

(1982) 11 SHI CK 0006
In the High Court Of Himachal Pradesh
Case No : F.A.O. No's. 33 and 35 of 1977

Kishan Sarup Thaper

APPELLANT

Vs

Dr. Lakhbir Sood and Others
 Oriental Fire and General
Insurance Co. Ltd. Vs Kishan Sarup Thapar and Others

RESPONDENT

Date of Decision : 06-11-1982

Acts Referred:

Motor Vehicles Act, 1939 — Section 95

Citation : (1985) 57 CompCas 472

Hon'ble Judges : Vyas Dev Misra, C.J

Bench : Single Bench

Advocate : K.S. Thapar and Deepak Thaper, for the Appellant; R.M. Suri, K.D. Sood and G.S. Ahuja, for the Respondent

Final Decision : Allowed

Judgement

Misra, C.J.—Mr. Kishan Sarup Thapar, advocate of Chandigarh, was engaged by Mr. Amrit Lal Sood in a case pending in the High Court at Simla. The date of hearing was August 25, 1970. Mr. Amrit Lal borrowed Car No. DLE-5220 from his brother-in-law, Mr. Lakhbir Sood, for going to Simla. He took Mr. Thapar and proceeded to Simla. The car was being driven by Mr. Amrit Lal. At 7.05 a.m. the car met with an accident with truck No. HRA-606 near post office at Kandaghat. Mr. Thapar was injured and was removed to Snowdon Hospital, Simla. He was found to have fractured his right shoulder and left hip bone. He remained in the hospital till August 31, 1970. Thereafter, he was removed to Chandigarh in an ambulance and had to remain in bed till 4th or 5th October, 1970. The doctor was of the opinion that Mr. Thapar would lead a stiff shoulder as its movements in extreme degrees would not be possible. The hip injury, according to the doctor, should lead to osteoarthritis of the hip joint leading to pain and restricted movement. Mr. Thapar says that he cannot lift any weight. He cannot even lift his grandchildren. The leg injury interferes with his profession since he cannot travel outside Chandigarh without an escort. He claimed Rs. 36,000 at the rate of Rs.

300 per month for a period of ten years in respect of loss of earning capacity. Rs. 1,000 were claimed as medical expenses and Rs. 2,000 for the two months for which he was confined to bed. He claimed Rs. 84,000 at the rate of Rs. 500 per month for a period of 14 years on account of loss of pleasures of life and permanent incapacity in using right arm due to stiffness of shoulder. Rs. 2,000 were claimed for suffering for about nine weeks. Thus, a "total compensation of Rs. 1,25,000 was claimed. He, however, stated in September, 1975, before the Motor Accidents Claims Tribunal that he was working and attending to his normal work as an advocate in the High Court though for the first three years after the accident he could not do so.

2. It is not disputed that the accident was due to the negligence of Mr. Amrit Lal. Mr. Thapar claimed compensation from Mr. Lakhbir Sood, owner of the car, Mr. Amrit Lal, who was driving the car and the Jupiter General Insurance Co. Ltd., with whom the car was insured, and others. The Tribunal awarded a total sum of Rs. 15,800 as compensation as well as interest at the rate of 10 per cent. per annum from the date of award till payment. It awarded Rs. 10,800 for the loss suffered by him of his professional income ; Rs. 2,000 for physical suffering for about nine weeks ; a sum of Rs. 2,000 for the loss of income for two months ; and a sum of Rs. 1,000 for medical expenses.

3. The insurance company as well as Mr. Thapar has filed appeals against the award. Whereas the insurance company contends that it is not liable to pay the compensation to Mr. Thapar, the latter has asked for enhancement of the compensation.

4. Mr. R. M. Suri, learned counsel for the insurance company, contends that the policy does not cover the risks of injury to a passenger. Now, it is Section 94 of the Motor Vehicles Act, 1939 (referred to as " the Act") which prohibits the use of a motor vehicle in a public place unless the vehicle is insured. Section 95 of the Act lays down the requirements of the policies of insurance and the limits of liability. The relevant part of this section reads I

" (1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which-

(a) is issued by a person who is an authorised insurer, or by a co-operative society allowed u/s 108 to transact the business of an insurer; and

(b) insures the person or classes of persons specified in the policy to the extent specified in Sub-section (2)-

(i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place ;

(ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising Out of the use of the vehicle in a public place :

Provided that a policy shall not be required-

(i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923, in respect of the death of, or bodily injury to, any such employee

(a) engaged in driving the vehicle, or...

(iii) to cover any contractual liability."

5. It is contended by Mr. Suri that the aforementioned proviso excludes the passengers in a vehicle who are not carried for hire or reward. It is also submitted that Section 11 of the insurance policy which relates to liability of a third party, does not cover injuries to passengers. Now, this Section 11 of the policy reads as under :

" Section 11.--Liability to third parties.

1. The company will indemnify the insured in the event of accident caused by or arising out of the use of the motor car against all sums including claimant's costs and expenses which the insured shall become legally liable to pay in respect of-

(a) death of or bodily injury to any person but except so far as is necessary to meet the requirements of Section 95 of the Motor Vehicles Act, 1939, the company shall not be liable where such death or injury arises out of and in the course of the employment of such person by the insured ;

(b) damage to property other than property belonging to the insured or held in trust by or in the custody or control of the insured."

6. My attention has been drawn to a judgment of the Supreme Court In Pushpabai Purshottam Udeshi and Others Vs. Ranjit Ginning and Pressing Co. (P) Ltd. and Another, in which the court considered the implication of Section 95 of the Motor Vehicles Act read with the aforementioned clause of the contract. The court observed (p. 1747 of AIR 1977) ;

" The legal liability is restricted to Clause 1(a) which states that the indemnity is in relation to the legal liability to pay in respect of death of or bodily injury to any person but except so far as is necessary to meet the requirements of Section 95 of the Motor Vehicles Act, the company shall not be liable where such death or injury arises out of and in the course of the employment of such person by the insured. Clauses 1 and 1(a) are not very clearly worded but the words "except so far as is necessary to meet the requirements of Section 95 of the Motor Vehicles Act, 1939, would indicate that the liability is restricted to the liability arising out of the statutory requirements u/s 95. The second part of Clause 1(a) refers to the non-liability for injuries arising in the course of employment of such person. The meaning of this sub-clause becomes clear when we look to the other clauses of the insurance policy. The policy also provides for insurance of risks which are

not covered u/s 95 of the Act by stipulating payment of extra premium. These clauses would themselves indicate that what was intended to be covered under Clauses 1 and 1(a) is the risk required to be covered u/s 95 of the Motor Vehicles Act. "

7. The court also observed AIR 1977 1746

" Section 95 provides that a policy of insurance must be a policy which insures the persons against any liability which may be incurred by him in respect of death of or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place. The plea that the words " third party " are wide enough to cover all persons except the person and the insurer is negatived as the insurance cover is not available to the passengers made clear by the proviso to subsection (1) which provides that a policy shall not be required."

8. It was, therefore, held that a policy of insurance was not required to cover risks to the passengers who are not carried for hire or reward.

9. In the instant case, Mr. Thapar was a passenger travelling in the car. He was not being carried for hire or reward. Therefore, the insurance company is not liable to pay compensation for the injuries sustained by him. Therefore, F.A.O. No. 35 of 1977, filed by the insurance company, is allowed.

10. Mr. Thapar submits that since he has already withdrawn the amount of Rs. 15,500 deposited by the insurance company, the latter may be asked to recover the amount first from the insured on whose behalf the insurance company was made to pay and in case the insurance company fails to recover the amount, then this amount may be recovered from him. In my opinion, it is a reasonable suggestion. Instead of forcing Mr. Thapar to recover this amount from the insured, the company should try to recover it from the insured and in case they fail to recover the amount from the insured, then they may ask Mr. Thapar to repay the amount.

11. Mr. Thapar contends that the Tribunal was not justified in refusing his claim in respect of loss of pleasures of life and permanent incapacity in using the right arm. The Tribunal has held that the physical disability resulting from a stiff shoulder cannot be considered as causing any loss to the appellant as claimed by him. Mr. Thapar has unequivocally stated that it is not possible for him to lift any weight, not even his grandchildren. It is thus fully established that this pleasure of life of lifting anything or fondling any child has been denied to him completely. Mr. Thapar is also likely to suffer from pain and restricted movements. In these circumstances, he should have been allowed compensation for the same. Mr. Thapar argued his appeal personally before me and though he did not complain of any pain in the hip joint, the possibility of pain in future cannot be ruled out in view of the opinion of the doctor. I would, therefore, consider a sum of Rs. 5,000 as adequate and just compensation on this account. Mr. Thapar's appeal is, therefore, allowed and the compensation awarded to him is enhanced to Rs.

20,800. He will be entitled to interest at the rate of 10 per cent. per annum from the date of award till payment. He will be entitled to recover this amount from Mr. Amrit Lal and Mr. Lakhbir Sood, respondents. No order as to costs.