
(1982) 07 KL CK 0022

In the High Court Of Kerala

Case No : A.S. No"s. 36 and 40 of 1977

Madras Motor and General Insurance Co. Ltd. and Others

APPELLANT

Vs

V.P. Balakrishnan and Others

RESPONDENT

Date of Decision : 27-07-1982

Acts Referred:

Motor Vehicles Act, 1988 — Section 95(2), 96

Citation : (1982) ACJ 460

Hon'ble Judges : V. Khalid, J;G. Balagangadharan Nair, J

Bench : Division Bench

**Advocate : Hariharashubramanian and C.S. Rajan, for the Appellant;
Pirappancode V. Sreedharan Nair and V.N. Achutha Kurup, for the Respondent**

Final Decision : Dismissed

Judgement

V. Khalid, J.—These two appeals are from the same judgment: the first by the 3rd Defendant-insurance company, and the other, the legal representatives of the 1st Defendant. The legal representatives of the 1st Defendant have been impleaded in A. S. No. 36 of 1977. The Plaintiff filed the suit in forma pauperis claiming damages for the injuries sustained by him in an accident involving bus K. L. D. No. 9261 owned by the first Defendant and driven by the 2nd Defendant. The total claim made by him was for Rs. 25,000/-. The Court below decreed the suit for Rs. 20,000/- with proportionate costs against all the Defendants. The 3rd Defendant-insurance company assails the decree on two grounds: one, that the court below ignored Ext. B-2 transfer by the 1st Defendant to the 2nd Defendant and secondly that the decree cast liability more than the statutory limit. The first Defendant disputes, in main, the award of compensation and its quantum.

2. On 30.3.1974 the Plaintiff boarded the bus K. L. D. 9261 owned by the first Defendant and driven by the 2nd Defendant to go from Perambra to Calicut. When the bus reached Thiruvangoor, it met with an accident. The 2nd Defendant tried to overtake another bus which was going ahead. This he did in a rash and negligent manner. He was driving the bus itself rashly and negligently. The result

was a head-on collision with a lorry K. L. Q. 5575 coming from the opposite side. One of the passengers in the bus died. The Plaintiff and some others in the bus sustained grievous injuries. Both the legs of the Plaintiff were fractured. He was removed to the Medical College Hospital, Calicut. An X-ray photo of his legs was taken. Both the legs were in plaster. He was in the hospital from 30.3.1974 till 9.4.1974. The suit was filed on 11.10.1974. On this date also his legs were in plaster. He was visiting the hospital for treatment even thereafter till 12.6.1976. He was not able to attend to his usual avocation. He suffered pain and was in great mental agony. He had to spend what he had earned for his treatment and other necessities. He was doing a small business in copra. For this purpose he had to cover a long distance on foot. After this accident, he could walk only with the help of a stick. His parents depended upon him for their maintenance. The damage to his legs has impaired his capacity to work and earn. He was 22 years old at the time of the accident. He had an expectation of 40 years more of life. His monthly income was Rs. 200/-. He could have earned substantial sum but for the injury caused to him. In support of his case he examined himself as P. W. 2 and adduced the evidence of P. W. 1, the doctor who treated him.

3. The first Defendant disputed the case of the Plaintiff that the accident took place because of the negligence of the 2nd Defendant. According to him, it was due to the negligence of the driver of the lorry. That the Plaintiff earned Rs. 200/- per month was not admitted nor that the accident had disabled the Plaintiff for life. He was in a position to attend to his work. It was further stated that he had sold the vehicle on 19.9.1973 to the 2nd Defendant and hence not liable for any damages.

4. The second Defendant filed a written statement denying the fact that he was driving the vehicle in a rash and negligent manner and disputing the quantum of damages claimed.

5. The third Defendant put the Plaintiff to proof of the allegations in the plaint.

6. It was after considering these rival claims that the Court below decreed the suit for Rs. 20,000/-.

7. We may at the outset dispose of the question whether the accident took place on account of the rash and negligent driving of the vehicle by the 2nd Defendant or not. Counsel for the Appellants found it difficult to challenge the finding of the Court below that the accident took place because of the rashness and negligence of the 2nd Defendant, to satisfy us with necessary materials that its finding was wrong. While the case of the first Defendant before the Court below was that the collision was as a result of rash and negligent driving by the driver of the lorry and not due to any fault of the 2nd Defendant, the case of the 2nd Defendant was that it happened due to the mechanical breakdown of the bus and since the brakes failed. The Court below has adversely commented upon this mutually destructive case of Defendants 1 and 2. It has found on evidence that the accident took place as spoken to by the Plaintiff. The only evidence before the

Court below was that of P. W. 2 regarding the manner in which the accident took place. There was no contra evidence either by the 2nd Defendant or by any other witnesses. For these reasons, we have no hesitation to hold in agreement with the Court below that the accident took place as spoken to by the Plaintiff, as a result of the rash and negligent driving by the 2nd Defendant. We confirm this finding.

8. The third Defendant, the insurance company, has feebly put forward a case in A. S. No. 36 of 1977 that it cannot be made liable as per Ext. B-1 the insurance policy, for, the vehicle was transferred by the 1st Defendant to the 2nd Defendant as per Ext. B-2 after the said policy. Ext. B-2, which is an agreement evidencing the sale of the bus by the 1st Defendant to the 2nd Defendant, was not accepted by the Court below. No one was examined to prove Ext. B-2. Hence no case can be built on Ext. B-2. The Court below has found that the first Defendant continues to be the owner of the vehicle in question. The case of the insurance company based on Ext. B-2 has therefore to be rejected. What is more, the insurance company cannot be permitted to put forward any case in appeal outside the limits set out in Section 96 of the Motor Vehicles Act and the case built on Ext. B-2 is one such. For this reason also the plea has to fail.

9. Counsel for the Appellant in A. S. No. 36 of 1977 questioned the direction in the decree making the insurance company liable for the entire damage decreed. According to him, the insurance company can be made liable only to the extent of the statutory limit contained in Section 95(2)(b)(ii)(4). According to him, the limit prescribed for the company u/s 95(2) (b) (H)(2) to vehicles like this is Rs. 75,000/- in all which means that the total compensation payable to all the injured persons in an accident involving a vehicle registered to carry more than 30 passengers but not more than 60 passengers is only Rs. 75,000/-. Sub-clause (4) limits the claim to individual passenger to Rs. 5000/-, for a vehicle like this. The decree as framed makes the 3rd Defendant liable for the entire Rs. 20,000/-, which, according to him, has to be corrected. The counsel for the first Respondent-Plaintiff met the case relying upon the decision in Motor Owner's Insurance Co. Ltd. v. J. K. Modi 1981 A.C.J. 507 (S.C.) as follows: Though the limit of Rs. 75,000/- is fixed as the total compensation payable, the case of each injured has to be construed as a separate and independent accident, and the limit of Rs. 75,000/- should be construed as the limit for each injured. The words "in all" occurring in the section should also be construed as the total compensation payable to each passenger. Support for this contention was sought from the following passages in the aforesaid decision:

14. If the words used by the Legislature in Clause (a) of Section 95(2) were the sole factor for determining the outside limit of the insurer liability, it may have been possible to accept the submission that the total liability of the insurer arising out of the incident or occurrence in question cannot exceed Rs. 20,000/-. Clause (a) qualifies the extent of the insurer's liability by the use of the unambiguous expression "in all" and since that expression was specially

introduced by an amendment, it must be allowed its full play. The legislature must be presumed to have intended what it has plainly said. But Clause (a) does not stand alone and is not the only provision to be considered for determining the outside limit of the insurer's liability. In fact, Clause (a) does not even form a complete sentence and makes no meaning by itself. Like the other Clauses (b) to (d), Clause (a) is governed by the opening words of Section 95(2) to the effect that "a policy of insurance shall cover any liability incurred in respect of any one accident" up to the following limits", that is to say, the limits laid down in Clauses (a) to (d). We have supplied emphasis in order to focus attention on the true question which emerges for consideration: What is the meaning of the expression "any one accident ?". If that expression were plain and unambiguous, and its meaning clear and definite, effect would be required to be given to it regardless of what we think of its wisdom of policy. But as we will presently show, the expression "any one accident" does not disclose one meaning conclusively according to the laws of language. It clearly is capable of more than one meaning, introducing thereby an ambiguity which has to be resolved by resorting to the well settled principles of statutory construction.

15. The expression "any one accident" is susceptible of two equally reasonable meanings or interpretations. If a collision occurs between a car and a truck resulting in injuries to five persons, it is as much plausible to say that five persons were injured in one accident as it is to say that each of the five persons met with an accident. A bystander looking at the occurrence objectively will be right in saying that the truck and the car met with an accident or that they were concerned in one accident. On the other hand, a person looking at the occurrence subjectively, like the one who is injured in the collision, will say that he met with an accident. And so will each of the five persons who were injured. From their point of view, which is the relevant point of view, "any one accident" means "accident to any one". In matters involving third party risks, it is subjective considerations which must prevail and the occurrence has to be looked at from the point of view of those who are immediately affected by it. If the matter is looked at from an objective point of view, the insurer's liability will be limited to Rs. 20,000/- in respect of injuries caused to all the five persons considered enbloc as a single entity, since they were injured as a result of one single collision. On the other hand, if the matter is looked at subjectively as it ought to be, the insurer's liability will extend to a sum of Rs. 20,000/- in respect of the injuries suffered by each one of the five persons, since each met with an accident, though during the course of the same transaction. A consideration of preponderating importance in a matter of this nature is not whether there was any one transaction which resulted in injuries to many but whether more than one person was injured, giving rise to more than one claim or cause of action, even if the injuries were caused in the course of one single transaction. If more than one person is injured during the course of the same transaction, each one of the persons has met with an accident.

10. Reliance on the above passages may at the first flush appear to be sound.

But "it can be seen that the Plaintiff cannot sustain the support that he seeks from the passages quoted above. It has to be noted that the Supreme Court in that case was concerned with Section 95(2)(a), as it existed on February 1, 1966, when the collision in that case took place. The Supreme Court referred to the changes that Section 95(2) underwent from time to time and traced its history to appreciate the scope of the contention raised in that case. It was after considering the section as it stood after amendment by the Motor Vehicles (Amendment) Act, 100 of 1956, that it was held that the insurance company could be made liable for an amount in excess of the statutory limit of Rs. 20,000/-, as it stood then, and that on the basis that each injured was involved in a separate accident. The question that fell for consideration before the Supreme Court in that case was whether the award of damages of Rs. 29,125/- to the legal representatives of the driver who died in the accident and the passenger who travelled in the car was proper, in view of the limit of Rs. 20,000/- fixed by the section as it then stood. We do not think it necessary to consider the applicability of the ratio of that decision for the reason that we are in this case concerned with the section as it stands after the amendment brought to Section 95(2) of the Motor Vehicles Act, by the Motor Vehicles (Amendment) Act, 56 of 1969, which came into force on 2nd March, 1970. By the said amendment, Section 95(2)(b)(ii)(4) has been introduced which reads as follows:

(4) Subject to the limits aforesaid, ten thousand rupees for each individual passenger where the vehicle is a motor cab and five thousand rupees for each individual passenger in any other case.

(This clause has not been correctly quoted in the report appearing in the decision¹). The Plaintiff's counsel found it extremely difficult to reconcile his submission with this sub-clause. He could not pursue his submissions based on the ratio of the decision under reference when confronted with this sub-clause. We have given our anxious consideration to this aspect of the case in view of the principle settled by the Supreme Court in the above decision. We hold that the decision could be distinguished on its facts. The section applicable in the present case is the amended Section 95(2) as it now stands with effect from 2nd March 1970. Clause (4) limits the claim of each individual passenger in a case like this to Rs. 5,000/-. Therefore we hold that the Appellant in A.S. No. 36 of 1977 could be made liable only for an amount of Rs 5,000/- in respect of each injured individual passenger and that the decree against the 3rd Defendant has to be modified accordingly restricting its liability to Rs. 5,000/- instead of Rs. 20,000/- decreed by the Court below.

11. The next question that has to be considered is the case of the Appellants in A.S. No. 40 of 1977 about the quantum of damages. The Appellant's counsel strongly pleaded that there was no evidence worth the name in the case to hold either that the Plaintiff was permanently disabled or partially disabled. It was contended that in the absence of any such evidence, the claim for compensation on the ground of disablement should be totally rejected. In any case, it was

contended that the claim was excessive. The Appellants' counsel submitted that the evidence of P. W. 2 is not conclusive to prove disablement. His evidence and the documents proved by him do not in any manner indicate the percentage of disability and the period during which the disability would last. According to him, even granting that the Plaintiff has suffered partial disablement the damages awarded are disproportionate to such disablement. He criticised the finding entered by the Court below as being arbitrary and without supporting materials. In his attempt to get the damages awarded substantially reduced, he placed reliance upon the following decisions: Vinod Kumar Shrivastava v. Ved Mitra Vohra 1970 A.C.J. 189 (M.P.); Subhash Chander v. Shri Ram Singh and Ors. 1972 A.C.J. 58 (Del); M.R.V. Bus Service (Pvt.) Ltd.v. Ravi (Minor) and Ors. 1974 A.C.J. 72 (Mad); Nathalal Chhaganlal v. Koli Karsan Lavji and Ors. 1979 A.C.J. 212 (Guj.); Vilas Rai Agarwal v. Ghisulal and Ors. 1979 A.C.J. 524 (Raj.); Amar Singh v. Surajmal and Ors. 1981 A.C.J. 382 (M. P.); Caetano Maria Palha and Anr. v. Agnelo Jose Santana Dias Mascarenhas 1981 A.C.J. 468 Goa Daman & Diu). He took us through these decisions also the amount of damages awarded in those cases. According to him, the damages awarded in those cases were reasonable while the amount decreed in the suit in question is not. Though no set guidelines to arrive at damages can be laid down, the acceptable norm is to follow comparable precedents in this behalf. He, therefore, commended the above decision for consideration. We have gone through them. According to us, each case has to be decided with reference to its peculiar facts and to adopt the reasoning in decisions rendered in cases with dissimilar facts may not always be safe. We have, with respect, our disagreement with the approach made in some of the above decisions but we refrain from entering into a detailed discussion about them, since it is not necessary for disposal of the appeal.

12. In this case, the only evidence available is what is supplied by P. Ws. 1 and 2. There is no evidence to the contra. The accident took place on 30.3.1974. The plaintiff was presented on 11.10.1974, at which time also both the legs of the Plaintiff were in plaster. The bones were united only on 12.12.1975. The Plaintiff was examined in Court in October, 1976. The Court below has observed in its judgment that the Plaintiff appeared in Court with sticks and that it was with great difficulty that he got into the witness box to give evidence. P. W. 1 has deposed that the Plaintiff could not walk without sticks. P. W. 2 has also deposed to the same effect. Ext. A-1 is the extract from the hospital records. Item 10 in this extract shows that after the accident both the legs of the injured were fractured. It is further damaged. The evidence is to the effect that there was damage to both the legs outside as well as inside. Column (14) shows that the X-ray revealed fracture of both the legs. Ext. A-10 is the reference card which shows that the Plaintiff had to visit the hospital on several occasions up to 12.6.1976. It was from these materials that the Court below held that there was permanent impairment of the legs. The Appellants' counsel disputed this conclusion by the Court below in paragraph 12 of its judgment contending that there was no evidence of permanent impairment of the legs. The Court below

has discussed the evidence of P. W. 1, the doctor, and that of P. W. 2, the injured. Though we may agree with the Appellants' counsel that there is no conclusive evidence about the permanent impairment of the legs due to the accident, We find it difficult to accept his case that there was no impairment of the legs at all. The evidence, according to us, satisfactorily proves that the injury had caused partial impairment to the efficiency of the legs and the consequent disablement to the Plaintiff to attend to his daily avocation. We cannot agree to ignore the fact that the Plaintiff had to go to the Court with sticks; nor can we overlook the impression formed by the Court below that the Plaintiff could get into the witness box only with difficulty. Though better evidence could have been made available about the percentage of disability, that is no reason to reject the case of the Plaintiff. Taking the totality of the circumstances available in the case we are of the view that the injuries have disabled the Plaintiff from attending to his work, which entitled him, according to us, to claim damages from the persons liable for it. We reject the contentions put forward by the Appellants that the evidence in the case does not make out any disablement--either partial or permanent--of the Plaintiff.

13. The first Respondent's counsel relied upon the decisions reported in M. P. S. R. T. Corporation, Bairagarh, Bhopal v. Sudhakar and Ors. 1977 A.C.J. 290 (S. C.); K. Gopala Krishnan v. Sankara Naryanan 1969 A.C.J. 34 (Mad.); Manmohan Sarup Kaushal and Anr. v. Mela Ram and Ors. 1977 A.C.J. 140 (Del), to contend that the Courts have in comparable cases awarded compensation even to the tune of Rs. 30,000/- and Rs. 50,000/-. We refrain from a detailed discussion of the facts of these cases also for the reason that such a detailed discussion is not necessary for a disposal of this appeal. The nearest approximation to the facts of this case is the one reported in M.P.S.R.T. Corporation v. Sudhakar¹. In that case one of the injured was a boy aged four who sustained fracture of right Tibia and Fibula lower third near ankle joints. It was held that though there was the possibility of the deformity caused being removed by surgical operation when he grew out to 16 years, the other possibility could" not be ruled out. The Tribunal awarded Rs. 10,000/- as general damages. The High Court enhanced it at Rs. 20,000/- and the award was confirmed by the Supreme Court. In this case, the injured Plaintiff is the bread-winner of his family. According to the evidence in the case, he used to sell copra by collecting it after visiting house after house, by which he made an income of Rs. 200/- per month. He was aged 22 years at the time of the accident. He had passed SSLC. According to him, he could expect to live for another forty years. It was on this basis that the Plaintiff claimed Rs. 25,000/- though the actual amount was estimated at one lakh of rupees in the plaint. The Court below has not accepted the case that the Plaintiff would make an income of Rs. 200/- per month and that for that reason the accounts were not produced. We are not very happy with the rejection of this case by the Court below. No evidence by way of accounts if necessary to show that an able bodied man aged 22 years could make a paltry sum of Rs. 200/- per month by doing some work. Even a labourer could easily make Rs. 200/-per month. The Court

below should have accepted this income as a guide to fix the damages. We are also not happy at the manner in which the Court below arrived at the figure of Rs. 20,000/- and at the absence of a proper discussion to arrive at this figure.

14. The Plaintiff has not itemised the damages under various heads. There is no evidence in the case clearly setting out the pecuniary losses and the non-pecuniary losses suffered by the injured- There is no evidence about the damages for pain and suffering and for loss of income, etc. We do not think we will be justified in accepting the Appellants', case and in denying the damages to the Plaintiff in the absence of sufficient materials fix damages on each item. Nor do we think we will be justified in endorsing the attempt of the Appellants' counsel to play down the disability put forward by the Plaintiff. It is not uncommon in cases of this nature for the Court to make global awards taking into consideration the cumulative effect of the entire materials placed before it. We think, in the peculiar facts and circumstances of this case, it would only be just and desirable to do so. As indicated above, the income of Rs. 200/- per month spoken to by P. W. 2 can be accepted as a safe guide to arrive at the amount of compensation. The evidence of P. Ws. 1 and 2 and the documentary evidence, in our view, established that the Plaintiff had in any case been disabled partially from attending to his work of taking out a livelihood to support himself and his parents. A healthy man of 22 years could in any case expect to live 40 years more. If Rs. 200/- per month is taken as the income that would work out to Rs. 2,400/- per annum. For 40 years, it would be Rs. 96,000/-. If the monthly income is computed at Rs. 100/-, the amount of compensation for 40 years would be Rs. 48,000/-. Even if deductions are made, to avoid the vice of accelerated payment, the proper compensation would exceed the amount decreed, which is less than 1/4th of Rs. 96,000/- and half of Rs. 48,000/-. So viewed, the compensation awarded by the Court below in the sum of Rs. 20,000/- in our judgment, does not appear to be in any manner excessive. We, therefore, uphold the award of damages at Rs. 20,000/- by the Court below.

15. In the result, we allow A. S. No. 36 of 1977 in part and modify the decree by making the 3rd Defendant liable only for Rs. 5,000/- instead of Rs. 20,000/-. We direct the parties to bear their costs in this appeal. A. S. No. 40 of 1977 fails and is dismissed with costs of the 1st Respondent.