

(1996) 12 DEL CK 0004

In the Delhi High Court

Case No : First Appeal Order No's. 220 and 239 of 1982

Mishri Devi and Others

APPELLANT

Vs

New India Assurance Co. Ltd. and Others

RESPONDENT

Date of Decision : 20-12-1996

Acts Referred:

Motor Vehicles Act, 1988 — Section 96(2)

Citation : (1997) 1 ACC 93 : (1998) ACJ 665 : (1997) 65 DLT 979

Hon'ble Judges : Usha Mehra, J

Bench : Single Bench

Advocate : O.P. Goyal and K.K. Jain, for the Appellant;

Judgement

Usha Mehra, J.

(1) These are two sets of appeal one filed by the legal heirs of deceased Om Prakash and the other by the New India Assurance Company Ltd. Since the point involved in both these appeals is the same i.e. challenge to the amount of compensation awarded, hence these appeals are taken up together and disposed of by one order.

(2) 20TH August, 1987 was the dark day in the life of Smt. Mishri Devi when her husband and father of S/Sh. Ram Kishan, Mahanand, Niraj, Sushil, Satish, Master Ashok as well as Km. Manisha Kaushik and Sunita was snatched away from them due to the accident caused by Sh.Trilochan Singh, driver of Mini Bus No. DLP-5663. Late Sh.Om Prakash was going on his two-wheeler Vespa Scooter on Malviya Nagar Road at 11.00 a.m. He was on his correct side of the road when from the opposite direction coming from Panchsheel Road crossing side, the Mini Bus in question driven by respondent No.2 in a rash and negligent manner hit his scooter. The bus dragged the scooter and the deceased to a considerable distance. Due to this accident O.P. Sharma lost his life. Smt. Mishri Devi his wife and children became orphans because their sole bread earner was done to death due to the rash and negligent driving of the driver of Mini Bus.

(3) SH.OM Prakash was a teacher in a Government School at the time of his death. He was 46 years old. He was drawing a salary of Rs. 1,165.75 paise per month. He left behind his wife and eight children out of which five were minors. The elder daughter Km. Manisha was 19 years of age. So far as the factum of accident caused by the rash and negligent driving of the driver of Mini Bus there is no dispute over that. There is also no dispute over the fact that the deceased was 46 years old and a teacher in a Government School drawing a salary of Rs.1,165.75 P. per month. And that he left behind 8 children, out of whom five were minor. The only controversy raised by the claimants in their appeal has been that the Motor Accident Claims Tribunal (in short the Tribunal) did not correctly apply the multiplier particularly when the longevity of the life in the family of deceased was fully established. The Tribunal instead of applying the multiplier on the basis of longevity of life in the family of the deceased, applied the multiplier of 12 years without any basis. Secondly, the Tribunal was not justified in deducting the amounts from the award on account of provident fund, pension, lump sum payment and income tax etc. He also could not have deducted 1/3rd out of the awarded amount as personal expenses of the deceased particularly when it was proved on record that the deceased had to support a large family. Finally no provisions have been made in the award with regard to the marriage expenses of the unmarried daughters and for the study of children.

(4) So far as the question of liability of the Insurance Company is concerned that is the main thrust of objections by the Insurance Company. According to appellants/claimants since the Mini Bus was comprehensively insured hence the liability of the Insurance Company was unlimited. Whereas the Tribunal treated it to be a case of "Act liability" and fixed the liability of the Insurance Company to Rs. 50,000.00.

(5) ON the other hand the Insurance Company's grievance has been that the Tribunal ignored that the fact that Mini Bus in question was transferred by its owner namely Harbans Singh respondent No. 12 to Sh. Ganesh Dass respondent No. 11 much before the date of accident. Therefore, the contract of insurance had ceased to exist as there did not exist any insurance policy on transfer of vehicle. The condition precedent for enforcement of limitation contained in Section 96(2) of the Motor Vehicles Act (in short the Act) is that there must be no dispute on the point as to who is the insurer and who is the insured. In this case since on the date of accident factum of insurance was in dispute as the vehicle stood transferred, Therefore, no amount could have been awarded against the Insurance Company.

(6) Before dealing with the objection regarding liability of the Insurance Company as raised by the appellant as well as by the Insurance Company I would like to make certain observations with regard to the claim of the claimants qua other respondents. Admittedly, Sh. Om Prakash deceased was 46 years old. He was a teacher in government school drawing a salary of Rs.1,165.75 paise per month. While fixing the amount of compensation the Tribunal ought to have

taken into consideration the longevity of life in the family of the deceased. Therefore, applying the multiplier of 12 years, to my mind, was on the lower side. Deceased had no vices. He was having good health. Having held that deceased was expected to live up to the age of 70 years, the multiplier ought to have been 18 years instead of 12 years. Deceased was drawing Rs. 1,165.75 paise the Tribunal should have considered his future prospects. He could not have stagnated as a government teacher at Rs. 1,023.95 paise for all times to come. It has come on record by the testimony of Sh. Puran Singh Public Witness -4 that the pay of the deceased was revised later on. The deceased was entitled to arrears due to enhancement in salary. His salary had gone to Rs. 1,165.75 paise per month. This shows that had he lived he would have also earned yearly increments till the age of his retirement which in the case of a teacher is 60 years. The certificate Ex. Public Witness -4/1 shows the increment which his L.Rs. got after his death. Sh. Puran Singh stated that had the deceased not died he would have got future increments year by year. But while calculating the dependency loss the Tribunal assessed the income of the deceased at Rs. 1,000.00 per month out of which he made deductions which, to my mind, the Tribunal could not do. Deductions on account of provident fund, pension or towards income tax or on account of lump sum payment is not admissible as held by Supreme Court. Similarly, the Tribunal fell in error in considering that the deceased would have been spending 1/3rd of his salary on his personal expenses. While doing so the Tribunal lost sight of the fact that the deceased had to feed 9 mouths beside his own with his meager salary of Rs. 1,165.75 paise per month. He could not have spent 1/3rd on himself. At best he could have spent Rs. 150.00 per month on himself. Therefore, the deductions as ordered by the Tribunal cannot be sustained. Taking these factors into consideration the dependency loss as arrived at by the Tribunal is hereby modified. On the basis of this income and by applying the multiplier of 18 years the dependency loss would work out to Rs. 2,16,000.00 and not as awarded by the Tribunal.

(7) The real controversy in both the appeals is whether the liability of the Insurance Company to pay compensation was limited to Rs. 50,000.00. I would first deal with the objection of the Insurance Company that it was not liable at all because the vehicle stood transferred, Therefore, it had no liability to pay at all. This aspect has been dealt with at length by the Tribunal in its judgment, particularly while disposing of issue No. 4. After analysing the evidence which had come on record, the Tribunal concluded that Harbans Singh was owner of the offending Mini Bus as on 20th August, 1975. Vehicle was insured in the name of Sh. Harbans Singh on 20th February, 1975 vide insurance policy, copy of which was proved on record as Ex.PW-1/A. On the basis of the documentary evidence Tribunal came to the conclusion that as on the date of accident vehicle had not been transferred by Harbans Singh to Sh. Ganesh Dass. Si Hukam Singh Public Witness -8 when recalled for cross examination on 20th March, 1981 said that the vehicle was given on superdari to Sh. Ganesh Dass as attorney of Harbans Singh. Therefore, merely by handing over the vehicle on superdari to an attorney of the

owner does not mean that the vehicle stood transferred to the attorney. It shows that Harbans Singh was owner of the vehicle on the date of accident and even thereafter. Sh. R.G. Soni Public Witness -11 Clerk of the Transport Authority on the basis of the official record relating to Mini Bus deposed that Harbans Singh was the owner of the Mini Bus as on 20th August, 1975 and that the bus was sold to Sh. Jasbir on 1st May, 1979 vide sale letter placed in file, photocopy of which is Ex. Public Witness -11/2. Sh. Ram Kishan, son of the deceased appearing as Public Witness -10 proved on record letter received from the Directorate of Transport intimating that the Mini Bus in question was registered in the name of Harbans Singh. Said letter has been proved on record as Ex. PW-10/A. From these documentary evidence it was fully established on record that as on the date of accident i.e. 20th August, 1975 Harbans Singh was the owner of Mini Bus and being the owner he got his vehicle insured with the Insurance Company. So is the testimony of Sh. O.P. Khurana General Attorney of installments Supply Pvt. Ltd. who appearing as Public Witness -2 testified that mini bus which was given on installments belonged to Sh. Harbans Singh. Original receipt he proved on record as Ex. PW- 2/1 and the Joint Managing Director's signatures at Ex. Public Witness -2/2. installments receipt as on 17th May, 1977 from Harbans Singh has been proved on record as Ex. PW-2/3.

(8) In view of these oral and documentary evidence placed on record, to my mind, the Tribunal rightly came to the conclusion that the vehicle had not been transferred to Sh. Ganesh Dass as on the date of the accident and the insurer Harbans Singh was owner on the date of accident. Ganesh Dass did not come into the witness box nor produced by Insurance Company to prove that he was owner of the bus on the date of accident. Therefore, the Tribunal rightly arrived at the conclusion that Harbans Singh was the owner of the vehicle as on the date of accident. Insurance Company, to my mind, miserably failed to bring home any error in the conclusion arrived at by the Tribunal with regard to this issue. Harbans Singh was owner of the vehicle as on the date of accident. Therefore, Insurance Company is liable to compensate the legal heirs of the deceased.

(9) I find no infirmity in the conclusion arrived at by the Tribunal against issue No.4. The appeal of the Insurance Company bearing F.A.O. No. 239/82 is accordingly dismissed having no merits with costs of Rs. 2,000.00.

(10) Now as regard the question whether liability of the Insurance Company was limited or not Mr. O.P. Goel appearing for the appellants/claimants contended that no reliance can be placed or ought to have been placed by the Tribunal on Exhibit Public Witness -1/A i.e. the insurance policy. It was got produced by the claimants to prove that the said mini bus was insured with this Company and not the liability part. Neither the original policy was produced nor Act liability plea was raised by the Insurance Company. Exhibit Public Witness -1/A is only a waste paper. It has no evidentiary value as regarding financial liability of the Insurance Company is concerned. No reliance can be placed on this document. In the absence of having pleaded and proved the Act liability, the Insurance

Company has to be held liable for unlimited amount. To support his contentions he relied on the decision in the case of Subhadara Kumari and others Vs. Lallu Ram and others, I am afraid the observations of the Court in this case are of no help to Mr. Goel. In that case the Insurance Company did not plead Act liability nor produced the policy. Only copy of policy prepared on the basis of a letter was produced. It was in this background the Court opined that since neither the original nor copy was produced, Therefore, liability of the Insurance Company was held to be unlimited. In that case even the witness who appeared on behalf of the Insurance Company admitted that the premium charged from the insured was more than third party. This admission on the part of the official of the Insurance Company demolished its case of limited liability. It was in these circumstances that the Court did not rely on the insurance policy which was prepared on the basis of a letter which was neither photocopy nor carbon copy of the original. But that is not the case in hand. Similarly reliance by Mr. Goel on the decision of the Supreme Court in the case of New Asiatic Insurance Co. Ltd. Vs. Pessumal Dhanamal Aswani and Others, , has no bearing on the facts of this case. In that case the Apex Court was concerned with the effect of the proviso and liability of the insurer vis-a-vis third party. While considering the object of Chapter VIII of the Act, 1939, the Apex Court observed that:

"its provisions ensure that third parties who suffer on account of the user of the motor vehicle would be able to get damages for injuries suffered and that their ability to get the damages will not be dependent on the financial condition of the driver of the vehicle whose user led to the causing of the injuries. But that is not the case in hand. We are concerned in this case about the liability of the Insurance Company and not the liability and the financial condition of the driver of the vehicle. Therefore, the observations in the case of New Asiatic Insurance Co. Ltd. (supra) have no bearing on the facts of this case. Similarly, reliance on the case of Nirmal Singh and Another Vs. C.M. Java and Others, ., and in the case of Usha Sehgal and others Vs. Chhote Ram and others, ., is misplaced. In both these cases insurance policy was not produced, Therefore, the Courts held that the liability of the Insurance Company was unlimited."

(11) In the case in hand admittedly, the quantum of liability was not proved by the respondent/insurance Company. At same time the appellant/claimants themselves proved the insurance policy by summoning the witness of the Insurance Company. He proved the policy as Exhibit Public Witness -1/A. In his cross examination Mr. Dinesh Sharma, Public Witness -1, Assistant in the legal department of the Insurance Company, admitted that the liability of the Insurance Company was limited to Rs. 50,000.00 as per the terms incorporated in Exhibit Public Witness -1/A. The claimants thereafter did not ask any further question in re-examination to find out whether any additional premium was charged by the Insurance Company from the insured raising the quantum of liability to unlimited one. Since the insurance policy has been proved on record as Exhibit Public Witness 1 /A, it does not lie in the mouth of the appellants now to contend that it is a waste paper and that no reliance should be placed on the

same; It is the appellant/claimants who relied on this document Ex. Public Witness 1 /A to prove that Mini Bus was insured with this Company and was owned by Harbans Singh. They cannot be allowed to take advantage of. one part of Ex. PW-I /A and when it comes to financial liability it should be ignored. The document which was got proved and taken advantage of, its genuineness being not in doubt cannot be now questioned by the appellants. The Tribunal, to my mind, rightly relied on the same in holding the liability of the Insurance Company to be limited. I see no reason to interfere with the same.

(12) However, before parting I must say that the Tribunal awarded interest from the date of award when normally the interest is awarded from the date of application. It is only when the delay is caused by the claimants in the conclusion of the case that the interest is awarded from the date of award. In the present case it is nobody's case that appellants delayed the proceedings then why should they suffer on this count. I accordingly modify the award on this count and order that the claimants would be entitled to interest on the amount of compensation awarded from the date of application till realisation. Mr. Goel's contention that Supreme Court in similar circumstances enhanced the rate of interest to 12%, Therefore, in this case also rate of interest be enhanced. I find force in this submission. Perusal of Exhibit Public Witness 1 /A shows that the liability of the Insurance Company is limited to the extent of Rs. 50,000.00. The contention of Mr.Goel that since it was a comprehensive insurance policy, Therefore, the liability is limited, to my mind, this argument is without substance. Supreme Court in the case of National Insurance Co. Ltd., New Delhi Vs. Jugal Kishore and Others, , observed that:

"Comprehensive insurance of the vehicle and payment of higher premium on this score, however, do not mean that the limit of the liability with regard to third party risk becomes unlimited or higher than the statutory liability fixed under sub-section (2) of Section 95 of the Act."

(13) Relying on the above observations I find no force in the submissions of Mr. Goel when he contended that since it was a comprehensive insurance, Therefore, liability was unlimited.

(14) For the reasons stated above, the award is modified. The appellants will be entitled to a sum of Rs. 2,16,000.00 with interest at the rate of 9% per annum from the date of application till realisation. The liability of the Insurance Company is limited to the extent of Rs. 50,000.00 with interest at the rate of 9% from the date of application till realisation and cost, which I assess Rs. 2,000.00. The liability of respondents 2 and 4 is joint and several. Out of the enhanced amount, an amount of Rs.1 lakh shall be given to the widow of the deceased and balance amount shall be shared in equal proportion by the children of the deceased.