
(1987) 10 MP CK 0041
In the Madhya Pradesh High Court

Motilal Hariballabh Mishra and Another	APPELLANT
Vs	
Khilaunabai and Others	RESPONDENT

Date of Decision : 30-10-1987

Acts Referred:

Motor Vehicles Act, 1939 — Section 95(2)(b), 95(2)(b)(ii)

Citation : (1987) 2 ACC 544

Hon'ble Judges : Ram Pal Singh, J;B.C. Varma, J

Bench : Division Bench

Judgement

B.C. Varma, J.—This appeal u/s 110-D of the Motor Vehicles Act, 1939 is filed against the award of the Motor Accident Claims Tribunal, Chhatarpur, passed in Claim Case No. 10 of 1977. Under this award, a net amount of Rs. 29,000/- has been awarded to compensation payable to respondent No. 1 as widow of deceased Dulichand and an amount of Rs. 50/- has been awarded to Ramesh Chand Jain son of respondent No 1. We are not concerned with the award in favour of Ramesh Chand Jain

2. The relevant facts for the purpose of this appeal are that deceased Dulichand and his son Rameshchand were travelling in a bus M.P.N. 7001 from Tikamgarh to Chhatarpur at about 8-00 P.M. on 30-9-1977 when the said bus collided against a truck No. M.P.M. 3684 coming from the opposite direction. At the relevant time, the bus was being driven by the appellant No. 2. Abdul Ajij who was then in the employment of the owner, i.e., M/s. Motiial Hariballabh Mishra, appellant No. 1. As a result of the accident, Dulichand died while his son Rameshchand sustained certain minor injuries. Widow of Dulichand, viz., Smt Khilaunabai, alleged that the bus was being driven rashly and negligently and so also the truck. The collision was the result of the negligent driving by the drivers of both the vehicles. At the time of his death, Dulichand was aged about 60 years while his widow Khilaunabai was aged 54 years. Dulichand was engaged in the business of procuring and selling Ghee He made sufficient income and maintained the entire family out of that income. The bus was insured with the

New India Assurance Company Ltd., respondent No. 2, under the insurance policy Ex. D/8 which has been, produced by the appellant No. 1 in this case. The claimant Khilaunabai made a very tall claim. Naturally the claim was denied both by the Insurance Company and also the two appellants. It may be mentioned that while Insurance Company pleaded that its liability was limited in terms of Section 95(2) of the Motor Vehicles Act, the appellants pleaded no agreement to the contrary specifying the limit of liability of the Insurance Company. After due trial, the Claims Tribunal held drivers of both the vehicles negligent in driving the vehicles and, there fore, attributed the injuries resulting in death of Dulichand to the use of the motor vehicles by them. While assessing the compensation to be awarded, the dependency was assessed at Rs. 6,600/- per year and assessing the expectancy of life of the deceased a multiplier of five was applied. Thus a total liability was assessed at Rs. 33,000/-. To this was added Rs. 2,000/- on account of pain and suffering, Rs. 1,000/- on account of loss of Ghee and, Rs. 250/- as medical charges. Out of this total amount, a sum equal to twenty per cent has been deducted because of the immediate payment to the claimant. A net amount of Rs. 20,000/- has, therefore, been awarded to the respondent No. 1 as compensation of death of her husband Dulichand. It is worth mentioning that no interest has been awarded on this amount.

3. While the two appellant, viz., the owners of the bus and its driver, have appealed against the award, the claimant Khilaunabai has filed a cross-objection claiming an additional amount. Even then no interest has been claimed.

4. The question of negligent driving of the vehicle by the two drivers does not have to detain us much. The counsel for the parties took us through the entire evidence on record and we find that the Claims Tribunal committed no error in holding the two drivers rash and negligent in the matter of driving of the vehicles. Indeed, no much effort was made by the appellants' counsel to question this finding which we affirm.

5. We may at this stage dispose of the cross-objection. While the teamed counsel appearing for respondent No. 1/claimant did not object to assessment of dependency, his assertion has been that a multiplier of five chosen for expectancy of life is on the lower side. He submitted that a figure 10 should be replaced for figure 5, We are not much impressed with this argument. After all the deceased was aged about 50 years. There is not much dependable evidence as to the longevity of age in the family. Considering the overall circumstances, a multiplier of 5 appears to be just. This is more so because the expectancy of life of the claimant has also play which learned Counsel for the claimant forgot when he asserted for the increase of the multiplier. From the oral evidence on record, we are satisfied that the Claims Tribunal cannot be said to be in error in choosing the figure 5 as multiplier. That finding does not need any change.

6. Shri P.C. Khare, appearing for the appellants, strongly argued that the liability of the Insurance Company could not have been limited to Rs. 5,000/-. The argument is that in view of the policy Ex. D/8, the extent of liability of the

Insurance Company should have been Rs. 50,000/- as that was the specific contract the parties entered into in that behalf. Section 95(2) of the Motor Vehicles Act, which is relevant for our purpose, is as follows:

95. Requirements of policies and limits of liability--

(1) x x x (2) Subject to the proviso to subsection (a), a policy of insurance shall cover any liability incurred in respect of any one accident up to the following limits, namely--

(a) where the vehicle is a goods vehicle, a limit of one lakh and fifty thousand rupees in all, including the liabilities, if any, arising under the Workmen's Compensation Act, 1923 (8 of, 1923), in respect of the death of, or bodily injury to, employees other than the driver, not exceeding six in number, being carried in vehicle;

(b) where the vehicle is a vehicle in which passengers carried for hire or reward or by reason of or in pursuance of a contract of employment,--

(i) in respect of persons other than passengers carried for hire or reward, a limit of fifty thousand rupees in all;

(ii) in respect of passengers, a limit of fifteen thousand rupees for each individual passenger;

Since the deceased was a passenger, the statutory liability of the insurer on account of his death would be covered by Section 95(2)(b)(ii) of the Act. It is common ground that at the relevant time, the limit of this statutory liability was Rs. 5000/-. It is clear from the reading of this provision that the insurer and the insured can by a contract raise this limit of liability. This is so because of absence of any words in the section prohibiting any such contract. This is the view expressed by the Supreme Court in *Shaikhupura Transport Co. v. N.L.T. Insurance Co.* AIR 1971 AC 1624 Their Lordships, in para 9 of the judgment, has stated the law in these terms:

The limit of insurer prescribed u/s 95(2)(b) of the Motor Vehicles Act can be enhanced by any contract to the contrary.

This decision has since been applied in *Premier Insurance Company v. Gambhirsingh* AIR 1975 Guj. 133 *Ajit Singh v. Sham Lal* AIR 1984 P.L.R. 223 and *Jyoti Prasad Dixit (deceased by L.Rs.) Vs. Smt. Bitan Devi and Others*, . It can, therefore, be readily conceded in appellants' favour that the limit of statutory liability u/s 95(2)(b)(ii) could well have been extended by mutual contract between the insurer and the insured. The question, therefore, is whether there has been any such contract. *Shri Khare*, learned Counsel for the appellants, urged that there has been such contract to the contrary extending the limit of liability to Rs. 50,000/-. For this submission, learned Counsel relied upon the document Ex. D/8 which is the insurance policy. We, however, are of the opinion that this document does not support the appellants' contention. This document

has corns from the appellants" (insured) possession. It appears that the complete document has not been filed for reasons best known to the appellants Shri Khare drew the Court's attention to the following term in that document:

Limits of liability: Limit of the amount of the Company's liability u/s II-1(i) in respect of any one accident--

Limit of the amount of the Company's liability u/s II-1(ii) in respect of any one claim or series of claims arising out of one event Rs. 50,000/-.

The aforesaid term indicates that the company's liability u/s II-1(i) in respect of any one claim or series of claims arising out of one event is Rs. 50,000/-. Apparently, the reference to Section II-1(ii) has a reference to some clause in the policy itself and not to any of the clauses of Section 96 of the Motor Vehicles Act. It is difficult to infer from this term that the parties has contracted to extend the limit of statutory liability u/s 95(2)(b)(ii) to Rs. 50,000/- Shri Khare, however, argued that a copy of this insurance policy is with the insurance company, respondent No. 2, and that in absence of its production by the company, it should be inferred that the liability has been extended as claimed. We find ourselves unable to accept this contention for the reason that the pleadings contained in the written statement filed by the appellants before the Claims Tribunal has no such reference No plea was raised nor was any issue struck that the limit of statutory liability has been extended to Rs. 50,000/- as is claimed before this Court. The policy of insurance exhibited by the appellants also does not lend support to this contention. Shri Khare, however, pointed out certain decisions to suggest that when the policy of insurance is not produced by the Insurance Company, its liability need not be restricted to the extent indicated in Section 95 See : Ajit Singh Vs. Sham Lal and Others, , Premier Insurance Co. v. Gambhirsingh AIR 1975 Guj. 133 , (supra) and Shyamlal v. The New India Assurance Co. Ltd. 1979 ACJ 208 , N.P. In all these cases relied upon by the learned Counsel for the appellants, the insurance company policy was not produced by the insurance company to show that its liability in respect of each passenger was limited to the statutory liability. The question was between the Insurance company and the claimants. We, however, have a Division Bench decision of this Court in Miscellaneous Appeal No. 78 of 1976 (1) Oriental Fire and General Insurance Company v. Kamlabai decided on 23-12-1976. The view taken therein by the Division Bench is that if the claimants were to contend that the statutory liability prescribed u/s 95(2)(b)(ii) of the Act has been extended by mutual contract, it is for them to establish by getting the insurance policy produced by the Company. This decision does not seem to have been brought to the notice of the learned single Judge who took a contrary view in Shyam Lal's case (Supra). Be that as it may. The position in the present case is that the policy has been produced and the question is between the Insurance company and the insured both of whom are in possession of the policy. The policy has actually been produced in Court and as we have indicated the term relied upon, does not help the appellants. That being so, we are of the opinion that the

appellants have not been able to establish that any contract to the contrary extending the statutory limit of liability u/s 95(2)(b)(ii) of the Act which plea they raised for the first time in appeal.

7. We are now left only with the question of award of interest to the claimant, It is true that the Claims Tribunal did not award any interest and that the respondent/claimant, although has filed cross-objection, has not claimed Interest even then. Claim for interest for the first time was made when the learned Counsel for the respondent No. 1 addressed the Court. We feel that the claimant is entitled to interest on the amount awarded as compensation from the date of the application before the Claims Tribunal. In the circumstances of this case, was direct that the amount awarded as compensation shall carry interest at six per cent per annum from the date of application until realization. See : Ramanathan v. Ramanathan AIR 1986 SC 1047 and Sumanbai and Others Vs. State of M.P. and Others, .

8. For the aforesaid reasons, the appeal and cross-abjection are dismissed. There shall be no order as to costs.