

(1992) 12 SHI CK 0011

In the High Court Of Himachal Pradesh

Case No : L.P.A. No's. 18 and 19 of 1988 with Cross-objections No's. 44 and 45 of 1989

National Insurance Co. Ltd.

APPELLANT

Vs

Kavita Rani and Others

RESPONDENT

Date of Decision : 15-12-1992

Acts Referred:

Motor Vehicles Act, 1939 — Section 21(A), 94, 95(2)

Citation : (1993) 1 ACC 606 : (1993) ACJ 489 : (1993) 1 ShimLC 416

Hon'ble Judges : L.S. Panta, J;Davinder Gupta, J

Bench : Division Bench

Advocate : A.K. Goel, for the Appellant; Ajay Sharma and S.S. Kanwar, for the Respondent

Final Decision : Allowed

Judgement

Devinder Gupta, J.—Question of law arising for determination in the two appeals being common, the same are being disposed of by a single judgment.

2. On 28th May, 1986, Havildar Rajinder Parshad took army jeep on duty from Yol to Alhilal. Major General Ram Krishan, VSM (Retd), Ex-Col. Commandant Assam Regiment, who had come to visit Yol Camp, under his own arrangement, took lift in the said jeep for going to Palampur, being on way from Yol to Alhilal: Near Aria, bus HIC 516, driven by Nand Kishore, respondent No. 5 and owned by Unemployed Graduate Bus Service, respondent No. 4, came from the opposite direction. According to the claimants, it was being driven rashly and negligently at a very high speed. While it was downhill and on wrong side, it struck against the jeep, as a result of which the jeep was pushed back to the hillside. Consequent to this impact, one side of the jeep was blocked by the hillside and the other by the bus, resulting in breaking out of fire and ultimately burning of the jeep and the bus. Both the occupants of the jeep received multiple injuries. As they could not come out of the jeep, they succumbed to their injuries. It was alleged that the driver of the bus absconded immediately.

3. On the basis of the aforesaid allegations, two separate claim petitions were preferred, one by Kavita Rani and others, the legal representatives of Havildar Rajinder Parshad and the other by Bimla Krishan and others, legal representatives of Major General Ram Krishan. Besides the owner and the driver of the bus, National Insurance Co. Ltd. was impleaded as one of the respondents, since the bus at the relevant time was insured. The Claims Tribunal holding the bus driver liable for rash and negligent driving fastened the liability on the owner and the driver and held the insurance company liable to indemnify the entire amount of claim. In the case of Kavita Rani, a sum of Rs. 1,09,000/- was awarded as the just amount of compensation and in the case of Bimla Krishan and others, a sum of Rs. 85,000/- was held to be the just compensation amount. In each case, over and above the amount of compensation, the claimants were also held entitled to interest at the rate of 12 per cent per annum from the date of institution of petition till the date of payment.

4. The insurance company felt aggrieved against the awards made by the Claims Tribunal. Its contention was that the extent of its liability qua the third party claim under the terms of the insurance policy was restricted only to Rs. 50,000/- in respect of one accident and as such the Tribunal was not right in directing the entire amount to be recovered from the insurance company.

5. A learned single Judge of this Court dismissed both the appeals in limine by a short order, which is reproduced hereunder:

There is no substance in this appeal in which the only argument advanced at the preliminary hearing related to the extent of liability of the appellant insurance company qua a third party claim. Neither the requirements of law nor the relevant provisions of the insurance policy are capable of being invoked in aid to restrict the liability in such a case to Rs. 50,000, as sought to be urged on behalf of the appellant insurance company. The aforesaid conclusion can be reached irrespective of whether any confession to that effect was made by and on behalf of the appellant insurance company before the Tribunal. Section 94 and Section 95, Sub-sections (1)(b)(i) and (2)(b) and Section 96 of the Motor Vehicles Act, 1939 and the insurance policy [See: Section II-1 thereof and also the limits of liability prescribed], if they are read closely and correctly, jointly and/or severally, leave no room for doubt that the liability of the appellant insurance company is not limited to Rs. 50,000/- in such cases. Hence summarily dismissed.

6. Still dissatisfied, the insurance company has come up in Letters Patent Appeal in both the cases. Claimants have also preferred cross-objections and prayed for enhancement of the amount of compensation.

7. We have heard the learned Counsel for the parties and also gone through the records.

8. The main question arising for determination is the extent of the liability of the insurance company. Learned counsel for the appellant has urged that in view of

the statutory provision, namely, Clause (b) of Sub-section (2) of Section 95 of the Motor Vehicles Act, 1939, (hereinafter to be referred to as "the Act"), as it stood on the date of the accident, namely, 28th May, 1986, no award in excess of Rs. 50,000/- could have been made against the insurance company and that also for a single accident.

9. Dealing with the aforementioned submissions, made by the learned Counsel for the appellant, it would be necessary, firstly, to refer to the terms of the policy, copy of which has been proved on record as Exh. R-1, against the heading "Limits of Liability", in which it is provided as under:

Limit of the amount Such amount as is of the company's liability necessary to meet under Section II-1 (a) in the requirements of respect of any one accident the Motor Vehicles Act, 1939. Limit of the amount of the company's liability under section II-I (b) in respect of any one claim or series of claims arising out of one event Rs. 50,000/-

10. In Section II of the policy under the heading "Liability to third parties", it has, inter alia, been provided as under:

1. Subject to the limits of liability the company will indemnify the insured against all sums including claimant's costs and expenses which the insured shall become legally liable to pay in respect of

(i) death of or bodily injury to any person caused by or arising out of the use (including the loading and/or unloading) of the motor vehicle.

XXX XXX XXX Provided always that

(a)XXX XXX XXX (b) 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 in respect of death of or bodily injury to any person in the employment of the insured arising out of and in the course of such employment.

(c) Except so far as is necessary to meet the requirements of Section 95 of the Motor Vehicles Act, 1939, in relation to liability under the Workmen's Compensation Act, 1923, the company shall not be liable in respect of death of or bodily injury to any person (other than a passenger carried by reason of or in pursuance of a contract of employment) being carried in or upon or entering or mounting or alighting from the motor vehicle at the time of the occurrence of the event out of which any claim arises.

(d) XXX XXX XXX

11. The relevant Clause (b) of Sub-section (2) of Section 95 of the Act, as it stood prior to the coming into force of the Motor Vehicles (Amendment) Act, 1969 (Act No. 56 of 1969) was as under:

95. Requirements of policies and limits of liability.?

(1)xxx xxx xxx (2) Subject to the proviso to Sub-section (1), a policy of

insurance shall cover any liability incurred in respect of any one accident up to the following limits, namely?

(a) XXX XXX XXX (b) Where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment, in respect of persons other than passengers carried for hire or reward, a limit of twenty thousand rupees; and in respect of passengers a limit of twenty thousand rupees in all and four thousand rupees in respect of an individual passenger, if the vehicle is registered to carry not more than six passengers excluding the driver;

The words "twenty thousand" in Clause (b) aforementioned were substituted with words "fifty thousand".

12. By virtue of Section 54 of the Amendment Act No. 56 of 1969, which came into force on and from 2nd March, 1970, Clause (b) was substantially amended and it stood after amendment as under:

95. Requirements of policies and limits of liability.?

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

(a)XXX XXX XXX (b) Where the vehicle is a vehicle in which passengers are 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;

(a) xxx xxx xxx

13. The question, which has been posed in this appeal in view of the judgment of the Apex Court in National Insurance Co. Ltd., New Delhi Vs. Jugal Kishore and Others, , is no more res Integra. The provision of Clause (b) of Sub-section (2) of Section 95 of the Act, as it stood prior to the Amendment Act No. 56 of 1969, was judicially interpreted. It was held that the liability undertaken by the insurance company with regard to the death of or bodily injury to a third party, caused by or arising out of the use (including the loading and/or unloading of the motor vehicle) falling u/s II-1 (i); wherein it is confined to "such amount as is necessary to meet the requirements of Motor Vehicles Act, 1939", in view of the apparent Clause (b) of Sub-section (2) of Section 95 of the Act, is Rs. 20,000/- only.

14. The Supreme Court was dealing with a case in which similar clause existed in the terms of the policy about the limit of liability of the insurance company,

wherein it was provided that the limit of the amount of company's liability under Sub-section II-1 (i) in respect of any accident would be such amount as is necessary to meet the requirement of the Motor Vehicles Act, 1939. The accident in that case took place on 15th June, 1969, by which date the Act had not been amended by Amendment Act No. 56 of 1969 and the amendment had not come into force. Negating the arguments put forth on behalf of the claimants in that case that since the vehicle had been comprehensively insured and higher premium had been paid, the limit of the insurance company with regard to the third party would be unlimited. The court held in para 6 of the judgment:

...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. For this purpose a specific agreement has to be arrived at between the owner and the insurance company and separate premium has to be paid on the amount of liability undertaken by the insurance company in this behalf. Likewise, if risk of any other nature, for instance, with regard to the driver or passengers, etc., in excess, of statutory liability, if any, is sought to be covered it has to be clearly specified in the policy and separate premium paid therefor. This is the requirement of the Tariff Regulations framed for the purpose.

15. In the policy in question, Exh. R-1, the extent of limit of liability of the company u/s II-1(A) in respect of any one accident is to the extent of the amount "as is necessary to meet the requirement of the Act". In Clause (b) of Sub-section (2) of Section 95, the limit as on the date of the accident was Rs. 50,000/- in respect of persons other than the persons carried for hire or reward. The vehicle involved in this case, admittedly, was a vehicle in which passengers were carried for hire or reward. The deceased in this case were third parties being persons other than passengers. Consequently, we have no hesitation in holding that the amount necessary to meet the requirements of the Act as on the date when the accident took place was Rs. 50,000/- in respect of any one accident and not unlimited, as held by the Tribunal and affirmed by the learned single Judge.

16. In this view of the matter, the judgment of the learned single Judge, which can be said to be per incuriam, without having noticed the judgment in National Insurance Co. Ltd., New Delhi Vs. Jugal Kishore and Others, is liable to be set aside.

17. The submission of the learned Counsel for the appellant that since it was only one accident in which two deaths have occurred, giving rise to two separate claim petitions, the extent of liability in all should not be more than Rs. 50,000/-, has no force in view of the ratio of the judgment in Motor Owner's Insurance Co. Ltd. Vs. Jadavji Keshavji Modi and Others, , wherein expression "any one accident" has been judicially interpreted and the court held that the word "accident" is used in the expression "any one accident" from the point of view of

various claimants, each of whom is entitled to make a separate claim for the extent suffered by him and not from the point of view of the insurer.

18. The claimants have preferred cross-objections claiming enhancement in the amount of compensation. Dealing with the case of Bimla foishan and others, first, the Claims Tribunal accepted the evidence adduced with regard to the earning of the deceased and held the income of the deceased as Rs. 1,076/- per month, as the amount of pension received by him, half of which the deceased might be spending for his own maintenance and the remaining half being contributed by him towards his wife. The two sons and the daughter were already earning; hence as on the date of the accident, they were not dependent upon him. Taking the monthly pecuniary loss as Rs. 500/-, the datum figure was taken as Rs. 6,000/-. The deceased was 58 years of age and was expected to lead a normal life till the age of 70. Taking relevant factors into consideration, the Claims Tribunal applied the multiplier of 12 and adding thereto Rs. 3,000/- being the amount of conventional loss towards loss of expectancy of life and Rs. 10,000/- as the loss of consortium, award in the sum of Rs. 80,000/-(Sic. Rs. 85,000/-) was made. Having gone through the record and having heard the learned Counsel for the claimants, we are of the view that the award in this case is just and adequate award. The Claims Tribunal was right in taking Rs. 6,000/- as the datum figure and in applying the multiplier of 12, which was selected after taking into consideration all the relevant factors. Consequently, we do not find any merit in the cross-objections No. 45 of 1989 and the same are dismissed.

19. In the case of Kavita Rani and others, the Claims Tribunal found that the deceased was getting a salary of Rs. 1,270/- p.m., including dearness allowance. He had put in 16 years of service and had still 11 years more to serve in the army. As per the army regulations, he would have retired at the age of 48 years. Being a qualified and skilled driver, he would have got some job somewhere else and earned handsome salary, keeping in view his age, health and other circumstances. In that case, Rs. 800/- was considered as the monthly pecuniary loss to the family and thus the datum figure arrived at is Rs. 9,600/-. Applying the multiplier of 15 and adding Rs. 3,000/- towards the loss of expectancy of life and Rs. 10,000/- towards the loss of consortium, the Tribunal arrived at the figure of Rs. 1,57,000/-. From the total loss of dependency of Rs. 1,44,000, the Tribunal ordered deduction to the extent of "1/3rd for lump sum payment. Consequently, the total amount of compensation awarded is Rs. 1,09,000/- (Rs. 96,000/- towards the loss of dependency, Rs. 3,000/- loss of expectancy of life and Rs. 10,000/- loss of consortium).

20. We find that the reason, which prevailed with the Claims Tribunal in ordering the deduction of Rs. 48,000/- from the amount of loss of dependency, which had been arrived at after correctly applying the multiplier of 15 to the datum figure of Rs. 9,600/-, is not in consonance with the provisions of law. The learned single Judge in Milap Kaur and Others Vs. The Secretary, Himachal Pradesh Public Works Department (Irrigation), Govt. of H.P. and Another, , after considering

catena of decisions of various High Courts and English decisions as also that of the Apex Court, concluded that in case where the amount of compensation is assessed by multiplying the figure of annual loss by selecting the multiplier it in itself takes care of various factors, including the lump sum payment. During the course of the judgment, the learned Judge held that:

The principle which emerges from these decisions is that no deduction on account of the lump sum payment given to the dependants is required to be made because of diverse factors, such as, the prospects of inflation and the proportionate devaluation of the rupee, the continuing rise in prices of the necessities of life and the increase in the cost of living, the omission to take into account the probability of the future increase in the income of the deceased by the improvement of prospects, the time consumed in the making or the finalisation of the award due to the usual delay in the multiplier adjudicatory process and/or in recovering the compensation amount, the denial of interest or the award of interest at low rates on the compensation amount, the increase in needs of the dependants with the advancement of age, et al. These various factors have been regarded as counterbalancing or offsetting the benefit of getting a lump sum payment. In..., where the multiplier method was followed, no deduction was made since the choice of the correct multiplier was taken to have reflected this factor. The said decision falls in line with the observations made on this point by the learned authors of the two treatises referred to earlier (McGregor on Damages and Kemp & Kemp on the Quantum of Damages). It will be seen that in this line of decisions cogent and convincing grounds have been set out, which accord with common sense, reason and justice, for not allowing deduction being made from the assessed amount of compensation on the ground of lump sum payment. There is no reason why the ratio of these judgments should not prevail unless stronger or equally formidable ratiocination is to be found in the judicial dicta elsewhere.

21. Considering the opposing view, the court further observed that:

...the compensation has the effect of putting the deceased's future contribution into the hands of the dependant(s) at once, should not be regarded as justifying a deduction being made from the assessed amount of compensation under all circumstances and in all cases. The view that the benefit of lump sum payment is set off or counterbalanced by several other factors over which the dependants have no control has found acceptance in a large number of cases and although it may appear to be more in consonance with the recent trend of law and also in conformity with the principles of equity, justice and good conscience, a just approach to the matter, in my view, would be that it is not a consideration which is to be wholly ignored or overplayed. It is a factor which may be borne in mind, along with the other equally relevant and probably more rational and realistic factors highlighted in the various decisions referred to earlier..., while selecting the multiplier, if the multiplier method is followed, or in computing the net compensation, if the pecuniary loss is ascertained in terms of the actual number

of years for which the loss will be suffered.

22. We have no reason to differ with the ratio of the judgment in *Milap Kaur and Others Vs. The Secretary, Himachal Pradesh Public Works Department (Irrigation), Govt. of H.P. and Another,)* and are of the view that the Claims Tribunal was not justified in making deduction on account of lump sum payment. Considering the relevant factors in a case, where the deceased was of the age of 37 years and serving as driver in the army, multiplier of 15 was reasonable, which in itself would take care of payment of compensation in lump sum. Consequently, we have no hesitation in holding that the claimants Kavita Rani and others would be entitled to the amount of compensation as assessed by the Claims Tribunal without any deduction to the sum of Rs. 1,44,000/- towards the loss of dependency and Rs. 3,000/- as the loss of expectancy of life and Rs. 10,000/- for loss of consortium. In all, claimants will be entitled to a sum of Rs. 1,57,000/- along with interest at 12 per cent per annum from the date of institution of the claim petition till realisation.

23. In the result, while allowing the appeals filed by the insurance company, we dismiss the cross-objections preferred by Bimla Krishan (Cross-objections No. 45 of 1989) and allow the cross-objections No. 44 of 1989, filed by Kavita Rani and others by modifying the awards of the Claims Tribunal. The liability of the insurance company in both the cases is held to the extent of Rs. 50,000/- in each case along with interest and costs. In the case of Kavita Rani and others the compensation payable is enhanced to the extent aforementioned.

Costs on parties.