

(1985) 04 RAJ CK 0043

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 216 of 1982

National Insurance Co. Ltd., Kota

APPELLANT

Vs

Mst. Kasturi and Others

RESPONDENT

Date of Decision : 11-04-1985

Acts Referred:

Motor Vehicles Act, 1939 — Section 95(2)

Citation : (1986) 1 ACC 298 : (1986) ACJ 236 : AIR 1985 Raj 224 : (1985) RLW 505 : (1985) 2 WLN 459

Hon'ble Judges : S.S. Byas, J

Bench : Single Bench

Advocate : A.K. Mathur, for the Appellant; M.N. Mathur, G.N. Mathur and S.K. Goel, for the Respondent

Final Decision : Allowed

Judgement

S.S. Byas, J.—In this appeal the question involved is short and simple and that is as to what extent the liability can be fixed for the payment of compensation on an insurer of a motor vehicle u/s 95(2)(ii)(2) and (4) of the Motor Vehicles Act, 1939 (hereinafter to be referred to as "the Act").

2. Very few facts need narration for the disposal of this appeal. The claimants are the heirs and legal representatives of the deceased Bagdi Ram being his widow, sons and daughters. On May 31, 1978, Bagdi Ram was travelling in bus RJR 7685. The bus was going from Kota to Gandhi Sagar. Around 9.30 A. M., when it reached near Berkhera, it left the road and capsized. Bagdi Ram fell down and was crushed by the bus, resulting in his instantaneous death on the spot. Mohan Lal Meghwal was driving the bus at the time of the accident. Respondent Devi Dayal was the owner of the bus. The claimants presented an application u/s 110-A of the Act against the owner, driver and the insurer, making a demand of Rs. 2,58,000/- as compensation. It was alleged that Bagdi Ram was a youngman of 27 years in age with sound health and perfect physique. He used to earn approximately Rs. 500/- per month. He was the only breadwinner of the family.

In the normal course, he was expected to remain alive up to the age of 70 years. It was further alleged that the accident had taken place due to the rash and negligent driving of the bus by its driver Mohanlal. The claim was resisted by the owner and the insurer. They admitted the accident but denied that it had occurred due to the rash and negligent driving of the bus by its driver. The bus was moving slowly. All of a sudden, the main plate supporting the bus got broken. The bus, therefore, lost its balance. As a result, it left the road and capsized. The quantum of compensation was challenged. The defence taken by the insurance company was that in case the claim was accepted, its liability for the payment of compensation and to indemnify the owner was only to the extent of Rs. 5000/-. Necessary issues were raised and the evidence of the parties was recorded. On the conclusion of trial, the Tribunal held that the accident had taken place due to the rash and negligent driving of the bus by its driver Mohanlal. The compensation was quantified in a sum of Rs. 42,000/-. An award was accordingly made. The liability of the insurer to indemnify the bus owner was fixed for the entire amount of the compensation. Aggrieved against the said award, the insurance company has come up in appeal.

3. I have heard the learned counsel for the parties and gone through the case file carefully.

4. The contention raised by Mr. Mathur learned counsel appearing for the appellant (insurance company) is that the Tribunal crept into an error in fixing the liability of the appellant for the payment of the entire amount of compensation of Rs. 42,000/-. It was urged that the insurer cannot be called upon to make a payment of more than Rs. 5000/- in view of the specific provisions of Section 95(2)(b)(ii) (2) and (4) of the Act. Reliance in support of the contention was placed on Sheikhpura Transport Co. Ltd. Vs. Northern India Transport Insurance Co., Madras Motor and General Insurance Company Ltd. v. V. P. Balkrishnan 1982 ACJ 460 , Premdevi v. Harbhajan Singh 1984 ACJ 707 , Noor Mohammad and Another Vs. Smt. Phoola Rani and Others, and Jyoti Prasad Dixit (deceased by L.Rs.) Vs. Smt. Bitan Devi and Others, It was argued that the observations made by their Lordships of the Supreme Court in Motor Owners' Insurance Company Limited Vs. Jadavji Keshavji Modi and Others, were misunderstood and wrongly applied by the Tribunal. The dicta laid down in this authority renders no assistance to the bus owner or the claimants.

5. It was, on the other hand, vehemently contended by the learned counsel appearing for the respondents (claimants and bus owner) that in view of the pronouncements made by their Lordship in Motor Owners Company Ltd case (supra), the position comes down to this that the expression "any one accident" relates to each injured. As such, each injured is entitled to recover a sum of Rs. 75,000/- from the insurance company. The provisions in Clause (4) of Section 95(2)(b)(ii) of the Act render no help to the insurer. Here the victim was only one and as such the insurer could be made liable to pay a sum of Rs. 75,000/- as the bus was registered for forty-eight passengers. Reliance in support of the

contention was placed on Motor Owners" Insurance Company Limited Vs. Jadavji Keshavji Modi and Others, National Insurance Co. Ltd. Vs. Chhunnu Ram and Another, Om Prakash and Another Vs. Smt. Rukmini Devi and Others, Srisailam Devastanam Vs. Bhavani Pramamma and Others, M. Subba Raju v. Sayyed Mohammad 1984 ACJ 130 (Kant) and New India Assurance Company Limited v Mehmood Ahmed AIR 1984 All 183.

6. I have taken the respective submissions into consideration. Looking to the importance of the subject and the contentions of the parties, it would be proper to examine the matter at some length.

7. According to driver Mohanlal (D.W. 2), the vehicle was registered to carry forty-eight passengers. Section 95(2) of the Act, around which the arguments have been built-up by the parties, stood as under at the relevant time when the accident took place :--

"(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) where the vehicle is a goods vehicle, a limit of 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 the vehicle;)

(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,-

(1) a limit of fifty thousand rupees in all where the vehicle is registered to carry not more than thirty passengers;

(2) a limit of seventy-five thousand rupees in all where the vehicle is registered to carry more than thirty but not more than sixty passengers;

(3) a limit of one lakh rupees in all where the vehicle is registered to carry more than sixty passengers; and

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

(c) not relevant. (d) not relevant.

Clause (b) reproduced above was substituted for the original by the Amendment Act (56 of 1969). Before the amendment, that is prior to 1970, the over-all liability of the insurer was upto Rs. 20,000/- and Rs. 2000/- per passenger if the

vehicle was registered to carry more than six passengers. This over-all liability was extended by the Amendment Act (56 of 1969) up to Rs. 1,00,000/-, depending upon the number of passengers the vehicle is registered to carry and Rs. 5,000/- per passenger depending upon the nature of the vehicle. It will be, thus, said that the amendment introduced by the Amendment Act (56 of 1969) relates only to the amount of compensation to be paid by the insurer. In all other respects, there is no change.

8. The provisions of Section 95(2)(b) of the Act, as they stood prior to the amendment, came for judicial scrutiny before the Supreme Court in *Sheikhupura Transport Co. Ltd. Vs. Northern India Transport Insurance Co.*, It was laid down that in absence of any contract to the contrary, the statutory liability of the insurer to indemnify the insured in the case of a vehicle allowed to carry more than six passengers extends only up to Rs. 2000/- in respect of each passenger though the total liability for the payment of compensation may go up to Rs. 20,000/-. The law laid down in this case holds the field even today. A fallacy has crept in somewhere that the decision given in *Sheikhupura Transport Company Ltd.* has been overruled by the Supreme Court in *Motor Owners' Insurance Company Limited Vs. Jadavji Keshavji Modi and Others*, The *Sheikhupura's* case was brought to the notice of their Lordships in *Motor Owners' Company* case. Their Lordships observed in Paras 25 and 26 of the judgment as under :--

"The case before the Punjab Full Bench in *Northern India Transporters* AIR 1966 P&H 288 arose under the old Section 95(2)(b) and need not really detain us. Under that section, as it stood prior to its amendment in 1969, a policy of insurance was required to cover any liability incurred in respect of any one accident up to the limit of twenty thousand rupees in respect of persons other than passengers carried for hire or reward, where the vehicle was one in which passengers were carried for hire or for reward or by reason of or in pursuance of a contract of employment In respect of passengers, there was a twofold limit on the insurer's liability "a limit of twenty thousand rupees in all" and four thousand rupees in respect of an individual passenger if the vehicle was registered to carry not more than six passengers excluding the driver, or two thousand rupees in respect of an individual passenger if the vehicle was registered to carry more than six passengers excluding the driver. A passenger bus was involved in an occurrence in which two passengers were killed. The High Court held that the straightforward course was to take the language of the Act as it stood, which left no doubt that in the case of a bus registered for carrying more than six passengers, the limit of the liability was twenty thousand rupees in all and there was a further limit in respect of each individual passenger in the sum of two thousand rupees. The words "any one accident" in the opening part of Section 95(2) made no difference to this interpretation because if more than one passenger were injured in a single occurrence, no one passenger was entitled to receive more than rupees two thousand or four thousand, depending on the registered capacity of the vehicle to carry passengers.

"26. The judgment of the Punjab High Court was brought in appeal to this Court in Sheikhpura Transport Co. Ltd. Vs. Northern India Transport Insurance Co., For reasons aforesaid, the judgment in that case is not an authority on the interpretation of Clause (1) of Section 95(2). After setting out the relevant provisions of Section 95(2) at pages 24 and 25 (of Suppl SCR) : (atp. 1627 of AIR) of the Report, Hegde, J. speaking for himself and Jaganmohan Reddy, J. concluded :

"In the present case we are dealing with a vehicle in which more than six passengers were allowed to be carried. Hence the maximum liability imposed u/s 95(2) on the insurer is Rs. 2,000/- per passenger though the total liability may go up to Rs. 20,000/-."

Towards the end of the judgment, it was observed that reading the provisions contained in Sections 95 and % together, "..... it is clear that the statutory liability of the insurer to indemnify the insured is as prescribed in Section 95(2). Hence the High Court was right in its conclusion that the liability of the insurer in the present case only extends up to Rs. 2,000/- each, in the case of Bachan Singh and Narinder Nath," In view of the limit on the insurer's liability in respect of each passenger, the argument on the construction of the words "any one accident" had no relevance and was therefore neither made nor considered by the Court. Different considerations may arise under Clause (b), as amended by Act 56 of 1969, but we do not propose to make any observations on that aspect of the matter, since it does not directly arise before us."

9. It is, thus, abundantly clear that in Motor Owners' Insurance Company Limited Vs. Jadavji Keshavji Modi and Others, their Lordships never dissented from the view taken in Sheikhpura Transport Co. Ltd. Vs. Northern India Transport Insurance Co., Since the case before their Lordships in Motor Owners' case related to the death arising in an accident by a goods vehicle, no occasion arose to decide the question of the liability of an insurer in respect of an accident arising from a passenger bus.

10. In the case of Madras Motor and General Insurance Company limited 1982 ACJ 460 (supra), which relates to an accident arising from a passenger bus, the claimants and owner placed reliance on the observations made in the case of Motor Owners' Insurance Company Limited Vs. Jadavji Keshavji Modi and Others, to cast the entire liability on the insurer. The contention was repelled by a Division Bench of the Kerala High Court Mr. Justice Khalid (as he then was) observed as follows :--

"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 Feb. 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 Mar. 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."

The plaintiffs 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 Mar., 1970. Clause (4) limits the claim of each individual passenger in a case like this to Rs. 50,000/-. Therefore we hold that the appellant in AS 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."

In *Jyoti Prasad Dixit (deceased by L.Rs.) Vs. Smt. Bitan Devi and Others*, the observations made by the Kerala High Court were followed and reliance was further placed on the observations of their Lordships of Supreme Court made in *Sheikhupura Transport Co. Ltd. Vs. Northern India Transport Insurance Co.*, A learned Judge of the Allahabad High Court observed as under in the above case (at pp. 33-341 : --

"In fact Section 95(2)(b)(ii)(4) of the Motor Vehicles Act is express on the point. Sub-section (2) lays down that the Insurance covers liability up to the limits laid down below and then Clause (4) of Sub-section (2)(b) lays down the limit of liability for each individual passenger to Rs. 5,000/- only, this would be the maximum limit irrespective of the total amount for which vehicle is insured or required to be insured. The statutory liability is only to that extent. Any further

liability can be taken by Insurance Company only in pursuance of any further contract or stipulation which is not the case. Similar view was taken in the case of Madras Motor and General Insurance Co. Ltd. v. U. P. Balakrishna also 1982 ACJ 460 , I am bound by the authority of the Supreme Court which I must follow with greatest respect."

It may be pointed out that the view taken by a learned single Judge in New India Insurance Company Ltd. v. Mehmood Ahmed (AIR 1984 All 183) (supra) was dissented from and not followed.

11. In Noor Mohammad and Another Vs. Smt. Phoola Rani and Others, , which was decided on April 18, 1984, a Division Bench of the Allahabad High Court, on the basis of the provisions contained in Section 95(2)(b)(ii)(4) of the Act, took the view that where a passenger in a bus died in an accident, the limit of the liability of the insurance company is only to the extent of Rs. 5,000/-. No reference has been made of the case of Motor Owners" Insurance Company Limited Vs. Jadavji Keshavji Modi and Others, presumably because it was not brought to the notice of the learned Judges and further because the observations made by the Supreme Court had no relevancy in a case relating to the death of a bus passenger.

12. In Premdevi v. Harbhajansingh 1984 ACJ 707 (supra), which was decided on Oct. 25, 1983, it was held that where a passenger in the bus is injured in an accident, the limit of the liability of the insurer to indemnify is limited to Rs. 5,000/-. Motor Owners" Insurance Company Limited Vs. Jadavji Keshavji Modi and Others, was not referred to by the learned Judges presumably because it had no relevancy to decide the question relating to a bus passenger.

13. There was a consistent view before the decision in the case of Motor Owners" Insurance Company Limited that the liability of an insurer in a case where passenger travelling in a bus died or sustained injuries, is Rs. 2,000/- or Rs. 5,000/- per passenger, depending upon the registered capacity to carry passengers and the over-all liability was either Rs. 20,000/- or Rs. 50,000/- taking the date of accident into consideration. This view still persists, as has been noticed above, though in some cases a different view has been taken on the basis of observations made in the case of Motor Owners" Insurance Company Ltd. It would be now appropriate to notice the cases cited on behalf of the owner and claimants.

14. In Om Prakash and Another Vs. Smt. Rukmini Devi and Others, the matter was entirely different. There a head-on collision took place between two buses USL 7134 and BLP 3692. As a result, some of the passengers travelling in bus USL 7134 died or sustained injuries. The finding was that the accident had taken place due to the rash and negligent driving of the bus DLP 3692 by its driver. As such, it was held that the owner and the insurer of bus DLP 3692 were liable to pay compensation to the claimants and the liability of the insurer was fixed at Rs. 50,000/-. It was thus, a case covered by Section 95(2)(b)(i) and not under (b)

(ii) of the Act. Thus, this case has no relevancy on the present dispute before me.

15. In *M. Subba Rajju v. Sayyed Mehmood* 1984 ACJ 130 (supra), the case does not appear relating to a passenger travelling in a bus. It appears to be a case falling u/s 95(2)(b)(i) of the Act. It appears that the victim was standing on a roadside and was hit by a motor vehicle.

16. In *New India Assurance Company v. Mehmood Ahmed* AIR 1984 All 183 (supra), a learned single Judge of Allahabad High Court took the view that in a case where a lone passenger travelling in a bus dies on account of accident, the limit placed by Sub-clause (4) will not apply and the statutory liability of the insurance company would be Rs. 50,000/-. The learned Judge sought help in arriving at this conclusion from the observations made in the case of *Motor Owners' Insurance Company Limited Vs. Jadavji Keshavji Modi and Others*, The view taken by the learned single Judge was dissented from and not followed by another learned single Judge of the same High Court in *Jyoti Prasad Dixit (deceased by L.Rs.) Vs. Smt. Bitan Devi and Others*, The case of *Sheikhupura Transport Co. Ltd. Vs. Northern India Transport Insurance Co.*, was not brought to the notice of the learned single Judge who decided the case of *New India Assurance Company*.

17. In *National Insurance Company Ltd. v. Chhunoo Ram* AIR 1984 Put 1 (supra), both the cases of the Supreme Court were brought to the notice of the learned Judges of the Patna High Court. A contention was raised that the insurer cannot be called upon to make the payment over and above a sum of Rs. 5,000/- in view of the provisions of Section 95(2)(b)(ii)(4) of the Act. The learned Judges did not accept the contention and observed (at p. 3) :-- "It must be held that the provisions in Sub-clause (4) of Clause (b) of Sub-section (2) of Section 95 of the Act must give way to the interpretation given by the Supreme Court in the above case. *Motor Owners' Insurance Company Limited Vs. Jadavji Keshavji Modi and Others*,

18. The learned Judges though they noticed *Sheikhupura Transport Co. Ltd. Vs. Northern India Transport Insurance Co.*, but expressed no view whether it stands overruled by the judgment given in *Motor Owners' Insurance Company Limited Vs. Jadavji Keshavji Modi and Others*, As has been discussed above, the Supreme Court left the observations made in *Sheikhupura Transport Company Ltd.*'s case untouched because the accident in the case of *Motor Owners' Insurance Company* (supra) related to an accident caused by a goods vehicle.

19. After going through the cases cited above at the bar the position, according to me, is that the view taken in *Sheikhupura Transport Co. Ltd. Vs. Northern India Transport Insurance Co.*, has not been reversed expressly or impliedly by the view taken in *Motor Owners' Insurance Company Limited Vs. Jadavji Keshavji Modi and Others*, nor in the latter case the Supreme Court dissented from the view taken in the former case. The view taken in *Sheikhupura Transport Company*'s case still holds the field. I, therefore, find myself in complete

agreement with the view expressed by the Kerala High Court in *Madras Motor ? General Insurance Company Ltd. v. V. P. Balkrishnan* 1983 ACJ 460 and by the Allahabad High Court in *Jyoti Prasad Dixit (deceased by L.Rs.) Vs. Smt. Bitan Devi and Others*, I am unable to subscribe to the view taken by the Patna High Court in *National Insurance Co. Ltd. Vs. Chhunnu Ram and Another*, and by the Allahabad High Court in *New India Insurance Company v. Mehmood Ahmed* AIR 1984 All 183 ." I am unable to agree with the learned Judges of the Patna High Court that the provisions in Sub-clause (4) of Clause (b) of Sub-section (2) of Section 95 of the Act must give way to the interpretation given b> the Supreme Court in the *Motor Owners" Insurance Company Limited Vs. Jadavji Keshavji Modi and Others*,

20. Turning to the instant case in my hand, the claimants have not alleged any special contract or stipulation with the insurer. They have not filed the Insurance Policy issued to them by the insurer. The case is, therefore, governed by the Act Policy. The registered capacity to carry passengers in the bus was forty-eight. As such, the extent of the liability of the insurer to indemnify the injured is up to Rs. 5,000/- only, in view of the provisions of Section 95 (2)(b)(ii)(4) of the Act. The Tribunal crept into an error in directing the insurer to pay the entire amount of compensation of Rs. 42,000/-to the claimants. This error should be corrected.

21. In the result, the appeal of the National Insurance Company Limited, Kota is allowed. The portion of the award of the Tribunal directing the appellant (insurance company) to pay the whole amount of Rs. 42,000/- to the claimants is set aside. The appellant's liability is limited"to Rs. 5,000/- (Rupees five thousand only). The appellant (insurer) is directed to pay the sum of Rs. 5,000/- to the claimants. It will be open to the claimants to recover the remaining balance from the owner, driver and the conductor of the bus. Looking to the importance of the contentions raised, I leave the parties to bear their own costs of this appeal.