

(1992) 05 RAJ CK 0007
In the Rajasthan High Court
Case No : Civil S.A. No. 18 of 1992

New India Assurance Co. Ltd. and Others	APPELLANT
Vs	
Ramanand and Others	RESPONDENT

Date of Decision : 06-05-1992

Acts Referred:

Motor Vehicles Act, 1988 — Section 95, 96
Penal Code, 1860 (IPC) — Section 120B, 468, 471

Citation : (1994) ACJ 571 : (1992) 2 WLC 344

Hon'ble Judges : R.S. Kejriwal, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : Alok Sharma, for the Appellant; G.C. Mathur, Atul Luhadia and J.K. Dhingra, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Kejriwal, J.—These three appeals arise out of a common judgment dated 17.1.1992 given in Appeal No. 318 of 1988 (Ramanand v. Lalita Sharma), S.B. Civil Misc. Appeal No. 341 of 1988 (Lalita Sharma v. Ramanand) and S.B. Civil Misc. Appeal No. 368 of 1988 (K.C. Agrawal v. Lalita Sharma).

2. Briefly stated, the facts of the case are that respondent Nos. 2 to 7 filed a claim petition before the Motor Accidents Claims Tribunal, Jaipur, against the appellants, National Insurance Co. Ltd., New India Assurance Co. Ltd., Jaipur and Ramanand, Sita Ram, Kailash Chand and Sagar Singh in relation to the death of Gopal Lal which was caused on 9.9.1982. Gopal Lal was working in the Sheep and Wool Department. He was going on a bicycle at a normal speed on the correct side of the road. When he reached near Lal Kothi, Tonk Road, bus No. RRL 1924, owned by Kailash Chand Agrawal, which was being driven rashly and negligently by Sagar Singh, hit the deceased cyclist from behind. As a result of the impact of the bus, Gopal Lal fell on the road. At the same time, a tractor, bearing No. PUW 3663, which too was coming from the same direction and which was also being driven rashly and negligently by Sita Ram crushed Gopal Lal. As a

result, Gopal Lal died instantaneously. The tractor was owned by Ramanand. The claimants had prayed that compensation amount amounting to Rs. 2,10,000/- be awarded against the nonapplicants.

3. The New India Assurance Co. Ltd., with which the tractor was insured, contested the claim petition and pleaded that the driver of the tractor did not have a valid licence and, therefore, the company was not liable to pay any amount to the claimants. The National Insurance Co. Ltd., with which the bus was insured, pleaded that the driver of the bus was not at fault and in any case, in view of the provisions of Sections 95 and 96 of the Motor Vehicles Act, 1939 (for short "1939 Act") it is not liable to pay more than Rs. 50,000/- by way of compensation.

4. The Motor Accidents Claims Tribunal considered the evidence led by the various parties and, after hearing the arguments of the learned counsel for the parties, passed an award dated 7.11.1988. It declared that the applicants-claimants were entitled to a compensation of Rs. 80,000/- along with interest at the rate of 10 per cent from the date of filing of the petition, i.e., 16.12.1982. If the payment was not made within one month, 12 per cent interest was to be payable from the date of application. It further declared that National Insurance Co. Ltd. was liable to pay Rs. 50,000/- and for the remaining amount the liability was joint and several qua Ramanand, Sita Ram, Kailash Chand and Sagar Singh. It further declared that New India Assurance Co. Ltd. was not liable to pay the compensation.

5. Against this award, three separate appeals were filed and, as already noticed hereinabove, all those appeals have been disposed of by a common judgment dated 17.1.1992.

6. In assailing the judgment dated 17.1.1992, Mr. Alok Sharma, learned counsel for the appellant, has, in the first instance, argued that the learned single Judge has committed a serious error of law in interfering with the finding of fact recorded by the Motor Accidents Claims Tribunal on the question that the tractor driver did not have a valid licence. Mr. Sharma argued that the learned Tribunal has carefully analysed the evidence produced by the parties and it has placed reliance on the evidence of Shrawan Singh, Assistant Sub-Inspector of Police, who clearly deposed that the licence produced by Sita Ram was forged one and for that Sita Ram was being prosecuted in a court of law. The argument of Mr. Sharma is that once the Tribunal has believed the testimony of Shrawan Singh and has drawn a particular conclusion, it was not open for the learned single Judge to have interfered with the finding of the Tribunal, merely because the learned single Judge entertained a different opinion on the appreciation of evidence. Mr. Sharma placed reliance on the decision of the Supreme Court in *Madhusudan Das v. Narayani Devi*, : AIR 1983 SC 1. Opposing the submission of Mr. Alok Sharma, Mr. Atul Luhadia and Mr. G.C. Mathur argued that the burden of proving that Sita Ram did not have a valid licence was on the appellant company and no evidence worth the name had been produced by the appellant to

discharge the burden which rested upon it. Nobody was produced on behalf of the company in order to show that Sita Ram was not having a valid licence. The bald statement of Shrawan Singh could not be made basis for holding that the appellant company had been able to discharge the burden placed upon it.

7. We have carefully considered the rival contentions and have perused the award passed by the learned Tribunal as well as the judgment of learned single Judge. We have also gone through the statements of Sita Ram and Shrawan Singh. In its award, the Tribunal has observed that in his statement Shrawan Singh has given out that the licence which had been produced by Sita Ram was found to be forged one and a case under Sections 120B, 468 and 471, Indian Penal Code, had been filed against Sita Ram. With reference to the statement of Sita Ram, learned Tribunal observed that Sita Ram had given out that the original licence had been given by him to the police. The so-called forged licence was produced by the owner of the tractor. From this, the learned Tribunal has concluded that Sita Ram had produced forged licence and if at all he had a valid licence, he should have produced it in the court. On that basis, the learned Tribunal concluded that Sita Ram was not having a valid licence at the time of accident. The owner of the tractor had also not made any effort to produce the valid licence. Since there was a breach of the conditions of the policy, the appellant was not liable. The learned single Judge has considered this issue and observed that burden of proving issue No. 5 relating to the possession of valid licence by the driver was on the insurance company. The learned single Judge observed that Sita Ram had stated that he has not produced any forged driving licence and he did have a valid driving licence which was obtained from Chandigarh. The criminal proceedings were still pending and merely because a forged licence is alleged to have been produced by the owner of the tractor during the course of investigation in a criminal case, it cannot be said that the insurance company has discharged its onus. No evidence whatsoever has been produced on behalf of the appellant to prove that Sita Ram, driver of the tractor, had no valid driving licence. The allegation of forged licence cannot be held as proved conclusively. Learned single Judge also took the view that there was no reason to disbelieve the statement of Sita Ram that he did possess a valid driving licence. After discussing the various decisions of the Apex Court the learned single Judge held that the Tribunal was not justified in relieving the appellant from its liability merely on the premise that Shrawan Singh had made a statement that Sita Ram had produced a forged driving licence. We have also gone through the statement of Shrawan Singh. In his statement Shrawan Singh has only stated that during the investigation, the licence which was produced before him was found to be forged one. In his cross-examination he has stated that the original licence was not with him and what was seized was a photostat copy which was produced during the course of investigation. In his statement Sita Ram has clearly stated that Ramanand has produced the licence. The original licence had been given to the police and the same was retained by the police. The original licence had been prepared in Chandigarh and he was driving

the tractor on the basis of the licence issued at Chandigarh. From the evidence which has come on record it is absolutely clear that no evidence has been produced by the appellant to discharge its burden of proving that Sita Ram did not possess a valid driving licence. None of the officers of the appellant company has come in the witness-box to make a deposition that Sita Ram did not possess a valid licence, while Shrawan Singh has stated that the original licence was not at all available and only a photostat copy had been produced. Sita Ram has made a statement that his original licence was prepared in Chandigarh. The original licence had been given to the police and the same had been retained by the police. In our opinion, the learned single Judge has correctly come to the conclusion that the insurance company has failed to discharge its burden of proving that Sita Ram was not having a valid driving licence at the time of accident.

8. In *Narcinva V. Kamat v. Alfredo Antonio Doe Martins* 1985 ACJ 397 their Lordships of the Supreme Court have held that the burden to prove that the driver, who was driving the vehicle at the relevant time, did not have a valid driving licence was on the insurance company and once the insurance company failed to prove that aspect, its liability under the contract of insurance remains intact and unhampered. It was bound to satisfy the award under the comprehensive policy of insurance. In *Suresh Mohan Chopra Vs. Lakhi Prabhu Dayal and others*, similar view has been expressed by the Supreme Court. In that judgment their Lordships of the Supreme Court reversed the judgment of Delhi High Court and observed that burden was on the insurance company to prove that the driver had no licence.

9. In *Skandia Insurance Co. Ltd. v. Kokilaben Chandravadan* 1987 ACJ 411 their Lordships considered a similar question and observed:

Section 96(2)(b)(ii) extends immunity to the insurance company if a breach is committed of the condition excluding driving by a named person or persons or by any person who is not fully licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification. The expression "breach" is of great significance. The dictionary meaning of "breach" is infringement or violation of a promise or obligation. [See Collins English Dictionary]. It is, therefore, abundantly clear that the insurer will have to establish that the insured is guilty of an infringement or violation of a promise that a person who is not duly licensed will have to be in charge of the vehicle. The very concept of infringement or violation of the promise that the expression "breach" carries within itself induces an inference that the violation or infringement on the part of the promisor must be a willful infringement or violation. If the insured is not at all at fault and has not done anything he should not have done or is not amiss in any respect how can it be conscientiously posited that he has committed a breach. It is only when the insured himself places the vehicle in charge of a person who does not hold a driving licence, then it can be said that he is guilty of the breach of the promise that the vehicle will

be driven by a licensed driver. It must be established by the insurance company that the breach was on the part of the insured and that it was the insured who was guilty of violating the promise or infringement of the contract. Unless the insured is at fault and is guilty of a breach, the insurer cannot escape from the obligation to indemnify the insured and successfully contend that it is exonerated having regard to the fact that the promisor (the insured) committed a breach of his promise.

10. After referring to the provisions of Section 84 of 1939 Act, their Lordships further observed:

To construe the provision differently would be to rewrite the provision by engrafting a rider to the effect that in the event of the motor vehicle happening to be driven by an unlicensed person regardless of the circumstances in which such a contingency occurs, the insurer will not be liable under the contract of insurance. It needs to be emphasised that it is not the contract of insurance which is being interpreted. It is the statutory provision defining the conditions of exemption which is being interpreted. These must, therefore, be interpreted in the spirit in which the same have been enacted accompanied by an anxiety to ensure that the protection is not nullified by the backward-looking interpretation which serves to defeat the provision rather than to fulfill its life aim. To do otherwise would amount to nullifying the benevolent provision by reading it with a non-benevolent eye and with a mind not tuned to the purpose and philosophy of the legislation without being informed of the true goals sought to be achieved. What the legislature has given, the court cannot deprive of by way of an exercise in interpretation when the view which tenders the provision potent is equally plausible as the one which renders the provision impotent. In fact, it appears that former view is more plausible apart from the fact that it is more desirable. When the option is between opting for a view which will relieve the distress and misery of the victims of accidents or their dependants on the one hand and the equally plausible view which will reduce the profitability of the insurer in regard to the occupational hazard undertaken by it by way of business activity, there is hardly any choice. The court cannot but opt for the former view. Even if one were to make a strictly doctrinaire approach, the very same conclusion would emerge in obeisance to the doctrine of "reading down" the exclusion clause in the light of the "main purpose" of the provision so that the "exclusion clause" does not cross swords with the main purpose highlighted earlier.

11. In view of the above, it must be held that the learned single Judge has not committed any error of law warranting interference on the question of liability of the appellant company.

12. The decision of the Supreme Court in *Madhusudan Das v. Narayani Devi*, : AIR 1983 SC 1, is of no assistance to the appellant. That case contains reiteration of the general principles of law which are required to be followed for interference with the finding of fact arrived at by the trial court. In fact, what their Lordships have held is the reiteration of the principle laid down in *Sarju*

Pershad Vs. Raja Jwaleshwari Pratap Narain Singh and Others, The principle enunciated by the Supreme Court does not require further elaboration. What the learned single Judge has in this case found, in our view rightly, that the learned Tribunal committed a serious error in overlooking the fact that the insurance company had failed to discharge its burden of establishing that Sita Ram had no valid driving licence at the time of accident.

13. The second contention advanced by Mr. Alok Sharma is that the learned single Judge has committed a serious error in enhancing the compensation by taking into consideration the expected age of the deceased. Mr. Sharma has argued that the learned single Judge has not correctly applied the principles of law in determining the amount of compensation payable to the dependants of the deceased. He referred to the decision of the Punjab and Haryana High Court in *Lachman Singh v. Gurmit Kaur* 1979 ACJ 170 in support of his contention. Mr. Luhadia and Mr. Mathur, on the other hand, vehemently argued that the learned single Judge has correctly applied the principles of law in enhancing the compensation awarded by the Tribunal. Learned counsel have placed reliance on the decision of Patna High Court in *Oriental Fire and Genl. Ins. Co. Ltd. Vs. Sudha Devi and Others*, of this court in *Abdul Zabbar v. Ram Swaroop* 1985 ACJ 594 and also a recent decision of the Supreme Court in *Hardeo Kaur and others Vs. Rajasthan State Transport Corporation and another*, Mr. Luhadia and Mr. Mathur also argued that this court cannot interfere with the award of compensation in an appeal filed by the appellant insurance company. They invited the attention of the court to the decision of Supreme Court in *British India General Insurance Co. v. Capt. Itbar Singh* 1958 ACJ 1 .

14. The learned single Judge has observed that the salary of the deceased was Rs. 516/-. Believing the statement of the wife of the deceased, wherein she stated that the family of deceased consisted of six children and that he was giving Rs. 500/- per month as expenses to the family and also taking note of the fact that no defence was produced by any of the respondents to disprove the statement of the wife of the deceased, the learned single Judge held that there was no reason for the Tribunal to hold that the deceased spent Rs. 200/- of his own and contributed a sum of Rs. 300/- only for upkeep of his family. Learned single Judge held that it was not possible for 7 persons to survive in less than Rs. 500/- per month and, therefore, he held that the deceased used to contribute a sum of Rs. 500/- to his family every month. Learned single Judge held that the legal representatives of the deceased should receive such pecuniary benefits as they would have got from the deceased if he would have lived his normal life. Taking note of the fact that the deceased was 40 years old at the time of the incident and that a Government servant has to upkeep the family even after retirement, there was no justification for making any deduction for personal expenses in computing the family dependency. The learned single Judge also held that the average life span of every Indian is at least 70 years and, therefore, he was of the opinion that ends of justice would be met if the multiplier of 25 is applied. In the Punjab case, on which much emphasis has been

placed by Mr. Sharma, a Bench of five Judges of Punjab and Haryana High Court referred to a large number of decisions of different courts including the British courts and then held that 16 will be a suitable multiplier having regard to the circumstances of the case as well as hazards and uncertainties of the life in the villages. The Punjab and Haryana High Court summed up the principles to be observed while assessing the compensation in the following words:

(1) The compensation to be assessed is the pecuniary loss caused to the dependants by the death of the person concerned and no compensation is to be assessed on any extraneous consideration like love, affection, mental agony or any such similar consideration. Solatium is alien to the concept of compensation;

(2) For the purpose of calculating the just compensation, annual dependency of the dependants should be determined in terms of the annual loss accruing to them due to the abrupt termination of life. For this purpose, annual earning of the deceased at the time of the accident and the amount out of the same which he was spending for the maintenance of the dependants will be the determining factor. This basic figure will then be multiplied by a suitable multiplier;

(3) The suitable multiplier, as referred to in (2) above, shall be determined as held in Sudhakar's case 1977 ACJ 290, decided by the Supreme Court as well as in Mallets' case 1969 ACJ 312 (HL, England), by taking into consideration the number of years of the dependency of the various dependants, the number of years by which the life of the deceased was cut short and the various imponderable factors like early natural death of the deceased, his becoming incapable of supporting the dependants due to illness or any other natural handicap or calamity, the prospects of the remarriage of the widow, the coming up of age of the dependants and their developing independent sources of income as well as the pecuniary benefits which might accrue to the dependants on account of the death of the person concerned. Such benefits, however, should not include the amount of the insurance policy of the deceased to which the dependants may become entitled on account of its maturity as a result of the death;

(4) The method adopted in certain decisions of this court of multiplying the amount of the annual loss to the dependants with the number of years by which the life has been cut short without anything else cannot be sustained and all those decisions in which this view has been taken are hereby overruled;

(5) The compensation cannot be assessed on the basis of so called interest thereby as the same provides the dependants with the capital as well as the amount of annual loss earned by way of interest and it also suffers from a number of other defects, as have been discussed in this judgment; and

(6) Consideration of overgrowing inflation and the decrease in the money value are also not relevant for the purpose of assessment of compensation.

15. The Punjab and Haryana High Court was dealing with the case in which the

incident took place on 20.9.1960. The deceased was 23 years of age; his income was held to be Rs. 1,080/-. It was found that he must have been spending Rs. 600/- for the maintenance of the family. A multiplier of 16 was applied by the Punjab and Haryana High Court on the basis of the principles deduced by it.

16. We may have discussed the issue at some greater length, but we find it unnecessary in view of the latest pronouncement of the Supreme Court in *Hardeo Kaur and others Vs. Rajasthan State Transport Corporation and another*, That was a case in which the appeal was filed in the Supreme Court against the judgment of the Rajasthan High Court. Their Lordships of the Supreme Court referred to their decision in *Jyotsna Dey v. State of Assam* 1987 ACJ 172 and observed that the span of life should be taken to be 70 years in view of the high rise in life expectancy. Further after making a reference to their own decision in *Motor Owners Insurance Co. Ltd. v. J.K. Modi* 1981 ACJ 507 the court further observed that the delay in final disposal of the motor accident compensation cases, as in all other classes of litigation, takes a sting out of the laws of compensation and added to that the monstrous inflation and the consequent fall in the value of rupee makes the compensation demanded years ago less than quarter of its value when it is received after such a long time. Taking note of the decision in *Manjushri Raha v. B.L. Gupta* 1977 ACJ 134 their Lordships observed that the Supreme Court awarded compensation by multiplying the life expectancy without making any deductions. On that premise, their Lordships held that the Tribunal and the High Court (in that case Rajasthan High Court) were not justified in making lump sum deductions from the compensation payable to the dependants.

17. The law relating to the determination of quantum of compensation has to be construed liberally and unless there are exceptional circumstances, warranting interference in the quantum of compensation, there is little justification for this court to interfere with the amount of compensation awarded by the Tribunal or as enhanced by the learned single Judge. We are fully convinced that the learned single Judge has not committed any error of law in taking into consideration the expected age of the deceased as 70 years and applying the multiplier of 25. In *Hardeo Kaur and others Vs. Rajasthan State Transport Corporation and another*, also the Supreme Court applied the multiplier of 24. We are conscious of the law laid down by the Supreme Court in *British India General Insurance Co. v. Capt. Itbar Singh* 1958 ACJ 1 wherein their Lordships of the Supreme Court have interpreted the provisions of Sections 96(2) and 96(6) which relate to defences open to the insurer. We do not want to be taken as holding that in all cases the court is precluded from examining the question relating to the quantum of compensation, even if the award passed by a Tribunal or by a learned single Judge is contrary to the settled principles of law; but we are clearly of the opinion that this is not a fit case in which any interference is warranted in the compensation awarded by the learned single Judge.

18. Mr. Alok Sharma lastly argued that it was a case of contributory negligence

and not a case of composite negligence and, therefore, a serious error has been committed by the learned single Judge in reversing the finding of the Tribunal. The facts which have come on record nowhere show as to how the deceased was in any manner responsible for the accident. The theory of contributory negligence comes into play only when the person who suffers injury or dies in an accident is found to have contributed to the occurrence. Neither there is any plea nor any evidence to support the theory of contributory negligence. Therefore, the contention of the learned counsel that the liability is fastened on the appellant alone cannot be accepted.

19. Since none of the contentions advanced by the learned counsel for the appellant merit acceptance, these appeals deserve to be dismissed and they are hereby dismissed.