

(1989) 08 GAU CK 0025

In the Gauhati High Court

Case No : M.A. (F) No's. 3, 4, 6, 8 to 11, 13, 15, 16, 19 to 22, 24, 25, 28, 33, 37 and 38 of 1987 and 1 to 3, 5, 6, 10, 11, 13, 15 to 20, 26, 29, 32 and 34 to 36 of 1988

New India Assurance Co. Ltd.

APPELLANT

Vs

Ka Synshar Baren and Others

RESPONDENT

Date of Decision : 11-08-1989

Acts Referred:

Motor Vehicles Act, 1988 — Section 95(2), 95(2)(b)

Citation : (1990) 2 ACC 436 : (1991) ACJ 508

Hon'ble Judges : R.K. Manisana Singh, J;H.K. Sema, J

Bench : Division Bench

Advocate : K.B. Paul and R. Chowdhury, for the Appellant; A Sarma and B. Dutta, Government Advs., for the Respondent

Judgement

R.K. Manisana Singh, J.—This batch of appeals, namely, M.A. (F) Nos. 3, 4, 6, 8, 9, 10, 11, 13, 15, 16, 19, 20, 21, 22, 24, 25, 28, 33, 37 and 38 of 1987 and MA (F) Nos. 1, 2, 3, 5, 6, 10, 11, 13, 15 to 20, 26, 29, 32, 34, 35 and 36 of 1988, can be disposed of by a common judgment as they are from a common judgment passed by the Motor Accidents Claims Tribunal, Shillong in MAC. Case Nos. 3 to 11, 14, 18, 19, 22, 30, 33, 36, 37, 42, 43 and 51 of 1983. The appeals of 1987 were filed by the insurance company and the appeals of 1988 were filed by the Meghalaya Transport Corporation, for short "the MTC.

2. The brief facts of the case are thus. This bus bearing registration mark MLX 222 belongs to the MTC. On 30.8.1982, while the bus was carrying passengers, it met with an accident. As a result of the accident eight passengers died and some other passengers who were travelling in the same bus received injuries. In all, 38 claim cases were filed. All those claim cases were tried jointly and 37 cases were disposed of by a common judgment. The Tribunal awarded compensation in 37 cases. Against the awards, the insurer has filed 37 appeals and MTC has filed another 37 appeals. On perusal of the evidence, we find that some cases are

lacking in evidence and, therefore, out of 37 appeals, except the present appeals, we have already set aside the awards in 17 appeals and sent back the matters for disposal afresh.

3. The Tribunal has held that the accident took place on account of the negligence on the part of the driver of the bus. We have examined the evidence. There are sufficient materials to support the finding. Accordingly, we affirm the conclusion of the Tribunal that the accident took place due to the negligent driving of the driver of the bus in which the passengers were travelling.

4. In MAC. Case No. 3 of 1983, the claimant sustained injuries. The Tribunal awarded a sum of Rs. 8,000/- as compensation to the claimant. The finding of the Tribunal that the claimant received injuries on her face resulting in small disfigurement is based on the evidence and materials on records. Considering the facts and circumstances of the case, we are of the view that, if a sum of Rs. 8,000/- is reduced to Rs. 5,000/- it will meet the ends of justice. Accordingly, the award is modified and is reduced to Rs. 5,000/-.

5. In MAC. Case No. 4 of 1983, the Tribunal awarded Rs. 7,500/- as compensation to the claimant. The claimant was aged 23 years at the time of accident and she was treated in the hospital for 10 days. Her injury was on the backside of the head. Considering the facts and circumstances of the case, we reduce the award to Rs. 5,000/-. Accordingly, the claimant is entitled to Rs. 5,000/-.

6. In MAC. Case No. 5 of 1983, the claimant is the sister of the deceased Ka Ploi Tangsong. She died in the civil hospital after three days of the accident. The Tribunal awarded Rs. 70,000/- as compensation to the claimant. She was aged about 45 years at the time of her death. It appears from the evidence that her profession was business-cum-cultivation and that her income was about Rs. 1,000/- per month. The deceased left four children behind. Even at the modest computation, the contribution of the deceased towards her family would not be less than Rs. 400/- per month, that is, Rs. 4,800/- per year. Taking the normal span of life to be 65 years the deceased would have lived for another 20 years.

Therefore, her contribution to her family would be Rs. 4,800/- X 20 = Rs. 96,000/-. After the general deduction, the award of Rs. 70,000/- is reasonable. We, therefore, affirm the award.

7. In MAC. Case No. 6 of 1983, the claimant is the son of the deceased Ka Lish Tangsong who was aged 70 at the time of death. She was a cultivator earning about Rs. 600/- per month. The Tribunal awarded Rs. 20,000/-. Considering the facts and circumstances of the case, we reduce the award of Rs. 20,000/- to Rs. 10,000/-.

8. Miss Mera Khongsdam, the claimant in MAC. Case No. 7 of 1983 was aged 24 at the time of accident. She received lacerated wound on her head. She was in the hospital for 13 days. The Tribunal made an award of Rs. 9,000/-. Considering

the facts and circumstances of the case, we reduce the award to Rs. 6,000/-.

9. In MAC. Case No. 8 of 1983, the claimant is the father of deceased U.S. Pyngrope who died in the accident. The Tribunal made an award of a sum of Rs. 40,000/- as compensation to the claimant. The deceased was a contractor by profession. However, in the evidence it is stated that the income was Rs. 5,000/- per month. He died leaving three brothers and two sisters. His wife predeceased him. There is no evidence that he had any child. The contribution of deceased for his dependants would not be less than Rs. 500/- per month, that is, Rs. 6,000/- per year. At the time of the accident, the deceased was aged 58 years. Considering the span of life to be 65 years the deceased would have lived for another 7 years. Considering the facts and circumstances of the case and keeping in view that the court would not interfere with the award of the Tribunal unless the amount found by us to be either too high or too low, we hold that the award was justified.

10. In MAC. Case No. 9 of 1983, the claimant is a driver by profession and was aged 42 years at the time of accident. His hand was fractured in the accident. He was in hospital for some time for treatment. The Tribunal awarded a sum of Rs. 50,000/-. It is in evidence that at the time of accident, he was drawing a salary of Rs. 700/- per month. However, after the accident he has been driving a light motor vehicle but cannot drive heavy vehicle. Considering the age upto which he could drive the heavy vehicle actively and circumstances of the case, we reduce the award of Rs. 50,000/- to Rs. 10,000/-.

11. In MAC. Case No. 10 of 1983, the claimant is the mother of the deceased Ka Lesarine Shympliang who died in the accident. The Tribunal awarded Rs. 45,000/-. At the time of the accident she was aged between 60 to 70 according to doctor (CW). Although there is evidence that her income was Rs. 1,000/- per month, there is no evidence to corroborate it. Considering the overall circumstances of the case, we reduce the award of Rs. 45,000/- to Rs. 25,000/-.

12. In MAC. Case No. 11 of 1983, the claimant's husband, U Plir Singh Kharnaor, died in the accident. The Tribunal awarded Rs. 50,000/- as compensation to the claimant. At the time of accident the deceased was aged 52 and he was a class II contractor. The evidence is that he was earning Rs. 3,000/- per month. Considering the span of life and the circumstances of the case, we are of the view that the award of Rs. 50,000/- was not too high. We, therefore, affirm the award.

13. In MAC. Case No. 14 of 1983, the father of the claimant Yes Iarah died in the accident. The age of the deceased was 55 years at the time of the accident. The Tribunal awarded Rs. 45,000/- as compensation to the claimant. It is in the evidence that his income was Rs. 2,000/- per month. Considering the span of life and the circumstances of the case, we are of the view that the award of Rs. 45,000/- was not too high. We, therefore, affirm the award.

14. In MAC. Case No. 18 of 1983, the claimant was aged 40 at the time of the

accident. He was a Government servant drawing a salary of Rs. 345/- per month. The Tribunal made an award of Rs. 8,000/-. It is in the evidence that he suffered physical pain and mental agony only. But there is no evidence that he received any visible injuries. Considering the facts and circumstances of the case, we reduce the award of Rs. 8,000/- to Rs. 5,000/-.

15. In M.AC. Case No. 19 of 1983, the claimant was aged 22 at the time of the accident. The Tribunal made an award of Rs. 10,000/-. The claimant was not examined. She was a student. Under this circumstance and considering the facts and circumstances of the case, we reduce the award of Rs. 10,000/- to Rs. 5,000/-.

16. In MAC. Case No. 22 of 1983, the claimant has made a claim for the injuries sustained by her on her head, forehead and eyelid and for pain in her right thigh. The Tribunal made an award of Rs. 12,000/-. She was aged 19 at the time of the accident. Considering the facts and circumstances of the case, we reduce the award of Rs. 12,000/- to Rs. 6,500/-.

17. In MAC. Case No. 30 of 1983, the claimant is a Government servant drawing a salary of Rs. 700/- per month. He was aged 32 at the time of accident. In the accident he sustained injuries on his head and hips. He was in the hospital for 7 days. The Tribunal awarded Rs. 7,000/-. The claimant was not examined. Considering the evidence and facts and circumstances of the case, we reduce the award of Rs. 7,000/- to Rs. 5,000/-.

18. In MAC. Case No. 33 of 1983, the claimant was aged 40 and was a cultivator. He sustained head injury and he was under treatment for 7 days in the hospital. The Tribunal awarded Rs. 8,000/- as compensation to the claimant. Considering the facts and circumstances of the case, we reduce the award of Rs. 8,000/- to Rs. 5,000/-.

19. In MAC. Case No. 36 of 1983, the claimant has claimed compensation for the death of his mother Ka Sabitri Dkhar. On perusal of the evidence and materials on record, we find that the claimant was not examined. The award is not supported by the facts and circumstances of the case. We are, therefore, of the view that the award made by the Tribunal cannot be sustained and is liable to be set aside. Therefore, we set aside the award. However, considering the facts and circumstances of the case, we remand the case to the Tribunal for disposal of the matter afresh.

20. In MAC. Case No. 37 of 1983, the mother of the claimant named Ka Jesalin Shangpliang died in the accident on the spot. She was aged 50 and was a tailor-cum-business woman. Her earning was Rs. 1,500/-per month. The Tribunal made an award of Rs. 50,000/-. Considering her span of life to be 65 years, she would have lived for another 15 years. Even at the modest computation, the contribution of the deceased towards her family members would not be less than Rs. 400/- per month, that is, Rs. 4,800/- per year. Considering the facts and circumstances of the case, we are of the view that the award was not too

excessive. We, therefore, confirm the award.

21. In MAC. Case No. 42 of 1983, the claimant claimed that her husband U.K. Sohtun died on the spot in the accident. The Tribunal made an award of Rs. 50,000/- to the claimant. The deceased was an Accountant in the office of Mawryngkneng Development Block. His pay was Rs. 1,000/- per month. Out of Rs. 1,000/- aforesaid, his contribution towards his family would be not less than Rs. 400/- per month, that is, Rs. 4,800/- per year. The deceased was aged 48. Taking the span of life to be 65 years, the deceased would have lived for another 17 years. Therefore, the total loss occasioned to the dependants would be Rs. 4,800/- X 17 = Rs. 81,600/-. Even after general deduction, we are of the view that the award is not too low. Therefore, we confirm the award.

22. In MAC. Case No. 43 of 1983, the claimant made the application for compensation for the death of her husband Sudhin Dra Kumar Das who was a chowkidar in Shillong South Division. His pay was Rs. 632/-per month. The Tribunal made an award of Rs. 30,000/- as compensation to the claimant. Out of the said sum of his pay, the deceased would have spent for his dependants at least Rs. 200/- per month, that is, Rs. 2,400/- per year. The deceased was aged 44 years at the time of his death. Taking the span of life to be 65 years, the deceased would have lived for another 21 years, the loss to the dependants amounted to Rs. 50,400/-. After making general deduction the award of Rs. 30,000/-made by the Tribunal is not too low. Therefore, we affirm the award.

23. In MAC. Case No. 51 of 1983, the claimant filed the application for compensation for the death of her husband U.S. Khongdup. The deceased was a conductor of the bus which met with the accident. His income was Rs. 500/- per month at the time of the accident. He died on the spot. The deceased might have spent for his family at least Rs. 170/- per month, that is, Rs. 2,040/-per year. He was aged 35 years. Considering his span of life to be 65 years, the loss occasioned to the dependants would be Rs. 61,200/-. We are of the view that after making general deduction the amount awarded by the Tribunal is just and reasonable. Accordingly, we affirm the award.

24. The claimants in the MAC. cases referred to above in which awards have been modified and affirmed would be entitled to interest at 12 per cent per annum from the date of application for compensation to the date of payment.

25. As regards the limit relating to the aggregate liability of the insurer in one accident, Mr. KB. Paul, the learned counsel for the insurer, has submitted that where the vehicle is registered to carry more than 30 but not more than 60 passengers, has been fixed by the statute at Rs. 75,000/- in all. In support of his contention he has referred us to the decision of the Supreme Court in M.K. Kunhimohammed Vs. P.A. Ahmedkutty and Others,

26. Mr. A Sarma, the learned counsel for the MTC, has submitted that if more than one person were injured during the course of the same transaction each one of the persons must be deemed to have met with an accident. Mr. Sarma has

relied on the decision of the Supreme Court in Motor Owner's Insurance Co. Ltd. Vs. Jadavji Keshavji Modi and Others, and the decision of this court in Ghishalal Durge Dutta v. Binna Das (1984) 1 GLR 32.

27. In M.K. Kunhimohammed Vs. P.A. Ahmedkutty and Others, the Supreme Court has held:

Having regard to the statute as it stood prior to the amendments by Act 47 of 1982 we hold that the insurer was liable to pay up to Rs. 10,000/- for each individual passenger where the vehicle involved was a motor cab and upto Rs. 5,000/- for each individual passenger in any other case. The judgment of the Kerala High Court against which this petition is filed has followed the above construction. We do not find any ground to interfere with it. This petition is, therefore, dismissed.

28. In Motor Owner's Insurance Co. Ltd. Vs. Jadavji Keshavji Modi and Others, , Clause (a) of Section 95(2) of the Act came up for consideration before the Supreme Court. In that case, the accident happened on 1.2.1966. A collision took place between a car and a goods truck as a result of which the driver Ajit Singh, who was driving the car, died instantaneously and Jadavji Keshavji Modi, who was travelling in that car, sustained injuries. The truck was insured against third party risk. The High Court awarded compensation of Rs. 19,125/-with interest to the legal representatives of driver Ajit Singh and Rs. 10,000/- with interest to Jadavji Modi who was travelling in that car. The liability of insurer exceeded more than statutory liability of Rs. 20,000/-. The Supreme Court has held that if more than one persons were injured during the course of the same transaction each one of the persons must be deemed to have met with an accident.

29. In Sheikhpura Transport Co. Ltd. Vs. Northern India Transport Insurance Co., the Supreme Court has held that an insurance company is not liable to pay any sum exceeding Rs. 2,000/- per passenger although the total liability may go upto a maximum of Rs. 20,000/- u/s 95(2)(b) of the Motor Vehicles Act.

30. In Smt. Manjushri Raha and Others Vs. B.L. Gupta and Others, Clause (b) of Section 95(2) of the Act again came up for consideration before the Supreme Court. In that case also the motor vehicle which was involved in the incident was a bus carrying passengers. The Supreme Court followed the decision in Sheikhpura Transport Co. Ltd. Vs. Northern India Transport Insurance Co., and limited the liability of the insurer to Rs. 2,000/-as provided by the Act at that time.

31. In Motor Owner's Insurance Co. Ltd. Vs. Jadavji Keshavji Modi and Others, , the accident took place on 1.2.1966, as already stated, before the Motor Vehicles (Amendment) Act, 1969 came into force on 2.3.1970. In that case, the Supreme Court observed thus:

... In view of the limit of 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.

32. In *M.K. Kunhimohammed Vs. P.A. Ahmedkutty and Others*, the Supreme Court also considered *Motor Owner's Insurance Co. Ltd. Vs. Jadavji Keshavji Modi and Others*, . On a reading of the judgment of *Motor Owners' Insurance Co. Ltd.'s case (supra)*, we are of the view that the decision in that case is not an authority on the interpretation of Clause (b) of Section 95(2). Therefore, the aggregate liability of the insurer in the present case is Rs. 75,000/- in all, keeping in view the decision of the Supreme Court in *M.K. Kunhimohammed v. PA. Ahmedkutty (supra)*.

33. As regards the decision of this court in *Ghishalal Durge Dutta v. Binna Das (1984) 1 GLR 32*, this court while considering Section 95(2)(b) has observed that as the benefit of the second or the inner limit applicable in case of "each individual passenger" is available to an insurer only in a case where it can show that application merely of the outer or overriding limit had become irrelevant as a result of several claims arising out of the same accident, in this case the insurer is not entitled to avail the benefit of the special limit. But the decision of the Supreme Court in *M.K. Kunhimohammed Vs. P.A. Ahmedkutty and Others*, was not available before this court. In view of the decision in *M.K. Kunhimohammed (supra)*, the decision of this court does not help the MTC.

34. At this stage the liability of the insurance company cannot be distributed or proportioned as some of the claim cases are yet to be disposed of. Therefore, we cannot fix the liability of the insurance company for each of the passengers. In such a situation, we direct the MTC to pay the awards to the claimants and we further direct the insurance company to indemnify the MTC by paying a sum of Rs. 75,000/-. It is further directed that if the insurance company has paid more than Rs. 75,000/-, the MTC shall refund the balance or the excess amount paid by the insurer.

35. With the said observation and directions, the appeals are disposed of. Interim order is merged in this judgment. No costs.