

(1983) 11 AHC CK 0025
In the Allahabad High Court
Case No : F.A.F.O. No. 420 of 1979

New India Assurance Co. Ltd.

APPELLANT

Vs

Mahmood Ahmed and Others

RESPONDENT

Date of Decision : 25-11-1983

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 33
Motor Vehicles Act, 1939 — Section 110B, 110D, 95(2), 96

Citation : (1984) 2 ACC 173 : AIR 1984 All 183 : (1986) 59 CompCas 291

Hon'ble Judges : N.N. Mithal, J

Bench : Single Bench

Advocate : A.K. Banerji, for the Appellant; S.A. Khan, for the Respondent

Final Decision : Dismissed

Judgement

M.N. Mithal, J.—A question of comparatively some importance has been raised in this appeal u/s 110D of the Motor Vehicles Act. Following an accident between Bus No. UPZ 8963 in which the deceased, Km. Saulat Nigar, was travelling on May 3, 1974, and truck No. WVK 9261 at Kanpur Mahgaon Road, a claim petition was filed which was allowed and a compensation of Rs. 15,000 was awarded against the insurance company.

2. The insurance company has presented this appeal and Sri A. K. Banerji, learned counsel for the appellant, has urged three points. Firstly, he has urged that the liability of the appellant was merely to reimburse the insured and no primary liability could be fastened on it. As the award does not make the owner of the vehicle liable under no circumstances, that liability could be fixed on the insurer. He also urged that having recorded a finding that both the truck and the bus driver were responsible for causing the accident, the entire amount of compensation could not be made payable by the appellant, being the insurer of the bus. Lastly, he relies upon the provisions of Section 95(2) and urges that the total liability in any one accident cannot exceed Rs. 5,000 per passenger and, therefore, the appellant cannot be made liable for the entire amount awarded.

3. As far as the first point is concerned, that need not detain us for long. It is true that the liability primarily is of the owner of the vehicle in such cases but under the contract of insurance, the insurer becomes liable for indemnifying the owner to the extent of the liability undertaken by it in view of Section 95(2) and Section 96, M.V. Act, 1939.

4. Under O. 41, r. 33, CPC, which undoubtedly is applicable to appeals u/s 110D of the Act, the court has power to grant such relief as ought to have been granted by the court below. Merely on account of the fact, therefore, that no award had been given against the owner, the insurance company cannot escape its liability. It is only a mistake in the form of the award which can always be corrected by the appellate court. In view of this, the award passed by the court below should be read as one against the owner of the vehicle and also the appellant-insurance company subject, of course, to what may be decided on the remaining points involved in this appeal.

5. Coming now to the second point, the Claims Tribunal has recorded a clear finding that the driver of the bus alone was rash and negligent in driving the bus and that there was no negligence on the part of the truck driver. The learned counsel has not been able to show to me anything that this finding by the Tribunal was, in any way, wrong. The portion of the road where the accident took place was under repair and the bus driver had been repeatedly warned earlier also by the passengers in the bus not to drive rashly and negligently merely because he wanted to pick up a marriage party at 1 p.m. that day from Allahabad. Despite these warnings, he did not become careful and took the vehicle to the middle of the road on which the truck was coming from the other side resulting in a head-on collision whereafter the bus swerved to its left and hit against a tree. I have no reason to take a different view in the matter and the findings recorded by the Claims Tribunal on this point are, therefore, confirmed.

6. Coming to the crucial point that arises in this appeal, learned counsel for the appellant has submitted that in view of the provisions contained in Section 95(2) (b) of the Act, the upper limit of liability of an insurer is Rs. 5,000 in any one accident involving a vehicle carrying passengers. Section 95, M.V. Act, 1939, deals with the requirement of insurance and also prescribes the limits of insurer's liability thereunder. Sub-section (1) lays down that a policy of insurance ought to be issued by an authorised insurer to the extent of liability prescribed by Sub-section (2) in respect of death of, or bodily injury to, a passenger or to any other person or his property. Sub-clause (2) deals with the extent of liability which must be covered by the insurer in respect of any one accident having regard to the kind of vehicle, its registered capacity to carry passengers and whether they are carried for hire or reward or merely under terms of employment or any contract. When passengers are carried for hire or reward, the limit of liability depends upon the carrying capacity of the vehicles, i.e., Rs. 50,000, Rs. 75,000 and Rs. 1 lakh, depending upon whether the capacity was up to 30, 60 or more than 60 passengers, respectively. Subject to the above

limits, it also prescribes the liability of Rs. 5,000 for each individual passenger in respect of a vehicle other than a motor cab. The question that has been raised is about the liability of the insurance company in view of the last condition and it is urged that the same cannot exceed Rs. 5,000. In order to appreciate the argument, it will be better to extract only the relevant portion of Section 95 :

"(1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which--

(a) is issued by a person who is an authorised insurer or..... and

(b) insures the person or classes of persons specified in the policy to the extent specified in Sub-section (2)...

(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--...

(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,--...

(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 cab, and five thousand rupees for each individual passenger in any other case ;.....

(5) Notwithstanding anything elsewhere contained in any law, a person issuing a policy of insurance under this section shall be liable to indemnify the person or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of persons."

7. The crucial words in the section are to be found in the earlier part of Sub-clause (2), according to which a policy of insurance " shall cover any liability up to the following limits." This clause clearly means that the latter part of sub-section provides merely the minimum limit of liability which must be covered by the insurer including liability arising from death of, or bodily injury to, persons being carried as passengers in vehicles of various kinds and capacity. Reading Sub-clause (b) in this light would show that as regards passengers who are being carried for hire or reward" the overall limit of liability undertaken by the insurance policy must vary from Rs. 50,000 to rupees one lakh depending upon its registered capacity and Rs. 5,000 for each individual passenger.

8. The main stress in the argument of the learned counsel for the appellant was that in view of Sub-clause (4) of Section 95(2)(b), the liability of the insurance company could not exceed Rs. 5,000 for the death of, or bodily injury to, any one passenger. This submission, however, does not appear to be correct. The expression " subject to the aforesaid limits " only refers to the overall limit prescribed for passenger vehicles of various capacity in Sub-clauses (1), (2) and (3) and the reference to Rs. 5,000 for each individual passenger would apply only in those cases where more than one passenger have either lost their lives or have been injured or both. Where, in any one accident, only one person has either died or been injured, the limit of Rs. 5,000 would not apply in view of the overall limit prescribed in Sub-clauses (1), (2) and (3). The legislative policy also appears to be to ensure payment to victims of a motor accident and for this law has provided compulsory insurance up to a certain minimum so that owner's liability may be secured to that extent at least, the owner of the vehicle and the insurance company being always free to contract to insure the vehicle for any larger amount to cover any increased risk. Sub-clause (4) cannot be understood to mean that the liability of the insurance company is limited to just Rs. 5,000 irrespective of the number of persons injured or killed in an accident, since there exists an upper limit to the extent to which the insurance company is bound to indemnify the claim against the owner for each individual claimant who would be entitled to be indemnified to the extent of Rs. 5,000 at least.

9. Reference in this connection may be made to Motor Owners' Insurance Company Limited Vs. Jadavji Keshavji Modi and Others, , where Section 95(2)(a) came in for consideration by the court. The Supreme Court, after considering the matter in detail, came to the conclusion that the expression " any one accident " in Section 95(2) and consequent liability to the extent of Rs. 50,000 " in all " used in Section 95(2)(a) must mean an accident not from the point of view of the vehicle but from the point of view of each individual person who is injured or who loses his life and " in all " also refers to each such individual separately. Analysis of the provisions cannot be put in better language than used by the Supreme Court itself which may be quoted below, (at pp. 463 and 464 of 52 Comp Cas):

" The expression " any one accident " in Section 95(2) is susceptible of two equally reasonable meanings or interpretations. If a collision occurs between a car and a truck resulting in injuries to five persons, it is as much plausible to say that five persons were injured in one accident as it is to say that each of the five persons met with an accident. A bystander looking at the occurrence objectively will be right in saying that the truck and the car met with an accident or that they were concerned in one accident. On the other hand, a person looking at the occurrence subjectively, like the one who is injured in the collision, will say that he met with an accident. And so will each of the five persons who were injured. From their point of view which is the relevant point of view, "any one accident" means "accident to any one". In matters involving third party risks, it is subjective considerations which must prevail and the occurrence has to be looked

at from the point of view of those who are immediately affected by it. If the matter is looked at from an objective point of view, the insurer's liability will be limited to Rs. 20,000 in respect of injuries caused to all the five persons considered en bloc as a single entity, since they were injured as a result of one single collision. On the other hand, if the matter is looked at subjectively as it ought to be, the insurer's liability will extend to a sum of Rs. 20,000 in respect of the injuries suffered by each one of the five persons, since each met with an accident, though during the course of the same transaction. A consideration of preponderating importance in a matter of this nature is not whether there was any one transaction which resulted in injuries to many but whether more than one person was injured, giving rise to more than one claim or cause of action, even if the injuries were caused in the course of one single transaction. If more than one person is injured during the course of the same transaction, each one of the persons has met with an accident.

We are, therefore, of the opinion that the ambiguity in the language used by the Legislature in the opening part of Section 95(2) and the doubt arising out of the correlation of that language with the words "in all" which occur in Clause (a), must be resolved by having regard to the underlying legislative purpose of the provisions contained in Chapter VIII of the Act which deals with third party risks. That is a sensitive process which has to accommodate the claims of the society as reflected in that purpose.

Indeed, it is in this area of legislative ambiguities, unfortunately not receding, that courts have to fill gaps, clear doubts and mitigate hardships. In the words of judge Learned Hand in *Cabell v. Markham* [1945] 148 FD 737, 739 :

" It is one of the surest indexes of a mature and developed jurisprudence.....to remember that statutes always have some purpose or object to accomplish whose sympathetic and imaginative discovery is the surest guide to their meaning. "

There is no table of logarithms to guide or govern statutory construction in this area, which leaves a sufficient and desirable discretion for the judges to interpret laws in the light of their purpose, where the language used by the law-makers does not yield to one and one meaning only. Considering the matter that way, we are of the opinion that it is appropriate to hold that the word "accident" is used in the expression "any one accident" from the point of view of the various claimants, each of whom is entitled to make a separate claim for the accident suffered by him and not from the point of view of the insurer."

10. This, therefore, is the dictum of the Supreme Court while interpreting Section 95(2)(a) of the Act. However, can the same interpretation be applied to the provisions of Clause (b) thereof. The Supreme Court was not directly concerned with that sub-clause and did not venture to express any opinion thereon. It left it undecided with the following observations (at p. 468 of 52 Comp Cas):

" 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."

11. The language of Sub-clause (4) is certainly ambiguous and within the minimum of the prescribed limit for the liability of an insurance company, it also prescribes a minimum liability of Rs. 5,000 for each victim.

Thus, if in any accident ten persons die or are injured, the insurance company will have to indemnify the owner of the vehicle up to a minimum of Rs. 5,000 for each individual passenger. However, if the number of those killed or injured exceeds ten, even then the liability in respect of each passenger will not be less than Rs. 5,000 though its overall liability may remain Rs. 50,000. If it were not so, the heavier the pecuniary loss to the dependants, the lesser would be the extent of its coverage by the insurance company.

12. The whole provisions appear to be inequitable to those who stand in utmost need of the compensation money. As between those who are injured in any accident, those who are awarded higher compensation will get more than those who are awarded lesser compensation because, due to lower income, their dependency would also be lower. At the time of being indemnified by the insurance company on the basis of pro rata division of compensation, the poor will be benefited to a much lesser extent than their more affluent co-passengers. This completely makes a mockery of the true spirit behind the provision which was introduced mainly to ensure quick and prompt payment to the family of the victim which may need help in their moment of distress immediately. In actual practice, therefore, the benefit does not really go to those who are supposed to get it but someone else reaps its benefits. It is time that the Legislature should step in and make a suitable provision to ensure payment of whatever compensation that is awarded to any claimant and the same should be made fully indemnifiable by the insurer. There can be no moral or legal justification for making a distinction between passengers in car and those in any other kind of passenger or goods vehicle. The value of human life cannot depend upon the mode of travel employed by a person. Nor can it be allowed to depend upon the type of vehicle which terminates a human life in a roadside accident, more if you are hit by a car and much less if one is unluckily hurt by another kind of vehicle. The various provisions contained in Sub-clauses (a) and (b), though they may not be discriminatory, have no valid basis for differentiation.

13. Even the Supreme Court could not help noticing this great disparity and proceeded to draw the attention of the Legislature to remove this kind of anomaly by observing thus (at p. 470 of 52 Comp Cas) :

" We hope and trust that our law-makers will give serious attention to this aspect of the matter and remove the serious lacuna in Section 95(2) (d)(ii) of the Motor Vehicles Act. We would also like to suggest that instead of limiting the liability of the insurance companies to a specified sum of money as representing the value of human life, the amount should be left to be determined by a court in the

special circumstances of each case."

14. Thus, in the light of the above discussion, it appears to me that subject to the limits specified under Sub-clauses (1), (2) and (3) of Section 95(2) (b) of the Act, the liability of the insurance company to reimburse would at least be Rs. 5,000 for each individual. Although the minimum extent of liability of the insurance company to indemnify the owner of the vehicle in respect of the compensation incurred by him due to loss of life or injury to each individual passenger in a motor accident would at least be Rs. 5,000, yet its total liability would be subject to the minimum limit prescribed. Any liability in excess thereof, if incurred by the owner, will have to be borne by the owner of the vehicle himself unless the terms of the contract of insurance provide otherwise. In the present case, a lone passenger had lost her life and, therefore, the limit placed by Sub-clause (4) will not apply. The statutory liability of the insurance company being up to the extent of at least Rs. 50,000, it would be liable for satisfying the entire judgment as the Claims Tribunal has only awarded Rs. 15,000 by way of compensation to the claimant.

15. A feeble effort was also made to urge that the vehicle involved in the accident was a contract carriage. That can legally make no difference in the matter of award of compensation. The plea was rightly discarded in mid-stream, for the Act only contemplates two kinds of four wheeled vehicles, those carrying goods and the other for passengers. The goods vehicles may either be private or public carriers and similarly the passenger carriages may be stage carriages, contract carriages or the like. These are only various varieties of these two major kinds of vehicles, apart from other kinds of vehicles such as tractors, three and two wheelers, etc. The point has been noted only to be rejected, having no merits.

16. In view of the above, I find no force in this appeal, which is accordingly dismissed with costs.