

(1990) 05 MAD CK 0017
In the Madras High Court

New India Assurance Company Limited	APPELLANT
Vs	
K. Chandra and Others	RESPONDENT

Date of Decision : 02-05-1990

Acts Referred:

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

Citation : (1991) 2 ACC 531 : (1991) ACJ 386

Hon'ble Judges : K. Venkataswami, J; Govinda Swamy, J

Bench : Division Bench

Judgement

K. Venkataswami, J.—Both the above Civil Miscellaneous Appeal arise out of an award of the Motor Accidents Claims Tribunal.

Chengalpattu, in M.O.P. No. 274 of 1980 dated 24.12.1981. C.M. A. No. 394 of 1982 is preferred by New India Assurance Co. Ltd. whereas

C.M.A. No. 861 of 1987 is preferred by claimants/petitioner in the said O.P. Brief facts are the following:

The parties hereinafter are referred to with reference to their ranks in the M.O.P. The petitioner (appellants in C.M.A No. 861 of 1987) are the

widow, minor children and mother of the deceased by name Kulandaivelu. The accident took place on 16.5.1989 at about 3.00 p.m. when the

deceased was going on a bicycle towards Uthirantnerur after attending a meeting at the B.D.O's office on the left side of road. The bus belonging

to the 1st respondent (also 1st respondent in C.M.A. No. 861 of 1987) bearing registration No. TNS 1069, driven rashly and negligently, dashed

against the deceased as a result of which the deceased sustained multiple injuries and later died in the C.M.C. Hospital at Chengalpattu. The

petitioners, claiming a total compensation of Rs. 2,00,000/- preferred M.O.P. No 274 of 1980.

2. The owner of the bus as well as the insurance company resisted the claim contending, inter alia, that it was on account of the negligence on the part of the deceased in suddenly turning to his right, the accident has occasioned, and therefore, the petitioner are not entitled to any compensation at all. It was also alternatively contended that the claim was excessive. One other contention was raised on behalf of the insurance company, namely, the insurance company was liable as per Section 95(2)(b) of the Motor Vehicles Act to an extent of Rs. 50,000/- only and not more than that. The Tribunal, on a consideration of both oral and documentary evidence, clearly found that the accident took place on account of rash and negligent driving of the bus belonging to the 1st respondent. The Tribunal fixed the compensation in a sum of Rs. 1,23,000/- and apportioned the same as follows: The 1st petitioner Rs. 50,000/- 2nd and 3rd petitioner each Rs. 25,000/- and the 4th petitioner Rs. 23,000/- The Tribunal also held that the policy being a comprehensive one, the insurance company cannot be heard to say that its liability is only Rs. 50,000/-. Aggrieved by the above said award of the Tribunal, the petitioner (claimants) have filed C.M.A. No. 861 of 1987 claiming enhanced compensation, the insurance company has filed C.M.A. No. 394 of 1982 for a decision that its liability is restricted to Rs. 50,000/-. We may first dispose of the appeal filed by the petitioner/claimants for enhanced compensation. The first petitioner examined herself as PW 1. She has stated that her deceased husband was working as Sub-Divisional Engineers in Tamil Nadu Electricity Board and was getting a monthly salary of Rs. 1,264/-. He was contributing to the family a sum of Rs. 1,000/- per mensem. At the time of the death of the deceased, he was 37 years old. To prove the age, the S.S.L.C. certificate was produced, to prove the salary of the deceased, one Balaraman, an Assistant working in the Tamil Nadu Electricity Board, was examined and he produced the pay-slip of the deceased, according to which the pay was Rs. 1,464.70 per month, PW 2 stated that the deceased would have even come upto the level of Superintending Engineer on a salary of Rs. 2,000/- per mensem had he lived upto 58 years. Based on his evidence, the Tribunal found that the deceased would have contributed not less than a sum of Rs. 600/- per mensem to the family and that he would have earned that amount for another 21 years, and on that basis, he has multiplied the annual contribution by 21 and arrived at a

figure of Rs. 1,51,200/- Towards lump sum, payment and uncertainties of life, 1/6th of the amount was deducted, and the balance was Rs.

1,26,000/- Again from this amount another sum of Rs. 17,500/- was added towards probable loss of pensionary benefit, from the above said two

amounts, the Tribunal has deducted a sum of Rs. 20,000/- paid by the Government and also the Employee's union. Thereafter, the Tribunal fixed

the compensation at Rs. 1,23,000/-. The contention of the learned Counsel appearing for the petitioners is that the deduction of Rs. 20,000/- is

unsustainable in view of number of decisions of this court. He also submitted that the monthly (Sic. contribution should have) been taken at a sum

of Rs. 1,000/- and on at Rs. 600/-. He also submitted that the interest at 6 per cent from the date of the award is contrary to the several decision

of this court and the Supreme Court, and that interest should have been awarded at 12 per cent per annum from the date of the application.

Learned Counsel appearing for the respondents opposed the enhancement and submit-led that what was given by the Tribunal was just and fair

compensation. However, they have no answer for the argument that the deduction of Rs. 20,000/- was not in accordance with the settled

principles.

3. In the light of the several decision of this court and the one relied on by the learned Counsel for the petitioner, in *Bhagat Singh Sohan Singh v.*

Om Sharon 1983 ACJ 203 (P&H). We find no difficulty in holding that the deduction of Rs. 20,000/- is unsustainable. Apart from this, we also

find no difficulty in holding that the interest at 6 percent per annum from the date of the award is not correct, and that interest should have been

awarded at 12 per cent per annum from the date of the petition. Now, it remains to be considered whether apart from this enhancement, any

further enhancement is necessary.

4. After going through the award of the Tribunal and in the light of the evidence adduced by the petitioner, we do not think any further interference

is called for, and the finding of the tribunal that the deceased would have contributed Rs. 600/- per month to the family seems to us fair and

reasonable. Accordingly, we hold that the petitioner/claimants (appellants in C.M.A. No. 861 of 1987) are entitled for enhancement of

compensation of Rs. 20,000/- more and his sum of Rs. 20,000/- shall be shared

in the proportion of Rs. 8,000/-, Rs. 4,000/- (Sic. Rs. 4,000/-)

and Rs. 4,000/- by the claimants respectively. The claimants are also entitled to interest at the rate of 12 per cent annum from the date of petition

both on the original award and on the enhanced compensation.

5. Now, coming to the appeal preferred by the insurance company, namely, C.M.A. No. 394 of 1982, the point to be considered is whether the

liability of the insurance company is limited Rs. 50,000/-alone. According to the learned Counsel for the insurance company, the Tribunal below

has misconstrued the term "comprehensive policy" which led to the wrong conclusion arrived at by the Tribunal. The Tribunal has not given any

other reason for rejecting the contention advanced on behalf of the insurance company. The Tribunal has held, "'Exh. B-4 is a comprehensive policy

and therefore the liability of the insurance company is unlimited.'" In this connection, the learned Counsel for the insurance company invited our

attention to recent decision of the Supreme Court *National Insurance Co. Ltd. v. Jugal Kishore* 1988 ACJ 270 (SC) : (1988) ACC 327 (SC)

wherein the nature of comprehensive policy has been explained in detail. He also relied on a Division Bench judgment of this court in *Rajeswari*

Transports Firm, Theni v. M.G. Rajan 1982 ACJ (Supp) 118 (Mad. It is seen from the insurance policy produced before the Tribunal on behalf of

the insurance company that no extra premium was paid and the liability was fixed with reference to Section 95(2)(b) of the Motor Vehicles Act.

The Supreme Court in *National Insurance Co. Ltd v. Jugal Kishore* (supra)

We have accordingly pursued the photo state copy of the policy to ascertain whether risk for any amount higher than the amount of Rs. 20,000/-

contemplated by clause (b) aforesaid was covered. Our attention was invited by learned Counsel for the respondents to the circumstance that at

the right hand corner on the top of page 1 of the policy the words "Commercial Vehicle Comprehensive" were printed. On this basis and on the

basis that the premium paid was higher than the premium of an "Act only" policy it was urged by the learned Counsel for the respondents that the

liability of the appellant was unlimited and not confined to Rs. 20,000/- only. We find it difficult to accept this submission. Even though it is not

permissible to use a vehicle unless it is covered at least under an "Act only" policy, it is not obligatory for the owner of a vehicle to get it

comprehensively insured. In case, however, it is got comprehensively insured a higher premium than for an "Act only" policy is payable depending on the estimate value of the vehicle. Such insurance entitles the owner to claim reimbursement of the entire amount of loss or damage suffered upto the estimated value of the vehicle calculated according to the rules and regulations framed in this behalf. 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 there for. This is the requirement of the Tariff Regulations framed for the purpose. The liability under the policy in the instant case was the same as the statutory liability contemplated by Clause (b) of Sub-section (2) of Section 95 of the Act, namely Rs. 20,000/- An award against the appellant could not, therefore, have been made in excess of the said statutory liability.

6. In *Rajeswari Transports (Firm), Theni v. M.G. Rajan* 1982 ACJ (Supp) 118 (Mad) a Division Bench of this court has held as follows:

We would like to dispose of the third question as to the extent of the liability of the insurance company first. The learned Counsel for the appellant, relying on the decision of this court in *Oriental Fire and Genl. Ins. Co. Ltd. v. V. Ganapathi, Ramalingam* 1982 ACJ (Supp) 106 (Mad) contends that since the policy issued by the insurer in respect of the bus in question is a comprehensive one, the insurer's liability should be taken to be unlimited. It is true, in that case, a Division Bench of this court, to which one of us was party, has held that limitation of liability against insurance company upto Rs. 50,000/- towards compensation in respect of passengers or persons other than a passenger contained in Section 95(2) of the Motor Vehicles Act, is inapplicable to third parties when the policy is a comprehensive one. In this case, that the Tribunal has limited of the

insurance company to Rs. 50,000/- seems to have been based not only on Section 95(2) of the Motor Vehicles Act, but also on the terms of the

policy, it is no doubt true that the policy in this case is a comprehensive one. However, the policy itself restricts the insurer's liability to Rs.

50,000/- in respect of death or bodily injury to any person caused or arising out of the use of the motor vehicle. So, in respect of death or bodily

injury to third parties, the policy limits the liability of the insurer to Rs. 50,000/-. It cannot be doubted, even in a comprehensive policy it is open to

the insurer to limit its liability. If the insured wants a policy with an unlimited liability, then he should have bargained for such a policy and paid the

requisite premium for such an unlimited liability. But in this case, the parties have agreed that the limit of liability in respect of third party to be borne

by the insurer should be Rs. 50,000/- and having paid premium on that basis, it is not open to the insured to ignore the terms of the insurance

policy and claim to make the insurance company liable for more than Rs. 50,000/-. If the limit of Rs. 50,000/- has not been mentioned in the

policy, and it has merely restricted the liability of the insurer u/s 95(2), then it is possible to say that the liability to the insurer is unlimited, being a

comprehensive policy. But as here the comprehensive policy has limited the liability of the insurer to Rs. 50,000/- it is not possible for us to make

the insurer liable for an unlimited amount merely because the policy is comprehensive one. We have to, therefore, hold that in this case even though

the policy is comprehensive one, the insurer's liability is not unlimited, as the so-called comprehensive policy itself limits the liability to Rs. 50,000/-

. Thus the legal submission put forward by the learned Counsel for the appellant fails.

7. In the light of the above two decisions we find the view taken by the Tribunal that merely because the policy was a comprehensive one, the

liability of the insurer is unlimited is not correct. It is not the case of the owner or the claimants that extra premium has been paid to make the

insurer liable beyond the limit prescribed u/s 95 (2)(b) of the Act. Therefore, we uphold the contention of the learned Counsel appearing for the

insurance company. The award of the Tribunal will be modified accordingly limiting the liability of the insurance company to Rs. 50,000/- and

proportionate interest and the rest of the compensation will be paid by the owner of the vehicle, the appeals are accordingly allowed. However,

there will be no order as to costs in both the appeals.

Venkataswami and Govindaswamy, JJ.

8. Mr. Narasimhan, learned Counsel appearing for the owner of the vehicle, submits that this is a case in which the interpretation of Section 95(2)

(b) of the Motor Vehicle Act is involved, therefore, leave to appeal to Supreme Court should be granted. In our view, we have only followed the

judgment of the Supreme Court and a Division Bench judgment of this court in interpreting the scope of Section 95(2)(b) of the said Act and;

therefore, we do not think, this case deserves leave. Accordingly, we decline to grant the oral leave prayed for under Article 134-A(b) of the

Constitution of India.