
(1993) 11 RAJ CK 0028

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 8, 10, 11, 12, 13 of 1988

New Indian Assurance Company Ltd.

APPELLANT

Vs

Mst. Baikala and Others

RESPONDENT

Date of Decision : 25-11-1993

Acts Referred:

Motor Vehicles Act, 1939 — Section 95(2)(a)

Citation : (1993) 2 RLW 672 : (1994) 3 WLC 216 : (1993) WLN 532

Hon'ble Judges : Milap Chandra Jain, J

Bench : Single Bench

Judgement

Milap Chandra Jain, J.—These appeals have been filed against the common award of the Motor Accidents Claims Tribunal (District Judge), Banswara dated August 1, 1987 by which it has partly allowed the claim petitions arising out of the same accident and has awarded various amounts as compensation to the claimants as noted below:

Number and year of Name of Amount S. No. MACT awarded in Misc. Appeal Case
Deceased Injured Rs. 1. 8/88 34/82 Bherunath - 57,800 2. 10/88 53/82
Gangaram - 25,100 3. 11/88 33/82 Laxman - 39,000 4. 12/88 35/82 - Nanu
Ram 16,400 5. 13/88 36/82 - Girdhari 12,000

2. The facts of the cases giving rise to these appeals may be summarised thus. On May 31, 1979, truck No. GTY 4126, owned by Suresh Nathuram Agrawal (non petitioner-respondent No. 3) and insured by non-petitioner-appellant, was bringing cement from Kandla to Banswara. It was being driven by its driver Laxman (non-petitioner-respondent No. 2). The injured Radha Kishan, Nanu Ram, Girdhari and Kamla and deceased Laxman, Gangaram and Bherunath boarded it at the bus stand of the village Mangana along with their baskets of fish after paying their fare and also the freight of the baskets. The deceased Virendra Kumar was Khalasi in the truck. While it was passing through Chandu ji-ka-Ghata (P.S. Loharia), it fell down in a ditch. As a result thereof, aforesaid persons received injuries and Laxman, Ganga Ram, Bheru Nath and Virendra

Kumar died as a result of the injuries. The accident took place due to rash and negligent driving of the truck by its said driver. The claim petitions were filed by the injured and the legal representatives of the aforesaid deceased persons. After holding necessary trial, the Tribunal awarded the said amounts as compensation against the owner, driver and Insurance Company.

3. It has been contended by the learned Counsel for the appellant that the nature of the vehicle for the purpose of application of Section 92, Motor Vehicles Act, 1939 (hereinafter to be called the Act) is determined on the basis of its use at the time of the accident, as such Clause (a) of Sub-section (2) of Section 95 of the Act is not applicable in this case but Clause (b) of this sub-section is applicable and accordingly the Insurance Company is liable to the extent of Rs. 5,000/- in each case as provided in Sub-clause (4) of Clause (b) of Sub-section (2) of Section 95 of the Act otherwise the passengers carried in a goods vehicle would be in a higher position than the passengers traveling in a public service vehicle meant for carrying passengers. He relied upon *M.K. Kunhimohammed Vs. P.A. Ahmedkutty and Others*,

4. In reply, it has been contended by the learned Counsel for respondents No. 1 to 3 that in these cases Clause (a) of Sub-section (2) of Section 95 of the Act is applicable and not Clause (b), Clause (a) specifically deals with goods vehicles, Clause (b) with passenger vehicles, Clause (c) with other vehicles and Clause (d) with all types of vehicles. They relied upon *Badri Narian v. Chhotu Ram* 1986 ACJ 1062 (Raj.), *Oriental Fire and General Insurance Company Ltd. v. Lachman Das* 1986 RLW 564, *Rama and Ors. v. Ram Kishan and Ors.* 1987 ACJ 488, *Durga Devi and Ors. v. Ram Kishan and Ors.* 1987 ACJ 547, *Kishan Lal v. Shri Ram and Ors.* 1987 ACJ 691, *Mst. Nani and Ors. v. Ghasi and Ors.* 1987 (2) RLR 948 and *New India Assurance Company Ltd. v. Rambahadur Singh G. Rajput and ors* 1987 ACJ 81.

5. In its reply to the claim petitions, the appellant Insurance Company has averred that the driver of the offending truck allowed the said injured and deceased persons to board his truck after taking fare from each one of them including the freight of their baskets of fish. It is also well proved from the evidence on record. Thus the deceased and injured persons were being carried for hire. According to the decision of the Full Bench of this Court given in *Santara Bai v. Prahlad* 1985 ACJ 762 (FB), the appellant Insurance Company is liable to pay compensation to the injured persons and legal representatives of the deceased persons.

6. The question for consideration in these appeals is about the extent of liability of the appellant Insurance Company. The relevant part of Section 95 as stood on the date of the accident, i.e. May 31, 1979, ran as under:

95(2). Subject to the proviso to subs. (1), a policy of insurance shall cover any liability incurred In respect of any one accident upto 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 cab, and five thousand rupees for each individual passenger in any other case;

(c) save as provided in Clause (d) where the vehicle is a vehicle of any other class, the amount of liability incurred;

(d) irrespective of the class of the vehicle, a limit of rupees two thousand in all in respect of damage to any property of a third party....

Clause (a) of Sub-section (2) speaks of goods vehicles only. Clause (b) is in respect of vehicles in which the passengers are carried. Clause (c) deals with other classes of vehicles. Clause (d), dealing with damage to property starts with "ir respective of the class of vehicle." It includes all types of vehicles. It is thus clear that the insurance coverage is on the basis of the classifications of the vehicles, namely, (1) goods vehicles, (2) vehicles in which passengers are carried and (3) vehicles other than the goods vehicles or passengers vehicles. This is also clear from the provisions of Section 94 of the Act and various definitions given in Section 2 of the Act particularly of the "goods vehicle" in Sub-section (8) "public service vehicle" in Sub-section (25) and "transport vehicle" in Sub-section (33) that the insurance coverage is on the basis of the classification of the motor vehicles at the time of its insurance and not on the basis of their use at the time of the accident. It is, therefore, difficult to hold that when the accident took place the offending truck was a vehicle meant for carrying passengers and was not a goods vehicle. I find support in this view from *Jai Laxmi v. R.G. Insurance Company* AIR 1971 Mad 132 (FB) and *New India Assurance Co. Ltd. Vs. Kamlaben Sultansinh Jadav and Others*, that the extent of liability of the appellant Insurance Company is as provided in Section 95(2)(a) of the Act. In *Motor Owners Insurance Company Ltd. v. J.K Modi* 1981 ACJ 507 (SC), Their

Lordships have interpreted the words "in one accident" appearing in Clause (a) of Sub-section (2) of Section 95 of the Act and held that if more than one person is injured in the course of the same transaction, each one has met with accident and each is entitled to total compensation limited by the statute from the Insurance Company. Thus the appellant Insurance Company is liable to pay compensation to the extent of Rs. 50,000/- in each case.

7. Great reliance has been placed by the learned Counsel for the appellant on *M.K. Kunhimohammed Vs. P.A. Ahmedkutty and Others*, . In this case, a passenger of the bus which met with an accident on July 24, 1978 died and his legal representatives filed claim petition, Clause (b) of Sub-section (2) of Section 95 of the Act was applicable and according to the provisions of Sub-clause (4) of Clause (b), the Tribunal awarded Rs. 5,000/- only as compensation. This was confirmed by the Kerala High Court and Hon'ble Supreme Court maintained it. *Motor Owners' Insurance Company Limited Vs. Jadavji Keshavji Modi and Others*, has not been desented in AIR 1981 SC 2158. It may also be mentioned here that the judgment given in AIR 1981 SC 2158 is of a Bench consisting of Three Hon'ble Judges and judgment given in 1981 ACJ 507 is of TWO Hon'ble Judges.

8. In a similar case reported as *Badri Narain v. Chhotu Ram* 1986 ACJ 1062 (Raj.) The Insurance Company was held liable to pay compensation to the extent of Rs. 50,000/-. In other cases relied upon by the learned Counsel for the respondents, the liability of the Insurance Company was held to the extent of Rs. 50,000/-.

9. In the result, the Miscellaneous Appeals No. 10, 11, 12 and 13 of 1988 are dismissed with costs. Miscellaneous Appeal No. 8 of 1988 is partly allowed with costs. The appellant Insurance Company is held liable to the extent of Rs. 50,000/-