
(1990) 11 AHC CK 0126
In the Allahabad High Court
Case No : F.A.F.O. No. 591 of 1980

Oriental Fire and General Ins. Co. Ltd. and Others	APPELLANT
Vs	
Manju Goel and Others	RESPONDENT

Date of Decision : 16-11-1990

Acts Referred:

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

Citation : (1992) 1 ACC 235 : (1991) ACJ 882

Hon'ble Judges : K.P. Singh, J;K.K. Birla, J

Bench : Division Bench

Advocate : Vineet Saran, for the Appellant;

Final Decision : Disposed Of

Judgement

K.K. Birla, J.—This is an appeal against the award dated 17th May, 1980 passed by the Motor Accidents Claims Tribunal, Mathura, decreeing the claim for Rs. 1,09,500/- against the opposite parties and the total compensation payable by the Oriental Fire & Genl. Ins. Co. Ltd. (hereinafter referred as "the insurance company").

2. Ramesh Chand Goel aged about 24 years died on account of the accident on 23.4.1977. In brief, he was going on motorbike from Refinery Mathura to Mathura and truck No. MPG 9893 driven by Mohan Singh and owned by Ajayab Singh was coming from the opposite side with great speed. It hit the motor cycle at about 3.45 p.m. causing serious injuries to Ramesh Chand Goel. Ramesh Chand deceased died on way to the hospital. From the evidence on record the Tribunal found that the accident was caused on account of the rash and negligent driving of the truck driver. This has not been disputed before us.

2-A. Ramesh Chand deceased was a Government contractor of First Class and had factories at Badopal and Hissar besides other immovable properties and including agricultural land. He left behind his widow Manju Goel aged about 19

and one daughter Monika Goel aged about 4 months at the time of the accident. A claim of Rs. 12,00,000/- was preferred in the claim petition. Manju Goel subsequently remarried with her husband's younger brother on 28th April, 1979. According to the Tribunal the expenditure incurred on Manju by the deceased was not less than Rs. 1,000/- per month. He granted a compensation of Rs. 24,500/- to her for the period of her widowhood. He also granted Rs. 10,000/- by way of compensation for her miseries. As regards the daughter he awarded a sum of Rs. 50,000/- to be kept in fixed deposit in some nationalised bank and to be taken out at the time of her marriage for the purposes of marriage only. He further awarded a sum of Rs. 25,000/- for the minor so that the amount of interest received from this amount may be spent in the bringing up of Monika. He accordingly awarded a sum of Rs. 1,09,500/- to be payable by the insurance company as the truck was comprehensively insured and the liability of the insurance company was limited to Rs. 1,50,000/-. Being aggrieved the insurance company and Ajayab Singh have preferred this appeal.

3. The amounts awarded have been challenged on various grounds on behalf of the appellants. It is contended that as the family business was continuing, it is not a case of total loss of income and as such the amount awarded is excessive. It is also contended that no compensation for shock and agony or miseries could have been awarded to the widow under the law. According to the appellants the liability of the insurance company was limited to Rs. 50,000/- only at that time and as such the direction of whole compensation amount being paid by the insurance company is against the law and the liability of the insurance company should be limited to Rs. 50,000/- only. On the other hand, it is contended on behalf of the respondents that the joint-appeal by the insurance company and the owner is not maintainable, that the appeal is bad for non-joinder of the driver. It was also asserted that in view of the comprehensive insurance policy the liability of the insurance company had extended to Rs. 1,50,000/- and the order passed is proper.

4. We have heard the learned counsel for the parties and perused the records.

5. It is contended on behalf of the respondents that the interest of the insurance company and the truck owner, appellant No. 2, are inconsistent and as such joint-appeal by them is not maintainable. No doubt, the liability of the insurance company to the extent of the whole amount is being challenged in the appeal and is sought to be limited to Rs. 50,000/-. On this point it may be said that there is a clash of interest between the appellants. But in our opinion it was a matter to be taken into account by the appellants. Both of them have joined in the appeal. The grounds raised in the memo will, therefore, be taken to have been raised on behalf of the appellants, even though there may be clash of interest. When this was put to the learned counsel for the appellants he has stated at the Bar that he was representing both the appellants and the points raised by him are being raised on behalf of both the appellants. It was also stated that the awarded amount has already been deposited by the insurance

company and withdrawn by the respondents. According to him, the rights of the respondents are, therefore, not to be affected at all and the purpose of the appeal is to have a finding regarding the liability of the insurance company in such cases. In view of the above, we are of the opinion that the appeal is not liable to be dismissed on the grounds urged by the learned counsel for the respondents.

6. From the evidence led by the claimants it is clear that the deceased was an affluent man, having vast properties and other resources. The learned Tribunal has considered the income of the share of the deceased only while determining his contribution on the maintenance of his wife. This does not appear to be excessive in our opinion. Therefore, the award of Rs. 24,500/- is maintained.

7. Rs. 10,000/- has been awarded to the respondents by way of compensation for the miseries. It is contended that no compensation under this head was admissible. This contention appears to be correct in view of the principles laid down in the case of Padma Devi etc. Vs. The U.P. State Road Transport Corporation etc., and in the case of N. Sivammal and Others Vs. Managing Director, Pandian Roadways Corporation and Another, . According to these cases no compensation can be awarded for agony suffered by the dependants. However, the amount awarded under one head can be shifted to another head as held in Division Bench case of Oriental Fire and General Insurance Company Ltd. and Another Vs. Lalta Prasad and Another, . In the instant case the respondent No. 1 was deprived of the companionship and conjugal bliss on account of the death of her husband. No amount has been awarded on account of loss of consortium which should have been awarded in our opinion. Therefore, this amount of Rs. 10,000/- is awarded to her under this head, though not by way of compensation for mental shock and agony.

8. The awarding of the compensation of Rs. 75,000/- to the respondent No. 2 does not appear to be excessive in the facts and circumstances of the case. The same has not been seriously challenged before us. It is contended that the awarding of Rs. 50,000/- solely for the purposes of marriage is unjustified. Even if the observation of the Tribunal in this regard may not be happily worded, in our opinion, this does not affect the awarding of Rs. 75,000/- as compensation to the respondent No. 2.

9. It is contended on behalf of the appellants that the liability of the insurance company is Rs. 50,000/- only. On the other hand, it is contended on behalf of the respondents that the truck was comprehensively insured and the liability of the insurance company was up to Rs. 1,50,000/-. It is not in dispute that at the time of the accident the statutory liability of the insurance company extended up to Rs. 50,000/- only in such cases. Therefore, it has to be seen whether this liability got extended under the insurance policy. It is admitted case that the truck had a comprehensive insurance. The insurance policy has been filed before the Tribunal. It shows that an additional premium of Rs. 39/- has been paid and against this is the endorsement "personal injury and property damage Rs.

1,50,000/-". The mere fact that there is comprehensive insurance of the vehicle will not extend the statutory liability of the insurance company as regards third party risk unless there is a specific agreement between the parties to that effect.

10. In the case of National Insurance Co. Ltd., New Delhi Vs. Jugal Kishore and Others, it has been held that:

...such insurance (comprehensive added by us) entitles the owner to claim reimbursement of the entire amount of loss or damage suffered up to 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 therefore.

In the case before us the policy shows the liability up to Rs. 1,50,000/- only in case of personal injury and property damage and not with regard to third party risk. Therefore, in our opinion the learned Tribunal has erred in fixing the liability of the insurance company to Rs. 1,50,000/-.

11. However, in this case by an interim order dated 17.9.1980 the stay was granted on the condition of depositing Rs. 50,000/- in fixed deposit account. By a subsequent order dated 5th May, 1981 the further stay was allowed on deposit of Rs. 59,500/- and this amount was to be withdrawn by the claimants-respondents on furnishing adequate security. It has been stated before us that these orders have been complied with. The learned counsel for the appellants has also stated that no refund is being claimed by the insurance company from the respondents therefor. In view of this no interference or modification of the amount awarded to be paid by the insurance company is called for.

12. It is contended on behalf of the respondents that the deposit of Rs. 50,000/- will be multiplied several times and the direction for utilizing the whole of the amount for the marriage purpose of the respondent No. 2 is unwarranted and against the spirit of the times. In our opinion, the contention cannot be brushed aside lightly. In our opinion, the proper course would be to direct that this amount will remain invested in the fixed deposits in a nationalized bank for the period till the respondent No. 2 attains majority. In case her marriage is arranged before she attains majority the respondent No. 1 and in the event of her death the lawful guardian of respondent No. 2 will be permitted by the Tribunal to draw the reasonable amount to be incurred in her marriage. The Tribunal while permitting such amount should take into consideration the

relevant factors including the status of the parties.

13. It has been further urged by the learned counsel for the appellants that no relief regarding the refund of the compensation is claimed from the respondents, the appellant No. 1 is entitled to recover the amount paid in excess of its statutory liability from the appellant No. 2. As the contention has been raised by the learned counsel for both the appellants, it should be taken that the appellants inter se have no objection to the same.

14. Lastly, it was urged by the learned counsel for the respondents that the appeal was bad for non-joinder of the driver. No doubt, it would have been proper that the driver should have been joined as a party in the appeal. However, in view of the above discussions no liability for payment is being fixed on the driver nor the appellants have contended so. Therefore, this does not affect the maintainability of the appeal.

15. In the result, the award of the Tribunal with regard to the awarding of the compensation of Rs. 1,09,500/- along with the costs and together with the interest and for payment of the compensation by the Oriental Fire & Genl. Ins. Co. Ltd., opposite party No. 3, appellant No. 1, is maintained. However, the apportionment of the compensation as given in the award is also confirmed subject to the modification that the amount of Rs. 50,000/-already deposited in the fixed deposits shall remain in fixed deposit till Monika Goel, respondent No. 2, attains majority and withdrawal of the money for the purpose of her marriage may be made in accordance with the observations made in the judgment. However, it will be open to the insurance company, appellant No. 1, to recover the amount paid in excess by it from the appellant No. 2 in accordance with law.

16. In the circumstances of the case, the parties shall bear their own costs of the appeal.