
(1988) 08 MP CK 0070
In the Madhya Pradesh High Court

Oriental Fire and General Insurance Company Ltd.	APPELLANT
Vs	
Promila and Others	RESPONDENT

Date of Decision : 10-08-1988

Acts Referred:

Motor Vehicles Act, 1988 — Section 110A

Citation : (1989) 2 ACC 96 : (1989) ACJ 809

Hon'ble Judges : T.D. Mulye, J;S.K. Dube, J

Bench : Division Bench

Judgement

T.D. Mulye, J.—This judgment shall also govern the disposal of M.A. No. 203 of 81 Oriental Fire and General Insurance Co. Ltd. v. Sardarmal, M.A. No. 212 of 81 Smt. Pramila and two Ors. v. Yusuf and 3 Ors. M.A. No. 211 of 81 Sardarmal v. Yusuf and 3 Ors. and C.R. No. 836 of 1981 Oriental Fire and General Insurance Co. Ltd. v. Narendra Kumar and 3 others as all these appeals and revision, arise out of the one and the same accident on account of which the claimants had filed claim petitions u/s 110-A of the Motor Vehicles Act and after recording common evidence in all these cases, the same have been disposed of by the first Addl. Motor Accidents claims Tribunal, Indore.

2. M.A. No. 202 of 81 has been filed by the Insurance company against an award dated 9th May, 1981 passed in claim Case No. 97 of 78, whereby the claimants have been awarded a compensation of Rs. 21,000/- with cost and interest at the rate of 6 per cent per annum from the date of the filing of the claim petition.

3. M.A. No. 203 of 81 has been filed by the Insurance company against Sardarmal Jain and Ors. against an award dated 9th May, 1981 passed in claim Case No 96 of 78, whereby the respondent No. 1 Sardarmal has been awarded a compensation of Rs. 2750/- with cost and interest at the rate of 6 per cent per annum from the date of the filing of the claim petition.

4. M.A. No. 211 of 81 has been filed by. Sardarmal for enhancement of compensation to the tune of Rs. 50,000/- as he has been awarded a

compensation of Rs. 2750/- only plus cost and interest.

5. M.A. No 212 of 81 has been filed by Smt. Pramila Jain and others against Yusuf and Ors. for enhancement of compensation to the tune of Rs. 1,50,000/- plus cost and interest awarded to them are meagre.

6. Civil Rev. No. 836 of 81 has been filed by the Oriental Insurance Company Ltd. against Narendra Kumar and Ors. against an award dated 9th May, 1981 passed in claim Case No. 187 of 78 whereby a compensation of Rs. 1400/- plus cost and interest at 6 per cent per annum from the date of the filing of the petition has been awarded by the same Member, Motor Accidents claims Tribunal, Indore.

7. The facts giving rise to these appeals and revision may be stated, in brief, thus : Respondent Yusuf is the owner of car No CPE-116 of which on the relevant day of the accident, which took place on 10-5-1978 respondent Abdul Rashid was the driver, in the employment of respondent Yusuf. The said car was insured with the Oriental Fire and General Insurance Co. Ltd. vide Annexure-D5. Respondent Choudhury Mohammed Zafar is the cousin of respondent Yusuf.

8. The deceased Sagarmal Jain and claimant Sardarmal Jain are brothers claimant Narendra Kumar, who has his own book and stationary business by, the name Sanghvi Stores, was also traveling in the same car when the accident took place, claimant Smt. Pramila Jain is the widow of Sagarmal Jain and Ku. Rajula Jain and Baby Reli, who are minors, are the children of Sagarmal Jain.

9. According to the claimants, respondent Yusuf and Mohammed Zafar are the owners of the said car, which was being plied as a taxi. On the fateful day i.e. 10-5-1978 Sagarmal hired this car as a taxi from respondent Zafar for going to Bamhina to attend a wedding at the rate of Rs. 1/- per km. Accordingly the deceased Sagarmal along with his brother Sardarmal and Pukhraj, Narendra Sanghvi and Jainendra Kumar left Indore by this car at about 10" clock in the afternoon. Only about fifteen minutes after their departure this car met with an accident near village Bijapur. At that time the driver of the car Abdul Rashid was driving the car in a rash and negligent manner at an excessive speed with the result that he lost his control over the car which collided against the left side of the culvert and proceeding further dashed against the roadside drum. The car finally came to a halt facing towards Indore after taking a U-turn. All the occupants of the car sustained injuries in the incident. Sagarmal received fatal injuries on his head and other parts of the body. He was immediately taken to the M.Y Hospital, Indore where he remained under treatment till 13-5-1978 when he succumbed to the injuries.

10. On these facts Sagarmal's widow Smt. Pramila Jain and her two minor daughters, as the legal representatives of the deceased filed claim petition claiming compensation of Rs. 1,50,000 as the deceased Sagarmal was working as a partner in the firm Satkar Tent House and had also agricultural lands and thus the monthly income of Sagarmal was Rs. 1000/-. At the time of the accident Sagarmal was a young man aged about 28 years

11. Claimant Sardarmal had put up a claim for compensation amounting to Rs. 50,000/- for the personal injuries sustained by him in the said accident, though considering the nature of injury sustained by him the learned Member of the Tribunal thought it proper to award him a compensation of Rs. 2750/-.

12. Claimant Narendra Kumar also put up a claim of Rs. 50,000/- as compensation for the personal injuries sustained by him in the said accident and the learned Member of the Tribunal awarded a compensation of Rs. 1400/- as just and reasonable compensation.

13. In all these cases the award is passed against all the respondents, including the Insurance Company Ltd. who have been held jointly and severally liable and responsible to satisfy the entire claim under the award.

14. All the respondents in their written statement denied the allegations that Mohammed Zafar was also one of the owners of this Car. It was also denied that the accident occurred because of the rash and negligent driving of the car by the driver. According to them the accident was the result of a sudden mechanical failure of the brakes. They denied that the car was being plied as a taxi and contended that it was a private car of respondent Yusuf, which he had lent to Sagarmal out of friendship. The Insurance Company sought to avoid its liability on the ground that the car was being driven for hire as taxi in contravention of the terms of the policy, which was taken as a private car policy. It was also contended that on account of overloading in the said car the Insurance Company could not be held liable for compensation.

15. The learned Member of the Tribunal, after considering the oral as well as the documentary evidence adduced by the parties in support of their respective contentions, found that Yusuf and Zafar both are the owners of the said car; that through Zafar this car was taken on hire as taxi at the rate of Re. 1/- per km. that the car was not lent to Sagarmal as a friendship; that the accident occurred because of the rash and negligent driving of the car by the driver and not on account of sudden failure of the brakes; that Sagarmal died on account of the injuries sustained in the said accident; that the monthly income of Sagarmal was Rs. 785/- per month and that the Insurance Company on the basis of the terms and conditions on the Insurance policy is also liable to pay compensation jointly and severally along with other respondents.

16. Hence these respective appeals and revision by the aggrieved parties.

17. The learned Counsel for the owner and driver of the car as also the Insurance Company did not dispute the factum of accident nor have they challenged the finding that the accident occurred because of the rash and negligent driving of the car by the driver on account of which Sagarmal succumbed to his injuries and Sardarmal and Narendra Kumar received injuries, which have been proved by the medical evidence also.

18. The learned Counsel for the claimant after taking us through the evidence

and material on record submitted that the compensation awarded to the claimant widow Smt. Pramila Jain and her two minor children is too low and deserves to be enhanced as admittedly Sagarmal at the time of his death was a young man of 28 years. and thus after applying a multiplier of fifteen and considering the dependency of the claimants an amount of Rs. 60,000/- would be a just and reasonable compensation. The learned Counsel for the owner of the car Shri A.H. Khan in fairness submitted that the said claimants are entitled for enhancement of compensation and agreed with the figure of Rs. 60,000/- submitted by the learned Counsel for the claimants.

19. As regards the claim put up by claimant Sardarmal learned Counsel for the said claimant submitted that considering the nature of injuries sustained by him, which is proved by medical evidence, he is entitled to a compensation of Rs. 5000/-. The learned Counsel for the owner of the car also submitted that this could be a just and reasonable compensation.

20. It is, therefore, not necessary to reconsider the evidence adduced by the claimants. We are, therefore, of opinion that in the case of Smt. Pramila Jain and Ors. the award given by the learned Member of the Tribunal deserves to be enhanced and modified from Rs. 21,000/- to Rs. 60,000/-.

21. Similarly we are also of opinion that in the case of Sardarmal he is entitled to enhancement of compensation and the award deserves to be modified from Rs. 2750/- to Rs. 5000/-.

22. However, the learned Counsel for the Insurance Company after taking us through the whole evidence submitted that when the learned Member of the Tribunal has given a definite finding that on the relevant day of the accident the car was being plied as taxi, it has committed an error in holding the Insurance Company jointly liable to pay compensation to the claimants in all these cases by not carefully considering the terms and conditions of the Insurance Policy Ex. D/5, which was admittedly insured as a private car and not as a taxi, especially when it has negated the owner's case that he had lent the car to Sagarmal as, a friend, who had just to use the same by filling up petrol at his own expenses. The learned Counsel for the Insurance Company, therefore, submitted that the finding of the learned Member of the Tribunal regarding the liability of the Insurance Company in respect of these cases deserves to be set aside and in support of his submission he placed reliance on the decisions reported in 1986 ACJ 84 and 1986 ACJ 1073 wherein it has been held that in a case where a private car though insured as a private car is used as taxi, in case of accident, the Insurance Company cannot in any way be held liable or responsible for violating the terms and conditions of the said policy. The learned Counsel also submitted that the facts of the case reported in 1972 ACJ 13, *Hindus" tan General Insurance Society Ltd. v. Kaushatya Rani Das* being distinguishable, the learned Member of the Tribunal has committed an error in holding the Insurance Company also liable.

23. The learned Counsel for the Insurance Company also placed reliance on the decision reported in Pushpabai Purshottam Udeshi and Others Vs. Ranjit Ginning and Pressing Co. (P) Ltd. and Another, Thus, according to the learned Counsel, in the present case the insurance was meant for the use of the car as a private car and not by way of taxi for hire or reward. But the evidence adduced in this case having abundantly proved and also found by the learned Member of the Tribunal as a fact proved, the owner of the car having committed breach of the terms and conditions of the policy Ex. D-5 by changing the use of the car as a taxi, the Insurance Company cannot be held liable in any way so far as these cases are concerned.

24. The learned Counsel for the Insurance Company further submitted that the additional premium taken under the said insurance policy Ex. D-5 was a premium taken in addition to the premium received for the act policy as there was no statutory bar for the Insurance Company to effect insurance for a higher amount beyond the statutory amount so fixed. But that cannot be correlated or termed as a premium meant for plying the said car as a taxi. u/s 95 of the Motor Vehicles Act the Insurance normally affected is for a third party. In the present case there is nothing to indicate that the said policy was comprehensive policy which applied to the inmates of the car when the accident occurred and admittedly at the time of the accident in question the deceased and the injured persons were traveling in the said car as a taxi by taking it on hire and, therefore, there being a violation of the specific terms and conditions of the policy to the effect that the said car shall not be used for hire or reward, the Insurance Company cannot be legally held liable to pay the compensation.

25. A similar question arose before the Madras High Court, and in the decision reported in United India Fire and General Insurance Co. Ltd., Madurai Vs. M.S. Durairaj and Others, , it has been held that the Insurance policy contained a term that it would not cover use of the car for hire or reward. The policy was in terms limited in respect of the liability of the insurer in relation to death or bodily injury to any person to the extent necessary to meet the requirements of Section 95 The law does not require that a policy of insurance should cover risk to passengers. who are not carried for hire or reward. The deceased having been found to have paid charges to the driver of the car for the trip, the insurer was not liable to pay compensation to the heirs of the deceased. The fact that it was described as a comprehensive policy did not affect the position, particularly in view of the express term that the policy did not cover use of the car for hire or reward. The said decision has placed reliance on the decision reported in Pushpabai Purshottam Udeshi and Others Vs. Ranjit Ginning and Pressing Co. (P) Ltd. and Another,

26. In the present case the learned Member of the Tribunal, after considering the evidence and material on record as also the terms and conditions of the insurance policy, a copy of which is placed on record, having found that the Insurance in the present case was for a Private car and that the same was taken

on hire, in our opinion, it has committed an error of law in holding the Insurance Company also jointly and severally liable. The submission of the learned Counsel for the respondent owner that as the insurance of the car was directly arranged by the Bank with whom the said car was hypothecated, the owner had no knowledge about the nature and type of insurance effected by the Bank, cannot be accepted. He also submitted that the Insurance Company having taken extra premium for passengers, the Insurance Company Cannot be absolved from its liability. However, considering the facts and circumstances of the case, we are not persuaded to agree with this submission.

27. In AIR 1987 SC 1184 Skandia Insurance Co. Ltd. v. Kokilaben Chandravadan it has no doubt been held mere breach of clause does not absolve insurer of his liability as he has to establish that insured himself was guilty of committing breach of promise in contract of insurance. In the present case the claimants themselves have come with a case that the said car was taken on hire. They have also adduced evidence to that effect and there appears no reason to disbelieve that evidence. Even the evidence adduced by the Insurance Company also proves that in the present case the breach was committed by the owner of the car by plying the same as a taxi.

28. If the said car was being plied as a taxi without obtaining the necessary permit from the concerned authorities, for violation thereof action can be taken against the owner of the said car which is an independent action but on that basis a civil liability cannot be fastened on the Insurance Company especially when it has been satisfactorily proved that though the Insurance was effected as a private car with a specific condition that it shall not be used for hire or reward there appears no reason to differ from the view taken by the learned Member of the Tribunal on a consideration and appreciation of the material on record that the said car was being plied as a taxi.

29. In the result M.A. No. 203 of 81, M.A. No. 202 of 81 and C.R. 836 of 81 filed by the Insurance Company are allowed. The award passed against the Insurance Company is set aside. However, the Insurance Company will bear its own costs throughout.

30. M.A. No. 212 of 81 filed by Smt. Pramila Jain and Ors. is partly allowed to the extent that the said claimants are entitled to a total compensation of Rs. 60,000/- (Sixty thousand) plus cost and interest at the rate of Rs. 12/- per cent per annum from the date of filing of the application till realization, but only against the owner Yusaf s/o Mohammed Sharif and the driver Abdul Rashid s/o Abdul Hamid and not from the Insurance Company or Choudhary Mohammed Zafar.

31. Similarly M.A. No. 211 of 81 filed by Sardarmal is allowed to the extent that he is entitled to a total compensation of Rs. 5000/- plus cost and interest at the rate of Rs. 12/- per cent per annum from the date of filing the application till realization, but only against Yusuf son of Mohammed Sharif and Abdul Rashid s/o

Abdul Hamid and not from the Insurance Company or Choudhury Mohammed Zafar.

32. However, in case the Insurance Company has deposited the amount as per the award in all these cases and the same has been withdrawn by the claimants, considering the facts and circumstances of the case the Insurance Company shall not be entitled to its restitution from the claimants. The Insurance Company, if it so desires, is entitled to recover the same from the owner and the driver.

33. Thus, all these appeals and revision are disposed of with the modification indicated above. Counsel's fee as per schedule.