
(1989) 04 CAL CK 0051

In the Calcutta High Court

Case No : A.F.O.O. No's. 406 and 407 of 1980

Oriental Fire and Genl Ins. Co. Ltd. and Another

APPELLANT

Vs

Josheda alias Joshoda Bala Ghanta and Another

RESPONDENT

Date of Decision : 20-04-1989

Acts Referred:

Motor Vehicles Act, 1988 — Section 95

Citation : (1991) ACJ 349

Hon'ble Judges : S.S. Ganguly, J;Ajit Kumar Nayak, J

Bench : Division Bench

Advocate : N.R. Majumdar, M.K. Bose and Amal Kumar Mitra, for the Appellant;Samindra Kumar Das, for the Respondent

Final Decision : Dismissed

Judgement

Ajit Kumar Nayak, J.—The only short question that has been raised in these two appeals heard analogously, viz., Nos. 406 and 407 of 1980, arising out of the decision of the Claims Tribunal Judge, dated 18th September, 1979, is the extent of liability of the appellant insurance company. It has been urged that in view of the specific provisions contained in Section 95(2)(b) of the Motor Vehicles Act, the upper limit of liability of an insurer cannot exceed Rs. 5,000/- in anyone accident, involving a vehicle carrying passengers.

2. It is an admitted position that following an accident on 19.6.1977, involving passenger bus No. WWB 2226, in the district of Midnapore, two claim petitions were filed before the Claims Tribunal Judge, Midnapore, one in respect of deceased passenger, Hemanta Kumar Samanta, travelling by the said bus and the other in respect of a helper employee, Binoy Krishna Ghanta, of the offending bus meeting the same fate. Both the claim petitions were tried and heard analogously and disposed of by the same judgment by the Tribunal Judge, awarding compensation of Rs. 45,000/- to the heirs of the deceased passenger and Rs. 27,000/- in respect of the helper employee.

3. The findings of the Tribunal Judge on the points of incident, death of the persons concerned and negligence in driving the offending vehicle at the relevant time have not been questioned or pressed before us. The only points that have been urged are the extent of liability of the appellant insurance company and denial of such liability for the deceased helper as an employee of the bus in question.

4. It may be stated at the very outset that we have no reason to take a different view in the matter and finding recorded by the Tribunal Judge for very cogent reasons as given by him, on the point that deceased Binoy Krishna was an employee who used to draw a salary of Rs. 300/- per month and we confirm the same.

5. In order to appreciate the question and the extent of liability of the appellant insurance company, it will be convenient to place the relevant provisions of Section 95 of the Motor Vehicles Act as the main thrust in the argument of the learned counsel for the appellant is that in view of Sub-clause (4) of Section 95(2)(b), the liability of the insurance company cannot exceed a sum of Rs. 5,000/- for the death or injury to any one passenger.

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)-

XXX XXX XXX

(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-

(a) XXX XXX XXX (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) XXX XXX XXX (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.

6. Undisputedly, the deceased Hemanta Kumar Samanta was a passenger in the ill-fated bus which was covered by the insurance policy of the appellant company, issued in the name of the owner, respondent No. 2, M/s. Sahid Smriti Samabay Paribahan Samity Ltd., covering risk in respect of death or injury to third person.

7. According to the appellant insurance company, the liability coming under a policy of insurance as in the instant case shall cover up to the limits as stated in clause (b), Sub-section (2), subject further to the provision of Sub-clause (4) of Sub-section (2) of Section 95. Reading clause (b) in the light of such limit would show as regards passengers who are being carried for hire and reward, the overall limit of liability undertaken by the insurance policy would vary from Rs. 50,000/- to Rs. 1,00,000/- depending upon its registered capacity and Rs. 5,000/- for each individual passenger. That being so, in a case of one accident where only one person has either died or is injured, the limit of Rs. 5,000/- would not apply in view of the overall limit prescribed in Sub-clauses (1), (2) and (3) of Sub-section (2) of Section 95. The real intention of the legislature in a case like this is to ensure payment of at least Rs. 5,000/- and owner's liability to that extent is secured thereby. Undoubtedly, the owner can and is free to contract for a larger amount to cover any increased risk. Sub-clause (4) therefore does not mean that the liability of the insurance company is just limited to Rs. 5,000/-, irrespective of the number of persons injured or killed in an accident. In view of the fixation of an upper limit as aforesaid the insurance company is bound to indemnify the claim against the owner for each individual claimant and would be entitled to be indemnified to the extent of Rs. 5,000/- at least. Reference may be made in this connection to the Supreme Court decision in *Motor Owners' Insurance Co. Ltd. v. Jadavji Keshavji Modi* 1981 ACJ 507 (SC), where the expressions "in any one accident" in Section 95(2) and the liability to the extent of Rs. 50,000/- "in all" in the said section were interpreted not from the point of view of the vehicle but from the point of view of each individual person injured or losing life and was held accordingly that expression "in all" referred to each such individual separately. Although Supreme Court made such an interpretation while dealing with the case coming u/s 95(2)(a) of the Motor Vehicles Act, such an interpretation can also be extended to a case coming under clause (b) of Sub-section (2) of Section 95 and the ambiguity in the expression "in any one accident" of overall limits as provided in Sub-clauses (1), (2) and (3) can be reconciled having regard to the underlying intention of the legislature as contained in Chapter VIII of the Motor Vehicles Act which deals with third party risk. In reconciling such apparent ambiguity as in the instant case in the opening part of Section 95(2) and Sub-clause (4), the court of law should not look only

into the formal expression and language literally but should be sympathetic and imaginative enough to fill in the gaps, clear doubts and mitigate hardships. In relying upon and referring in this connection to the English decision in *Cabell v. Markman* (1945) 148 F 2d 737, the Supreme Court further observed that:

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 lawmakers 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.

8. The relevant provision of Section 95 appeared to the Supreme Court to be ambiguous and inequitable without any valid basis for differentiation between the different provisions. The court therefore drew the attention of the legislature to remove such disparity by observing:

We hope and trust that our lawmakers will give serious attention to this aspect of the matter and remove the serious lacuna in Section 95(2)(b), 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.

9. It appears therefore subject to the limits specified under Sub-clauses (1), (2) and (3) of Section 95(2)(b), the liability of the insurance company to reimburse would at least be Rs. 5,000/- for each individual. As in the instant case only one passenger lost his life and claim has been preferred in respect of such claim of the passenger. The other person being an employee the limit placed by Sub-clause (4) will not apply. Statutory liability of the insurance company being upto the extent of at least Rs. 75,000/- (the insurance covered being for a number of 35 passengers vide Exh. A, insurance policy) the appellant insurance company would be liable for the entire claim amount as awarded by the Claims Tribunal Judge in respect of such passengers.

10. As regards the helper employee Binoy Krishna Ghanta his claim is covered by the insurance policy in respect of any employee as cleaner coming under additional Clause 13(a) of the insurance policy in question vide Exh. A. The insurance company as it appears from the contract of insurance vide Exh. A contracted a wider liability in receipt of an additional premium at the rate of Rs. 6/- per passenger as well as for the employee in question. In the case of the deceased employee an amount of Rs. 27,000/- was awarded as compensation by the Tribunal Judge. A statutory duty is cast upon the insurer under Sub-section (1) read with proviso (i) of Section 95 to indemnify the insured against any liability to pay compensation to his employee under the Workmen's

Compensation Act and such a provision has been made in the insurance policy. In view of the additional premium for wider coverage of the risk the insurer would be liable to pay compensation in excess of that payable under the Workmen's Compensation Act to the extent payable under the common law. Reference may be made in this connection to the ruling reported in *The General Assurance Society Ltd. Vs. Jayalakhmi Ammal and Others*, As the heirs of the deceased employee have chosen the forum of the Claims Tribunal Judge instead of the Commissioner, Workmen's Compensation, they are entitled to receive such compensation as awarded by the Tribunal Judge though the same may appear to be somewhat in excess of that might be awarded under the Workmen's Compensation Act [reference may be made in this connection to the ruling reported in *Ogeti Pedda Ranganna Vs. Zaleka Bee and Another*,

11. Next, it has been urged on behalf of the respondents that no interest has been granted by the Tribunal Judge on the sums awarded by way of compensation, which they are entitled to in view of the decision of Justice P.N. Bhagwati, reported in *Smt. Chameli Wati and Another Vs. Municipal Corporation of Delhi and Others*, We are also inclined to take the view as supported by the said Supreme Court decision to grant interest on the sums awarded from the date of filing the applications by the claimants and not from the date of award.

12. In view of what has been discussed and our findings above, both the appeals fail and same are dismissed accordingly. The judgment and award passed by the Tribunal Judge awarding compensation of Rs. 45,000/-and Rs. 27,000/- respectively, are upheld and the respondent-claimants are also held to be entitled to get interest on the sums so awarded from the date of filing the applications by them and not from the date of award. No further order is made as to costs.

S.S. Ganguly, J.

13. I agree.