
(1991) 04 RAJ CK 0014

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 138 of 1987

Oriental Fire and Genl. Ins. Co. Ltd.

APPELLANT

Vs

Shanta Kanwar and Others

RESPONDENT

Date of Decision : 03-04-1991

Acts Referred:

Motor Vehicles Act, 1939 — Section 95(2)(b)(ii)

Citation : (1992) ACJ 903

Hon'ble Judges : Milap Chandra Jain, J

Bench : Single Bench

Advocate : N.P. Gupta, for the Appellant; B.R. Gupta, for the Respondent

Final Decision : Dismissed

Judgement

Milap Chandra Jain, J.—This appeal has been filed against the award of the learned Member, Motor Accidents Claims Tribunal, Udaipur dated June 23, 1987 by which the claimant-respondents have been awarded Rs. 43,000/- as compensation with costs and interest. The facts of the case giving rise to this appeal may be summarised thus.

2. On October 24, 1984, Chhatar Singh, husband of the claimant No. 1, Shanta Kanwar and son of the claimant Nos. 2 and 3, Kesar Singh and Sobhag Kanwar, was travelling in bus No. RSY 9651 owned by the respondent No. 5, Hangami Lal. It was being driven by its driver, respondent No. 4, Bhanwar Singh, rashly and negligently. As a result thereof, it overturned. The passengers Chhatar Singh and Shanti Das received fatal injuries and died on the spot. The claimant-respondents filed a claim petition for Rs. 1,90,000/- against respondent Nos. 4 and 5 and the appellant. They seriously contested the claim petition. The insurance company also averred that it is liable to the extent of Rs. 15,000/- only as the deceased Chhatar Singh was a passenger in the said bus. After framing necessary issues and recording the evidence of the parties, the learned Member of the Tribunal held that the accident occurred due to the rash and negligent driving on the part of the bus driver Bhanwar Singh, the claimants are entitled to get Rs. 43,000/-

as compensation from all the three respondents and accordingly gave the award under challenge.

3. The claimant-respondents have filed cross-objections for the enhancement of the compensation to the extent of Rs. 1,90,000/- as claimed in the claim petition and also rate of interest.

4. It has been contended by the learned counsel for the appellant that admittedly the deceased Chhatar Singh was a passenger in the bus, its liability was to the extent of Rs. 15,000/- as provided in Section 95(2)(b)(ii) of the Motor Vehicles Act, 1939 and the learned Tribunal seriously erred to hold that the appellant is also liable to make payment of the entire amount of award. He further contended that no additional premium was charged for the passengers, the appellant never agreed for wider coverage than the minimum statutory liability and by leaving the column 13-A blank the liability of the appellant did not extend beyond the statutory limit.

5. In reply, the learned counsel for the respondents contended that the appellant insurance company is liable to pay the entire amount of compensation awarded. It was further contended by the learned counsel for the claimant-respondents that the amount awarded is highly inadequate and it deserved to be enhanced to Rs. 1,50,000/-.

6. A true copy of the insurance policy, paper No. C9/14-15 is on the record. It shows that Rs. 586/- were paid for 49 passengers and Rs. 16/- for driver and cleaner under the head of extra perils. It is also mentioned that it is subject to Endorsement Nos. IMT 13, 16, 21, 23 and 26. The Endorsement No. IMT 13 runs as under:

Endorsement No. IMT 13 attaching to and forming part of policy No. 01438/83.

Legal liability to passengers excluding liability for accidents to employees of the insured arising out of and in the course of their employment.

In consideration of an additional premium of Rs....and notwithstanding anything to the contrary contained in Section II-I (C) but subject otherwise to the terms, exceptions, conditions and limitations of this policy the company will indemnify the insured against liability at law for compensation (including law costs of any claimant) for death of or bodily injury to any person than a person excluded under II-I (B) being carried in or upon Or entering or mounting or alighting from the motor vehicle but such indemnity is limited to the sum of Rs. ...in respect of any one person and subject to the aforesaid limit in respect of any person to Rs. ...in respect of any number of claims in connection with motor vehicle arising out of one case.

Provided always that in the event of an accident occurring whilst the motor vehicle is carrying more than the number of persons mentioned in the schedule hereto as being the licensed carrying capacity of that vehicle in addition to the conductor, if any, then the insured shall repay to the company a rateable

proportion of the total amount which would be payable by the company by reason of this endorsement if not more than the said number of persons were carried in the motor vehicle.

Provided further that in computing the number of persons for the purpose of this endorsement any three children not exceeding 15 years of age will be reckoned as two persons and any children in arms not exceeding 3 years of age will be disregarded.

Provided also that the provisions of condition 3 of the policy are also applicable to a claim or series of claims under this endorsement.

Provided further in the event of the policy being cancelled at the request of the insured no refund of premium paid in respect of this endorsement will be allowed. Subject otherwise to the terms, exceptions, conditions and limitations of this policy.

The space regarding limitation has been left blank. It leads to the inference that the appellant did not put any limit for its liability while issuing the policy and has effected a wider and unlimited coverage. The appellant is thus liable under Sections 95 (5) and 96 (1) of the Motor Vehicles Act, 1939 to pay the entire amount of compensation and its liability is not limited to Rs. 15,000/- only. It has been observed in the *Oriental Fire and General Insurance Co. Ltd. v. Jagadish Baku* 1986 ACJ 890 (Karnataka), at page 897, para 33 as under:

Therefore, when the insurance company has left the said columns blank even in the insurance policy (Exh. D-I), it is not open to the insurance company to contend that its statutory liability is limited to Rs. 5,000/- only per passenger. Merely because the statute restricts the liability to Rs. 5,000/- per passenger, the insurance company cannot with impunity contend that its liability should be limited to Rs. 5,000/-, even though blanks are to be found in Endorsement No. IMT 13 (a). As matter of fact the columns have been left blank in Endorsement No. IMT 13 (a). It only follows that the insurance company wanted that its liability should be taken as unlimited. The view taken by us is in consonance with the view taken by the Gujarat High Court.

Reference to *Darshani Devi v. Sheo Ram* 1987 ACJ 931 (Rajasthan), *Bomanji Rustomji Ginwala v. Ibrahim Vali Master* 1982 ACJ 380 (Gujarat) and *Gujarat Mineral Development Corporation Ltd. Vs. Varjubhai Lallubhai Bhil and Others* etc., may also be made here.

7. The second question for consideration is whether the claimant-respondents are entitled for the enhancement of compensation. The learned Tribunal has awarded Rs. 43,000/- as compensation including Rs. 2,200/- as consortium to the widow calculating the saving at Rs. 200/- per month and applying the multiplier of 17. Admittedly, the deceased Chhatar Singh was 25 years of age on the date of the accident and he was earning his livelihood as a mason. Shanta Kanwar, AW 1, has stated on oath that her husband was earning Rs. 30/- per day

and he used to pay her Rs. 25/- to Rs. 30/- per day. She has further disclosed in cross-examination that her great grand-father-in-law, father-in-law and mother-in-law are alive. Bhanwar Singh, AW 4, has deposed that the deceased Chhatar Singh worked as a mason in his house for about three months. The non-petitioners did not produce any evidence vide order-sheet dated May 15, 1987 on the file of the Tribunal. It is thus clear that this claimant's evidence has gone un rebutted. When the deceased Chhatar Singh was earning Rs. 30/- per day he must be contributing Rs. 20/- per day to his family, i.e., Rs. 600/- per month or Rs. 7,200/- per annum. Taking the normal span of life to be 60 years, he would have lived for another 35 years. Thus the claimants have been deprived of atleast Rs. 1,00,000/-. It has been observed in *Rajendra Kumari v. Shanti Trivedi* 1989 ACJ 517 (SC), para 12 as follows:

Even at the modest computation, the contribution of Hari Singh towards family could not be less than Rs. 500/- per month, that is, Rs. 6,000/- per year. Taking the normal span of life to be 60 years, Hari Singh would have lived for another 35 years. It is apparent that the appellants have been deprived of more than a lakh of rupees and, accordingly, their claim for Rs. 1,00,000/- on account of compensation was quite reasonable. Both the Tribunal and the High Court were not justified in assessing the amount of compensation payable to the appellants at Rs. 10,000/-only.

8. The amount of Rs. 2,200/- awarded as consortium to the widow is also very inadequate. The age of the widow Shanta Kanwar at the time of accident was only 22 years. This amount deserves to be enhanced to Rs. 10,000/-. Thus the claimants are entitled for the enhancement of the amount of compensation from Rs. 43,000/- to Rs. 1,10,000/-.

9. The Tribunal has awarded interest at the rate of 9 per cent from the date of the claim petition to the date of award and at the rate of 10 per cent from the date of award to the date of realisation. The interest should be awarded at the rate of 12 per cent per annum from the date of institution of the claim petition.

10. Consequently, the appeal is dismissed with costs. The cross-objections of the respondent-claimant Nos. 1 to 3 are allowed with costs. The amount of compensation is enhanced from Rs. 43,000 to Rs. 1,10,000/-. The claimants will get interest at the rate of 12 per cent per annum from the date of the institution of the claim petition. To this extent the award of the Tribunal is modified.

11. The amount of compensation will be apportioned in the same ratio and will be invested in the same manner as has been done by the Tribunal.