(1994) 08 BOM CK 0016

In the Bombay High Court

Case No : F.A. No. 118 of 1990 and Cross-objections No. 312 of 1991

Oriental Insurance Co. Ltd. and Others APPELLANT

Vs

Hasmat Bi and Others RESPONDENT

Date of Decision : 10-08-1994

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

Citation : (1995) 1 ACC 1 : (1996) ACJ 637

Hon'ble Judges : G.D. Kamat, J;A.A. Halbe, J

Bench : Division Bench

Advocate : E. Afonso, for the Appellant; A.N.S. Nadkarni and S.D. Padiyar, for the Respondent

Final Decision : Allowed

Judgement

A.A. Halbe, J.—The appellant insurance company has preferred this appeal against the award of compensation of Rs. 1,44,000 with 12 per cent interest thereon and costs of Rs. 2,000/- on the ground that the insurance company is liable only to the extent of Rs. 15,000/- under the Act policy in respect of one passenger.

2. The respondent transport corporation has preferred the cross-objections, on the ground that the amount of compensation is pretty high looking to the age and earnings of the deceased.

3. The facts are that on 18.9.1987 at about 7.15 p.m. the deceased Sk. Mohidin alias Sk. Ismail was a passenger in the corporation bus, GDX 47. The bus was going from Sanquelim to Bicholim. When the bus was taking a turn on a culvert at Sanquelim in front of the Happy Home Restaurant, it is claimed that the driver drove the bus in high speed as a result of which the deceased who was inside the bus was thrown out and sustained injuries and ultimately succumbed to the injuries. The claimants are the widow and one minor son. According to the claimants, the deceased was the customs guard earning the salary of Rs. 1,108/-

per month. He was only 40 years old. Hence the claim of Rs. 3,93,550/- was preferred.

4. This was resisted by the respondents. It is claimed that the deceased was drunk and he jumped out of the bus, for which the driver of the bus was not responsible. The insurer claimed that its liability was only to the extent of Rs. 15,000/-.

5. The learned Member found favour with the evidence of the claimants and awarded compensation of Rs. 1,44,000/-with costs and interest as indicated above.

6. Being aggrieved by this order, the insurance company preferred the above appeal in regard to its limited claim of Rs. 15,000/-. The facts are that Narshiv Gawande was the passenger in the bus and he has deposed that the deceased was inside the bus. He has stated that the bus went in high speed and that is why the deceased was thrown out. The witness on behalf of the respondent, Sayed Anwar, has deposed that the deceased jumped from the bus. The learned Member found favour with the evidence of Narshiv Gawande, who has deposed as above that the deceased was thrown out. According to him, the deceased was near the cabin of the driver at the entrance door and the door of the bus was open. It would be obvious that it was the duty of the conductor to have closed the door and if in that event the deceased was thrown out, the driver, owner and the insurer of the bus shall be responsible for the compensation. On behalf of the Kadamba Transport Corpn., it has been pointed out that the deceased was standing and, therefore, could not be called a passenger and in that light, the insurance company is liable to meet the compensation in respect of that of the third party.

7. Our attention is drawn to the case of National Insurance Co. Ltd. Vs. V.K. Sundaravali and Others, . The Madras High Court held that as per the rules framed under the Motor Vehicles Act, it was required that the passenger must have reasonably comfortable sitting space. He must have also a reasonably standing space. Reference has been made to the rules of Tamil Nadu Motor Vehicles Rules. In that case, the deceased was about to get down. However, when he was about to put his legs on the ground, the bus moved and the deceased was thrown out. Similarly, reliance is also placed on another case of Sivakumar Transports Vs. Mani alias Palaniswamy and Others, . In that case, the deceased was about to board the bus and in that process, he put one foot on the footboard and the bus started and the deceased sustained injuries and suffered permanent disability. In this regard, it will have to be emphasized that at no stage the transport corporation has averred or contended that the deceased was not a passenger. In the cross-objections before this court, there is no reference whatsoever to this aspect of the pleading. Apart from that, the learned advocate for the insurance company has relied on the case of Vijay Singh Vs. Haryana Roadways and another, . The Punjab and Haryana High Court held that when the passenger is travelling on a roof of the bus he shall be deemed to be the

passenger. In the case of Mangilal Kale v. Madhya Pradesh State Road Trans. Corporation. 1988 ACJ 460, the High Court of Madhya Pradesh observed that the deceased was a passenger even when he climbed the ladder for verifying his luggage put on the top of the bus. These are the views to support the contention of the insurer that the deceased was the passenger. We have indicated hereinbefore that in the cross-objections no plea has been raised in this behalf and hence the Kadamba Transport Corporation cannot be heard on the question whether the deceased was the passenger.

8. It is not in dispute that the passenger liability of the insurer is Rs. 15,000/- only u/s 95 (2) (b) (ii) of the Motor Vehicles Act, 1939.

9. On the question of compensation, it would be found that the amount awarded by the Tribunal is not at all excessive. The deceased would have certainly contributed Rs. 800/- per month for the maintenance of his family. Taking the multiplier of 15, the amount would be Rs. 1,44,000/-, Rs. 20,000/- would have been required to be added for the loss of life and loss of consortium. Hence, we are of the view that the amount of compensation cannot be reduced on any count.

10. Accordingly, the following order:

The amount of compensation awarded by the Tribunal is maintained. The same shall carry 12 per cent interest. The order of costs of Rs. 2,000/- passed by the Tribunal is confirmed. However, the liability of the insurance company is fixed at Rs. 15,000/- plus proportionate costs and interest thereon. The rest of the amount of compensation shall have to be satisfied by the respondent, Kadamba Transport Corporation and the driver, respondent No. 2, jointly and severally. The amount paid by the insurer and the transport corporation shall be adjusted towards the compensation. If the amount is found payable to the insurance company in view of their limited liability, the excess amount should be refunded to the insurance company. There shall be, however, no order as to costs.