
(1994) 09 RAJ CK 0030

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No's. 437, 452, 459 and 460 of 1993

Oriental Insurance Co. Ltd. and Others

APPELLANT

Vs

Verda Ram and Others

RESPONDENT

Date of Decision : 22-09-1994

Acts Referred:

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

Citation : (1995) ACJ 200 : (1995) 1 RLW 645 : (1995) 3 WLC 313

Hon'ble Judges : P.P. Naolekar, J

Bench : Single Bench

Advocate : N.P. Gupta, for the Appellant; R.K. Mehta, M.L. Garg and A.K. Rajvanshi, for the Respondent

Judgement

P.P. Naolekar, J.—This appeal is heard along with S.B. Civil Misc. Appeal No. 437 of 1993, New India Assurance Co. Ltd. v. Kamla; S.B. Civil Misc. Appeal No. 452 of 1993, New India Assurance Co. Ltd. v. Verda Ram and S.B. Civil Misc. Appeal No. 459 of 1993, Oriental Insurance Co. Ltd. v. Kamla.

With the consent of the advocates appearing for the parties common judgment is delivered in all these appeals as the questions involved are interlinked and are in regard to one accident.

In an accident two passengers of jeep, Chhagan Lal and Babu Lal, have died. Chhagan Lal's dependants, Verda Ram, father; Hemi Bai, mother; Lila, widow and Lata, daughter, have filed a claim petition No. 42 of 1988 and claim petition No. 47 of 1988 was filed by Babu Lal's dependants, Kamla Bai, widow; Tiji Bai, mother; Balkishan, Raju, Chetan, sons and Meena, daughter, against the New India Assurance Co. Ltd., which is the insurer of jeep No. RRT 7286 and the Oriental Insurance Co. Ltd., which is the insurer of truck No. RJW 3329 and Mangubai, the owner of the jeep, Nijammudin, driver of the jeep and Jeevan Ram, owner of the truck and Shanti Lal, driver of the truck.

The Misc. Appeal No. 452 of 1993 and Misc. Appeal No. 437 of 1993 are filed by

New India Assurance Co. Ltd. challenging the extent of the liability imposed over insurance company and the Misc. Appeal No. 460 of 1993 and Misc. Appeal No. 459 of 1993 are filed by the Oriental Insurance Co. Ltd. and by the owner challenging entire award passed by the Claims Tribunal in two claim petitions, (i) in claim case No. 42 of 1988 and (ii) in claim case No. 47 of 1988.

In claim case No. 42 of 1988, filed by the dependants of Chhagan Lal, the Tribunal has awarded compensation taking dependency of Rs. 1,800/- per month and applying the multiplier of 30. The award was made for Rs. 6,48,000/- and Rs. 14,000/- for loss of love and affection, total Rs. 6,62,000/- with 12 per cent interest from the date of application till realisation.

In claim case No. 47 of 1988 filed by Babu Lal's dependants, the Tribunal has held that at the time of the death of Babu Lal, his age was 45. His salary was Rs. 5,600/- and dependency of the claimants was Rs. 2,000/-per month. The multiplier applied by the Tribunal was 15 and the claimants were awarded Rs. 3,60,000/- and Rs. 20,000/- for loss of consortium and for loss of love and affection, total Rs. 3,80,000/-.

In both the claim petitions, the apportionment of the liability was made on truck 75 per cent and on jeep 25 per cent. As regards the New India Assurance Co. Ltd., its plea for statutory liability of Rs. 15,000/-per passenger only was rejected. It is held that the insurance company's liability is unlimited. On these findings it has been held that the respective insurance companies along with the owners of the vehicles and the drivers are jointly and severally responsible for payment of the compensation.

2. Facts in brief are that Chhagan Lal, aged about 28 years and Babu Lal, aged about 45 years, died in an unfortunate motor accident that occurred on 21.2.1988 at 5.30 a.m., near village Veerwara in Sirohi District, involving a jeep No. RRT 7286 and truck No. RJW 3329. The deceased Chhagan Lal was engaged at the relevant time as daily collection agent of the bank and as an agent of L.I.C. and was earning about Rs. 2,700/-per month and Babu Lal was engaged as the Development Officer in the Life Insurance Corporation and was drawing the salary of Rs. 5,600/-.

The facts emerged from the evidence of the witnesses, Mana Ram AW 3, Nijammudin, NAW 3, Exhs. A-6 and AW 7, spot inspection note and Exhs. A-1, A-2, photographs, which is not seriously challenged by the appellants and found by the Tribunal are that Chhagan Lal and Babu Lal were travelling in a jeep. The truck No. RJW 3329 was standing on jackknife on the road on account of the breakdown, covering about 6 feet of the tar road, which has a breadth of 24 feet. The truck was put on a jack removing the back wheels. The truck was standing for 12 hours on that position. There were no tail-lights, nor the stones were put around the truck to indicate that the truck is stationary. The jeep has not dashed the standing truck from rear, but backside of the jeep brushed backside of the standing truck while passing. The truck was put only on jack, which slipped,

truck tilted and fell on the passing jeep. It has come in evidence that when jeep reached near the place of incidence, driver of the jeep spotted incoming vehicle from opposite direction and to avoid a head-on collision, he tried to squeeze through the road available and in the process back portion of the jeep hit the back portion of the standing truck. The truck was not put stationary on solid support after removal of back wheels.

3. Counsel for the Oriental Insurance Co. Ltd. and the owner of the truck has contended that the apportionment done by the Tribunal is not correct. At the relevant time, the truck was stationary and the jeep driver has not taken sufficient care to drive his vehicle carefully to avoid any accident, particularly so when admittedly standing truck was visible from a distance to the driver of the jeep.

4. In apportioning the blame, the court should take into consideration the respective blame of the parties as also consentient potency of their acts or omissions. In case where the negligence of both the parties contributes to the damage, the court can apportion the fault between the parties contributing the damage.

The standard of reasonable man is a relevant factor in case of jeep driver's part as much as truck driver's in assessing contributory negligence. In the words of Denning, L.J., "A person is guilty of contributory negligence if he ought reasonably to have foreseen that, if he did not act as a reasonable, prudent man, he might hurt himself and in his reckonings, he must take into account the possibility of other being careless." [Jones v. Livax Quarries Ltd. (1952) 2 QB 608]. But if the safety precautions are prescribed by statutory regulations, the party can assume that regulations have been complied with as held in Westwood v. The Post Office 1973 3 All ER 184 at page 192.

Section 81 of the Motor Vehicles Act, 1939, reads as under:

Leaving vehicle in dangerous position.- No person in charge of a motor vehicle shall cause or allow the vehicle or any trailer to remain at rest on any road in such a position or in such a condition or in such circumstances as to cause or be likely to cause danger, obstruction or undue inconvenience to other users of the road.

Rule 151 of the Rajasthan Motor Vehicles Rules, 1951, provided that a vehicle shall carry one rear lamp showing red light visible from 500 feet. These statutory provisions have been made for safety of the traffic and their violation endangers the lives as well as the property.

5. The driver of the truck has placed his truck covering 6 feet width of metal road obstructing the highway which constitutes a danger to other road users. If parking of a vehicle, however, recklessly so as to cause needless obstructions to other road users, is to hold blameless, merely because the other motorists still have a room to pass, provided they keep a proper look-out, the deliberate

parking of vehicle anywhere even in the middle of the road should be considered equally excusable regardless of the facts that the other motorist had come to grief by reason of his not being fully alert. In this age of fast motor transport, it is required that every motorist should observe the golden rule of showing due consideration for other road users or suffer the consequences of his failure to do so. It is true that the truck was stationary and was visible to the driver of the jeep as come in his evidence, but when vehicle is parked on the road, it is the duty of the driver to park the vehicle in such a position so that the road will be kept open for the regular traffic. There is no evidence on record as to why the vehicle could not be moved out of the tar road when there is a kacha road of 5 feet breadth available and why sufficient and adequate precautions have not been taken to keep the vehicle on a solid support when vehicle was stranded for 12 hours. As already noticed from the evidence on record, the truck was parked negligently covering 6 feet width of the metal road. The parked truck was on the jackknife and there was no other support to keep the truck stable. There were no tail-lights indicating that the truck is stranded. No stones have been put around the truck so as to avoid danger to passing vehicles. The truck driver has not followed the regulations made for parking of the vehicle and thus, has played the major part in contributing the road accident.

Considering entire circumstances it cannot be said that the driver of the jeep was not at all negligent. He has not stopped the jeep when he has noticed incoming vehicle and stranded truck. The act of the driver of the jeep in not stopping his vehicle when he saw the incoming vehicle from the other direction and stranded truck, is certainly a relevant factor to the apportionment of the blame. Although the jeep driver was within his rights to presume that necessary precautions must have been taken by the driver of the stranded vehicle, but not taking the reasonable precautions while driving the vehicle, particularly so when he has seen the stationary vehicle from a distance, he cannot be absolved from his responsibility.

Considering all these facts and circumstances of this case, it is just and equitable that liability of the parties should be apportioned in the ratio of 75 per cent by the truck owner, its insurer and the driver and 25 per cent by the jeep owner, its insurer and driver of the jeep respectively.

6. The next question for consideration is, what is the liability of the New India Assurance Co. Ltd., where the vehicle in which the passengers are carried for hire or reward is insured in view of the provisions under the statute in Clause (b) of Sub-section (2) of Section 95 of the Motor Vehicles Act, 1939, as it stood at the relevant time, wherein no award of more than Rs. 15,000 for each accident in respect of a passenger could have been made by the Tribunal against insurance.

The Supreme Court in a case reported in *National Insurance Co. Ltd. v. Jugal Kishore* 1988 ACJ 270 (SC), has explained as to what is the comprehensive policy and has held as under:

Even though it is not permissible to use a vehicle unless it is covered at least under an "Act only" policy it is not obligatory for the owner of a vehicle to get it comprehensively insured. In case, however, it is got comprehensively insured a higher premium than for an "Act only" policy is payable depending on the estimated value of the vehicle. Such insurance entitles the owner to claim reimbursement of the entire amount of loss or damage suffered upto 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.

Thus, no award of compensation more than fixed in the statute can be made only on the footing that the policy covering the risk is comprehensive policy.

It is true that notwithstanding the provisions of Section 95 (2) (b) providing for statutory liability it is open to the insured to take a policy covering a higher risk on payment of additional premium or otherwise, it is, therefore, necessary to look into the policy produced in the case and find out whether there is specific agreement covering higher risk and liability than the statutory liability. A policy was issued by the New India Assurance Co. Ltd. on 12.10.1987 for jeep taxi of sitting capacity of 7 passengers, i.e., 6 passengers and driver, in the left top corner, the words are shown "Comp.", i.e., comprehensive. Under Schedule of premium the premium of Rs. 800/- paid for "own damages basis", i.e., for covering the risk of the vehicle. Premium of Rs. 120/- is shown to have been paid for liability to public risk and Rs. 72/- for legal liability to passenger, as per endorsement Indian Motor Tariff 13. Limit per passenger and maximum rupees as per Motor Vehicles Act, 1939, are left blank. Motor tariff provides that it is compulsory to cover legal liability to fare paying passengers. The liability for accident per passenger on total licensed passenger carrying capacity is fixed and limited to Rs. 15,000/- to any one passenger in one accident on premium of Rs. 12/- per passenger, Rs. 20,000/- for premium of Rs. 23/-, for Rs. 30,000/- premium of Rs. 30/- and for covering unlimited risk, premium rate per passenger is Rs. 50/-. The vehicle in question is jeep licensed to carry six passengers and the premium paid covering the legal liability is Rs. 72/- only, that is, Rs. 12/- per passenger. Under the policy only statutory risk is covered by payment of premium at Rs. 12/- for six passengers; total Rs. 72/- only.

It is apparent from the policy that no extra or additional premium was paid covering the additional limit than the statutory limit. The limit per passenger and in the bracket maximum Rs. as per Motor Vehicles Act, 1939, and add for increased limits, is kept blank because no extra premium was paid to or charged by the insurance company covering the additional liability than statutory liability

fixed under the Act, no particular significance can be attached for keeping columns blank as suggested by the counsel for owner of the jeep.

For the reasons aforesaid, I hold that the New India Assurance Co. Ltd.'s liability is only to the extent of Rs. 15,000/- each for the death of Chhangan Lal and Babu Lal.

7. As regards the compensation awarded to the applicants, it has been found by the Tribunal that Chhagan Lal at the time of the death was 28 years of age, he was earning Rs. 2,700/- per month, monthly dependency was calculated at Rs. 1,800/-, applying the multiplier of 30, the award was made.

The Tribunal found that at the relevant time Babu Lal was 45 years old, he was earning Rs. 5,600/- per month, monthly dependency was Rs. 2,000/- and applying the multiplier of 15, the compensation award was made.

8. It is challenged by the counsel for the appellants on the ground that the compensation awarded by the Tribunal on the basis of aggregating the entire future earnings over the period the life expectancy was lost, deducting a percentage therefrom towards uncertainties of future life and to award resulting sum as compensation is not in accordance with law. The multiplier applied, representing the number of years' purchase on which the loss of dependency is capitalized is not correctly taken and thus, the award of compensation of the claimants is not correct as it is not based on correct principle of law.

9. The assessment of the damages to compensate the dependants is not free from difficulties, as much of the calculation is based on hypothesis, because from the nature of the things, many factors are required to be taken into consideration, the life expectancy of the deceased and dependency, enhancement of the earnings or loss of income, the amount which would have been earned by the deceased during remainder of his life, contribution of the amount by the deceased for the dependants, the chance that the deceased may not live for the entire period of life expectancy or the dependants may not live up to the estimated period of life expectancy. The damages shall be ascertained on the basis of net income of the deceased available to support himself and his dependants and deducting therefrom the amount normally expected to be spent by the deceased on himself. Then, to capitalize that by multiplying it by proper number of years' purchase. The amount so arrived would normally be sufficient to support the dependants as it would have been during the lifetime of the deceased.

10. In a case General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, it has been held by the Hon^{ble} Supreme Court as under:

It is necessary to reiterate that the multiplier method is logically sound and legally well-established. There are some cases which have proceeded to determine the compensation on the basis of aggregating the entire future

earnings for over the period the life expectancy was lost, deducted a percentage therefrom towards uncertainties of future life and awarded the resulting sum as compensation. This is clearly unscientific. For instance, if the deceased was, say, 25 years of age at the time of death and the life expectancy is 70 years, this method would multiply the loss of dependency for 45 years- virtually adopting a multiplier of 45-and even if one-third or one-fourth is deducted therefrom towards the uncertainties of future life and for immediate lump sum payment, the effective multiplier would be between 30 and 40. This is wholly impermissible. We are aware that some decisions of the High Courts and of this Court as well have arrived at compensation on some such basis. These decisions cannot be said to have laid down a settled principle. They are merely instances of particular awards in individual cases. The proper method of computation is the multiplier method. Any departure, except in exceptional and extraordinary cases, would introduce inconsistency of principle, lack of uniformity and an element of unpredictability for the assessment of compensation. Some judgments of the High Courts have justified a departure from the multiplier method on the ground that Section 110-B of the Motor Vehicles Act, 1939, in so far as it envisages the compensation to be "just", the statutory determination of a "just" compensation would unshackle the exercise from any rigid formula. It must be borne in mind that the multiplier method is the accepted method of ensuring a "just" compensation which will make for uniformity and certainty of the awards. We disapprove these decisions of the High Courts which have taken a contrary view. We indicate that the multiplier method is the appropriate method, a departure from which can only be justified in rare and extraordinary circumstances and in very exceptional cases.

11. When the Tribunal has applied the multiplier of 30 and 15 in case of Chhagan Lal and Babu Lal respectively, it has adopted method of aggregating entire future earnings for over the period of life expectancy and deducting therefrom the percentage towards the uncertainty of future life, which is strongly disapproved by the Supreme Court.

Applying the principle laid down by the Supreme Court what multiplier should be applied in the present case for the death of Chhagan Lal and Babu Lal.

In General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, , the deceased was aged 39 years and the Supreme Court has adopted the multiplier of 12.

In National Insurance Co. Ltd. Vs. M/s. Swaranlata Das and others, the deceased was aged 26 years and the Supreme Court has adopted the multiplier of 15.

Considering the cases of Supreme Court, the multiplier in case of Chhagan Lal would work out to be 15 and not 30 as applied by the Tribunal, and in case of Babu Lal, who was aged 45 years at the relevant time, the multiplier should be applied as 10 and not 15 as adopted by the Tribunal.

12. The Tribunal in case of Chhagan Lal has said that at the relevant time his

income was Rs. 2,700/- p.m. and he was spending the amount of Rs. 1,800/- p.m. towards his dependants. The trial court has not taken into consideration the future expectancy of increase in the earning of the deceased. The deceased was only 28 years of age at the time of the accident. Taking liberal view of future prospects of the deceased for which there is evidence on record, it would be unreasonable to estimate loss of dependency on the present earning of the deceased. Considering these facts I feel that the income of the applicant should be taken to be Rs. 4,000/- and deducting therefrom about 1/3rd of the amount spent on himself and applying multiplier of 15, the calculation should be Rs. $2,700 \times 12 \times 15$, i.e., Rs. 5,16,000/-; adding the amount of Rs. 14,000/- awarded by the Tribunal for loss of consortium, the total amount comes to Rs. 5,30,000/-. 75 per cent of this amount, i.e., about Rs. 4,00,000/- shall be paid by Jeevan Ram, owner of the truck, Shanti Lal, driver of the truck and the Oriental Insurance Co Ltd. 25 per cent liability, i.e., Rs. 1,30,000/- is that of the jeep. Out of this amount, the amount of Rs. 15,000/- shall be paid by the New India Assurance Co. Ltd. and the balance amount of Rs. 1,15,000/- shall be paid by the owner of the jeep, Mangubai and the driver of the vehicle, Nijammudin. Claimants are also entitled to interest at the rate of 12 per cent per annum from the date of the claim petition till realisation.

13. Babu Lal at the time of his death was aged 45 years and was on permanent job.

Considering his future prospects, the amount of dependency shall be Rs. 3,000/- per month and considering the age of the deceased, the number of years purchased shall be 10. Thus, the damages worked out are Rs. 3,000/- x 12 x 10, i.e., Rs. 3,60,000/- + Rs. 20,000/- for loss of consortium and love and affection, total Rs. 3,80,000/-. 75 per cent of this, i.e., Rs. 2,85,000/- shall be paid by the Oriental Insurance Co. Ltd., Jeevan Ram, owner of the truck and Shanti Lal, driver of the truck, jointly and severally. 25 per cent of the amount, i.e., Rs. 95,000/- shall be the liability of the jeep. Out of this amount Rs. 15,000/- shall be paid by the New India Assurance Co. Ltd. and the balance of Rs. 80,000/- by Mangubai, owner of the jeep, and Nijammudin, the driver of the jeep. The claimants are also entitled to interest at the rate of 12 per cent per annum from the date of the claim petition till realisation.

14. Out of the award made considering age of the claimants and their relation with deceased Babu Lal and Chhagan Lal, I apportion the amount of award as follows:

Award of Rs. 3,80,000/-

Tiji Bai (mother) Rs. 30,000/- Kamla (widow) Rs. 1,00,000/- Balkishan (son) Rs. 50,000/- Raju (son) Rs. 50,000/- Chetan (son) Rs. 50,000/- Meena (daughter) Rs. 1,00,000/- ----- Total Rs. 3,80,000/- -----

The half of the amount of award of minors should be kept in fixed deposit in any nationalised bank for 7 years.

Award of Rs. 5,30,000/- Verda Ram (father) Rs. 3,000/- Hemi Bai (mother) Rs. 75,000/- Lila (widow) Rs. 2,50,000/- Lata (daughter) Rs. 2.02,000/-
----- Total Rs. 5,30,000/- -----

Half of the amount of compensation shall be kept in fixed deposit in any nationalised bank for 7 years.

15. For the reasons aforesaid, the appeals filed by the insurance companies and owner are partly allowed. There shall be no order as to costs.