

(1996) 11 RAJ CK 0006

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No's. 794 to 801 of 1993 and 102, 794 to 801 of 1994

Oriental Insurance Co. Ltd.

APPELLANT

Vs

Babu Lal and Others

RESPONDENT

Date of Decision : 29-11-1996

Acts Referred:

Motor Vehicles Act, 1939 — Section 95

Citation : (1998) ACJ 67

Hon'ble Judges : G.L. Gupta, J

Bench : Single Bench

Advocate : S.C. Srivastava, for the Appellant; S.C. Srivastava, R.K. Mathur, Mukesh Verma, Sudhir Tewari and Iqbal Khan, for the Respondent

Final Decision : Dismissed

Judgement

G.L. Gupta, J.—The unfortunate accident took place on 18.6.1989 on National Highway No. 11 near village Barson. Seven persons lost their lives and some persons received multiple injuries. Claim cases were filed by the legal representatives of the deceased and the injured. The Tribunal tried all the cases together and disposed of them vide judgment dated 30.10.1993. Two vehicles were involved in the accident. It was found that there was composite negligence of the drivers of both the vehicles. The claims were decreed against the driver, owner and the insurer of the jeep as also the Union of India who was the owner of the truck. The Oriental Insurance Co. Ltd., insurer of the jeep filed 8 appeals. The Union of India has also filed 8 appeals. Claimant Shakshi Devi has filed appeal for enhancement of the amount of compensation. In Appeal No. 800 of 1993 cross-objection has also been filed by the claimants. Since all the appeals and cross-objection arise out of the same award, they have been heard together and are being disposed of by this common judgment.

2. The claimants' case was that Kapoor Chand, Harish Chand, Babu Lal, Sanjeev Kumar, Javitri Devi, Anita Rani and Hari Babu were travelling in Jeep No. RJD

4135. Vinod Kumar was the driver of that jeep. Truck No. 79-E-4537 came from opposite direction and it dashed against the jeep, as a result of which, Kapoor Chand, Anita Rani, Javitri Devi, Sanjeev Kumar, Hari Babu, Satish Chand and Vinod Kumar (the driver of the jeep) died at the spot. Babu Lal and Harish Chand received multiple injuries. In the claim cases various sums were claimed.

3. In the reply filed by the insurance company it was averred that there was no fault of the driver of the jeep for this accident and that the driver of the truck was responsible. In the reply filed by the Union of India, it was averred that the truck was being driven carefully and at moderate speed when the jeep dashed against the truck.

4. On the pleadings of the parties, the Tribunal framed 6 issues. The claimants examined 18 witnesses. In rebuttal, Union of India examined two witnesses. Learned Motor Accidents Claims Tribunal, Bharatpur after hearing the arguments of the learned Counsel for the parties, held under issue No. 1 that the accident had occurred due to the rash and negligent driving of both the vehicles and that some persons had died and others had sustained injuries in that accident. Under issue No. 2 the Tribunal held that the claimants are entitled to the following sums as compensation.

Claim Case No. 71 of 1991 Rs. 20,000/- Claim Case No. 72 of 1991 Rs. 4,91,000/- Claim Case No. 73 of 1991 Rs. 15,000/- Claim Case No. 74 of 1991 Rs. 4,55,000/- Claim Case No. 204 of 1991 Rs. 35,000/- Claim Case No. 205 of 1991 Rs. 7,65,000/- Claim Case No. 206 of 1991 Rs. 2,80,000/- Claim Case No. 311 of 1991 Rs. 4,00,000/- 5. I have heard the learned Counsel for the parties and perused the record of the cases.

6. Mr. Srivastava, learned Counsel for the appellant Oriental Insurance Co. Ltd. contended that the insured has used the vehicle in contravention of the terms of the policy and, therefore, the insurance company could not be held liable to indemnify the insured. His further submission was that in any case the liability of the insurance company was limited to the extent of Rs. 15,000/- only.

7. Mr. Rafiq, learned Counsel for the Union of India, urged that the Tribunal has erred in holding that the truck driver was also responsible for this accident. He contended that the amount awarded is excessive which should be reduced. According to him the amount is excessive because of adopting higher multiplier.

8. Mr. Sudhir Tewari, learned Counsel for the claimants-appellants, Shakshi Devi and Meenakshi contended that grossly inadequate amount has been awarded by the Tribunal. He submitted that the present income of the deceased should have been doubled to calculate the loss of dependency.

9. I have given the arguments of the learned Counsel for the parties my thoughtful consideration.

10. The first point which arises for consideration is whether the Tribunal has erred in holding that the truck driver was also responsible for this accident. It

has come in the statement of Shivcharan, PW 17 and Amar Singh, PW 18, that the truck driver was at fault. They have deposed that they had witnessed the occurrence. According to them there were buffaloes going on the kacha road and the truck driver moved on the right side of the road, there was accident. Both these witnesses belong to village Barson, where the accident had taken place. The learned trial court has not erred in placing reliance on their statements. It is true that Had Singh and Babu Lal who were injured have not deposed in clear terms that the accident had occurred because of negligent driving of the truck. According to them the speed of the jeep was excessive. However, both these witnesses were sitting on the rear side of jeep. It is possible that they could not see the truck coming from the opposite direction and they guessed that the accident had occurred because of the mistake on the part of the jeep driver only. When the persons standing on the road have deposed that the accident had occurred because of the wrong side movement of the truck, it cannot be said that the driver of the truck was not at fault. It is significant to point out that the driver of the truck has not been examined in the case though sufficient opportunities were given by the Tribunal to the Union of India to examine their witnesses. Only one witness Nayak Kanwar Singh was examined. Kanwar Singh has deposed that he was traveling in the truck and that the truck was moving slowly. He has, however, admitted that there were buffaloes on the road and buffaloes had moved from right side of the road to the left side. It appears that on the movement of the cattle the driver of the truck lost control and he moved on his right side and at the same time jeep driven at high speed came from the opposite direction and there was collision. There is clear evidence that the speed of the jeep was excessive. It is, therefore, manifest that this accident had occurred because of rash and negligent driving of both the vehicles. The Tribunal was, therefore, justified in holding that both the drivers had contributed to the accident equally.

11. To determine as to whether the insurer of the jeep is liable to indemnify the insured, we may refer to policy Exh. A/1 produced in the case. This policy is proved by the statement of Ashok Gupta, NAW 1, who was the Assistant Zonal Manager at the relevant time. He has deposed that when the policy was issued he was Assistant Manager and he had signed on the policy. He further deposed that the policy Exh. A/1 is the true copy and he had certified it to be true copy.

12. A reading of the policy indicates that it is for private car. Clause (1) of Section 2 provides as follows:

(1) The company will indemnify the insured in the event of accident caused by or arising out of the use of the motor car against all sums including the claimant's costs and expenses which the insured shall become legally liable to pay in respect of:

(a) death of or bodily injury to any person including occupants carried in the motor car provided that such occupants are not carried for hire or reward but except so far as necessary to meet the requirements of Section 95 of the Motor

Vehicles Act, 1939 the company shall not be liable where such death or injury arises out of and in the course of employment of such person by the insured.

Further, in the Schedule, limitation as to use have been recorded as follows:

Use only for social, domestic and pleasure purposes and for the insured's business.

The policy does not cover use for hire or reward or for organised racing, pace making, reliability trial, speed-testing, the carriage of goods (other than samples) in connection with any trade or business or use for any purpose in connection with any trade or business or use for any purpose in connection with the motor trade.

13. One of the above two conditions of the policy makes it clear that the insurer had not undertaken to indemnify the insured for the death of occupants who were carried for hire and reward, i.e., specifically it was provided that the policy did not cover use for hire or reward.

14. There is overwhelming evidence on record that the vehicle was used to carry passengers for hire. Both the injured, Had Singh, PW 1, and Babu Lai, PW 12, have deposed that the jeep driver was calling the passengers for taking them to Agra. Had Singh has deposed that his elder brother made payment to the jeep driver. Babu Lal Gupta has also deposed that when he and his other family members reached the bus stand, the taxi driver called them and there were as many as 20 passengers traveling in that jeep. According to him, the fare was paid by Kapoor Chand, deceased. There is absolutely no reason to disbelieve this evidence. By this evidence, it is fully established that the jeep was used for carrying passengers on hire. Obviously, there was violation of the terms of the policy.

15. It has been held by Madras High Court in the case of United India Fire & General Ins. Co. Ltd. v. M.S. Durairaj 1982 ACJ 261 (Madras), that where the policy imposes prohibition against carrying passengers for hire or reward and breach is committed by the insured, the insurance company is not liable for the death of such passengers. In that case also, comprehensive policy of similar terms was issued to the insured. This contention was not accepted that in a comprehensive policy the insurer undertakes to cover the risk of passengers as well. When the policy on the face of it says that it will not cover the use of passengers for hire or reward, it cannot be found that the policy covered even the risk of the passengers.

16. In the case of Gurcharan Singh v. Savitri Devi 1986 ACJ 584 (P&H), the Punjab and Haryana High Court held that where it was specifically provided that the insurer would not indemnify if the vehicle was used for the purpose otherwise than the Schedule and the Schedule contained the specific limitation for use as taxi, the insurance company was not liable.

17. The Madhya Pradesh High Court had also occasion to deal with this point in

the case of Rama alias Shaheeda Bi Vs. Aabid Hasan and Others, It was held that where there was breach of the condition of the policy and the vehicle was used for hire, the insurance company was liable to be absolved of its liability.

18. The Division Bench of the same High Court in Oriental Fire & Genl. Ins. Co. Ltd. v. Pramila 1989 ACJ 809 (MP), also held that where the car was used as a taxi there was breach of terms of the policy which prohibited the use of the car for hire and reward and the insurance company was not liable.

19. It is thus obvious that where there is breach of the conditions of the policy and the car is used as taxi, the insurance company is absolved of its liability. The conditions recorded on the policy have been quoted above. The evidence clearly indicates that the driver had used the jeep for carrying passengers on hire.

20. It is significant to point out that the insured though had set up a case that he had not permitted his driver to use the vehicle to carry passengers, he did not lead evidence on this point. He even had no courage to enter into the witness-box. The burden of issue No. 3 was on the owner insured, which he failed to discharge. That being so, it shall be presumed that the deceased driver had used the jeep to carry passengers on hire on the directions of the owner and also with his knowledge. Consequently, it is proved on record that the insured had committed a breach of express condition of the policy. In the aforesaid premises it has to be accepted that the insurance company is not liable to indemnify the insured in respect of the passengers who died or suffered bodily injuries. Appeal Nos. 801 of 1993, 798 of 1993, 797 of 1993, 800 of 1993, 794 of 1993, 796 of 1993 and 795 of 1993 deserve to be allowed.

21. The next questions that call for consideration are whether the amount awarded to the various claimants is excessive and whether inadequate amount has been awarded in Claim Case Nos. 205 of 1991 and 74 of 1991.

22. Appeal No. 799 of 1994 in respect of Claim Case No. 206 of 1991 for the death of Kapoor Chand:

(i) This case has been filed by the L.Rs. of deceased Kapoor Chand who was 53 years of age at the time of accident. The Tribunal has held that the annual income of the deceased was Rs. 31,570/-. Considering that Rs. 11,570/- were required to be spent by the deceased on himself, the loss of dependency has been assessed at Rs. 20,000/- per annum. Applying the multiplier of 12 the total loss of dependency was worked out to Rs. 2,40,000/-. To this amount, Rs. 40,000/- were added for the loss of consortium, love and affection etc. to the four claimants and a total sum of Rs. 2,80,000/- has been awarded.

(ii) The contention of learned Counsel for the Union of India that much higher multiplier has been adopted in this case is not without merit. It has been held by the hon'ble Supreme Court in the case of General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, as follows:

The multiplier represents the number of years' purchase on which the loss of dependency is capitalised. Take, for instance, a case where annual loss of dependency is Rs. 10,000/-. If a sum of Rs. 1,00,000/- is invested at 10 per cent annual interest, the interest will take care of the dependency perpetually. The multiplier in this case works out to 10. If the rate of interest is 5 per cent per annum and not 10 per cent, then the multiplier needed to capitalise the loss of the annual dependency at Rs. 10,000 would be 20. Then the multiplier, i.e., the number of years' purchase of 20 will yield the annual dependency perpetually. Then allowance to scale down the multiplier would have to be made taking into account the uncertainties of the future, the allowances for immediate lump sum payment, the period over which the dependency is to last being shorter and the capital feed also to be spent away over the period of dependency is to last etc. Usually in English courts the operative multiplier rarely exceeds 16 as maximum. This will come down accordingly as the age of the deceased person (or that of the dependants, whichever is higher) goes up.

(iii) The loss of dependency was Rs. 20,000/- per annum. This means that so much should be considered as loss of total dependency, it would earn interest of Rs. 20,000/- per annum. Taking the interest rate at 12 per cent per annum, if Rs. 1,60,000/- are deposited in a fixed deposit account they will fetch around Rs. 20,000/- per annum as interest. Thus, the multiplier of only 8 in this case is appropriate and the Tribunal has erred in adopting the multiplier of 12. On this multiplier the loss of dependency comes to Rs. 1,60,000/-, on adding Rs. 40,000/- which have been awarded by the Tribunal for loss of consortium and deprivation of love and affection, the just compensation works out to be Rs. 2,00,000/-. The claimants in this case are entitled to this sum and the award needs to be modified.

23. Appeal No. 798 of 1994 in respect of Claim Case No. 71 of 1991 filed by Hari Singh:

Hari Singh had sustained six injuries in the accident and even had fractured his skull. The Tribunal has awarded only Rs. 20,000/- which cannot be called excessive.

24. Appeal No. 801 of 1994 in respect of Claim Case No. 73 of 1991 filed by injured Babu Lal:

Babu Lal had suffered three fractures in the accident. The Tribunal has awarded Rs. 15,000/-, which amount cannot be called excessive. Therefore, no interference is called for in this appeal.

25. Appeal No. 797 of 1994 in respect of Claim Case No. 204 of 1994 for the death of Javitri:

Javitri (70 years) had died in the accident. She was partner in the firm and her income was Rs. 4,000/- per month. The claimants are the husband and six sons. The amount awarded is Rs. 35,000/- only which cannot be called excessive.

26. Appeal No. 800 of 1994 in respect of Claim Case No. 72 of 1991 filed for death of Anita:

(i) Anita (21 years) who was the wife of the claimant had died. She was partner in the firm and her share was $\frac{1}{3}$ rd. The Tribunal has held that her annual income was Rs. 20,510/-. After reducing Rs. 7,510 which the deceased might have spent on herself, the loss of dependency was assessed at Rs. 13,000/- per annum. Adopting the multiplier of 37 a sum of Rs. 4,91,000 has been awarded.

(ii) It has been held in the case of General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, that the maximum multiplier in a case can be of 16. It is thus obvious that the Tribunal has erred in adopting the multiplier of 37.

(iii) On adopting the multiplier of 16 which is appropriate in this case, loss of dependency works out to be Rs. 2,08,000. On adding a sum of Rs. 10,000/- awarded by the Tribunal for loss of consortium, the just compensation comes to Rs. 2,18,000. The claimant is entitled to this sum only. The award deserves modification.

27. Appeal No. 794 of 1994 in respect of Claim Case No. 74 of 1991 filed for the death of Hari Babu:

(i) Hari Babu (42 years) who died in the accident was teacher and was drawing Rs. 3,200/- per month at the time of accident. The Tribunal has held that the loss of dependency was Rs. 2,000/- per month. Adopting the multiplier of 16 and adding some amount on other heads a sum of Rs. 4,55,000/- has been awarded.

(ii) Hari Babu was 42 years of age. In the case of General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, the Hon"ble Supreme Court had adopted multiplier of 12 where the deceased was 38 years of age. In this case the appropriate multiplier is 11.

(iii) However, as per the observations made in the case of Susamma Thomas, the present income of the deceased will have to be doubled as he was on stable job. On doing so, the amount of compensation would be more than what has been awarded by the Tribunal.

(iv) Laxmi Devi filed cross-objection for the enhancement of compensation. On the principle enunciated in the case of Susamma Thomas the deceased's monthly income shall have to be taken as Rs. 6,400. The pecuniary loss of the family comes to Rs. 4,000/- p.m. On adopting the multiplier of 11 the loss of dependency will work out to be Rs. 4,000/- x 12 x 11 = Rs. 5,28,000/-. The Tribunal has rightly awarded a further sum of Rs. 10,000/- to each of the claimants for loss of consortium and deprivation of love and affection and Rs. 1,000/- for funeral expenses. Consequently, just compensation works out to be Rs. 5,28,000/- + Rs. 70,000/- + Rs. 1,000/- = Rs. 5,99,000/-. The award needs modification.

28. Appeal Nos. 102 of 1994 and 795 of 1994 arising out of Claim Case No. 205 of 1991 filed by Shakshi and others:

(i) Sanjeev who died in the accident was 29 years of age. He was officer in the Bank of Rajasthan. As per the documentary evidence produced in the case, his revised salary at the relevant time was Rs. 3,986.46. The Tribunal assessed the loss of dependency at Rs. 25,000/- per annum and adopting the multiplier of 29 a sum of Rs. 7,25,000/- was found as the total loss of dependency. To this amount Rs. 40,000/- were added for the loss of consortium and deprivation of love and affection and thus Rs. 7,65,000/- have been awarded.

(ii) The contention of learned Counsel for the claimants who have filed cross-objection was that the deceased was on the stable job and, therefore, on the dictum of General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, , his present income should have been doubled for calculating the loss of dependency. His further contention was that more adequate amount should have been awarded to the widow for the loss of consortium.

(iii) The contention of learned Counsel for the Union of India on the other hand was that very high multiplier has been adopted which could not be more than 16 in any case.

(iv) I have given the contentions my thoughtful consideration. In the case of Susamma Thomas (supra) two principles have been enunciated: first where the deceased was on the stable job, the present income of the deceased should be doubled keeping in view that the deceased might have got promotions and earned more and more amount in the coming years. Second, that the highest multiplier can be 16 in any case.

(v) It has, therefore, to be accepted that the Tribunal has erred in adopting the multiplier of 29 which could not be more than 16. The Tribunal has further erred when it did not double the present income of the deceased for calculating the loss of dependency.

The present income of the deceased was Rs. 3,986/-, i.e., around Rs. 4,000/-. If this amount is doubled and a reasonable sum of Rs. 3,000/- which the deceased might have spent on himself is deducted, the loss of dependency comes to Rs. 5,000/- i.e., Rs. 60,000/- per annum. In this case the deceased was 29 years of age. The appropriate multiplier is of 15. Thus, the loss of dependency works out to be Rs. 9,00,000.

It has to be accepted that Meenakshi became widow in very early age of her life. She was married just one and half year before the date of accident. This court has generally allowed Rs. 15,000/- for the loss of consortium in such cases. This sum should be awarded. Rs. 10,000/- have been awarded to the daughter for the deprivation of love and affection of her father. On adding Rs. 25,000/- to the sum arrived at in the preceding para, the just compensation works out to be Rs.

9,25,000/-. The claimants are entitled to this amount. The award needs to be modified.

29. Appeal Nos. 799 of 1993 and 796 of 1994 arising out of Claim Case No. 311 of 1991 filed by Shakuntala and others:

(i) Deceased Vinod was 27 years of age, when he died. He was the driver of the jeep in which the passengers who have either died or suffered injuries were traveling. The Tribunal has held that the loss of dependency was Rs. 10,000/- per annum. Adopting the multiplier of 38, a sum of Rs. 3,80,000/- was arrived at. To this amount Rs. 20,000/- were added for loss of consortium and deprivation of love and affection.

(ii) Two submissions were made by the learned Counsel for the Union of India. First, Vinod himself had contributed to the accident and, therefore, award for the entire sum could not be passed against the Union of India and at the most 50 per cent could be made payable by his client. Second, very high multiplier has been adopted in this case.

(iii) The contentions are not without merit. Vinod was driving the jeep. It has come in evidence that he drove the jeep rashly and negligently. The Tribunal has found that Vinod was equally responsible for this accident. In such circumstances, the Tribunal has certainly erred when it passed the award for the entire sum against the driver and owner of the truck. They could not be made liable for more than half the amount of the award.

(iv) Tribunal has adopted multiplier of 38. In the case of General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, the hon"ble Apex Court has held that the highest multiplier can be of 16. Looking to the age of the deceased it is appropriate to adopt the multiplier of 16.

(v) On adopting the multiplier of 16 the total loss of dependency works out to be Rs. 1,60,000/-. On adding a sum of Rs. 20,000/- awarded to the daughters for loss of love and affection, etc., the compensation works out to Rs. 1,80,000/-. The Tribunal has awarded much higher amount. The award needs modification. Claimants are entitled to get Rs. 90,000/- only from the Union of India. They are further entitled to get Rs. 90,000/- from the insurer of jeep as extra premium of Rs. 8/- was paid by the insured for the liability arising out of death of the driver as per endorsement IMT-16, i.e., half amount of the just compensation, i.e., Rs. 90,000/-. The Tribunal has thus erred in awarding much higher amount. The award needs modification.

30. As a result of the above discussion, Appeal Nos. 801 of 1993, 798 of 1993, 800 of 1993, 797 of 1993, 794 of 1993, 796 of 1993 and 795 of 1993 are allowed and the awards passed against the insurance company are set aside.

31. Appeal Nos. 799 of 1994, 800 of 1994, 799 of 1993, 102 of 1994 and 796 of 1994 are partly allowed and the awards passed are modified as follow:

(i) In Claim Case No. 206 of 1991 the claimants are entitled to get Rs. 2,00,000/- only with interest as directed by the Tribunal from the respondent Nos. 1, 2 & 3 of that case.

(ii) In Claim Case No. 72 of 1991 the claimants are entitled to get Rs. 2,18,000 with interest as directed by the Tribunal from the respondent Nos. 1, 2 & 3 of that case.

(iii) In Claim Case No. 205 of 1991 the amount of award is enhanced. The appellants shall be entitled to get Rs. 9,25,000/-with interest as directed by the Tribunal from the respondent Nos. 1, 3 & 4 of that case.

(iv) In Claim Case No. 311 of 1991 Union of India is liable to pay compensation to the claimants of Rs. 90,000/- only with interest thereon as directed by the Tribunal. The insurance company is liable for the remaining amount with interest as directed by the Tribunal.

32. Cross-objection filed by claimants in Appeal No. 800 of 1993 is allowed. The award is modified. The claimants of Claim Case No. 74 of 1991 shall get Rs. 5,99,000 as compensation with interest as directed by the Tribunal from respondent Nos. 1, 3 & 4 of that case.

33. Appeal Nos. 801 of 1994, 798 of 1994, 797 of 1994, 794 of 1994 and 795 of 1994 are devoid of merit and are hereby dismissed.