
(1994) 08 BOM CK 0086
In the Bombay High Court
Case No : F.A. No. 68 of 1990

Oriental Insurance Co. Ltd.

APPELLANT

Vs

Bhuma Bi and Others

RESPONDENT

Date of Decision : 03-08-1994

Acts Referred:

Motor Vehicles Act, 1988 — Section 95

Citation : (1994) 2 ACC 715 : (1994) ACJ 627

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

Bench : Division Bench

Advocate : H.R. Bharne, for the Appellant; N. Sardesai, for the Respondent

Judgement

A.A. Halbe, J.—The insurer, original respondent No.. 3, Oriental Insurance Co. Ltd., has preferred this appeal, making a grievance that although its statutory liability was Rs. 50,000/- per accident, the Motor Accidents Claims Tribunal, in Claim Petition No. 62 of 1988, was pleased to direct that the entire award of Rs. 1,32,000/- with 12 per cent interest thereon should be borne by the insurer. It is further contended that the learned Member of the Tribunal fell in error when the learned Member observed that since the policy is the comprehensive policy, the liability of the insurance company cannot be restricted to Rs. 50,000/-.

2. At the outset, it will have to be stated that the question of negligence on the part of the original respondent No. 1 is not disputed by the insurer. The facts are that on 31.3.1988 at about 11 p.m. respondent No. 1 drove mini bus No. GDF 1104 in a rash and negligent manner and when he was proceeding from Panaji towards old Goa, the vehicle dashed against the footsteps of the parapet wall of the claimant. The claimant's husband, Amin Sab, aged about 46 years, was sitting along with his wife, claimant No. 1. On account of the dash given by the offending vehicle, GDF 1104, the deceased sustained injuries and he died in the hospital. The claimants have contended that the deceased was earning around Rs. 1,500/- and looking to the dependency and the age of the deceased, the claimants were entitled to the compensation of Rs. 4,43,000/-.

3. This was resisted by the respondents on the ground that the deceased tiled to cross the road and came beneath the vehicle, and the insurer contended that its liability was Rs. 50,000/- under the insurance policy.

4. As indicated, the question of negligence has not been disputed. Even if the evidence of the claimants' witness, Bhuma Bi, is considered, it would be manifest that the offending vehicle dashed against the parapet wall and in consequence her husband and she herself sustained injuries. Her husband died. The panchnama proved by Kharjuvekar supports this conclusion. The respondent No. 1, Harizan, has stated that he was going at a slow speed when he spotted the person crossing the road, he stopped the vehicle, but the deceased came just close to the vehicle and was knocked down.

5. Looking to the evidence of Bhuma Bi and the panchnama, the Tribunal felt satisfied about the rashness and negligence on the part of the respondent No. 1, driver, and the same is neither disputed nor challenged by the present appellant.

6. However, the main controversy centres around the liability of the insurance company. In that regard, attention is drawn to the policy, which is on record and the learned advocate for the appellant has contended that u/s 95(2)(b), the liability of the insurance company is of Rs. 50,000/-. According to him, this was a passenger vehicle and that is borne out from the terms of the insurance policy. As against this, learned advocate for the respondents-claimants has contended that this was a goods vehicle, that eight non-fare paying passengers were covered under this insurance and that the liability of the insurance company is to the extent of Rs. 1,50,000/- in terms of Section 95(2)(a) of the Motor Vehicles Act. Alternatively, it is contended that even if the vehicle is found to be neither goods vehicle nor passenger vehicle, under Clause 2 (c) of Section 95 of the Motor Vehicles Act, the liability of insurance company is to the extent of liability incurred by the insured. There is a lot of substance in this argument. Now, when we look to the policy, it is manifest that the vehicle covered was Matador station-wagon and the limitations of use were, "use in connection with insured's business". The premium is paid on eight non-fare paying passengers. The owner-respondent No. 2, in his written statement, has contended that this vehicle was used for transporting newspapers, meaning thereby that this was used as a goods vehicle and the non-fare paying passengers were the boys or employees engaged for distribution of newspapers. The learned advocate for the appellant was called upon to produce the original proposal of insurance made by the owner of the vehicle, that could have shown precisely as to whether the business of the insured was of transporting newspapers, viz., goods. However, the original proposal could not be traced and the learned advocate for the appellant expressed his inability to tender the original proposal for insurance. Now, looking to the unchallenged pleadings of the owner that the vehicle is a goods vehicle and that it covered 8 employees would rather show that the vehicle appeal's to be a goods vehicle. The onus is cast on the appellant-insurance company to show that it is a passenger vehicle. However, as indicated above, the evidence on

record supports the argument by the learned advocate for the original claimants. It shall have, therefore, to be held that this is a goods vehicle and that the liability of the insurer u/s 95(2)(a) of the Act is to the extent of Rs. 1,50,000/-.

7. The appellant has also challenged the quantum of the compensation. In this regard, a brief reference to the evidence of the employer of the deceased, C. Abdulla, appeal's to be necessary. According to him, the deceased was working with him for about 2¹/₂ months and that his income was Rs. 1,500/- per month. The claimant No. 1 was working with the same construction company and was getting Rs. 650/-. It appears that the age of the deceased was between 45 and 50 years. The evidence of C. Abdulla shows that the deceased was working with him for only the last 2 months. The nature of the employment is not shown to be of a permanent nature and it would not be, therefore, safe to assume that the deceased would have drawn the same salary or would have continued indefinitely in that employment. In that light of the matter, the dependency should be scaled down to Rs. 600/- p.m. The annual contribution, therefore, comes to Rs. 7,200/-, multiplying the same with the multiplier of 10, the amount comes to Rs. 72,000/-. Rs. 10,000/- should be added for loss of life and Rs. 20,000/- for loss of consortium to the widow. It may be stated that the claimants are the widow and minor daughter. The total thus comes to Rs. 1,02,000/-. It should be rounded off to Rs. 1,00,000/-. The award of compensation of Rs. 1,32,000/- appeal's to be on the higher side. Accordingly, the following order:

Appeal partly allowed. The appellant and respondent Nos. 3 and 4 shall jointly and severally pay Rs. 1,00 000/- with 12 per cent interest thereon plus costs of Rs. 2,500/- to the claimants. The amount deposited by any of the respondents shall be adjusted towards this payment. The amount has been directed to be snared equally between the mother and daughter.