
(1991) 01 RAJ CK 0083

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No's. 99 and 101 of 1986

Oriental Insurance Co. Ltd.

APPELLANT

Vs

Evan Lodricks and Others

RESPONDENT

Date of Decision : 09-01-1991

Acts Referred:

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

Citation : (1991) ACJ 1085

Hon'ble Judges : S.C. Agrawal, C.J

Bench : Single Bench

Advocate : S.C. Srivastava, for the Appellant; Atul Whadia and N. Jain, for the Respondent

Final Decision : Allowed

Judgement

K.C. Agrawal, C.J.—This appeal (Appeal No. 99 of 1986, connected with Appeal No. 101 of 1986) arises from the award given on 24.1.1986 by the Motor Accidents Claims Tribunal, Jaipur, in Motor Accident Case Nos. 374 and 375 of 1983.

2. On 7.11.1983 one Christopher Lodricks was going on his scooter from Ajmeri Gate to Sawai Man Singh Hospital. Yvonne (Evan) Lodricks was the pillion rider on the aforesaid scooter. The claimants alleged that when they reached at the tiraha of Ashok Marg, near Maharani College, Jaipur, a car bearing number RST 549 came from the opposite direction and collided with the scooter; as a result of the accident Christopher died at the spot, whereas the pillion rider sustained injuries.

3. Claiming that the car, driven by Om Prakash, was being driven rashly and negligently, which struck the scooterist on the wrong side, Yvonne (Evan) Lodricks and Christeen Lodricks (claimants-respondents in Appeal No. 99 of 1986) filed a claim petition to recover compensation in a sum of Rs. 3,40,000/- and Rs. 34,000/- which were claimed on account of the injuries sustained by the

pillion rider Yvonne (Evan) Lodricks.

4. The claim was contested by Om Prakash, the driver of the car, as well as the owner of the car, Subhash Dasot and the allegation of reckless driving on the part of the driver was denied as correct. They claimed that the deceased had contributed to the negligence and as such he was guilty of the same.

5. The insurer, Oriental Insurance Co. Ltd., claimed that there was negligence on the part of the scooterist, as such the respondents were not liable to pay any compensation.

6. The Tribunal, by its award dated 24.1.1986, held that the accident occurred due to driving of the aforesaid car rashly and negligently by its driver. It awarded a sum of Rs. 79,000/-; out of this amount Rs. 15,000/- had already been given by way of no fault liability. The award was passed jointly and severally against the Oriental Insurance Co. Ltd., the driver Om Prakash and the owner Subhash Dasot.

7. Against the aforesaid award Appeal No. 101 of 1986 has been preferred by Yvonne (Evan) Lodricks and Christeen Lodricks; whereas Appeal No. 99 of 1986 has been filed by the Oriental Insurance Co. Ltd.

8. In the appeal of the insurance company the solitary point raised was that under the policy the liability of the insurance company was limited to Rs. 50,000/- and, therefore, it could be made liable to pay that amount only and not Rs. 79,000/-.

9. The policy of insurance wherein the amount of liability has been stated is as under:

Limits of Liability:

Limit of the amount of the company's liability u/s II-1 (i) in respect of any one accident:

such amount as is necessary to meet the requirements of the Motor Vehicles Act, 1939.

10. Counsel appearing for the insurance company referred to Section 95 (2) (b) of the Motor Vehicles Act, which is as under:

(b) where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment-

(i) in respect of persons other than passengers carried for hire or reward, a limit of fifty thousand rupees in all;

and, relying on the limits of the liability clause of the policy, along with the aforesaid provision, submitted that the insurance company could not be held liable to pay more than Rs. 50,000/- in all. Hence, the award given against it for Rs. 79,000/- was illegal and wrong.

11. Having heard counsel for the parties it appears to me that the liability of the insurance company prescribed by Section 95 (2) (b) could not be enhanced to more than Rs. 50,000/-. In respect of this amount, on the finding given that the accident resulted on account of the rash and negligent driving of the car by Om Prakash, its driver, the Tribunal held the insurance company liable jointly and severally with the owner of the taxi-car. To this extent, the award of the Tribunal holding the insurance company liable to pay Rs. 79,000/- suffers from an apparent error.

12. Coming to the appeal (Appeal No. 101 of 1986) filed by the claimants, the solitary question argued was that the Tribunal committed an error in applying the multiplier of 17 for finding out the compensation payable to them.

13. Section 110-B of the Motor Vehicles Act confers power to "determine the amount of compensation which appears to it to be just". Even without the word "just" there can be no doubt that the compensation awarded must be what is considered just by the court in the circumstances of the case. While construing the word "compensation" the Supreme Court in *State of Gujarat v. Shantilal* AIR 1969 SC 534, laid down:

The word "compensation" means anything given to make things equivalent to a thing given to or to make amends for loss, recompense, remuneration or pay.

14. In *Corpus Juris Secundum*, Volume 15, at pages 652 and 653, the meaning of the word "compensation" with reference to injuries or loss has been defined thus:

In the sense of an act, the word has been defined as meaning an act which a court orders to be done or money which a court orders to be paid, by a person whose acts or omissions have caused loss or injury to another, in order that thereby the person damnified may receive equal value for his loss, or be made whole in respect of his injury; the giving back an equivalent in either money, which is but the measure of value, or in actual value otherwise conferred; in damnification, making amends, payment of damages, or the rendering an equivalent in value of amount...a recompense or reward for some loss, injury, or service, especially when it is given by statute; that return which is given for something else. More specifically with reference to injury or loss, "compensation" has been defined as making amends; an equivalent given to property taken or for an injury done to another, or an equivalent in money for a loss sustained.

15. The purpose of awarding compensation to the dependant of the deceased is that the quantum be calculated in such manner that the death of the victim of a motor vehicle accident should not have made any difference to the living dependants. Calculation of compensation is not a rule which could be laid down with exactitude. The extent of pecuniary loss of dependency cannot be ascertained with certainty. It is a matter of estimate or even purely of conjecture. This principle has been laid down by Lord Viscount Simon in *Nance v. British Columbia Electric Rly. Co.* 1951 AC 601, in the following words:

... that the claim to damages in cases of death fell under two separate heads: first, what sums the deceased would have probably applied out of his income to the maintenance of his wife and family if the deceased had not been killed and would have lived the full span of life; second, what would have been the additional savings which the deceased would or might have left but for the premature death, which would probably have accrued to his wife and family.

16. According to the principle of this case it is necessary first to estimate what was the life expectancy of the deceased if he had not been killed and next what sum he was spending on his wife and other dependants.

17. In *Gobald Motor Service v. R.M.K. Veluswami* 1958 ACJ179 (SC), the Supreme Court held (para 7):

The determination of the question of compensation depends on several imponderables. In the assessment of those imponderables, there is likely to be a margin of error. If the assessment made by the High Court cannot be considered to be unreasonable and we do not think it to be unreasonable it will not be proper for this court to interfere with the same. Taking an overall assessment of the facts and circumstances of this case, we are unable to agree with the contention of the appellant's counsel that the compensation awarded to the legal representatives of the deceased person is excessive.

18. When the deceased died he was 37 years of age and was working as a Telephone Operator in Poddar Spinning Mill, where his salary was Rs. 630/-. Out of that salary, he was contributing Rs. 400/- p.m. to his family. This finding of the Tribunal was assailed by the learned counsel for the claimants by saying that the contribution to the family must have been much more than Rs. 400/- as the deceased must have been spending some money on himself. The figure of Rs. 400/- found by the Tribunal as contribution to the family appears to be just and proper.

19. Applying the principles laid down in various cases we have to consider what is the expected span of the life of the deceased Christopher Lodricks. The deceased was in robust health and actively engaged in pursuit of self-earning, therefore, it can be easily said that he would have lived upto 60 years of age, i.e., for another 23 years. This safely demonstrated that the multiplier of 17 was inadequate and it should have not been less than 20.

20. For what I have said above, I find that the amount of compensation is liable to be increased from Rs. 79,000/- to Rs. 96,000/- and would be payable to the claimants along with interest at the rate of 12 per cent per annum with effect from the date of the application to the date of payment. Liability of payment of the insurance company would be upto Rs. 50,000/- along with interest payable thereon. For the balance the liability is that of the driver of the car, Om Prakash and owner, Subhash Dasot.

21. In the result, the Appeal No. 101 of 1986 is allowed in part. Compensation is

raised to Rs. 96,000/- from Rs. 79,000/-. The Appeal No. 99 of 1986 filed by the insurance company is also allowed. No costs.