
(1992) 04 RAJ CK 0003
In the Rajasthan High Court

Oriental Insurance Co. Ltd.

APPELLANT

Vs

Pushpa Devi and Others

RESPONDENT

Date of Decision : 01-04-1992

Acts Referred:

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

Citation : (1994) 1 ACC 435

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

Bench : Single Bench

Judgement

K.C. Agrawal, C.J.—These two appeals arise from an award dated 15.4.1986 passed by the Motor Accident Claims Tribunal, Bharatpur (hereinafter referred to as "the Tribunal") in MACT Case No. 39 of 1982. A sum of Rs. 78,000/- was awarded in favour of Pushpa Devi, Krishna Kumar, Mahendra Kumar, Pradeep Kumar, Munna and Laxmi Devi, the claimants, with interest at the rate of 9 per cent per annum.

2. The Oriental Insurance Co. Ltd. filed an appeal (No. 186 of 1986) and cross-objection (Appeal No. 206 of 1986) has been filed by the claimants. As common questions of facts and law are involved in both these appeals, they are being decided by this common judgment.

3. Jagdish Prasad, husband of Pushpa Devi, boarded bus No. RSD 2551 on 27.1.1982 while he was going from Jaipur to Bharatpur. The bus overturned at village Hantara. The claimants alleged that the bus collided with a culvert resulting in the death of Jagdish Prasad.

4. The age of the deceased was 32 years and his earning at the time of death was Rs. 800/- per month being the partner of the firm M/s. Jagdish Prasad Om Prakash. Pushpa Devi and other dependents, aforesaid, claimed Rs. 4,50,000/- as compensation from the owner of the bus, driver and the Insurance Company. Rajasthan State Road Transport Corporation (for short "Corporation") was also impleaded as a party in the claim petition as it was hirer of the bus from its

owner. The Insurance Company filed a written statement asserting that the accident had occurred due to an attempt of the driver to save its collision with a tractor. It stated that even if the liability is fastened, it could not be more than Rs. 5,000/- per passenger.

5. The Tribunal awarded a sum of Rs. 78,000/- together with interest at the rate of 9 per cent per annum from the date of filing of the petition, jointly and severally, as against the owner, driver and the Insurance Company. Aggrieved, the Insurance Company has come up before this Court by means of the present appeal whereas the claimants, by means of the other appeal, have claimed more compensation.

6. The sole controversy raised by the learned Counsel for the Insurance Company was that its liability could not be exceeded beyond the limit prescribed by Section 95(2)(b)(ii)(4) of the Act. That amount is Rs. 5,000/- per passenger. For this submission, he relied upon the case in M.K. Kunhimohammed Vs. P.A. Ahmedkutty and Others,

7. The submission made is fully supported by the aforesaid decision of the Supreme Court. In that case, it was held that the limit prescribed by Section 95(2)(b)(ii)(4) of the Act is the maximum amount payable by an insurer in respect of each passenger who has suffered on account of the accident.

8. The aforesaid decision covers the controversy raised by the Insurance Company in the instant case. It may be pointed out that the Parliament took steps to amend Sub-section (ii) of Clause (b) of Section 95(2) by Act No. 47 of 1982. This, however, is admittedly not applicable to the present case.

9. The other appeal, as stated above, has been filed by the claimants. The total award is for a sum of Rs. 78,000/- plus interest at the rate of 9 per cent per annum. The submission of the learned Counsel for the claimants is that the amount fixed was less than the amount to which they were entitled under the law. I am inclined to agree with the submission for the reason that the deceased was a partner of a firm as well as he was in service and was earning Rs. 800/- per month at that time. He was only 32 years of age. That being so, the amount fixed could not be less than Rs. 1,50,000/-.

10. Learned Counsel for the Corporation wanted to escape its liability on the ground that the award could only be as against the owner of the vehicle and not against the Corporation. This is not acceptable to me. The controversy has been considered in Rajasthan State Road Transport Corporation Vs. Jugal Kishore and Others, wherein it has been held that the liability would be that of the Corporation as well as the Insurance Company and the owner.

11. In the result, appeal filed by the Insurance Company is allowed to the extent that its liability is Rs. 5,000/- per passenger and the appeal of the claimants is allowed to the extent that the claimants are entitled to a sum of Rs. 1,50,000/- from the Insurance Company, owner of the bus and the State Road Transport

Corporation with interest at the rate of 9 per cent per annum. The parties shall bear their own costs.