

(2006) 06 J&K CK 0020

In the Jammu And Kashmir High Court

Case No : Cross Appeal (C) no. 5 Of 2006CIMA No. 166 Of 2005, CMP nos. 218 Of 2005 & 315 Of 2006CIMA no. 171 Of 2005, CMP nos. 234 Of 2005 & 314 Of 2006; Cross Appeal (C) no. 5/200

Oriental Insurance Company Ltd

APPELLANT

Vs

Nirmala Devi & Ors; Raj Kumari & Ors

RESPONDENT

Date of Decision : 08-06-2006

Acts Referred:

Motor Vehicles Act, 1988 — Section 145, 165

Citation : (2007) 3 JKJ 401 : (2007) KashLJ 98 : (2008) 1 SriLJ 47

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

Bench : Single Bench

Advocate : Raghu Mehta, D.S.Chauhan, Advocates appearing for the Parties

Judgement

These appeals of the Oriental Insurance Company Limited and cross appeals by the claimants in file nos. 421/C.P and 422/C.P of the Motor

Accidents Claims Tribunal, Kathua, arise out of its award dated 02.06.2005, awarding an amount of Rs. 2, 90, 000/ as compensation to the

claimants in each petition.

Facts necessary for the disposal of these Appeals and Cross Appeals may briefly be stated thus:

Two labourers, Tilak Raj and Nagar Mal, both resident of Givindsar Kathua were engaged in unloading Marble States from Truck no. JK

02D6947 at Chak Partap Singh Kathua at about 11 PM, on the National Highway, when the loosely loaded Marble Slates fell down from vehicle

No. JK 02D 6947 resulting in instantaneous death of these two labourers.

Nirmala Devi, widow of Tilak Raj, her two minor sons, a minor daughter and fatherinlaw lodged a claim for an amount of Rs. 15, 61, 500/,

claiming compensation under the following heads:

- a. Expenditure incurred in taking dead body: Rs. 1500/
- b. Loss of love and affection Rs. 3, 50, 000/
- c. Loss of consortium Rs. 80, 000/
- d. Loss of mental shock, agony pains and sufferings, etc. Rs. 2, 00, 000/
- e. Funeral expenses Rs. 30.000/
- f. Loss of income and dependency Rs. 9, 00, 000/

Raj Kumari, widow of Nagar Mal, her minor son, two minor daughters and father and mother-in-law lodged a claim for an amount of Rs.15, 01,

500/claiming compensation under the following heads:

- a. Expenditure incurred in taking dead body: Rs. 1500/
- b. Loss of love and affection Rs.4, 00, 000/
- c. Loss of consortium Rs. 70.000/
- d. Loss of mental shock, agony pains and sufferings, etc. Rs. 2, 00, 000/
- e. Funeral expenses Rs. 30, 000/
- f. Loss of income and dependency Rs. 8, 00, 000/

These two claim petitions were tried together on the following issues:

Whether accident involving death of Nagar Mal and Tilak Raj has occurred due to rash and negligent driving of the offending truck no. JK

02D6947 on 12.2.2000 at 11 PM at Chak Partap Singh NHW OPP

2. In case issue no. 1 is proved in affirmative, what amount of compensation is payable to the petitioners in each claim petition and by whom OPP

3. Whether the Insurance Co. Respondent no. 2 is not liable to indemnify the insured, if so, how OPR 2.

4. Whether the driver of the offending truck did not possess valid/effective driving licence at the time of accident and as such the insurance

company is not liable to pay the compensation OPR 2.

5. Relief.

The claim petitions were contested only by the appellant insurance company. This contest was, however, without leading any evidence by the

appellant insurance company against the one which had been led by the claimants in support of their respective claims.

On the basis of the evidence of the claimants the Claims tribunal decided issue nos. 1 and 2 in favour of the claimants and rest of the issues against

the appellant insurance company. It accordingly, made an award for an amount of Rs. 2, 90, 000/ in both the petitions along with interest at the rate

of 6% P.A from the date of application.

The claimants have questioned the award in cross objections, saying that the Tribunal had awarded inadequate compensation whereas the

appellant insurance company questions the award as bad in law, saying that no tortious liability had arisen out of the alleged incident which had

occurred when the vehicle was stationary.

Mr. D.S. Chauhan, learned counsel appearing for the appellants vehemently argued that a tortious liability out of the use of a motor vehicle would

arise only if the vehicle had been in motion, in one way, or the other. Learned counsel submits that the expression ""USE"" appearing in Chapter XII

of the Motor Vehicles Act, 1988 would be attracted only if the vehicle had been moved or propelled by external or internal force. He says that

activity carried out by the owner in a stationary truck resulting in death of labourers would not entail any liability either on the owner or on the

insurer under the Motor Vehicles Act.

Mr. Rahu Mehta, learned counsel for the claimants, on the other hand, submits that movement of a Motor Vehicle by external or internal force

was not a sine qua non for maintaining a claim for compensation under the Motor Vehicles Act, 1988 because the expression ""arising out of the

use of motor vehicles"" occurring in Section 165 of Chapter XII of the Motor Vehicles Act was wide enough to cover the activities undertaken by

the owner and the driver of the vehicle even in a stationary vehicle while on roads. Learned counsel justified the finding of the Tribunal as to the

maintainability of the claim petition relying on Shivaji Dayanu Patil and anr. vs. Smt. Vatschala Uttam More, reported as AIR 1991 SC 1769.

Supporting the cross objections, learned counsel urges that the Tribunal had been penurious in awarding compensation to the families of the two

labourers who had led cogent evidence in establishing that they were entitled to the compensation more than the one which had been awarded to

them by the Tribunal. He questions Tribunal's deduction of 1/3rd of the amount of dependency which had been assessed by the Tribunal.

Mr. Chauhan, on the other hand, says that in case the claim petitions of the respondents were allowed to be maintainable, the amount awarded by

the Tribunal would not warrant any increase as the Tribunal has not committed any error in assessing the compensation.

I have considered the submissions of learned counsel for the parties in the light of the judgment cited by learned counsel for the claimants.

The question raised by Mr. Chauhan that the claim petitions would not be maintainable when the accident had arisen because of the activity carried

out in a stationery truck, is no longer res integra in view of the law laid down in Shivaji Dayanu Patil's case.

The expression ""arising out of the use of motor vehicle opinion, is wide enough to cover the present case because the owner of the offending truck

had permitted it to be driven for being brought on the National Highway where after during unloading of Marble Slates from the truck the accident

had taken place, resulting in the death of two labourers. Use of a motor vehicle in any manner whatsoever, regardless of its being stationery would

entail a tortuous liability on the owner of the motor vehicle who permits the use of the vehicle in any manner resulting in loss of life or damage to any

one. The owner of the motor vehicle, being a person incharge of the vehicle, having permitted the vehicle to be brought on road on the National

Highway and there after permitted its use in a manner resulting in death of two labourers, cannot escape his liability to compensation arising out of

the accident, tike wise in view of the provisions of Section 145 of the Motor Vehicles Act, the indemnifierInsurance Company too cannot escape

its statutory besides contractual liability to indemnify the owner against third party risk This is so because the liability of he indemnifierInsurance

Company arises ""Gilt of the use of the motor vehicle, which has a wider connotation AND not only because of the driving of the motor vehicle. I

am supported in taking this view by a judgment in Ram Chander and ors vs. Rajasthan State Road Transport Corporation and ors, reported as

1996 ACH 736.

The claim petitions of the respondentsclaimants were thus maintainable and I do not find any error in the finding recorded by the Tribunal, holding

the claim petitions to be maintainable, in view of the law laid down in Shivaji Dayanu Patil's case. The submission of Mr. Chauhan, therefore, fails.

I will now examine the plea of claimants that they were not suitably compensated by the Tribunal.

I have gone through the evidence led by the claimants before the Claims tribunal. The evidence of the claimants that the deceased labourers were

earning between Rs. 150/ to Rs. 200/ per day goes un rebutted because not even a single question has been put to the witness on this aspect of the

earning of the deceased labourers. In view of the omission of the Insurance Company to lead evidence to controvert the evidence of the claimants,

the income of the deceased labourers had to be assessed at Rs. 4500/ per month. Deducting 1/3rd out of this income, which would have been

spent by the deceased on his personal expenses, the monthly dependency of the family on the earning of the deceased was required to be assessed

at Rs. 3000/ per month. The annual dependency would thus come to Rs. 36000/. Applying the same multiplier, which was selected by the

Tribunal, which was lesser than the prescribed

2. Shorn of details, following facts may be seen on appeal. The facts, read, thus: