
(1986) 03 RAJ CK 0042
In the Rajasthan High Court

Prakash Chandra and Others

APPELLANT

Vs

The Oriental Fire and General Insurance Co. Ltd. and Others

RESPONDENT

Date of Decision : 07-03-1986

Acts Referred:

Motor Vehicles Act, 1939 — Section 95(2)(b), 95(2)(b)(ii)(4)

Citation : (1987) 1 ACC 152

Hon'ble Judges : S.K. Mal Lodha, J;P.C. Jain, J

Bench : Division Bench

Judgement

S.K. Mal Lodha, J.—This special appeal u/s 18 of the Rajasthan High Court Ordinance, 1949, has been filed against the judgment dated February 7, 1985 of the learned single Judge, which he passed in an appeal u/s 110-D of the Motor Vehicles Act, 1939 (for short "the Act")

2. It is not necessary to re-state the facts in detail, for, they have elaborately been stated in the judgment under appeal. Suffice it to state that respondents No. 2 and 3 filed a claim against appellants No. 1 and 2 and Oriental Fire and General Insurance Company Limited, Udaipur (respondent No. 1) u/s 110-A of the Act. Their claim was for Rs. 1,22,000/-. The Motor Accidents Claims Tribunal, Udaipur ("the Tribunal") by its award dated March 10, 1978, allowed the claim to the extent of Rs. 4000/- each set of the claimants with proportionate costs. Aggrieved, the claimants filed an appeal u/s 110-D against the respondents. The learned single Judge allowed the appeal and ordered that Prakash Chandra, Mathuralal (appellants) and the Oriental Fire and General Insurance Company Limited, Udaipur ("the Insurance Company" herein) should pay a sum of Rs. 31,500/- as compensation to them. The liability of the Insurance Company for the payment of compensation was fixed at Rs. 5000/- being statutory liability. It was further ordered by the learned single judge that the aforesaid amount will carry interest at the rate of 6% per annum from the date of the award of the Tribunal, i.e., March 10, 1978, until it is paid. This judgment, as slated above, was rendered on February 7, 1985. Prakash Chandra and Mathura Lal

(appellants) have filed this special appeal against the Insurance Company and the claimants.

3. It was urged by the learned Counsel for the appellants that the learned single Judge committed an error when he held that the liability of the Insurance Company will only be to the extent of Rs. 5000/-. The view taken by the learned single judge was assailed on the basis of the decision reported in *Motor Owners' Insurance Company Limited Vs. Jadavji Keshavji Modi and Others*, On the other hand learned Counsel appearing for respondent No. 1 supported the judgment of the learned single judge for the reasons given by him.

4. Section 95(2) of the Act, as it stood at the relevant time was as follows:

(2). Subject to the proviso to Sub-section (1), a policy of insurance shall cover any liability incurred in respect of any one accident upto the following limits, namely:

(a) Where the vehicle is a vehicle used or adopted to be used for the carriage of goods, a limit of twenty thousand rupees;

(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, in respect of persons other than passengers carried for hire or reward, a limit of twenty thousand rupees; and in respect of passengers a limit of twenty thousand rupees in all, and four thousand rupees in respect of an individual passenger, if the vehicle is registered to carry not more than six passengers excluding the driver or two thousand rupees in respect of an individual passenger, if the vehicle is registered to carry a more than six passengers excluding the driver ;

(c) Where the vehicle is a vehicle of any other class the amount of the liability incurred.

Clause (b) was substituted for the original by the Amendment Act (No. LVI of 1969) w.e.f. March 2. 1970. Prior to this, overall liability of the Insurance Company was upto Rs. 20,000/- and Rs. 2,000/- per passenger if the vehicle was registered to carry more than six passengers. This over-all liability was intended by the aforesaid Amendment upto Rs. 10,000/- depending upon the number of passengers the bus/vehicle is registered to carry and Rs. 5000/- per passenger demanding upon the nature of the vehicle. The amendment is, thus, regarding compensation to be paid by the Insurance Company.

5. We have carefully considered *Motor Owners' Insurance Co.'s* case which has been relied on by the learned Counsel for the appellants The learned single judge has stated that *Motor Owners' Insurance Co.'s* case related to the death caused in an accident by a goods vehicle and no occasion arose in that case for their Lordships to decide the liability of insurer in respect of an accident resulting from a passenger bus. We may usefully refer to para 26 of the report, in which reference has been made to *Sheikhupura Transport Co. Ltd. Vs. Northern India Transport Insurance Co.,* . It was stated in para 26 that *Shekhupura Transport*

Co. Ltd.'s case is not an authority on the interpretation of clause (a) of Section 95(2). In support of that observations made at page 1627 in Shekhupura Transport Co. Ltd.'s case by Hegde, J., speaking for himself and Jaganmohan Reddy, J. have been quoted, which are as under:

In the present case we are dealing with a vehicle in which more than six passengers were allowed to be carried. Hence the maximum liability imposed u/s 95(2) on the insurer is Rs. 2000/- per passenger though, the total liability may go upto Rs. 20,000/-.

6. We may here refer to the observations made in this connection in Motor Owners' Insurance Co. Ltd.'s case, which are as under:

Towards the end of the judgment, it was observed that reading the provisions contained in Sections 95 and 96 together.

...it is clear that the statutory liability of the insurer to indemnify the insured is as prescribed in Section 95(2). Hence the High Court was right in its conclusion that the liability of the insurer in the present case only extends upto Rs. 2000/- each, in the case of Bachan Singh and Narinder Nath. In view of the limit on the insurer's liability in respect of each passenger, the argument on the construction of the words, "anyone accident" had no relevance and was, therefore, neither made nor considered by the Court. Different considerations may arise under clause (b), as amended by Act 56 of 1969, but was do not propose to make any observations on that aspect of the matter, since it does not directly arise before us.

7. A perusal of para 2 of the report will show that that case related to Section 95(2) of the Act. For the aforesaid reasons, Motor Owners' Insurance Co. Ltd.'s case cannot be taken to be an authority for the purpose of interpreting Section 95(2)(b)(ii)(4) of the Act. It was held in Shekhupura Transport Co. Ltd.'s case that in the absence of any contract to the contrary the statutory liability of the insurer to indemnify the insured is as prescribed in Section 95(2)(b) of the Act as it stood then. This case was of course distinguished, as stated above, in paras 25 and 26 in Motor Owners' Insurance Co. Ltd.'s case. The principle laid down in Shekhupura Transport Co. Ltd.'s case wherein Section 95(2)(b) of the Act as it stood prior to the amendment is applicable, to the case on hand and according to that the Insurance Company is liable to indemnify the claims upto Rs. 5000/- only, u/s 95(2)(b)(ii)(4) of the Act. This view was taken by this Court in Automobile Transport v. Dewlal 1976 WLN 783 and Sampat Lal v. Smt. Geeta Devi 1985 RLR 1951 where, one of us (P.C. Jain, J.) after considering a number of cases, including Automobile Transport's case and Shekhupura Transport Co. Ltd.'s case held that u/s 95(2)(b)(ii)(4) the statutory liability of the Insurance Co. is only upto Rs. 5000/- and not beyond that. The un-amended Section 95(2)(b)(ii)(4) of the Act came up for consideration before G.M. Lodha, J., in Suraj Narain v. Sneha Lata Jain 1985 ACJ 581, it was held that there is a ceiling of Rs. 5000/- in case of passengers in vehicle other than motor cab as enshrined in Sub-

clause (4), and the insurance company would be liable to pay Rs. 5000/- for each individual passenger travelling in a bus as is covered by Section 95(2)(b)(ii)(4) of the Act. We may mention that this view was also taken by the Kerala High Court in *Madras Motor and General Insurance Co. Ltd. v. V.P. Balakrishnan* 1982 ACJ 460, in which, after considering *Motor Owners' Insurance Co. Ltd.*'s case, it was observed as under:

Reliance on the above passage may at the first flush appear to be sound. But it can be seen that the plaintiff cannot sustain the support that he seeks from the passages quoted above. It has to be noted that the Supreme Court in that case was concerned with Section 95(2)(a), as it existed on February 1, 1966, when the collision in that case took place. The Supreme Court referred to the changes that Section 95(2) underwent from time to time and traced its history to appreciate the scope of the contention raised in that case. It was after considering the section as it stood after amendment by the Motor Vehicles (Amendment) Act (No. 100 of 1956) that it was held that the insurance company could be made liable for an amount in excess of the statutory limit of Rs. 20,000/- as it stood then, and that on the basis that each injured was involved in a separate accident. The question that fell for consideration before the Supreme Court in that case was whether the award of damages of Rs. 29,125/- to the legal representatives of the driver who died in the accident and the passenger who travelled in the car was proper, in view of the limit of Rs. 20,000/- fixed by the section as it then stood. We do not think it necessary to consider the applicability of the ratio of that decision for the reason that we are in this case concerned with the section as it stands after the amendment brought to Section 95(2) of the Motor Vehicles Act by the Motor Vehicles (Amendment) Act (56 of 1969), which came into force on 2nd March, 1970. By the said amendment, Section 95(2)(b)(ii)(4) has been introduced which reads as follows:

(4). Subject to the limits aforesaid, ten thousand rupees for each individual passenger where the vehicle is a motor cab and five thousand rupees for each individual passenger in any other case.

(This clause has not been correctly quoted in the report appearing in the decision). The plaintiff's counsel found it extremely difficult to reconcile his submission with this sub-clause. He could not pursue his submissions based on the ratio of the decision under reference when confronted with this sub-clause. We have given our anxious consideration to this aspect of the case in view of the principles settled by the Supreme Court in the above decision. We hold that the decision could be distinguished on its facts. The section applicable in the present case is the amended Section 95(2) as it now stands with effect from 2nd March, 1970. Clause (4) limits the claim of each individual passenger in a case like this to Rs. 5000/-. Therefore, we hold that the appellant in A.S. No. 36 of 1977 could be made liable only for an amount of Rs. 5000/- in respect of each injured individual passenger and that the decree against the 3rd defendant has to be modified accordingly restricting its liability to Rs. 5000/- instead of Rs. 20,000/-

decreed by the court below.

8. The learned single Judge has rightly held that the principles laid down in Shekhupura Transport Co. Ltd.'s case are attracted in this case and according to that the liability of the Insurance Company is limited to Rs. 5000/- only u/s 95(2)(b)(ii)(4) of the Act. Motor Owners' Insurance Co. Ltd.'s case on which reliance is placed by the learned Counsel for the appellants is clearly distinguishable.

9. The view taken by the learned single Judge limiting the liability of the Insurance Co. to the extent of Rs. 5000/- is correct and no interference is called for in the appeal.

10. No other point was pressed by the learned Counsel for the appellants in support of the appeal.

11. The result is that this appeal fails and it is, hereby, dismissed.

12. In the circumstances of the case, the parties are left to bear their own costs of this appeal.