

(1989) 03 RAJ CK 0044

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 25 of 1986

Radhey Shyam

APPELLANT

Vs

Daulat Singh and Others

RESPONDENT

Date of Decision : 13-03-1989

Acts Referred:

Motor Vehicles Act, 1988 — Section 95(2), 95(5)

Citation : (1989) ACJ 738 : (1989) 1 RLW 202

Hon'ble Judges : N.C. Sharma, J

Bench : Single Bench

Advocate : S.R. Singhi, for the Appellant; J.M. Bhandari and S.G. Ojha, for the Respondent

Final Decision : Allowed

Judgement

Navin Chandra Sharma, J.—In the interim award in Motor Accident Claim Case No. 143 of 1984, the Motor Accidents Claims Tribunal, Bhilwara by its order dated November 1, 1985 awarded compensation to Daulat Singh and Gyan Kanwar, Respondent Nos. 1 and 2, father and mother respectively of the deceased Jitendra Singh, to the extent of a sum of Rs. 7,500/- each, but so far as the liability of New India Assurance Company Ltd. (Respondent No. 4) was concerned, the liability was limited to a total amount of Rs. 10,000/- . Mr. Radhey Shyam who was the owner of bus No. RSL 3976 which had resulted in accident causing the death of Jitendra Singh has come in appeal before this Court.

2. The sole contention advanced by the Learned Counsel for the Appellant is that the liability of the insurance company was limited to the extent of Rs. 15,000/- in respect of each passenger and therefore, Respondent No. 4 was liable for the total amount of Rs. 15,000/- and its liability could not be limited only to Rs. 10,000/- .

3. I find considerable force in the contention. In South Staffordshire Tramways

Company Ltd. v. Sickness and Accidents Assurance Association Ltd. 1891 (1) QBD 402, the Plaintiffs, a Tramcar Company, effected with the Defendants an insurance against claims for personal injury in respect of accidents caused by vehicles upto the amount off 250 "in respect of any one accident". One of the vehicles specified in the insurance policy was overturned, causing injuries to about 40 persons, as a result of which the Plaintiff became liable to pay to more persons compensation to the extent off 833. The question before the court was whether the injuries caused to each of the said 40 persons constituted a separate accident within the meaning of the policy. The court of appeal answered that question in the affirmative. "If several persons were injured", said the Master of Rolls, "upon the true construction of the policy, there were several accidents." In Halsbury's Laws of England the decision in South Staffordshire Tramways Company "s, case (supra) is cited in support of the proposition that the word "accident" may fall to be construed from the point of view of each individual victim, so as to produce, in effect as many accidents (even in a single occurrence) as there are victims.

4. Reference may also be made to the decision of their Lordships of the Supreme Court in Motor Owner's Insurance Co. Ltd. Vs. Jadavji Keshavji Modi and Others, In this case it was held that although the expression "any one accident" in Section 95(2) is susceptible of two equally reasonable meanings or interpretations, the ambiguity in the language and the doubt arising out of the correlation of that language with the words "in all" which occur in Clause (a) must be resolved by having regard to the underlying legislative purpose of the provisions contained in Chapter VIII of the Act which deals with third party risks. In matters involving third party risks, it is subjective considerations which must prevail and the occurrence has to be looked at from the points of view of those who are immediately affected by it. The word "accident" in the expression "any one accident" must be construed to have been used from the point of view of the various claimants, each of whom is entitled to make a separate claim for the accident suffered by him and not from the point of view of the insurer. In an accident resulting in an injury or death of not exceeding six persons, a consideration of preponderating importance is not whether there was one transaction which resulted in injuries to many but whether more than one person was injured, giving rise to more than one claim or cause of action, even if the injuries were caused in the course of the same transaction, each one of the persons has met with an accident.

5. It may be mentioned that as early as in the year 1977, their Lordships of the Supreme Court in Smt. Manjushri Raha and Others Vs. B.L. Gupta and Others, had sounded a warning and a reminder to the Government that in spite of limiting the liability of the insurance companies to a specified sum of money as representing the value of human life, the amount should be left to be determined by a court in specified circumstances of each case. The above observations made by his Lordship Fazal Ali, J., were languishing in cold storage of pious wishes. The Supreme Court again impressed upon the Government to provide by law of

payment of reasonable amount of compensation to victims of motor accidents in Motor Owner's Insurance Co. Ltd. Vs. Jadavji Keshavji Modi and Others, It seems that thereafter the Union Parliament made amendments in the Motor Vehicles Act by Amending Act, 47 of 1982 with effect from 1st October, 1982 substituting Sub-clause (ii) of Clause (b) of Sub-section (2) of Section 95 of the Motor Vehicles Act providing for the award of compensation by the insurance company to a limit of Rs. 15,000/- for each individual passenger. The Motor Accidents Claims Tribunal, Bhilwara was, therefore, wrong in limiting the liability of Respondent No. 4 to only Rs. 10,000/- . Respondent No. 4 was liable to the extent of Rs. 15,000/- for each individual passenger. Sub-section (5) of Section 95 also provides that notwithstanding anything elsewhere contained in any law, a person issuing a policy of insurance u/s 95 shall be liable to indemnify the person or class of persons specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of persons.

6. I, therefore, allow this appeal and modify the interim award of the Motor Accidents Claims Tribunal in relation to Respondent No. 4 to the effect that it would be liable to pay the interim compensation to the extent of Rs. 15,000/- to Daulat Singh and Gyan Kanwar, claimants-Respondent Nos. 1 and 2.