

(2004) 10 RAJ CK 0021

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 398 of 1996

Ram Lal

APPELLANT

Vs

Hasti Mal

RESPONDENT

Date of Decision : 04-10-2004

Acts Referred:

Motor Vehicles Act, 1939 — Section 95
Motor Vehicles Act, 1988 — Section 149, 149(2), 168(1)

Citation : (2005) 3 CivCC 155 : (2005) 1 RLW 630

Hon'ble Judges : Prakash Tatia, J

Bench : Single Bench

Advocate : Rajesh Panwar, for the Appellant; Anil Bhandari and M.N. Lodha and R.K. Mehta and Manoj Bhandari for Insurance Company, for the Respondent

Judgement

Prakash Tatia, J.—By these two appeals the award passed by the Motor Accident Claims Tribunal, Pali (hereinafter referred to as "the Tribunal") in Claim Case No. 103/89 has been challenged. The Tribunal awarded compensation of Rs. 1,97,000/- to the claimants in the said claim. By filing S.B.C.M.A No. 398/1996, the owner of the vehicle challenged the award because the Tribunal exonerated the Insurance Company from the liability of reimbursement of the claim amount beyond the statutory limit by holding that the United India Insurance Company shall be liable to pay only Rs. 15,000/- and not entire amount. In Appeal No. 467/1995 the claimants challenged the award as the Tribunal has not awarded the entire claim as claimed by the claimants and also challenged the finding of the Tribunal fixing limited liability of the said Insurance Company.

2. Brief facts of the case are that on 12th May, 1989, the deceased Kamlesh Kumar was going from Village Rani to Gundoj in Jeep No. RRT-6945. Devendra Kumar was the driver of the vehicle and because of his rash and negligent driving, the accident occurred and in that accident, the said Kamlesh Kumar died. Ram Lal, appellant in S.B.C.M.A. No. 398/1996, was the owner of the vehicle at the relevant time. The Jeep was insured with the respondent United India

Insurance Company. The deceased was of the age of 27 years only and he was doing the business of Gold Smith at Bombay. He was also an income tax assessee and was unmarried. His parents, brother and sister submitted the claim petition claiming compensation of Rs. 4,72,000/-. The claimants submitted in the claim petition that the deceased was earning Rs. 2,200/- per month out of which he used to deposit Rs. 1,000/- in his bank account and he was sending Rs. 1,000/- or even Rs. 1,200/- to the claimants because the deceased used to incur expenditure of Rs. 200/- only for himself as he was residing at Bombay with his relative. The claimants, submitted that because of the death of Kamlesh Kumar, they suffered loss of income of Rs. 1,200/- per month. The claimants further claimed certain compensations, which are not very much relevant for the purpose of deciding these appeals.

3. So far as the negligence in driving of vehicle by the driver-Devendra Kumar is concerned, it is not seriously in dispute in these appeals. The thrust of the argument of learned counsel appearing for the owner of the vehicle is that the respondent-Insurance Company is liable to pay the entire compensation amount. According to counsel for the owner of the vehicle, the Insurance Company took additional premium and, therefore, the entire risk of the passengers traveling in the taxi is covered under the insurance policy issued by the Insurance Company, therefore, the Insurance Company is liable to pay the entire compensation amount and liability is not limited as provided u/s 95 of the Motor Vehicle Act, 1939. Learned counsel for the appellant further submits that even if it is held that the liability of the insurance Company is limited even then, in view of the various judgments of the Hon"ble Apex Court and of this Court, the Insurance Company is liable to pay the full-compensation to the claimants. The Insurance Company may be permitted to recover such amount from the owner of the vehicle for which the Insurance Company was not liable as per law. The said argument advanced by learned counsel for the appellants- claimants are seriously contested by both the learned counsels for the Insurance Company.

4. First of all, it is to be seen whether the Insurance Company has charged additional premium to cover the unlimited liability of the passengers of the vehicle? According to learned counsel for the owner of the vehicle, the Insurance Company charged basic premium of Rs. 180/- whereas the tariff provides the basic premium of Rs. 150/- only. By this, the Insurance Company charged Rs. 30/- in addition to the basic premium and, therefore, the Insurance Company cannot take benefit of liability limited by the Section 95 of the Act of 1939.

5. I do not find any force in the submission of learned counsel for the owner of the vehicle. From the perusal of cover note, Ex. A-1, it is clear that the cover note issued by the Insurance Company clearly shows that the Insurance Company charged the premium to cover the risk of six passengers by charging premium of Rs. 72/-, Rs. 12/-for each passenger. It is not in dispute that this is normal charge to cover risk of the passengers to extant of limited liability only. For charging amount to cover risk beyond statutory limits, there is separate

Column in the cover note itself. Since no additional amount has been charged to cover the additional risk, therefore, said column is left blank in the Ex. A-1. In view of above it is proved that the Insurance Company has not took additional premium to cover additional risk of the passengers traveling in the Jeep. For the sake of argument, if it is presumed that the Insurance Company has charged Rs. 150/- against basic premium for the policy in place of Rs. 150/-, which is the tariff for basic premium even then this excess amount cannot be adjusted so as to cover the increased liability of the passengers simply because the acceptance of any amount in particular head, rightly or wrongly, knowingly or unknowingly, cannot be adjusted as per the wishes of one party only. In view of above facts, since insurer has not took any additional amount to cover additional liability of the passengers, the insurer has no ultimate liability to pay the entire amount of the compensation. In view of the above, the tribunal was right in holding that the Insurance Company is liable to pay the compensation up to the extend of Rs. 15.000/- only.

6. Next question is that, whether the Insurance Company can be directed to pay the entire compensation amount despite the fact that insurer has not covered the risk of the passengers beyond limits provided in the statute. Both the counsel by relying upon the various judgments advanced their arguments in support of their contentions.

7. I considered the submissions of learned counsel for the parties. Learned counsels for the Insurance Company heavily relied upon the C.M. Jaya's case (supra), which was decided by the larger Bench of the Hon'ble Supreme Court on 17th Jan., 2002. The relevant portion from the C.M. Jaya's case (supra), is required to be quoted here, which reads as under:-

"In the case of insurance company not taking any higher liability by accepting a higher premium for payment of compensation to a third party, the insurer would be liable to the extent limited u/s 95(2) of the Act and would not be liable to pay the entire amount."

8. The Division Bench of this Court, in the case of New India Assurance Company Ltd. v. Rajasthan State Road Transport Corporation and Anr., decided on 3rd Feb., 2003 (Supra), considered the C.M. Jaya's case (supra) and the Division Bench also considered the case of Cheruvakkara Nafeessu (AIR 2000 SCW 4535), and thereafter held as under: -

"It is true that the decision in case of Cheruvakkara Nafeessu (supra) has not been referred to in C.M. Jaya's case (supra), but in the realm of precedents, it is well settled that the smaller bench decisions of Supreme Court should give way to the larger bench decisions of Supreme Court, even if the former judgment is not referred to the later. It is only where an earlier larger bench decision is contrary to a judgment rendered by the smaller bench and the smaller bench has not taken note of the decision of the larger bench that for former judgment can continue to be a binding precedent notwithstanding a contrary decision of the

smaller bench but vice versa is not true."

and ultimately held as under:-

"Accordingly, in our opinion, there is no room for further contention before this Court in view of the decision in C.M. Jaya's case (supra), that the insurance company may be made liable to make payment of entire amount of compensation arising out of damages to the property in excess of statutory liability where no higher amount is accepted by accepting a higher premium and thereafter the insurance company may recover the same from the insured."

9. After the above Division Bench judgment of this Court, Hon"ble Supreme Court in the case of Oriental Insurance Co. Ltd. Vs. Shri Nanjappan and Others, while considering the question whether the Insurance Company can be directed to pay initially, the entire compensation amount to the claimants in the cases where the Insurance Company proved that their liability is limited and not unlimited, the Hon"ble Supreme Court held that the Insurance Company, even in that situation, is liable to pay the entire amount of compensation to the claimants. It is true that in this case C.M. Jaya's case (supra), is not referred.

10. In another judgment, National Insurance Co. Ltd. Vs. Baljit Kaur and Others, the Hon"ble Supreme Court, again took the same view and directed the insurance Company to satisfy the award by paying amount to the claimants with liberty to the Insurance Company to recover the amount from the owner without Filing a separate suit after holding that the risk of passengers carried for hire or reward or gratuitously in a goods vehicle is not covered and the Insurance Company is not liable for compensation on account of death of any such passenger traveling in the goods vehicle.

11. The Hon"ble Supreme Court again in the case of National Insurance Co. Ltd. v. Swaran Singh and Ors. specifically considered the same question and after considering the judgment of C.M. Jaya's case held that Sub-section (5) of Section 149, which imposes a liability on the insurer, must also be given its full effect. The Hon"ble Supreme Court very specifically held as under: -

"Sub-section (5) of Section 149 which imposes a liability on the insurer must also be given its full effect. The insurance company may not be liable to satisfy the decree and, therefore, its liability may be zero but it does mean that it did not have initial liability at all. Thus, If the insurance company is made liable to pay any amount, it can recover the entire amount paid to the third party on behalf of assured. If this interpretation is not given to the beneficent provisions of the Act having regard to its purport and object, we fail to see a situation where beneficent provisions can be given effect to. Sub-section (7) of Section 149 of the Act, to which pointed attention of the court has been drawn by learned counsel for the petitioner, which is negative language may now be noticed. The said provision must be read with Sub-section (1) thereof. The right to avoid liability in terms of Sub-section (2) of Section 149 is restricted as has been discussed hereinbefore. It is one thing to say that the insurance companies are

entitled to raise a defence but it is another thing to say that despite the fact that its defence has been accepted having regard to the facts and circumstances of the case, the Tribunal has power to direct them to satisfy the decree at the first instance and then direct recovery of the same from the owner. These two matters stand apart and require contextual reading."

(Italics and emphasis is supplied)

12. In the above Swaran Singh's case, the Hon'ble Apex Court ultimately held on this point in Paras 96 & 97, which are as under: -

"96. It is, therefore, evident from the discussions made hereinbefore that the liability of the insurance company to satisfy the decree at the first instance and to recover the awarded amount from the owner or driver thereof has been holding the field for a long time.

97. Apart from the reasons stated hereinbefore the doctrine of stare decisis persuades us not to deviate from the said principle."

13. The Hon'ble Supreme Court further held in this case in Para 99 of the Judgment, which is as under: -

"We may, however, hasten to add that the Tribunal and the court must, however, exercise their jurisdiction to issue such a direction upon consideration of the facts and circumstances of each case and in the event such a direction has been issued despite arriving at a finding of fact to the effect that the insurer has been able to establish that the insured has been able to establish that the insured has committed a breach of contract of insurance as envisaged under Sub-section 00 of Clause (a) of Sub-section (2) of Section 149 of the Act, realise the awarded amount from the owner or driver of the vehicle, as the case may be; in execution of the same award having regard to the provisions of Sections 165 & 168 of the Act. However, in the even, having regard to the limited scope of inquiry in the proceedings before the Claims Tribunal it had not been able to do so, the insurance company may initiate a separate driver of the vehicle or both, as the case may be. Those exceptional cases may arise when the evidence becomes available to or comes to the notice of the insurer at a subsequent stage or for one reason or the other, the insurer was not given opportunity to defend at all. Such a course of action may also be resorted when a fraud or conclusion between the victim and the owner of the vehicle is detected or comes to knowledge of the insurer at a later stage."

14. Further it will be worthwhile to quote the sub-para (x) of Para 102 of the judgment delivered in the Swaran Singh's case (supra):-

"(x) Where on adjudication of the claim under the Act the Tribunal arrives at a conclusion that the insurer has satisfactorily proved its defence in accordance with the provisions of Section 149 (2) read with Sub-section (7), as interpreted by this court above, the Tribunal can directed the insurer is liable to be reimbursed by the insured for the compensation and other amounts which it has

been compelled to pay to the third party under the award of the Tribunal. Such determination of the claim by the Tribunal will be enforceable and the money found due to the insurer from the insured will be recoverable on a certificate issued by the Tribunal to the Collector in the same manner u/s 174 of the Act as arrears of land revenue. The certificate will be issued for the recovery as arrears of land revenue of Section 168 of the Act the insured fails to deposit the amount awarded in favour of the insurer within thirty days from the date of announcement of the award by the Tribunal."

15. In view of the subsequent decision of the Hon"ble Supreme Court and particularly in view of the decision given in Swaran Singh's case (supra), after considering C.M. Jaya's case (supra), the different view taken in any other case cannot hold the field.

16. At this stage, I may refer that this court's judgments delivered in the cases of (i) United India Insurance Co. Ltd. Vs. Neela Devi and Others, (ii) Oriental Insurance Co. Ltd. Vs. Methi and Others, (iii) Kalia Devi and Others Vs. Kishan Lal Meena and Another, (iv), United India Insurance Co. Ltd. v. Geeta Devi and Ors. (2003 (3) DNJ (Raj.) 1434), (by me) and (v) United India Insurance Co. Ltd. v. Ashok Kumar and Ors. (2001 WLC (Raj.) UC 753), & Branch Manager, National Insurance Company Ltd. v. Nanda and Ors. (2004(2) DNJ (Raj.) 587), in which the same view was taken that even in cases where the Insurance Company has limited liability or has proved defence under Sub-section 2 of Section 149 of the Act, still the Insurance Company can be directed to pay the compensation amount to the claimants.

17. It may be noticed that contract of insurance of a motor vehicle has its own unique feature. It is a contract between owner of the vehicle and insurer. By this contract insurance company undertakes to reimburse the damages and liability of the insured. The statutory provision, i.e., Section 168(1) of the Motor Vehicle Act, 1988, provides that the claimant, a third party and stranger to the insurance contract may, though has no privity of contract, either with the insurer or with the insured may directly file claim petition against the insurer also for getting compensation from insurer directly and an award can be passed against the insurer directing the insurer itself to pay the compensation to the claimant instead of passing award only against wrongdoer and his employer, who is victoriously liable for the damages. Necessities of the insurance contract is required to be completed by the insurance contract is required to be completed by the insurer and there is no role of the claimant in this. Consideration in form of premium is paid by the insured to insurer. Despite all these insurance of motor vehicle in one way covers the risk of the owner of the vehicle but at the same time passes on benefit of the contract to the victim. The beneficiary of the insurance may be any person; insured, or victim or his successors. The right to recover compensation from insurance company is given to claimant-third party by statutory provisions of law by enacting social beneficial legislation is a valuable right of the person who suffered damages by rash and negligent driving

of the motor vehicle on public places. Such person is statutory beneficiary of insurance contract. Therefore, any breach committed by the insurer, of the condition of the insurance policy may absolve the insurance company from paying compensation to the party to contract, i.e., insured but it may not be a good ground for depriving a statutory beneficiary of insurance contract from his right to recover the compensation from the insurer. In case, breach of policy condition is committed by the insured then it is breach committed by the insured only and not by the claimant. There is no reason for depriving claimant from the benefit of insurance coverage only because of the wrong which was not committed by him. The breach of policy condition by the insurer gives a cause of action to the insurer against the insured for reimbursement of the loss which the insured suffered due to wrong committed by the insured. Unless and until the insurer suffers loss (by paying compensation to the claimant-third party), no cause of action accrues to the insurer to claim reimbursement of any amount from insured. Therefore, once there is valid contract of insurance, the insurer cannot avoid its liability to pay compensation to third party. If view is taken otherwise, then without there being any fault of the beneficiary and because of fault of insured, the beneficiary will be deprived from his valuable right because of none of his fault. The view, that the insurer shall have initial liability to pay the compensation to claimant even in case where insurer proved his defence to avoid his liability, it will not only be just and proper but it will sub-serve the purpose of the act.

18. So far as award of compensation is concerned, admittedly the deceased was of the age of 27 years only. He was working as Gold Smith in Bombay. He was an income tax assessee. He was sending some money to his parents, which is clear from the evidence of the claimants. The deceased was also saving the money and was also sending money to the claimants, which stands fully proved from the bank receipts Ex.7 to Ex.11 and Ex.12 and oral evidence available on record. Evidence on record clearly proves that the deceased was sending Rs. 1,000/- to his parents. The Tribunal observed that the plea of the claimants that the deceased was carrying on with a petty amount of Rs. 200/- to Rs. 300/- per month only, that too, at Bombay, cannot be believed.

19. So far as this finding is concerned, I do not think that the Tribunal has committed any mistake and contention of the claimants that the deceased was incurring expenditure of Rs. 200/- only for himself at Bombay is liable to be rejected, as highly impossible.

20. It will be worthwhile to mention here that the Tribunal did not consider the future prospects of the earning of the deceased. At the same time, there is equal force in the submissions of learned counsel for the respondent that the deceased was unmarried and in the course of time, after his marriage, he would not have sent more money to his parents and his brother and sister. It is also submitted that the claimants are father and mother, therefore, the multiplier of 15 is on higher side because the multiplier should have been applied looking to the age of

the claimants and not looking to the age of the deceased.

21. It appears that the accident occurred in the year 1989. The parents are still alive and about 15 years have already passed, therefore, so far as the multiplier of 15 is concerned, it cannot be said to be on higher side as time has proved that they are entitled to get the benefit of income of deceased for at least 15 years.

22. The Tribunal has certainly committed illegality in not giving benefit of future prospects of earnings of the deceased to the claimants. The deceased was of the age of 27 years only and he was working as Gold Smith at Bombay and he was income tax assessee at his young age. His future earning prospects cannot be taken as of a business at small place. The future prospects of earning at Bombay is much more brighter. In view of the important facts; the age of deceased, that he was income tax assessee, he was sending money to his parents while living at Bombay, therefore, future prospects of earning of the deceased should have been taken into account by the Tribunal. It is relevant to mention here that since the claimants already lived for more than 15 years, the multiplier of 15 applied by the Tribunal on the date when it was applied, might have been a proper multiplier, but compensation awarded to the claimants of Rs. 1,97,000/- in total cannot be said to be adequate compensation in such peculiar circumstances particularly looking to the business of the deceased, place of the business and longevity which the claimants have already proved by surviving. It is also true that the deceased would have to incur some expenditure for himself and more after expansion of his family, after his marriage, therefore, instead of increasing the future prospects by 50% of the income of the deceased, it will be appropriate that 25% of the income be added in the income of the deceased to award a just and proper compensation for the claimants as remaining 25% would have needed for deceased family after his marriage.

23. The Tribunal assessed monthly income of the deceased as Rs. 1,500/-. This income is required to be increased by adding 25% on account of future prospects of earning of the deceased. Therefore, total monthly income of the deceased for the purpose of computing the loss to the claimants after adding the future prospects of earning comes to Rs. 1,875/-. After giving deduction of the amount which the deceased would have incurred for himself, the claimants' benefit comes to Rs. 1,250/- per month. The net loss to the claimants comes to Rs. $1250 \times 12 \times 15 = 2,25,000/-$. The Tribunal awarded compensation of Rs. 15,000/- for pain and sufferings and for funeral expenses Rs. 2,000/-. The total award, thus comes to Rs. 2,42,000/- for which the claimants are entitled in place of total compensation of Rs. 1,97,000/- awarded by the Tribunal. The claimants shall also be entitled for the interest @ 9% per annum over the enhanced amount from the date of filing of the claim petition till its realization.

24. In the light of the above discussions, S.B. Civil Appeal No. 39871996 is dismissed and S.B. Civil Misc. Appeal No. 46771995 is partly allowed. It is held that the claimants are entitled for total compensation of Rs. 2,42,000/- in place of Rs. 1,97,000/-. Tribunal was right in holding that the Insurance Company is

liable to pay Rs. 15,000/-to the claimants and the owner and driver of the vehicle are liable to pay the compensation as awarded by the Tribunal. The respondent-Insurance Company is directed to pay the entire award amount (excluding the amount already paid or deposited by them) to the claimants by depositing it in the Tribunal within a period of two months from today. The respondent-Insurance Company shall have a right to recover the excess amount paid by them to the claimants from the owner of the vehicle by initiating proceedings in the Tribunal itself without filing any separate suit in the light of the decisions of the Hon"ble Supreme Court.