
(1985) 04 DEL CK 0039

In the Delhi High Court

Sagar Chand Phool Chand Jain

APPELLANT

Vs

Santosh Gupta and Others

RESPONDENT

Date of Decision : 10-04-1985

Acts Referred:

Citation : (1986) 1 ACC 263 : (1985) 2 ACC 43 : (1985) ACJ 585

Hon'ble Judges : S.B. Wad, J

Bench : Single Bench

Judgement

S.B. Wad, J.—Deceased Manohar Lal Gupta was a contractor and general order supplier, He was also running tea shop. He was traveling in a car bearing No. DLJ 3675. The car was driven by respondent no 1 Kartar Singh in the Claimant's Petition in the course of his employment with M/s Sagar Chand Phool Chand Jain, Respondent No. 2. The car was going from Najafgarh towards village Nivada. Manohar Lal Gupta was sitting on the rear seat. Two other persons, Shri Tek Chand and Shri Preet were sitting on the front seat with the driver-respondent no. 1. It is found by the Tribunal that the driver was driving at a very high speed and in a reckless manner and while approaching Kakrola bridge hit into the drums on the left side of the road. The driver could not control the vehicle and, Therefore hit it with the tree on the other side. The passengers were seriously injured. Manohar Lal Gupta and other injured were taken to Najafgarh Public Health Centre, where Dr. A.D. Dutta declared Manohar Lal Gupta dead. At the time of his death Manohar Lal Gupta was 32 years old. He was survived of his wife and five minor children from the age of two months to 9 years.

2. The Tribunal found that the evidence of the eye witnesses Shri Hari Pershad PW4 and Tek Chand PW was quite reliable and on that basis the version of the accident as put by the claimants was established. The Tribunal further found that there was no counter version on the record produced by the respondents to hisprove the same. The Tribunal also noted that the respondents did not produce the driver namely respondent no. 1 who was the most vital, witness. On the assessment of the evidence on record the Tribunal found that respondent no. 1

was driving the car in a rash and negligent manner resulting in the accident in which Manohar Lal Gupta was killed. The Tribunal further held that the respondents did not produce any evidence to show that respondent no. 1 was not driving the vehicle in the course of his employment with respondent no. 2. The Tribunal, Therefore, held respondent no. 2 vicariously liable for the loss of life of the deceased. The Tribunal, however, held that Manohar Lal Gupta being a gratuitous passenger there was no liability for respondent no. 3 Insurance Company. On the quantum of the petitioners claimants that the monthly income of the deceased was Rs. 700/-. After deducting a sum of Rs. 250/- as his "Pocket Money" the Tribunal assessed the monthly dependency at Rs. 450/- or 5,400/- annually. On consideration of the history of longevity in the family of the deceased, the Tribunal held that the Manohar Lal Gupta could have lived at least up to the age of 65 years but the Tribunal held that the multiplier of 14 would be appropriate in the case. After making deductions for lump sum payments, the Tribunal awarded the compensation of Rs. 64,260/-. The Tribunal did not allow any interest on the said amount.

3. The cross-appeals were filed, one by the claimants, for the enhancement of compensation and the other by respondent no. 2, the owner. Considering the evidence on record, the counsel for respondent no. 2, the owner could not advance any convincing arguments as to why the findings of fact recorded by the Tribunal should not be accepted. I have gone through the evidence on record and I am satisfied that the Tribunal was right as regards its findings on the version of the accident and also as regards; the fact that respondent no. 1 driver committed the said accident during the course of his employment with respondent no. 2, the owner. It must be particularly noted that respondent no. 2 did not produce the driver who was the crucial witness in the case. The only question which was seriously argued was whether respondent no. 2, the owner, was liable or whether Insurance Company, respondent no. 3 was liable.

4. The learned Counsel for the Insurance Company has relied upon the judgment of the Supreme Court in Pushpabai Purshottam Udeshi and Others Vs. Ranjit Ginning and Pressing Co. (P) Ltd. and Another, . According to the counsel the ratio of the Supreme Court judgment is that u/s 95 of the Motor Vehicles Act, 1939 the liability of Insurance Company is restricted to a statutory liability u/s 95 and no more. If the risk to the passenger is to be covered it must be done by a special contract. According to the counsel, in the present case, the contract of insurance did not specify risk to the passengers nor any additional payment of premium was received on that account. On the other hand, the submission of the owner of the car is that the Supreme Court was only concerned with the simple question whether the liability of Insurance Company was unlimited with regard to risk to the passengers or was limited only to Rs. 50,000/- as stated in the contract. The learned Counsel for the claimants has submitted that the very concept of a comprehensive policy includes the risk to a passenger gratuitously carried. A special contract is necessary for limiting the liability of the insurance company. He has further submitted that the statutory Tariff Advisory Committee

have by their instructions dated 13th March, 1978 had given directions to Insurance Companies in regard to liability of insurance company in respect of the passengers carried in a private car. It is submitted by the counsel that the said instructions mandatorily require incorporation of a following clause in the contract, viz., "death of or bodily injury to any person including occupants carried in the Motor Car provided that such occupants are not carried for hire or reward." It is then pointed out that the Tariff Advisory Committee had directed that "all existing policies should be deemed to incorporate this amendment automatically" and the above decision is brought into force with effect from 25th March, 1977." A copy of the said instructions of the Tariff Advisory Committee is produced and I have taken the same on record. The further submission of the counsel is that these instructions have a statutory force and the insurance Companies including the respondent No. 3 in this case are bound by the same.

5. The decision of the Supreme Court makes it clear that although there is no statutory liability for the insurance company to pay compensation to a passenger, a contract of insurance can provide otherwise. The Supreme Court has traced history of the Section 95 of the Act which was amended by Act no. 56 of 1969. Section 95 incorporates the provisions of Section 203(4) of the Road Traffic Act, 1960 passed in England. The Supreme Court has also noted that the Motor Vehicles (Passenger Insurance) Act of 1971 made insurance cover for the passenger liability compulsory. But absence of the statutory provisions covering passenger liability is made good in India by the instructions of the Tariff Advisory Committee which is a statutory body. The instructions of the Tariff Advisory Committee referred to above have come into operation with effect from 25th March, 1977. It is interesting to note that that exactly is the date on which the judgment in Pushpabai (supra) was pronounced by the Supreme Court. The business of life insurance in India is now nationalised. The Insurance Companies such as respondent No. 3 are now the instrumentality of the State. They are, Therefore, bound by the instructions of the Tariff Advisory Committee. The policy in this case was taken out in 1970 and the accident took place when the policy was a valid policy. By the time the case came up for decision before the Tribunal on 31st May, 1979, the said instructions of the Tariff Advisory Committee had already come into operation. The only question is whether the policy in the present case can be treated as an "existing policy" within the meaning of the said statutory instructions. In other words the question is whether respondent No. 3 as an instrumentality of the State could be fastened with a liability in the year 1979 when under the instructions of the Tariff Advisory Committee i.e. 13th March, 1978 such a liability to the occupants/passengers was an established fact. I am inclined to hold that respondent No. 3, after the said instructions cannot avoid this liability.

6. But apart from the instructions of the Tariff Advisory Committee the contract itself provides positive indication that the risk of occupants/ passengers is covered by the policy. The contract describes itself at the top as a contract for "PRIVATE CAR (COMPREHENSIVE)". Section 2 of the Contract provides for the

liability to third party. This para says that the Company will Indemnify the Insured in the event of accident caused by or arising out of the use of the Motor Car against all sums including claimant's costs and expenses which the Insured shall become legally liable to pay in respect of death of or bodily injury to any person but except so far as is necessary to meet the requirements of Section 95 of the Motor Vehicles Act, 1939 the Company shall not be liable where such death or injury arises out of and in the course of the employment of such person by the Insured. Apart from these provisions the Contract itself provides for general exceptions where the Company shall not be liable to pay. These exceptions do not include one relating to the occupants/passengers. In the schedule attached to the Insurance Policy it is stated that the policy would cover "Driver; Any of the following:

(a) ...

(b) "Any person."

7. The policy is a comprehensive policy for Rs. 640/- out of the total sum of Rs. 679/- covering risk for driver, fire, riots etc. The bare reading of the Insurance Policy with its schedule demonstrate that while charging a sum of Rs. 640/- for a comprehensive policy, the Company has undertaken to cover a risk to "any person." The clause in Section 2 referring to the liability u/s 95 is a mere repetition of the contents of Section 95 but where after reproducing Section 95 the policy speaks of the risk to "any person" it must be held that the occupants/passengers are also covered by the policy. During the time of the arguments it was argued by the counsel for the claimants that there are different types of policies but there was no separate provision under the instructions of the Tariff Advisory Committee providing for separate premium to cover occupants passengers before 1978. He further submitted that very valuable and important instructions effecting the policy holders are not published either by the Tariff Advisory Board or by the nationalised Insurance Companies. The counsel for the Insurance Company was, Therefore, called upon to produce all the relevant instructions from the Traffic Advisory Board and the various types of policies taken out by the policy holders before 1978 and thereafter. The counsel could not produce the relevant material in particular he could not produce a single policy where, in a comprehensive policy special premium is charged to cover the risk of occupants/passengers. This would negatively establish that the nationalised Insurance Companies did not enter into special contract of Insurance to cover occupants/passengers and that the comprehensive policy covers all the risks and liabilities to which the insured is liable. 1978 instructions of the Tariff Advisory Committee, are in the nature of the express clarification of the legal position already obtaining. I, Therefore, hold that respondent No. 3, the Insurance Company is liable to pay compensation. The owner can rightly say that under the policy, a company was bound to pay to the claimants for the death of the passengers. It is clear from the contract of Insurance that liability is not limited to any amount, Therefore, the Insurance Company has unlimited liability. In

other words, respondent No. 3, Insurance Company will have to pay entire amount of compensation awarded by the Tribunal. The appeal of respondent No. 2 owner is, Therefore, to be accepted.

8. As regards quantum of compensation there is merit in the claimants' submission for enhancement of compensation. The reduction in compensation due to lump sum payment has no basis in fact for economic realities. Inflation takes away most of the value of compensation as years passed. I would, Therefore, not permit any deductions for lump sum payment. The learned Judge has rightly held that deceased would have contributed about Rs. 5,400/- annually to his family. That was on the basis of the income at the time of his death. Future possibilities of enhanced income are not taken into account by the Tribunal. However, even we proceed on the basis of Rs. 5,400/- it is not understandable as to how the Tribunal has applied the multiplier of 14. There is no Explanation for it nor any reason stated nor any authority referred by the Tribunal. The Tribunal has itself found that the life expectancy of the deceased could be over 65 years and at the time of his death he was only 32 years. That means that the deceased would have contributed Rs. 5,400/- to his family for atleast up to his age of 65 years. The amount of compensation, Therefore, cannot be brought down by an arbitrarily multiplier of 14. The compensation amount, Therefore, comes to Rs. 1,78,200/-. This Court as well as Supreme Court has allowed interest of the amount of compensation @ 9% per annum even when there was no contract for the payment of interest.

9. Considering the fact that the accident had taken place in 1977 and the claimants family viz., widow and five minor children were not paid any compensation for the last 14 years, I find every justification to award interest @ 9% per annum from the date of the application for compensation before the Tribunal till its realisation. I may note that out of six claimants four were daughters between the age of two to nine at the time of accident. Their education and marriage expenses would have to be taken into account while awarding the compensation. So is with regard to sixth claimant namely the son who was two month old at the time of the accident. For the reasons stated above, this appeal (FAO 142/79) is dismissed and the claimants' appeal CM 66/80 (Cross-objections) is allowed with the enhanced compensation and the interest as mentioned above. They will also be entitled to the costs.