

(1985) 09 RAJ CK 0087
In the Rajasthan High Court

Sampat Lal and Oriental Fire and General Insurance Co. Ltd.	APPELLANT
Vs	
Geeta Devi and Others	RESPONDENT

Date of Decision : 10-09-1985

Acts Referred:

Motor Vehicles Act, 1988 — Section 95(2)(b)(ii)(4)

Citation : (1986) 1 ACC 563

Hon'ble Judges : P.C. Jain, J

Bench : Single Bench

Judgement

P.C. Jain, J.—This judgment will dispose of two appeals viz. S.B. Civil Misc. Appeal No. 29 of 1983 and S.B. Civil Misc. Appeal No. 63 of 1983. These appeals arises out of an award passed by the Accident Claims Tribunal, Udaipur, on 31-7-1982.

2. Aggrieved by the award, appeal No. 29 of 1983 has been filed by Sampat Lal, owner of the bus RJI 3515 and Ramjiwan the driver of the vehicle. Another Appeal No. 63 of 1983 has been filed by the insurer of the said vehicle.

3. Shri N.P. Gupta assailed the finding of the learned claims tribunal and contended that the finding on issue No. 1 given by the tribunal is not correct. The learned Counsel also disputed the amount of compensation awarded by the Claims Tribunal in favour of the claimants who are the widow of the deceased and two minor sons. Shri Gupta submits that there is no evidence on record to prove rash and negligence on the part of the driver of the bus. Learned Counsel for the claimants submitted that the award of the claims tribunal is based on evidence on record and the finding arrived at by the learned Claims Tribunal is perfectly justified.

4. I have given my thoughtful consideration to the respective contentions made by the learned Counsel for the parties and perused the record. In order to prove issue No. 1, the applicants have examined Chunilal AW 1, Mangi Lal AW 2, Chhoga Lal AW 3, Ramchandra AW 7 and Madan Lal AW 8, all these witnesses

were travelling in the bus. The bus RJI 3515 was carrying a Barat on 22-2-1977 and all these witnesses were in the bus. They have deposed that when the bus was going on from Gangapur to Bhilwara at one point the vehicle took a sharp turn even when it was going on with a high speed, consequent, whereof the accident had occurred. In the accident Ganpat Lal died. I have no reason to disbelieve the testimony of these witnesses. The finding of the learned Claims Tribunal is based on the testimony of these witnesses. I, therefore, find no force and substance in the submissions of the learned Counsel for the appellant and affirmed the finding of the learned tribunal that the accident occurred on account of rash and negligent acts on the part of the driver.

5. The learned Counsel for the appellant submitted that the amount of compensation awarded in this case is highly excessive. The learned Claims Tribunal assessed the dependency amount at Rs. 200/- per month and adopted the multiplier to be 15. The global compensation was assessed at Rs. 36,000/-. This amount is certainly on a very high side looking to the dependency amount of Rs. 200/-. In *Automobile Transport Service (Rajasthan) Private Ltd. v. Deva Lal* 1977 ACJ 150 a Division Bench of this Court has held that the sum to be awarded as damages should be equal to cost of purchasing an equity of the relevant amount for the relevant period. This amount if put in the bank, will give an interest which would be more than Rs. 300/- per month. Thus, it would be in excess to the dependency amount of Rs. 200/-. Looking from this angle, the amount of Rs. 36,000/- is on a higher side. In the circumstances of the case, I am of the opinion that if multiplier 10 is adopted it will meet the ends of justice. The amount, on being calculated with 10 multiplier will come to Rs. 24,000/- In my opinion, Rs. 24,000/- is just and proper compensation in the facts and circumstances of the case.

6. Appeal No. 65 of 1983 filed by Insurer of the Vehicle:

On behalf of the appellant Shri B.L. Panwar appeared and submitted that the award dated July 31, 1982, passed by the learned Claims Tribunal, Udaipur, is contrary to law. He submitted that learned Tribunal while deciding issue No. 5 has completely lost sight of Section 95 (2)(b)(ii)(4) of the Motor Vehicles Act. He further submitted that the insurer, in the written statement had taken categorical defence that the liability of the insurer is limited to Rs. 5,000/- only as the bus in question was registered to carry more than 30 passengers but not more than 60 passengers. He also submitted that deceased Ganpat Lal was admittedly a passenger in the bus as such the statutory liability of the Insurer was only upto Rs. 5,000/-. Controverting his arguments, learned Counsel for the claimants and for the owner of the bus submitted that in the instant case the Insurance Company failed to produce the policy to show that its liability in respect of the accident was limited, consequently the Insurance Company must be held liable for the full amount. The learned Counsel further submitted that the remedy of the Insurer against the insured is provided in Section 96 of the Act. Section 95 (2)(b)(ii)(4) which is relevant for the disposal of appeals reads as under:

(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:

(i) in respect of persons other than passengers carried for hire or reward, a limit of fifty thousand rupees in all;

(ii) in respect of passengers:

(1) a limit of fifty thousand rupees in all where the vehicle is registered to carry not more than thirty passengers;

(2) a limit of seventy-five thousand rupees in all where the vehicle is registered to carry more than thirty but not more than sixty passengers;

(3) a limit of one lakh rupees in all where the vehicle is registered to carry more than sixty passengers; and

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

... ..

Shri N.P. Gupta, learned Counsel of the owner of the vehicle supporting his submission referred to Motor Owner's Insurance Co. Ltd. v. Jadavji Keshavji Modi and ors. 1981 ACJ 507. On the basis of that authority, the learned Counsel submits that the liability of the Insurance Company is not limited to the extent contended by the counsel for the Insurer but the liability will extend to a sum of Rs. 50,000/-. His submissions are that Sub-clause (4) of Section 95(2)(b)(ii) merely provides minimum liability beyond which the Insurance Company cannot enter into a contract of insurance, otherwise the liability of Insurer is to the extent provided in Clauses 1, 2 and 3 of Section 95(2)(b)(ii) of the said Act.

7. Shri Gupta further puts reliance on National Insurance Company Ltd.'s Case 1985 ACJ 577, on the basis of this authority the learned Counsel submits that in that case 19S1 ACJ 507 (supra) which is an authority of the Hon'ble Supreme Court, was considered and the learned Division Bench observed that in view of the binding effect of that authority, the provisions contained in Sub-clause (4) of Clause (b)(ii) of Sub-section (2) of Section 95 must give way to the interpretation given by the Supreme Court in the above case. In National Insurance Company's case referred to above the learned judges of Patna High Court have taken the view that the expression in Sub-clause (2) controls the claims arising under Clause (a) as well as Clause (b) and the decision of the Supreme Court would have a binding effect falling under Clause (b) of Sub-section (2) as well.

8. In Jugal Kishore v. Ram Singh 1982 ACJ 503, it was observed that in case the Insurer failed to place on record the documentary evidence available with it, the presumption should be drawn against the Insurer and in that case it was held that the Insurer was liable to pay the full amount. It was also held in that case

that the Insurer in such circumstances is to proceed against the Insured u/s 96 Sub-clause (4) of the Act.

9. In *Satyavati Pathak v. Hari Ram* 1983 ACJ 424, it was observed that in case the policy is not produced, the Insurance Company is liable to pay the full amount. The relevant portion of the judgment is reproduced below:

The contract of insurance has not been proved. If there is no insurance contract its liability in respect of the accident must be held for the full amount. The remedy of the insurer if any against the insured is provided in Section 96(4) of the Act. In *Shyamlal and ors. v. New India Assurance Co. Ltd.* and Anr. 1979 ACJ 208 (MP); *National Insurance Co. Ltd. v. Narendra Kumar and Ors.* (1981) ACJ 95 (All.); and, *Oriental Fire and General Insurance Co. Ltd. v. Leelavati R. Adyanthaya and Ors.* 1976 12 DLT 165 it has been held that if the Insurance Company failed to prove the contract of Insurance it must bear the consequences. The insurance company was held liable for the full amount. Section 95(2) of the Act no doubt prescribes the minimum requirement of insurance policy. It is however open to the insurer to cover risk to a larger extent. The insurance company did not prove insurance policy and therefore it must be held that the insurance company is liable for the full amount irrespective of Section 95(2) of the Act.

10. In *National Insurance Company v. Narendra Kumar* 1980 Allahabad 597, a Division Bench of the Allahabad High Court held that where the claimants claimed by way of compensation an amount larger than the amount prescribed under the Act against the insurer, the insured and the driver but the insurance company failed to disclose the amount of insurance by bringing on record the policy, it would not be possible to presume in the absence of any on contract to the contrary, and the Insurance Company would be liable to Rs. 50,000/- was prescribed by the Act.

11. I may observe here that that case was considered in the light of provision of Section 95 Sub-section (2) (a) of the Motor Vehicles Act and not u/s 95 (2)(b) of the said Act,

12. In *Madras Motor and General Insurance Co. Ltd. v. V.D. Balakrishanan* 1982 ACJ 460, the Kerala High Court considered the case of *Motor Insurance Owners Company Ltd. v. J.K. Modi* case (supra) and distinguished the same and held that the liability of the Insurance Company with reference to passenger's risk is restricted to Rs. 5,000/- in view of Section 95 Sub-clause (2)(b)(ii)(4) of the Act.

13. In *New India Assurance Co. v. Mohanlaxmi* 1979 ACJ 400 it was held that where a passenger in a bus met with his death as a result of accident. It was held that the insurer was liable only to the extent of Rs. 5,000/-.

14. In *Noor Mohammed and another v. Phoola Rani and Ors.* 1984 ACJ 518, a Division Bench of the Allahabad High Court while considering a case where a passenger in bus died in an accident held that the Insurance Company was liable

to Rs. 5,000/- only, in view of provision of Section 95(2)(b)(ii)(4) of the Act.

15. In *New India Assurance Co. Ltd. v. Mahmood Ahmad* 1984 ACJ 390, a reference was made to *Motor Owners Insurance Co. Ltd.*'s case and after considering the observations made by their Lordships in that case, the Allahabad High Court held that in case one passenger travelling in the bus dies in an accident, the liability of insurer is not restricted up to Rs. 5,000/-.

16. In *Hamirpur Co-operative Transport Society v. Koshalya Devi* 1983 ACJ 70, the High Court of HP in respect of failure by the Insurer to produce the policy held the liability of the Insurer to the extent of Rs. 5,000/-. The teamed Court held that as regards the liability of the Insurance Company, in case the insurer did not produce the policy of insurance will be limited to statutory limits alone. An adverse inference will have to be drawn that insurance policy did not fully cover the liability of the insured.

17. In *K.R. Sivagani v. Mahoob* 1981 ACJ 399 the liability of the Insurance Company was limited to Rs. 10,000/- for each individual passenger as the accident in that case resulted in death of a taxi passenger.

18. In *Deshraj v. Ramnarain* 1980 ACJ 202, inspite of the fact that the insurer neither filed policy nor defended on any grounds mentioned in Section 96(2). still the liability was held to be limited to the extent of Es. 2,000/- only.

19. In *Makbool Ahmed and Others Vs. Bhura Lal and Others*, bur own High Court laid down that the liability of the Insurance Company for the payment of Compensation will be a statutory one i.e. Rs. 5.000/-. Same has been observed in a unreported case *Gaheemal v. Moomchand* (SBC Misc. Appeal No. 6 of 1982) decided on 20th February 1983. In *Automobile Transport Rajasthan Pvt. Ltd. v. Deva Lal* a Division Bench of our own High Court held that the liability of the Insurer cannot exceed to one i.e. provided as statutory liability unless there is a contract to the contrary. In this judgment the learned Division Bench held that if an injury caused to gratuitous passengers, the Insurance Company is not liable to pay any compensation as such a risk is not required by law to be covered.

20. From the discussions of the various authorities made above, the proposition of law laid down may be classified as follows:

(1) There is no doubt that in a case of gratuitous passenger the Insurance Company is not liable to pay compensation.

(2) The Hon''ble Supreme Court considered and explained the expressions "in all" and "in one accident" appearing in Section 95(2)(a) of the Act. and held that any one accident means accident to any one. The word "accident" is used in the expression in "any one accident" from the point of the view of the claimant and "in all" implies that Insurance Company's liability will extent to a sum of Rs. 20,000/- in respect of death or injuries suffered by each one.

(3) Our own High Court as well as High Courts of Allahabad, Himachal Pradesh,

Kerla, Madras and Orissa have held that the liability of the Insurance Company as regards passengers risk is limited to the extent provided u/s 95(2)(b)(ii)(4).

(4) Some High Court namely High Court of Delhi and have held that in case insurer failed to place on record the documentary evidence a presumption is to be drawn against the insurer and it is to be held that insurer is liable to pay full amount and that if the insurer has any claim, it can proceed against insured u/s 96(4) of the Act.

(5) There is a view of the Patna High Court based on Motor Owners Insurance Company's case wherein the Hon''ble Court has held that the provisions contained in Section 95(2) must give way to the interpretation given by the Supreme Court in that case and observed that a decree for compensation can be passed without limiting the liability to the extent of statutory, one.

(6) The High Courts of Allahabad and Himachal Pradesh have held that even in cases insurance policy is not produced, the liability of the Insurance Company will remain the statutory one. This view stands to some extent in conformity with the view expressed by our own High Court.

21. In view of difference of opinion in the matter referred to above, it is required to be considered in what manner Section 95(2)(b) should be interpreted.

22. In Sheikhpura Transport Co. Ltd. Vs. Northern India Transport Insurance Co., . Their Lordships observed as follows:

The limit of insurer prescribed u/s 95(2)(b) of the Motor Vehicle Act can be enhanced by any contract to the contrary.

23. In view of the aforesaid observations made by the Hon''ble Supreme Court, it makes it abundantly clear that a contract to the contrary i. e. insurance policy of a Motor Vehicle for higher amount over the one prescribed by Section 95(2)(b) of the Act is permissible under the law.

24. A division bench of our own High Court in United India Assurance and Fire General Insurance Co. Ltd. v. Sire Kanwar 1976 ACJ 426, observed that the insurer is not required to cover any liability in respect of passenger carried in a vehicle not run for hire or reward but the insurer can, by contract extend its liability in any respect beyond the requirements of the Act, and, also safeguard its interest fully by providing a term in the policy that it shall be entitled to take over the defence both on its behalf and on behalf of the Insurer even on grounds other than those limited by the Act.

25. In another DB judgment of this Court i e. Automobile Transport (Rajasthari) v. Deva Lal 1976 WLN 783 it was observed that the liability of insurer cannot exceed to one provided in the statute unless there is contract to the contrary. In that case no contract to the contrary was brought to the notice of the Court and the learned Court, therefore, limited the liability of the Insurance Company to the one provided u/s 95(2) of the Act.

26. The Allahabad High Court while considering the intention of the legislature in National Insurance Company's case AIR 1980 397 and in Hamirpur Co-operative Transport Company's case, the High Court of H.P. observed that in case the insurer fails to produce the policy of insurance an adverse inference can be drawn that insurance policy did not fully cover the liability of the insurer. In Hamirpur Co-operative Transport Company's case the observations made by a DB of Allahabad High Court in Deshraj v. Ramnarain were considered:

If, however, any person claims that under the contract of insurance, the insurance company had undertaken to indemnify the insured, for a larger sum, he has to get the policy made available for perusal of the Tribunal. In absence of insurance policy and without perusing the same the Tribunal could not fix any liability higher than that mentioned in Section 95 of the Act. As in this case the insurance company could not, u/s 110-C be saddled with a liability in excess at an amount higher than Rs. 2,000/-.

27. The extreme view taken by Patna High Court in National Insurance Company's case (supra), in my opinion, does not lay down the correct law and I respectfully disagree with the view expressed by the Hon'ble judges. If it be taken that on account of interpretation given by the Supreme Court to the expression "any one accident" the provisions contained in Section 95(2) of the Act must give way, it would amount to repealing Section 93(2) and it would lead to entering into the field of legislation which in my humble opinion the Court cannot do. To me it appears that this authority goes one step further than what is in fact laid down by the Hon'ble Supreme Court in Motor Owners Insurance Company's case. A careful reading of the judgment of the Hon'ble Supreme Court would reveal that the Court clearly pointed out that while deciding the case, it was concerned only with Clause (a) of Section 95(2) and was not concerned with other Clauses of Section 95(2) as would be evident from the observations made by the Hon'ble Court in para No. 8 in that case. In para No. 24 of the said judgment, the Hon'ble Court also observed that "different considerations may arise Under Clause (b), as amended by Act No. 56 of 59 but we do not propose to make any observations on that aspect of the matter, since it does not directly arise before us."

28. In Motor Owners Insurance Company's Case the Hon'ble SC referred to its own judgment given in Manushri Raha v. B.L. Gupta 1977 ACJ 134 and quoted the same for sounding a warning and a reminder again in that case which is reproduced below:

It is only just and fair that the Legislature should make a suitable provision so as to pay adequate compensation by properly evaluating the precious life of a citizen in its true perspective rather than devaluating human lives on the basis of an artificial mathematical formula. It is common knowledge that where a passenger travelling by a plane dies in an accident, he gets a compensation of Rs. 1,00,000/- or like large sums, and yet when death comes to him not through a plane but through a motor vehicle he is entitled only to Rs. 2,000/-. Does it

indicate that the life of a passenger travelling by plane becomes more precious merely because he has chosen a particular conveyance and the value of his life is considerably reduced if he happens to choose a conveyance of lesser value like a motor vehicle ? Such an invidious distinction is absolutely shocking to and judicial or social conscience and yet Section 95(2)(d) of the Motor Vehicles Act seems to suggest such a distinction. We hope and trust that our law makers will give serious attention to this aspect of the matter and remove this serious lacuna in Section 95(2)(d) of the Motor Vehicles Act. We would also like to suggest that instead 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 the special circumstances of each case. We further hope our suggestions of the highest Court of the country do not become a mere pious-wish.

It is unfortunate that the observations and pious wish as expressed by the Hon'ble SC is still languishing in the cold storage, and no proper legislation has been made in this regard. It is time that legislature should step in and make a suitable provision to insure payment of compensation i.e. award to claimants and the same should be made fully indemnifiable by the insurer. There can be no legal or moral justification for making a distinction between the passengers of car and other kind of passengers on goods vehicles. The loss of human life cannot be dependent upon the mode of transport employed by a person nor it should be allowed to depend upon the type of vehicles which terminate human life in the road side accident. A person on road gets more compensation than a person who is a passenger. The attention of the legislature once again drawn to remove this disparity and another. The view expressed by the Kerala High Court in the case of Madras Motor and General Insurance Company Ltd. case 1982 Act 460, appears to be more reasonable. In my opinion the judgment of the Hon'ble the Supreme Court given in Motor Owners Insurance Company's case was rightly distinguished by the Kerala High Court.

29. I am of the opinion, non-production of the policy will not make such difference in the case and would not lead to enhance the statutory liability. In this respect, I am in conformity with the observations made by the Himachal Pradesh High Court in the case of Hamirpur Transport Co-operative Societies Ltd. and find complete support in doing so from a DB Judgment of our own High Court, which is referred to above.

30. The result of the above discussion is that appeal of Oriental Fire and General Insurance Co. Ltd. is accepted. The award dated 31-7-1982 passed by the Motor Accident Claims Tribunal, Udaipur, is modified and the liability of the Insurance Company is reduced from Rs. 36,000/- to 5,000/-. Appeal No. 29 of 1983 is partly allowed reducing the amount of compensation from Rs. 36,000/- to Rs. 24,000/-. The liability of the Insurance Company is limited to Rs. 5,000/-. There shall be no order as to costs.