
(1988) 02 MP CK 0005
In the Madhya Pradesh High Court

Smt. Anupama and Others	Vs	APPELLANT
Laxman Rao and Others		RESPONDENT

Date of Decision : 23-02-1988

Acts Referred:

Motor Vehicles Act, 1939 — Section 95

Citation : (1990) 1 ACC 520 : (1988) MPLJ 526

Hon'ble Judges : P.D. Mulye, J;A.G. Qureshi, J

Bench : Division Bench

Judgement

P.D. Mulye, J.

This judgment shall also govern the disposal of M.A.No.33 of 1982 The Oriental Fire and General Insurance Co Ltd. v. Smt. Anupama and Ors.as both these appeals are directed against the same award dated 12th October,81 given by the Accident Claims Tribunal, Dhar in claim case No. 3 of 1980.

M.A.No.25 of 82 has been filed by the claimants for enhancement of compensation, whereas M.A.NO.33 of 1982 has been filed by the Insurance Company challenging their liability for the entire amount of compensation as awarded by the Tribunal.

The facts giving rise to these appeals, which are no longer in dispute and as found proved, may be stated, in brief, thus : B us number CPF9187 is owned by the Indian Tourism Development Corporation, of which on the relevant day of the accident, which took place on 24.6.79, Laxman Rao was the driver in the employment of the Indian Tourism Development Corporation. The said bus was insured with the Oriental Fire and General Insurance Company Limited.

The claimant-appellants are the legal representatives of the deceased Kishore Chand Vyas, who at the time of the accident was employed as a Depot Superintendent by Bharat Petroleum Corporation Ltd. Khandla, Distt. Kutch Gujarat. He was sent to Indore by the Corporation for training. On 24.6.1979 the deceased Kishorechand Vyas had gone to Mandu in the said bus on picnic. While

the deceased Kishore Chand was urinating near Rupmati Mahal, the driver Laxman Rao drove the bus in such a rash and negligent manner that while taking it in the reverse direction, the deceased was crushed under its wheels as a result of which the deceased received injuries to which he succumbed.

The claimants, who are the wife, son and daughter of the deceased along with the mother of the deceased Smt. Zhavcr Ben, who died during the pendency of the original case before the Tribunal, filed claim petition on 19.12.1979 claiming Rs. 6,90,000/- by way of compensation. According to the claimants the deceased at the time of his death was aged 45 years living with the members of his family in Gandhidham, Kutch, Gujarat and was drawing a salary of 3100/- per month, that because of his intellectual quality he was sent to Indore for further training and thus would have earned promotion to the higher post carrying additional salary. Thus the deceased's wife son and daughter have been deprived of the affection of the deceased. Further according to the claimants, the deceased was quite healthy and possessed of sound physique and after retirement at the peak of his promotion would have started his own business.

Thus, till he attained the age of 65 years, the family would have been benefited to the extent of Rs. 2500/- per month atleast, after deducing his own expenses and Income Tax.

The claimants, therefore, put up a claim for Rs. 6,90,000/- by way of compensation as under:

Rs. 5,40,000.00 for loss of pecuniary benefits for a period of 16 years at the rate of Rs.2500/-p.m. Rs. 20,000.00 For loss of service. Rs. 1,25,000.00 for mental agony for life as suffered by the claimants. Rs. 5,000.00 For funeral expenses and for travelling expenses incurred by the family for going to the site of accident. Rs.6,90,000/-

The driver of the said bus Laxman Rao in his written statement denied the entire claim of the claimants though he did not dispute that on the relevant day of the accident he was working as a driver on the said bus.

The respondent-Insurance Company while denying the claim of the claimants, according to the terms of the Insurance Policy admitted their liability to the tune of Rs. 5000/-only.

The Indian Tourism Development Corporation, who owned the bus, did not file any, written statement and chose to remain ex-parte.

The learned Member of the Tribunal, after considering the evidence and material on record came to the conclusion that at the time of the death of Kishorechand, he was aged 47 years and as an employee of the Bharat Petroleum Corporation was drawing Rs. 1607/- by way of monthly emoluments. He also found that the accident occurred because of the rash and negligent driving of the bus by the bus driver, that the deceased who was having sound health would have ordinarily lived upto 65 years, that upto the age of 58 years of the deceased the

dependency on the family members would be to the tune of 800/- per month. He thus found that the claimants are entitled to a total compensation of Rs. 82,360/- plus cost and interest at the rate of 6% per annum from the date of the award, for which all the respondents were jointly and severally held liable by rejecting the Insurance Company's contention that under the terms and conditions of the Insurance Policy their liability was to the tune of Rs. 50,000/- only. Hence these appeals.

The claimants in their appeal for enhancement of compensation have prayed that they are entitled to a compensation of Rs. 2,21,000/- atleast. The learned Counsel for the claimants submitted that though the learned Member of the Tribunal has come to a conclusion that for the eleven years, the amount for the dependants comes to Rs. 1,05,000/-, he has committed an illegality in deducting there from Rs. 18,000/- on account of insurance and gratuity, in view of the Full Bench decision of this Court reported in Smt. Kashmiran Mathur and Others Vs. Sardar Rajendra Singh and Another, ; Smt. Chand Kanwar Vs. Mannaram and Others, : Shri. Chand Kanwar v. Mannaram and Ors. which in turn hits filed on several decisions referred to in para 14 of its judgment.

The learned Counsel for the claimants further submitted that the learned Member of the Tribunal has committed further illegality in deducting 15 per cent on account of lumpsum compensation, even though the trend of the recent decisions has been that on account of increase in prices and decrease in value of rupee, there should be no deduction on that account as has been held in the decisions reported in 1986(1) T.A.C.381. : 1981ACJ 580 and 1986 A.C.J.125 Teja v. Ram Ratan and Ors. as also relied on several decisions on that point as referred to in para 12 of its judgment.

The learned Counsel for the claimants further submitted that the learned Member of the Tribunal has also committed an illegality in not allowing interest on the amount of compensation at the rate of 12 per cent per annum from the date of the filing of the application as has been held in the Supreme Court decisions reported in Smt. Chameli Wati and Another Vs. Municipal Corporation of Delhi and Others, , Jagbir Singh and Others Vs. General Manager Punjab Roadways and Others, , Punjab Roadways 1987(1) TAC.157 : 1987 A.C.J. 373 Municipal Corporation of Delhi v. Narvi Bai) 1987 A.C.J. 307 Prem Chand Jain v. Dev Karan and Ors. 1986 JLJ 797 .S.R.J.C. v. Pehlad Behari 1986 AC 233 Santro Devi v. Pratap Singh) 1986 A.C.J.252 K.L. Pasrija v. Oriental Fire and General Ins. Co. Ltd. 1986 A.C.J. 507 Inderjeet Kaur v. Punjab State 1986 A.C.J. 471 Ram Prakash v. Kanta Suri 1986 ACJ 243 New India Assurance Co. Ltd. v. Charan Kaur 1986 ACJ 152 New Hens Raj v. Neelam Chopra 1986 ACJ 481 Rajnish Chopra v. Ran Singh 1986 ACJ 368 Jassmeet Kaur v. Anant Ram 1986 ACJ 376 Shanta Nagpal v. Bhagwan Singh 1986 ACJ 497 Savita Sharma v. M Sharma 1987 A.C.J. 394 : 1986 A.C.J. 46 Mahipal Co-op, Society Ltd. v. Prabhati and 1987 (1) T.A.C. 482. Thus the learned Member of the Tribunal has committed an illegality in awarding interest at 5% per annum from the date of award i.e. 12.10.81.

The learned Counsel for the claimants further submitted that though the learned Member of the Tribunal in para 36 of the judgment has found that the deceased would have normally lived up to the age of 65 years, he has committed an illegality in calculating the amount of compensation till the time the deceased would have retired on account of superannuation at the age of 58 years, as even after retirement the deceased would definitely have earned atleast for a period seven years.

The learned Counsel further submitted that the learned Member of the Tribunal has erroneously ignored the further prospects of the deceased as admittedly he was selected for the post of Management as has been deposed to by A : W.8 Mohan and that when deceased died he was a management promoted on training during probation. The learned Counsel for the claimants relying on the testimony of this witness also submitted that at the time of his death the deceased was getting Rs. 1607/- in all per month and after one month he would have started getting in all Rs. 1943 per month, at which rate he would have received for the next six years, at least Rs. 1,39,896/- and during the next five years till retirement he would have earned Rs. 2,177/- per month and calculated at this rate he would have received during those five years a sum of Rs. 1,30,620/-. The learned Counsel therefore, submitted that the total earning for those 12 years comes to Rs. 2,70,516/-. If the amount of gratuity of Rs. 10290.50 p. is added to this the total comes to Rs. 2,80,806/-, wherefrom after deducting Rs. 15,000/- on account of Income Tax and professional tax for those 11 years, the deceased still would have actually received in all Rs. 2,65,806/-.

The learned Counsel, therefore, submitted that out of the aforesaid amount of Rs. 2,65,806/- a sum off Rs. 52,800/- is deducted, which the deceased would have spent on himself at the rate of Rs. 400/-p.m. in those 11 years, it leave a sum of Rs. 2,13,000/- for the dependants. To this a sum of Rs. 5000/- has to be added by way of compensation for loss of husband's company and Rs. 3000/- for taxi expenses as has been found by the learned Member of the Tribunal in paragraphs 41 and 42 of the judgment. Thus, the total comes to Rs. 2,21,000/-.

The learned Counsel further submitted that after retirement, for a period of 7 years more the deceased would have served elsewhere or otherwise gainfully employed himself and, therefore, reasonable amount deserves to be added under this head also, which according to the learned Counsel this is totally ignored by the learned Member of the Tribunal. The learned Counsel, therefore submitted that in order to arrive at a just and reasonable compensation in such a case, further prospects also have got to be considered as has been held in Smt. Manjushri Raha and Others Vs. B.L. Gupta and Others, as also AIR 1977 SC1189 M.P.S.R.T.C. v. Sudhakar.

The learned Counsel for the respondents owner and driver did not dispute that the learned Member of the Tribunal could not deduct insurance and gratuity amount from the compensation awarded by him. He also does not dispute that the claimants are entitled to claim interest at the rate of 12 per cent per annum

from the date of the filing of the claim petition. However, so far as uncertainties of life are concerned, the learned Counsel Shri Sarudhani relying on the decisions reported in 1970 ACJ 20 Suman v. The General Manager M. P. S.R.T.C. 1987 ACJ 172 and 1980AGJ 157 Maheshwari Transport Co v. Pritem Kaur submitted that with the cost of living increasing day by day and the value of money having gone down, coupled with the fact that the rate of taxation is also on the increase, even though the deceased might have got promotion, his personal expenses would also have got increased proportionately, but the dependency of the family members would not have increased in the same proportion. The learned Counsel further submitted that uncertainties of life has got to be taken into consideration as future prospects cannot be considered merely on conjectures and surmises as it is also likely that the deceased would not have proved himself to be so worthy and efficient as to get the promotions as was urged on behalf of the claimants. The learned Counsel, therefore, submitted that the claimants are not entitled to claim compensation on that account.

However, after hearing the learned Counsel on this point and after considering the latest trend of decisions, we are of opinion that the question future prospects, in normal circumstances, cannot be totally ignored especially when value of money is going down and therefore, we are inclined to agree with the submission made by the learned Counsel for the claimants that there should be no deduction on account of lump-sum payment

We are, therefore, satisfied that the learned member of the Tribunal has committed an illegality in deducting Rs. 18,000/- from the amount of compensation on account of insurance and gratuity and has also further erred in deducting an amount of Rs. 13,240/- on account of lumpsum payment at the rate of 15%.

It cannot be disputed that the compensation to be awarded must be just and reasonable which would always depend on the facts and circumstances of each case. Therefore, after considering the facts and circumstances of the present case as also the evidence adduced by the claimants, we are satisfied that a sum of Rs. 1,50,000/- would be just and reasonable compensation to which the claimant-appellants are entitled to and to that extent the award given by the Tribunal has to be modified.

This brings us to the appeal filed by the Insurance Company, whereby it is contended that according to the unamended provisions of Section 95 of the Motor Vehicle Act, as the accident in question took place on 24.6.79. the liability of the Insurance Company is limited as mentioned in that section, though in the present case the Insurance Company in their reply to the claim petition has admitted its liability to the extent of Rs. 50,000/-

The learned Counsel for the Insurance Company Shri A.K. Chitale submitted that Section 95 prescribes the statutory liability of the Insurance Company and in the present case even though as per the terms of the Insurance Policy Ex. A-13

insurance for the passengers was charged, as the Insurance Policy prescribes the limits of liability as under "limit of the amount of the Company's liability u/s 111(i) -in respect of any one accident : such amount as is necessary to meet the requirements of the Motor Vehicle Act, 1939 the same cannot exceed those statutory limits. The learned Counsel invited our attention to the heading in the Insurance Policy "Section II Liability to third party", wherein it is stated that "subject to the limits of liability the company will indemnify the insured against all sums including claimants cost and expenses which the insured shall become legally liable to pay in respect of (i) death of or bodily injury to any person caused by or arising out of the use (including the loading and/or unloading) of the Motor Vehicle". The learned Counsel warns us to interpret the words "such amount as is necessary to meet the requirements of the Motor Vehicles Act 1939" to mean that it is only statutory liability as mentioned in Section 95 of the Motor Vehicles Act that the Insurance Company can be called upon to meet and not beyond in respect of a passenger travelling in the said vehicle even though the insurer might have charged extra premium of Rs. 525/- for the legal liability to passengers and in support of this submission the learned Counsel for the Insurance Company placed reliance on the decisions reported in 1977 ACJ 343 Pushpabai Prushottam Udeshi v. Ranjil Ginning and pressing Co. 1986 ACJ 946 British Indian General Insurance Co. Ltd.,s, Maya Banerjee 1986 ACJ 947 New India Assurance Co. Ltd., v. Laxmi Devi 1985 MP w N 142, AIR 1987 SC 1958 Smt. Chand Kanwar Vs. Mannaram and Others, .

In order to appreciate this submission of the learned Counsel it is necessary to refer to the provisions of Section 95(2) of the Motor Vehicle Act prior to its amendment as under:

95 (2) subject to the proviso to Sub-section (1) a policy of insurance shall cover any liability incurred in respect of any, one accident up to the following limits namely-

(a) Where the vehicle is a goods vehicle, a limit of fifty thousand in all, including the liabilities, if any, arising under the Workmen's Compensation Act, 1923 (8 of 1923), in respect of the death of, or bodily injury to, employees(other than the driver), not exceeding six in number, being carried in the vehicle.

(b) where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of 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 lack rupees in all where the vehicle is registered to carry more than sixty passengers; and

(4) subject to the limits of 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;

(c) save as provided in Clause (d), where the vehicle is a vehicle of any other class, the amount of liability incurred;

(d) irrespective of class of the vehicle, a limit of rupees two thousand in all in respect of damage to any property of a third party....

Section 95 of the Act sets out the requirements of the policies of insurance which must be taken by the owners of motor vehicles and the limits of liabilities thereunder. A policy of insurance should subject to the proviso to sub-section (1) of Section 95 of the Act over any liability incurred in respect of any one accident up to the limits specified in Sub- section (2) of Section.95 of the Act. Clause(a) of Section 95(2) of the Act during the relevant time provided that where the vehicle was a goods vehicle the policy should cover the liability up to Rs. 50.000/- in all including the liabilities if any, arising under the Workmen's Compensation Act, 1923 in respect of death of or bodily injury to the workmen (other than the driver) not exceeding six in number being carried in the vehicle. This clause came up for consideration before the Supreme Court in the decision reported in Motor Owners' Insurance Company Limited Vs. Jadavji Keshavji Modi and Others, Motor Owners Insurance Co. Ltd. v. Jadavji Keshavji Modi in which it has been held that Clause (a) of Section 95(2) of the Act qualified the extent of the insurer's liability by the use of the unambiguous expression "in all" and since that expression was specially introduced by an amendment, it must be allowed its fully play. The legislature must be presumed to have intended what it had plainly said. But clause(a) did not stand alone and was not the only provision to be considered for determining the outside limit of the insurer's liability. It was necessary to give effect to the words "any one accident" which formed part in the opening part of Sub- section (2) of Section.95 of the Act. The Court, therefore, held that if more than one person was injured during the course of the same transaction each one of the persons must be deemed to have met with an accident. Accordingly the Court held that each of the persons who was entitled to claim compensation under Clause (a)of Sub- section (2) of Section 95 of the Act was entitled to claim a sum of Rs. 50.000/- which was the limit prescribed by the said clause on the date on which the accident referred to in that case, occurred.

It may be noted at this stage that u/s 95 of the Motor Vehicles Act, the statutory insurance policy docs not necessarily require the insurer to insure the vehicle in respect of passengers. Therefore, the present policy Exhibit-A/13 incorporates a condition which is in addition to the statutory requirement. Therefore, this policy Ex. A-13, in our opinion, can not be said to be of such a type which restricts the limits of liability of the Insurance Company to the extent indicated therein.

In the present case there is another document on record Exhibit-A/14 issued by the Oriental Fire and General Insurance Company Limited, mentioning therein the "Schedules of Rates in which under the heading legal liability for accidents to passengers" it has been mentioned "unlimited indemnity the existing premium of Rs. 15/- per seat to be maintained. "This, no doubt, is meant for agents" use, which gives general instructions to agents and also mentions the schedule of premium as also the additional benefits and at page 15 thereof the heading in "claims by passengers (legal liability)". Admittedly, normally the insurance policies are effected through Insurance Agents. This document Ex.A-14 is admitted by the Insurance Company. Therefore, if we read the terms of the policy coupled with Ex.A-14, the words "such amount as is necessary to meet the requirements of the Motor Vehicle Act 1939". do not absolve the Insurance Company from its liability to pay the entire compensation amount as fixed by the Tribunal which is a part and parcel of the provisions under the Motor Vehicle Act

On this point the learned Counsel for the claimants also invited our attention to the decisions regarding the liability of Insurance Company as reported in 1979 ACJ 198 Ram Adhim Singh v. Murari Lal Agrawal, 1982 ACJ 435 Hans Raj v. Sukkdev Singh and 1986 ACJ 1144 New India Assurance Co. Ltd., v. M.P.SJR.T. Corpn and submitted that two interpretations put forth by the Rajasthan High Court as being possible, in the case reported in Smt. Chand Kanwar Vs. Mannaram and Others, is not the correct approach because a plain meaning has to be given to these words because as the present Insurance policy is not only a statutory Policy in terms of Section 95 of the Act, but in addition has also covered the risk of liability of passengers in respect of death or bodily injury which is an accidental injury, the Insurance Company is liable to pay the entire amount of compensation along with the other respondents, namely the owner and driver of the vehicle. The authorities cited by the learned Counsel for the Insurance Company are distinguishable on facts as all those decisions are based on the terms and conditions of the insurance policies placed on record in those cases, apart from different facts of those cases pertaining to the vehicles . Therefore, in our opinion, those authorities do not help the Insurance Company in the present case as looking to the terms and conditions of Ex. A-13 the Insurance Company cannot escape its liability for the total amount of compensation. The Insurance Company by accepting extra-premium for passengers has thus agreed and contracted to satisfy "such amount as is necessary to meet the requirements of the Motor Vehicle Act, 1939". We are therefore, unable to agree with the view taken by the Rajasthan High Court that two interpretations of that clause are -possible, we are also unable to agree with the submission made by the learned Counsel for the Insurance Company that the liability of the Insurance Company is restricted only to Rs. 50,000/-.

If under the policy Ex.A-13 the Insurance Company wanted to restrict its liability in the present case, to the extent as contemplated by Section 95 of the Motor Vehicles Act, the words "such amount as is necessary to meet the requirements of the Motor Vehicle Act 1939" would have been worded differently thereby

specifically stating that even in respect of third parties, even though extra-premium is charged for passengers, the liability would be restricted as mentioned in Section 95 of the said Act. The very words "such amount and "requirement" itself contemplate that it is a mandatory requirement under the terms of the present policy. That apart, from the statutory liability in the present case the Insurance Company is also liable to fulfil the requirements covered by the provisions of the Motor Vehicle Act itself and payment of compensation by the Tribunal under the provisions of the said Act being a requirement of the said Act, that liability is covered by the words "such amount" especially when u/s II-liability to third parties" the company has specifically agreed that the company will indemnify the insured against all sums including claimants costs and expenses which the insured shall become legally liable to pay, subject to provisions as mentioned therein which are not attracted to the facts of the present case.

In the result the appeal filed by the claimants (M. A.25 of 82) succeeds partly and the appeal filed by the Insurance Company (M.A. 33 of 82) is dismissed. It is, therefore ordered by modifying the award given by the Tribunal, that the appellant-claimants are entitled to a total compensation of Rs. 1,50,000/- together with cost and interest at the rate of 12% per annum from the date of the filing of the application till realisation for which the owner, driver and the Insurance Company are jointly severally held liable. Counsel's fee according to schedule.

It appears that the Insurance company, as per the award of the Tribunal had deposited a sum of Rs. 91,196/- with the Tribunal. By an order passed by this Court on 21.1.83 in M. A. No. 33 of 82 the claimants were permitted to withdraw a sum of Rs. 50,000/- and the balance amount of Rs. 41,196/- was ordered to be paid to the claimants after furnishing solvent security in case of restitution.

However, Shri S.D. Sanghi, learned Counsel for the claimants had also submitted that as the claimants could not furnish solvent security, the balance amount of Rs. 41,196/- has been already kept in fixed deposit in the name of the Tribunal for a period of 37 months carrying interest, which period has expired in 1986. He had, therefore, submitted that in order that the claimants may not lose interest, the same may be renewed for a further period of two years, for which they have filed I. A. NO.3263 of 1987. It is, therefore, ordered that the aforesaid amount of Rs. 41,196/- shall be renewed by the Tribunal for further period of 2 years from 1986 and on maturity the same amount together with interest accrued thereon shall be paid to the claimants in person.

The respondents, shall within one month from today deposit the balance amount as awarded by this Court, together with interest, with Tribunal after adjusting and calculating the amount which the Insurance Company has already deposited with the Tribunal.

Both the appeals are thus disposed of accordingly.