
(1974) 08 CAL CK 0014

In the Calcutta High Court

Case No : A.F.O.O. No's. 515 and 516 of 1966

The Motor Owners' Insurance Co. Ltd. and Another

APPELLANT

Vs

Hrishikesh Das and Others

RESPONDENT

Date of Decision : 02-08-1974

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 98
Motor Vehicles Act, 1939 — Section 110, 110D, 96

Citation : (1975) ACJ 295 : AIR 1975 Cal 218 : 79 CWN 517 : (1975) 1 ILR (Cal) 24

Hon'ble Judges : R. Bhattacharya, J; C.N. Laik, J

Bench : Division Bench

Advocate : R.P. Bagchi and Snehansu Sekhar Roy, for the Appellant; Balai Chandra Ray and Buddhadeb Chatterjee, for the Respondent

Judgement

Laik, J.—These are the two appeals jointly by the Insurance Company (hereinafter referred to as the Company) and by one of the owners of the Bus -- one appeal against the husband Hrishikesh, and the other against the wife, Kaiyani.

2. The appeals arose out of two applications, one by the husband and the other by the wife, giving rise to Motor Vehicle Case Nos. 31 and 32 of 1965, u/s 110-A of the Motor Vehicles Act (hereinafter referred to as the Act) for the recovery of compensation based on the same accident at Digha, when the bus knocked down both the petitioners, causing serious injuries to them.

3. The husband laid his claim at Rs. 10,000/- and the wife laid her claim at Rs. 35,000/-. Both the applications were heard analogously on the same set of evidence by the Motor Accidents Claims Tribunal viz., the District Judge, Midnapore.

4. The Tribunal below awarded a sum of Rs. 5,600/- towards the compensation of the husband and a sum of Rs. 13,681/- for the wife.

5. Against the said award and decree, the aforesaid two appeals have been preferred. The respective claimant was the respondent No. 1 in each of the appeals and the other five Bus owners were made the other respondents. There was a cross-objection in each of the appeals by the claimant and in respect of the rest of the claims which have not been awarded in their favour.

6. I deal with both the appeal and the cross objection together about the quantum of compensation, claimed by the husband and the wife. The husband claimed Rs. 500/- on account of shock, Rs. 500/- for physical pain and Rs. 1,000/- for mental distress, totalling Rs. 2,000/-. These whole claims were rightly allowed by the Trial Court. The next claim of the husband was for a sum of Rs. 1,223/- for medical expenses. This claim was rightly rejected by the Trial Court, as there is no evidence in support of the claim.

7. The next item of the husband's claim was a total sum of Rs. 5,200/- out of which Rs. 2,500/- was claimed as due to loss of income from the legal profession for 10 months from January to October, 1965 at the rate of Rs. 250/- per month, Rs. 700/- towards depleted income for 7 months from November, 1965 to May, 1966 and lastly a sum of Rs. 2,000/- for expected loss of income for the rest of the life. The Court below allowed a total sum of Rs. 3,000/- out of the said sum of Rs. 5,200/- and that in our view it was also rightly allowed on evidence.

8. The husband further claimed a sum of Rs. 500/- due to the throbbing pain in the head. This also according to our view was rightly rejected by the Trial Court as this is included in the claims for physical pain, shock and mental distress which has been fully allowed as already stated. A sum of Rs. 500/- was claimed for extra conveyance. This claim did neither appeal to the Trial Court nor to us and the same has been rightly rejected.

9. The last group of claim was Rs. 400/- for wallet, Rs. 50/- for spectacles, Rs. 150/- for a gold ring, totalling a sum of Rs. 600/-. The whole amount was allowed by the Trial Court and that in our view rightly.

10. So far as the wife's claim is concerned she claimed a total sum of Rs. 35,000/-. No specific details have been given in the claim petition.

11. She claimed a sum of Rs. 2,000/- due to shock, physical pain and mental distress. The whole amount was rightly allowed by the Trial Court. Like her husband she also claimed for medical expenses and other items connected therewith which have been rightly disallowed by the court below. Both the patients were in the Government Hospital as indoor patients. They had to pay no fees to any Doctor nor to pay for any diet charges. If the father of the injured brought certain other special diet for the patients, in our view they cannot claim for the same. Her next item of claim was for a sum of Rs. 300/- for the loss of the wrist watch and earrings. The whole amount was rightly allowed by the Trial Court.

12. Likewise her husband, she claimed a sum of Rs. 1,000/- for pain which has

already been claimed in the item of shock, physical pain and mental distress and the same was rightly rejected by the Court below. Similarly, the claim for Rs. 2,220/- by the plaintiff as expenses for personal aid cannot be granted as found by the Court below, there being no evidence in support of the claim. Out of the claim of Rs. 1,500/- for a possible difficulty owing to permanent distortion of her pelvis, a sum of Rs. 750/- has been allowed by the Court below, as evidence justified the said amount.

13. The main head of the wife's claim was the loss of income at the rate of Rs. 250/- per month for the period from September, 1965 to May, 1966. This claim comes to Rs. 2,250/-. The loss of future income at the above rate was claimed at a sum of Rs. 20,000/- (twenty thousand).

14. The wife's ground for this claim was that she was offered the lecturer ship in the Howrah Girls' College in September, 1965 but she could not accept the same because of the accident. Agreeing with the view of the Trial Court, we cannot accept the said evidence of the petitioner, though a Doctor viz., P. W. 7 Dr. Chakraborty had stated that he had advised her not to accept the job in her then condition. In our opinion the claim has been very much inflated. No one from the Howrah Girls' College was examined in support of the offer. The Trial Court had assessed the damage on this head at Rupees 10,000/- in lump which appeared to us to be quite fair and reasonable rather more favourable on the side of the wife.

15. A sum of Rs. 50/- was allowed as compensation to the petitioner towards the fees of Dr. Chakravorty.

16. The Court below awarded the total compensation to the wife at Rs. 13,681/- which, according to the right calculation would be Rs. 13,962/-. This was pointed out in his usual fairness by Mr. Bagchi, the learned Advocate that the Tribunal made a wrong total in awarding the total compensation to the wife, Kalyani.

17. In the circumstances, so far as the quantum of compensation is concerned, we affirm the findings of the Trial Court and the reasonings given in support of it and we hold that the quantum would be Rs, 5,600/-for the husband and Rs. 13,962/- for the wife.

18. The following questions of law were raised in these appeals.

19. Mr. Bagchi submitted first that the Tribunal had no jurisdiction to pass an award of compensation except regarding bodily injury of the claimants. Personal effects viz., that the loss of wallet, gold ring, spectacle or damage or loss of movable property are outside the scope and jurisdiction of the Tribunal in deciding a claim u/s 110-A of the Act.

20. It must be stated at the outset that Section 110 has been amended in the year 1969 when damage to property of a third party were also pointedly and specifically brought within the jurisdiction of the Tribunal. But so far as these two appeals are concerned the cause of action had arisen in 1964 and therefore the

amendment does not help.

21. We have heard with patience the arguments of the learned Advocates of both sides. Section 110 along with the other Subsections especially (F) of Section 110 and items 10, 14 and 20 in the Form of the claim were placed before us. Section 109 of the Act was also placed. The following decisions were cited before us by either side. Many Vincent v. State of West Bengal ILR (1971) Cal 62, Dr. Om Prakash Mishra Vs. National Fire and General Insurance Co. Ltd. and Others, ; B.S. Nat Vs. Bachan Singh and Others, ; Jaswant Kaur and Others Vs. Ratti Ram and Others, ; Joshi Ratanshi Gopaji v. Gujarat State Road Transport Corporation, 1968 ACJ 338 (Guj); R. Selvaraj Vs. Jagannathan and Another, ; Farsubhai Altaphai Saiyed and Others Vs. Dullabhabhai Bhagabhai Patel, . All these cases deal more or less with the Tribunals jurisdiction u/s 110 of the Act.

22. Reading the other sections of the Act including Section 109, and keeping in mind the question as to whether the Tribunal had got jurisdiction u/s 110 to pass an award on the damage as to property. I am of opinion that even before the amendment in 1969, the Tribunal had such power. The principles laid down in the case of Dr. Om Prakash Mishra Vs. National Fire and General Insurance Co. Ltd. and Others, and in the same case after remand in Dr. Omprakash Mishra Vs. National Fire and General Insurance Co. Ltd. and Others, support my conclusion. The direct case which is contrary to my conclusion is the case of the Punjab and Haryana High Court of B. S. Nat (supra) in AIR 1971 Punj and Har 144. Just a contrary view has been taken by the said Punjab and Haryana High Court against the said Division Bench decision of the M. P. High Court reported in Dr. Om Prakash Mishra Vs. National Fire and General Insurance Co. Ltd. and Others, . In my view the reasons given by the Punjab and Haryana High Court in paragraph 16 of the said decision are not acceptable. The question is not one of general principle and it is not a case of extension of jurisdiction. In my view the Madhya Pradesh decision was not properly understood by the Punjab and Haryana High Court. When we go through paragraph 7 of the said decision of the Punjab and Haryana High Court we find that the provisions of Section 110 have not been even fully correctly quoted. The expression "Motor" was wrongly quoted and the word "only" is supplied by the learned Judge which is not in the section, which makes a difference in the interpretation.

23. In my view there is no ambiguity in the language of the sections and accordingly reference to Section 110-A (1) was not necessary. 24. Reference to the prospective amendment in 1969 on Section 110 (1) for interpreting the old Section 110-A was not proper. In paragraphs 14 and 16 of the said decision the learned Judge refers to objects and reasons of the 1969 amendment and according to him as if the original section was for the richer section of the people. In my opinion the law is equal for all rich or poor and the whole object of the Act would be frustrated, if the Tribunal be held to have no jurisdiction to dispose of the entire claim whether of bodily injury or of loss or damage to property both movable and immovable.

25. It should also be taken note of that Nat's case was referred to by the Junior Judge to the fuller Bench and the same learned Judge delivered the judgment of the fuller Bench. I am not saying for a moment that the same cannot be done but the learned Judge also stated that he had already expressed his reasons in the order of the reference. Here I express my doubt whether the referring Judge should rely on such reasons given in the order of the reference as the reasons for the final judgment by the fuller Bench. The reasons could have been adopted but the earlier expression of the reasons was only for the purpose of reference and should not have been merely referred to in the final judgment in the Reference without adopting the same. Moreover, the language employed by the learned Judge in paragraph 13 of B.S. Nat Vs. Bachan Singh and Others, , with respect, being unsavoury, ought not to have been used. It should further be noticed that paragraphs 6 to 10 of the judgment are already there in the Order of Reference itself.

26. It should also be noticed that Nat's case does not refer to the earlier Division Bench decision of the same High Court in the case of Municipal Committee, Jullundur City Vs. Shri Romesh Saggi and Others, . Though it is not a direct case, the Tribunal was held to be a Court and accordingly if no claim on the loss of property was advanced it might be argued that the claim in a subsequent suit would be barred under the principle of constructive res judicata.

27. Mr. Roy relies on the case of Union of India (UOI) and Another Vs. Shri Labh Chand Sharma and Others, . He wanted to argue that Section 110-F of the Act bars all claims made in a Court of law and "any" claim for compensation is covered u/s 112. Mr. Roy next cites another Madras decision in the case of Mohammed Habibullah and Another Vs. Seethammal, and placed before us that the Act is a self-contained Code and all cases of accidents "arising out of" are to be governed by the Act itself. According to him it is a complete machinery which deals with all types of claims and bars a Civil Court proceeding. These two cases though do not directly touch the point at issue, are of some importance.

28. The said recent decision of the Gujarat High Court in the case of Farsubhai Altaphai Saiyed and Others Vs. Dullabhabhai Bhagabhai Patel, is a single Bench decision of the learned Chief Justice. It seems that this decision takes a middle course and refers to the said M. P. decision viz; AIR 1962 Madh Pra 19 and to the said single Bench decision of the Gujarat case of Joshi Ratanshi Gopaji (supra). It did not refer to the said Punjab and Haryana High Court case in B.S. Nat Vs. Bachan Singh and Others, . It should be remembered that in this decision it appears that the suit was instituted by a person who has not suffered any bodily injury and this case also does not directly touch the point.

29. The single Bench decision in R. Selvaraj Vs. Jagannathan and Another, is a judgment which holds that the persons cannot claim any compensation as regards property. It only refers to the said M. P. decision of the year 1962 and no other decision. I am unable to follow the reasonings of the learned Judge.

30. In conclusion I hold and accept the principles laid down in the M. P. decision reported in *Dr. Om Prakash Mishra Vs. National Fire and General Insurance Co. Ltd. and Others*, and do not accept the contrary principles laid down in the other decisions specially in the decision reported in *B.S. Nat Vs. Bachan Singh and Others*, .

31. Mr. Bagchi next contended that the payment was made by the third party in the instant case. The father-in-law paid the expenses of the injured person and he did not want the amount to be refunded to him. Accordingly the claimants are not entitled to the compensation.

32. Our attention was drawn to the cases of *Schneider v. Eisovitch*, reported in (1960) 2 QB 430 at pp. 433 and 434 : (1960) 1 All ER 169; *Gage v. The King*, reported in (1960) 3 All ER 62; *Dennis v. London Passenger Board*, reported in (1948) 1 All ER 779; *Roach v. Yates* (1938) 1 KB 257 (263) and also to some passages from *Winfield on Torts*, 9th edition pages 583-586.

33. I need not go into all the above decisions and the text as on a plain reading of Section 110 of the Act itself, coupled with the evidence of the father-in-law and the son-in-law in the instant case. I hold that the compensation would include all the amounts inclusive of payment made by the third party. Here the father-in-law paid certain amount presumably as on moral obligation. There is no legal obligation of any third party to pay the amount. Though in certain cases the third party expects to be repaid but in this case the father-in-law did not take back the money from his son-in-law. The cardinal principle to be followed in such cases is that the wrong doer must pay, whether the third party pays or not.

34. Mr. Roy took no objection about the incompetency of the appeals. They were the joint appeals by the Insurer and one of the owners of the Bus where other co-owners of the Bus were made the respondents. According to him, the insurer cannot be sued, as there is no cause of action against it. The Insurer cannot be made a party and they cannot prefer the appeal. He referred to us the procedure in Section 110-C and Section 110-D of the Act. He also pointed out that the grounds u/s 96 (2) of the Act are limited. In the instant two Memoranda of Appeal it would be noticed there is no ground on behalf of the Insurer. He also pointed out the objection by the Insurer at paragraph 10, p- 32 of the Paper Book which shows that the same was inconsistent with the case of the owners. He relied on Section 96 (1) of the Act and argued that the entire liability was of the owner. He relies on the case of *The Vanguard Insurance Co. Ltd. Vs. Foolchand Mandal and Others*, . Mr. Bagchi on the other hand maintained that the joint appeal is competent and the following decisions were cited viz., the said decision of *Mohammed Habibullah and Another Vs. Seethammal*, and the decision of the same High Court in the case of *K. Gopalakrishnan Vs. Sankara Narayanan and Others*, which seeks to distinguish a Supreme Court decision in the case of *British India General Insurance Co. Ltd. Vs. Captain Itbar Singh and Others*, and a decision of a Punjab High Court in the case of *Vanguard Fire and General Insurance Co. Ltd. Vs. Sarla Devi and Others*, . Mr. Roy in reply placed

before us that the joint appeal is not permissible and he cites a decision of Madhya Pradesh High Court in the case of New India Insurance Co. Ltd., Bombay Vs. Smt. Molia Devi and Others, . Lastly, he cites the Bench decision of this Court in the case of British India General Insurance Co. Ltd. Vs. Captain Itbar Singh and Others, . He also referred to an unreported judgment (F. M. A. No. 165 of 1965) (Cal) in the case of New India Assurance Co. v. Ram Bai of A. K. Mukherjea and M. M. Dutt, JJ. Lastly a Division Bench decision of the Chief Justice Chagla and Dikshit, J. in the case of Royal Insurance Co. Ltd. Vs. Abdul Mahomed Meheralli, was cited where it had been inter alia held that the insurer could only defend in the name of the defendant. Another Full Bench decision of the Madhya Pradesh High Court in the case of Mangilal v. Parasram, reported in AIR 1971 Madh Pra 5 (FB) was also cited.

35. After the said Bench decision of this Court in (1970) 74 CWN 879 where the Insurer alone was the appellant and the owner tried to support the appeal, we did not find any reason to differ from the views expressed by the said Division Bench that no appeal was maintainable at the instance of the insurer alone. We hold however that the appeal is not incompetent as the owner is also the appellant in the instant case and the joint appeal by the insurer and the owner does not make such an appeal incompetent.

36. The last point that was argued by Mr. Bagchi that the claimants respondents were parties to the contributory negligence and they were not entitled to any payment, We may at once say that no suggestion as to the said point of fact was ever made before the Tribunal below. There was no evidence of contributory negligence. Mr. Bagchi only pointed out that the constable heard the sound of the horn and that is enough to substantiate that the injured person would have heard the sound and should have been careful but as there was negligence on their part they suffered the injury. The suggestion of Mr. Bagchi is only stated to be rejected.

37. In view of the above, I need not discuss the decision of the House of Lords, reported in (1886) 12 AC 41 : 1886 90 All ER, (Reprint and Extn. Vol.) 1955 in the case of Wakelin v. London and South Western Rly Co.

38. For all the above reasons I hold that both the appeals and the cross-objection must be dismissed but without costs. We only make it clear that the decree of Rupees 13,681/- in favour of the wife granted by the Trial Court would be corrected as Rupees 13,962/- based on a wrong total.

R. Bhattacharya, J.

39. I agree.