
(1986) 10 RAJ CK 0001
In the Rajasthan High Court

The New India Assurance Company Limited	APPELLANT
Vs	
Vidya Devi and Others	RESPONDENT

Date of Decision : 24-10-1986

Acts Referred:

Motor Vehicles Act, 1988 — Section 2(i)

Citation : (1987) 2 ACC 313

Hon'ble Judges : G.M. Lodha, J

Bench : Single Bench

Judgement

G.M. Lodha, J.—In all these four appeals, the judgment and award dated 1610-1985 of Motor Accident Claims Tribunal, Jhunjhunu is being challenged. It is common ground that on 9-7-82, Premchand and Prabhu Dayal were going on Motor Cycle No. DEX 584 from Khetri City to their village Sohli. A bus bearing registration No. RSZ 4831 belonging to Sophiya School Khetri was coming from the side of Khetri township which collided with the motor cycle at near about Nizampur turn. The accident resulted in death of both Prem Chand and Prabhu Dayal. The driver of the bus was Mahaveer. Claim petitions were filed by the claimants who are wives and children of Prem Chand and Prabhu Dayal. In the two claim petitions the question of negligence was first considered and decided and in both cases the Tribunal has found that the negligence of the driver Mahaveer is established on record. It is also being found and rightly so that since Mahaveer was negligent and the accident resulted in death of Prabhu Dayal and Prem Chand, the compensation should be paid to their wives and children.

2. The question raised before this Court is two fold. Firstly, that the insurance company has come with tie plea that their liability should be limited to Rs. 50,000/- and the Sophiya School has filed appeal on the ground that the liability of the insurance company should be unlimited to cover the entire award. The claimants have filed cross objection for increase of the amount of compensation.

3. I have carefully gone through the record and also heard Mr. Srivastava for the Insurance Company and Mr. Bhartiya for Shopiya School and Mr. Singh for the

claimants.

4. Now the first question is regarding the amount of compensation which should have been paid and which has been determined by the Tribunal.

5. I find that in the case of Narbada Devi her husband Prabhu Dayal was 42 years of age. The expectancy and dependency of income to family members which they would have got after meeting out the expenses of Prabhu Dayal has been adjudicated as Rs. 400/-. In my opinion the compensation should be treating Prabhu Dayal as 42 years of age and that would come as follows $400 \times 23 \times 12$. This would be 1,10,400/-. This amount should be divided between all the claimants the wife, Narbada should get 50 per cent and rest of the amount would be divided as per the proportion or others in aware.

6. In the case of Vidya Devi, the amount of compensation should be $400 \times 30 \times 12$ as Prem Chand at the time of death was of 32 years and Vidya Devi is only 29 years. This amount is Rs. 1,44,000/-. Vidya Devi has not been allowed compensation on the ground of consortium. Vidya Devi is only 29 years of age and loss of husband at this stage is bound to be a serious loss of the life partner for the whole of life. I allow Rs. 10,000/- as compensation for consortium. The total amount of compensation would be 1,54,000/- to Vidya Devi and six others. The amount of interest would be 12 percent from the date of application till the date of realisation in both cases.

7. Now comes to the important question regarding the liability for the insurance company.

8. Mr. Bhartiya appearing for the Sophiya School and Mr. Singh appearing for the claimants have submitted that the policy of insurance shows that in the column of limits of liability, it has been mentioned that the limits of the amount of complete liability under Sections 2(i) in respect of any one accident and then the column is blank. This according to Mr. Bhartiya and Mr. Singh tantamount to unlimited liability because no limit has been mentioned. It has been mentioned 50,000/- for the second part u/s 2(ii) which is not applicable for the loss of human life in such vehicles.

9. This policy and copy has been produced here, both by the insurance company and the Sophiya School and since they are identical there is no dispute. Mr. Srivastava submitted that in this policy there is a mention that such amount of liability as required and necessary as per the requirements of Motor Vehicles Act. I have carefully seen this note it is not in the column of limit of liability. A seal has been put mentioning the above but that seal both in the copy submitted by Mr. Bhartiya and the copy shown by Mr. Srivastava is in the column which has been mentioned, in the column of "insured estimate of value including accessories of the vehicle" has been mentioned, as subject and therefore the seal loses its relevancy.

10. It may be that it may be by mistake but the benefit of mistake would not go

to the insurer of policy, but it should go to the insured, because it is a social welfare legislation and the insurance company should pay the amount to the insured which indirectly goes to the injured persons or to the claimants of deceased.

11. The second limb of argument of Mr. Bhartiya is that the vehicle is not for passengers and there is column in which it has been mentioned that for private school purposes only. Mr. Bhartiya's argument is that in such cases the limit of liability u/s 95 is not applicable, because Section 95 is applicable on those vehicles which are carried or which ply for which run or hire or reward of the passengers and are passengers vehicles. Private Vehicles for school purposes cannot come in this category. I am not inclined to decide this point, because it is not necessary. This question is kept open for adjudication in some other case when it becomes relevant.

12. The result of the above discussion is that the insurance company is liable for the entire amount of the award and not Rs. 50,000/- only.

13. Now I have held that the insurance company will be liable for the entire amount to award and I have also held that the compensation is being increased as mentioned above because the negligence and rashness of the driver of the vehicle is proved on the evidence which has been correctly believed by the Tribunal and I have also held that this amount would be distributed amongst the dependents, the wife shall get 50 per cent in each case and other dependents taking equal amount of the balance to each case both in the case of Vidya Devi and as well as in the case of Narbada Devi.

14. It is further ordered that the investment distribution payment of the amount would become according to the principles laid down by this Court in Pistai Devi Agrawal's case 1985 R.L.R. 134. The result of the above discussion is that appeals of the Sophiya School in both the cases being Appeals No. 26 of 1986 and 27 of 1986 are accepted and those of M/s. New India Assurance Company being No. 20 of 1986 and 21 of 1986 are dismissed.

15. The parties would bear their own costs. The cross objection of Vidya Devi and Ors. and Narvada Devi are accepted as indicated above.