
(1988) 10 RAJ CK 0006
In the Rajasthan High Court

The New India Assurance Company Ltd.

APPELLANT

Vs

Mohinder Kaur and Others

RESPONDENT

Date of Decision : 07-10-1988

Acts Referred:

Motor Vehicles Act, 1939 — Section 95(2)(b)

Citation : (1989) 1 ACC 172 : (1989) ACJ 343

Hon'ble Judges : N.M. Kasliwal, J

Bench : Single Bench

Judgement

N.M. Kasliwal, J.—Brief facts of the case are that on September 2, 1969, Kulwant Singh (deceased) was going on scooter at about 2.30 p.m. from Moti Doongri Road towards Police Memorial in Jaipur City and as soon as he reached near Police Memorial one truck No. R.J.R. 2825 struck the scooter. On account of the accident Kulwant Singh fell down and received serious injuries. Kulwant Singh was admitted in SMS hospital and after remaining there for 26 days he succumbed to the injuries. Smt. Mahendra Kaur w/o Kulwant Singh and 7 daughters filed a claim petition on October 31, 1969 claiming a sum of Rs. 22,300/-. It was alleged in the petition that Kulwant Singh was carrying on transport business and was earning Rs. 1,000/- p.m. An amount of Rs. 200 has been spent by Kulwant Singh on himself and the rest used to be spent on the claimants. Shri Kulwant Singh at the time of accident was 45 years old.

2 The claim petition was contested by Shri Shaukat-Ali owner of the truck, Amir Shah driver of the truck as well as by the Northern India Genegal Insurance Company Ltd., insurer of the truck. The tribunal framed the following issues on the basis of the pleadings of the parties:

1. Whether the accident, causing the death of Kulwant Singh on 2-9-69 at about 2.30 p.m. arising out of the use of the truck No. RJR 2825, took place in the manner described in the petition ?
2. Whether the truck No. RJR 2825 was being driven by the respondent No. 2

Amir Shah rashly and negligently on account of which the accident took place?

3. Are the claimants entitled to claim Rs. 2,22,300 as detailed in para 10 of the petition and from whom?

4. Relief?

In view of the fact that no evidence was led on behalf of the claimants, the petition was dismissed on February 21, 1972. On appeal the High Court by judgment dated July 30, 1982 set aside the order of the tribunal and remanded the case for giving fresh opportunity for evidence to the claimants. After remand Smt. Mohinder Kaur, Harjit Singh, Karey Singh and Pooran Singh were examined on behalf of the claimants. On behalf of the non-petitioners only statement of Amir Shah driver of the truck was recorded. Learned tribunal under Issue No. 1 held that the death of Kulwant Singh resulted on account of the above accident having taken place on September 2, 1969. Under Issue No. 2 it was decided that the respondent No. 2 Amir Shah was driving the truck rashly and negligently on account of which the accident took place. Under Issue No. 3 the tribunal held that the income of Kulwant Singh was Rs. 800/- p.m. out of which one-third of the amount was considered as having been spent on Kulwant Singh himself. The family was thus held as having the benefit of Rs. 550/-per month. Treating the age of Kulwant Singh as 45 years & multiple of 10 years was taken into consideration and thus the claimants were entitled to an amount of $550 \times 12 \times 10$: Rs. 66,000/- under this head. Rs. 3,000/-were allowed towards the expenses incurred in the treatment as claimed by the petitioners. Out of the claim of Rs. 10,000/- on account of mental shock, the tribunal awarded a sum of Rs. 5,000/- in all to all the claimants. Under the head of Rs. 20,000/- claimed on account of future loss and untimely death, learned tribunal did not allow any compensation. As a result of the above finding, learned tribunal awarded a total sum of Rs. 74,000/- as compensation to the claimants. Interest @ 6% per annum was awarded from April 30, 1970 in case the amount was paid within one month otherwise interest was allowed @ 12% per annum from the date of the award. The non-petitioners were made liable to pay the award jointly and severally. It may be mentioned at this stage that the insurer Northern India General Insurance Co. Ltd., subsequently merged in the New India Assurance Co. Ltd., and as such the New India Assurance Co. Ltd. was substituted in place of Northern India General Insurance Co. Ltd. and the award was passed against the New India Assurance Co. Ltd. as insurer.

3. S.B. Civil Miscellaneous Appeal No. 76/1986 has been filed by the New India Assurance Co. Ltd., while S. B. Civil Miscellaneous Appeal No. 144/1986 has been filed by the claimants. Both the appeals are disposed of by one single order as they arise out of the same accident and the same judgment of the tribunal.

4. I shall first deal with the appeal filed by the New India Assurance Co. Ltd., Jaipur. It was contended by Mr. Lodha, learned Counsel for the appellant, that the liability of the appellant was only upto Rs. 20,000/-which was the maximum

statutory liability at the relevant time. It was submitted that the tribunal wrongly drew an adverse presumption against the insurer for not producing the insurance policy. It was submitted that in the absence of producing the policy the liability of the insurer could not have exceeded more than the statutory liability as fixed u/s 95 of the Motor Vehicles Act, 1939. It was also submitted that in the year 1969 when the accident took place the policy was issued by Northern India General Insurance Co. Ltd. which later on merged in the appellant New India Assurance Co. Ltd. and the record of the policy was not available with the appellant and as such the same could not have been produced. Mr. Lodha in support of his contention placed reliance on *Smt. Sampat Lal v. Smt. Geeta Devi and Ors.* 1985 RLR 1052 and *Automobile Transport Rajasthan v. Devi Lal* 1976 WLN 783.

5. On the other hand, it was submitted by Mr. Bhartiya learned Counsel for the claimants, that the claim petition was filed on October 31, 1969 against the Northern India General Insurance Co. Ltd. and a reply was also filed by the said Insurance Company on April 30, 1970, It was submitted that the insurance policy could have been produced by the Northern India General Insurance Co. Ltd or Shri Shaukat Ali, the owner of the truck, but both have failed to produce the policy. It was also argued that there is no basis or justification for taking the plea by the New India Assurance Company Ltd. that the Insurance policy is not available in their record. Neither any evidence has been led nor any rule or notification or order has been produced in order to show that the record of the insurance policy was not handed over to it by the Northern India General Insurance Co. Ltd. or the same has been weeded out. It was further submitted that in the above circumstances the tribunal was perfectly justified in holding the appellant as liable to the full extent of the award. Learned Counsel for the claimants placed reliance on *Jugal Kishore v. Rai Singh and Ors.* 1982 AC J 503 and *National Insurance Co. Ltd. v. Narain Das Mehta and Ors.* 1986 ACT 919.

6. P.C. Jain, J., in *Sampat Lal's* case (supra) had considered this question and after placing reliance on a Division Bench ruling of this Court in *Automobile Transport Rajasthan's* case (supra) held that non-production of the policy will not make much difference in the case and would not lead to enhance the statutory liability. In the above case after considering number of cases it was held that in view of the observations made in *Sheikhupura Transport Co. Ltd. Vs. Northern India Transport Insurance Co.*, it was abundantly clear that a contract to the contrary i.e. the Insurance Policy of a motor vehicle for higher amount over one prescribed by Section 95(2)(b) of the Motor Vehicles Act, 1939 is permissible under the law. In this context it was further held that in case no contract to the contrary was brought to the notice of the court the liability of the Insurance Company would be as provided u/s 95(2) of the Act. However, in a latter Division Bench case of this Court in *Narain Das Mehta's* case (supra) even the copy of the insurance policy sought to be produced by the Insurance Company at the stage of appeal was not allowed. It was held that the burden to prove that the liability of the insurer is limited to the extent provided u/s 95 of the Motor Vehicles Act, 1939 lies on the insurer. If no evidence is led by either party the insurance policy

or a copy thereof is produced, the insurance company would be held liable for the entire amount. In the case in hand before me neither the insurance policy has been produced nor any other evidence has been led to show that the insurer was only liable to the extent of statutory liability and in the absence of any evidence placed on record, the tribunal was right in holding the insurance company liable to the full extent of the award.

7. It was next contended by Mr. Lodha that there was no provision for the grant of interest in the Motor Vehicle Act at the time when the accident took place and it was only subsequently introduced with effect from March 2, 1970 by incorporating Section 110-CC in the Act. It was thus submitted that the claimants were not entitled to any interest. It was also submitted by Mr. Lodha that the claim petition was filed on October 31, 1969 and the same was dismissed by order Sated January 22, 1972 as no evidence was led by the claimants and the High Court allowed the appeal on July 30, 1982 in the interest of justice and remanded the case back and now the present award has been given on January 20, 1986. It has thus been submitted that the claimants themselves are responsible for this long delay and no interest can be awarded at all and in the alternative the same could have been awarded from the date of award only.

8. On the other hand, Mr. Bhartiya submitted that the tribunal itself has awarded interest from April 30, 1970 when Section 110-CC had already come into force. Apart from that the tribunal has already reduced the rate of interest @ 6% per annum instead of 12% per annum which is the normal rate of interest to be awarded in such cases as conclusively laid down by this Court as well as by the Supreme Court.

9. The interest has been awarded by the tribunal with effect from April 30, 1970. Section 110-CC was inserted by Act 55 of 1969 with effect from March 2, 1970. Section 110-CC reads as under:

Award of interest where any claim is allowed-Where any Court or Claims Tribunal allows a claim for compensation made under this Act, such Court or Tribunal may direct that in addition to the amount of compensation simple interest shall also be paid at such rate and from such date not earlier than the date of making the claim as it may specify in this behalf.

It is now clearly provided in the above Section that simple interest shall also be paid at such rate and from such date as may be specified by the court in this behalf. In the present case, the claim petition had been filed on October 31, 1969 and as such there is nothing wrong if the interest is allowed from April 30, 1970 which is admittedly a date later than the date of filing the claim petition.

10. Now, so far as the question of interest is concerned, Mr. Lodha, learned Counsel for the insurer, frankly and rightly conceded that he was not disputing the rate of interest awarded by the tribunal. His only grievance was that in view of the delay caused by the claimants themselves they are not entitled to any interest. I see no force in the contention of Mr. Lodha. The tribunal has reduced

the rate of interest from 12% to 6% per annum keeping in view the delay in passing the award and had also granted one month's time to make the payment failing which the interest was to be charged @ 12% per annum from the date of award. Thus, the interest has been awarded @ 12% per annum only when the amount is not paid within one month and even in that case only after passing of the award. Even otherwise for the long delay the interest has been awarded @ 6% per annum only and not loss has occasioned to the appellant insurer if the amount is now paid alongwith interest @ 6% per annum till passing of the award.

11. Now, I shall take up the Appeal No. 144/1976 filed by the claimants.

12. The dependency has been calculated @ Rs. 550/- p.m. It is contended by Mr. Bhartiya, learned Counsel for the claimants, that even if the income of Kulwant Singh is taken Rs. 800/- p.m. at least Rs. 700/- should have been considered as being spent on the family as there were 7 daughters and the wife dependent on Kulwant Singh. I see no force in this contention. There cannot be a definite yardstick to find out as to how much amount, one spends on himself and how much is spent on the family. The decided cases in this regard have laid down the principle that one-third of the income is usually spent by the person on himself and two-third on the family. The Tribunal has applied the same principle and I see no reason to take a different view.

13. The next question is regarding multiple applied In the present case. The tribunal found that the age of Kulwant Singh at the time of death was 45 years. Multiple of 10 years only has been allowed. In this regard the tribunal committed a clear mistake. The multiple in this case ought to have been applied at least of 15 years. Thus, the claimants are entitled to the compensation applying the multiple of 15 and it comes to $550 \times 12 \times 15 = \text{Rs. } 99,000/-$.

14. The tribunal has awarded an amount of Rs. 5,000/- only towards the claims under the head of mental shock, agony, loss of love and affection loss of consortium etc. The claimants had demanded Rs. 10,000/- towards mental shock, and Rs. 20,000/- towards loss of love and affection. I am of the view that each of the 7 claimants, who are daughters, are entitled to Rs. 2,000/- each towards loss of love and affection, mental agony etc. and so far as Smt. Mahinder Kaur widow is concerned, she is entitled Rs. 15,000/- for the loss of consortium, love and affection etc. Thus the claimants would be entitled to an amount of Rs. 29,000/- by way of compensation towards the above heads. Rs. 3,000/- has been awarded by the tribunal towards the expenses in the treatment as claimed by the claimants. Thus, the claimants would be entitled to a total sum of Rs. 1,31,000/- by way of compensation.

15. In the result, appeal No. 76/1986 filed by the Insurance Company is dismissed while Appeal No. 144/1986 filed by the claimants is allowed in part and the amount of compensation is increased to Rs. 1,31,000/-. The Insurance Company had filed a stay petition in Appeal No. 76/1986 and this Court on July 31, 1986 had stayed the execution of the award provided the appellant insurance

company paid Rs. 20,000/- plus interest @ 6% per annum from April 30, 1970 till the day of payment within a period of one month. In case the aforesaid amount has been paid by the Insurance Company, the rest of the amount shall be paid with interest @ 6% per annum from April 30, 1970 till actual payment. Two month's time is now granted to the Insurance Company to make the payment failing which interest would be charged @ 12% per annum on the balance amount of compensation from the date of judgment of this Court. The parties shall bear their own costs, throughout.