(1975) 02 DEL CK 0003

In the Delhi High Court

Case No : First Appeal No''s. 96 and 104 of 1974

The Oriental Fire and General Insurance Co. Ltd. and Another APPELLANT

Vs

Leelavati R. Adyanthaya and Others RESPONDENT

Date of Decision : 05-02-1975

Acts Referred:

Citation : (1975) 02 DEL CK 0003

Hon'ble Judges : B.C. Misra, J

Bench : Single Bench

Advocate : P.R. Monga and P.P. Malhotra, for the Appellant;

Judgement

B.C. Misra, J.

(1) This judgment will dispose oftwo First Appeal from Orders (FAO No. 96 and 104 of 1974) arising outof the award of the Motor Accidents Claims Tribunal dated 30thNovember, 1973 by which it has awarded a compensation of Rs. 32,000.00 tothe legal representatives of the deceased against respondents 1, 2 and 4jointly and severally. The first mentioned appeal has been filed by theInsurance Company for reduction of award and the second mentionedappeal by the claimants for its enhancement.

(2) The material facts of the case are that Shri N.R. Adyanthaya(deceased was a Scientist employed in National Institute of Oceoniography,Council of Scientific and Industrial Research, Ministry of Education andwas at the material time drawing a salary of Rs 872.40. At the time ofthe accident, he was driving his scooter and got involved in an accidentwith a bus bearing No Dlp 3383 which was owned by respondent No. 6and was being driven by Mohindar Singh, respondent No. 5. The accidenttook place at about 4.30 p.m. at Bahadur Shah Zaffar Marg on 6/09/1966 and the deceased was thrown off the seat a long distanceaway and received about 15 injuries as a result of which he died on thethe same day in the Irwin Hospital. His legal representatives made a claimfora sum of Rs. 3,50,000.00 for award of compensation. During thetrial of the claim, the

insurance company which had insured the offendingmotor vehicle had been taken over by the Oriental Fire and GeneralInsurance Co., (appellant in the appeal No. 96 of 1974). The MunicipalCorporation of Delhi was also imp leaded in the proceedings as respondent No. 3 on the ground that the aforesaid offending bus was working forits Delhi Transport Undertaking on the basis of some contract with them.The claim petition was contested and on the pleadings of the parties, thefollowing issues were framed ,

"1. Whether the accident resulting into death of Shri NitteRanganath Adyanthaya was due to rash and negligent driving onthe part of respondent No. 1 ?2. Whether respondent No. 3 is vicariously liable for the legal tortcommitted by respondent No. 1 ?3. Whether the petitioners are legal representatives of the deceased ?4. To what amount if any, are the petitioners entitled ?5. Whether respondent No. 1 had a valid driving license ? If notits effect ?6. Whether the vehicle was being operated without any permit or incontravention of the purpose of the permit if any, if so its, effecton the liability of the Insurance Co. ?7. What is the maximum liability of the Insurance Co. ?8. Relief,"

(3) The Claims Tribunal after examining the entire evidence onrecord came to the conclusion that the accident had occurred due to therash and negligent driving on the part of the driver of the offending busand the first issue was answered in the affirmative. With regard to issueNo. 2, it came to the conclusion that the Municipal Corporation of Delhirespondent No. 3 was not vicariously liable for the tort and omissions ofthe driver or the owner of the offending bus. With regard to issue No. 3,the Tribunal recorded a finding that the claimants namely the widow andsons of the deceased were his legal representatives, entitled to receivecompensation. With regard to issue No. 5, it held that the driver was inpossession of a valid driving license. With regard to issue No. 6, theTribunal held that the burden of establishing the said issue was on theInsurance Company which did not lead any evidence and so it did notfind any merit in the allegation that the offending bus had been operatedwithout any permit or contrary to terms of the permit and the issue wasanswered in the negative. With regard to issue No, 7, the Tribunal observedin paragraph 22 that the respondents had not brought to the notice of theTribunal any law or authority laying down the maximum liability of theInsurance Company in such cases. It, Therefore, came to the conclusion thatInsurance Company was jointly liable to pay the awarded amount and itdecided the issue accordingly. With regard to issue No. 4, it came to theconclusion that out of the salary received by the deceased, the amountavailable for the benefit of the family came to Rs. 275.00 per month andthe pecuniary loss to them for a period of 20 years amounted tors. 66,000.00. As against this, the Tribunal deducted certain amounts onaccount of benefits acquired by the legal representatives as a result ofdeath. The Tribunal also deducted the pension at the rate of Rs. 80.00per month which was payable to the widow for the period of 20 years Aftermaking the said adjustments, the Tribunal came to the conclusion thatRs. 32,000.00 was the pecuniary loss to the petitioners and it decided theissue accordingly. In answer to issue No. 8, it held

that the legalrepresentatives of the deceased were entitled to recover Rs. 32,000.00 as acompensation from respondents 1, 2 and 4 jointly as severally and itawarded 6 percent future interest from the date of the award up to the dateof the realisation with costs against respondents 1, 2 and 4.

(4) Feeling aggrieved by this order, the Insurance Company has filed(appeal No. 96 of 1974). Mr. P.R. Monga, learned counsel for theappellant has raised two contentions. He has filed on application underOrder 41 Rule 27 of the CPC and has prayed that theinsurance policy of the offending bus has not been proved and that thesame be allowed to be produced and exhibited in evidence. The reasondisclosed in the application for not proving it earlier is that Shri NityaNand Dhawan, Advocate who was representing the company was murderedand the case was taken over by his father Shri Makhan Lal, Advocate whowas not aware whether or not the policy had been produced and proved onthe record. Mr. Monga submits that Mr. Makhan Lal, Advocate has alsodied during the pendency of the appeal in this Court. He has now filed acopy of theinsurance policy which he wants to prove. The second contention of Monga is that under the law the maximum liability of the insurancecompany is limited to Rs. 2.000.00 and so the decree for the excess amount of Rs. 12,000.00 awarded by the Tribunal should be confined to the otherrespondents and the Insurance Company be exonerated to the liability inexcess of Rs. 20,000.00.

(5) This application for additional evidence is. being opposed on behalfof the contesting respondents 1,2,3,4,5 and 6. The Insurance policy orat least its counter-part was in possession of the Insurance company andthe Insurance Company had filed a written statement in which it hadadmitted the insurance but disputed its liability. It was, Therefore, itsduty to file the necessary documents before the Tribunal below on thedate the issues were framed. If it failed to do so, it must bear theconsequences. It is true that unfortunately Mr. Nitya Nand Dhawan,Advocate died an untimely death but that is no ground to hold that therewas any valid reason for the Insurance Company not to instruct thecounsel properly and file the insurance policy intime and take legal stopsto prove the same. Moreover, the counsel before the death couldproperly take all the necessary steps. Even, later when another conselMr. Makhan Lal, Advocate had been engaged and had taken over thebrief, it is obvious that he must have inspected the court file before takingfurther steps in the matter. He could easily take any steps necessary for production of the document had he considered it essential for the case.I am of the view that probably the counsel did not consider it necessaryto burden the file with the production and proof of the insurance policysince the factum of insurance had been admitted and the extent ofliability would be a matter for determination between the InsuranceCompany and the owner of the vehicle and it had very little materialbearing on the case so far as the claim of the legal representatives of thedeceased was concerned. No sufficient ground has been made out forallowing the application under Order 41 Rule 27 CPC and the same is,therefore, rejected.

(6) Mr. Monga has then pressed his second contention. It iscorrect that u/s 95(2) of the Motor Vehicles Act (4 of 1939), IT is provided that where the vehicle is a vehicle in which passengers arecarried for hire or reward or by reason of or in pursuance of a contract ofemployment (i) in respect of persons other than passengers carried forhire or reward, a limit of Rs. 20.000.00 in all and Rs. 4.000.00 in respect ofindividual passenger and etc. This limit has subsequently been raised insub-section (i) to Rs. 50,000.00 but that is not material for the decision ofthe present case. However, u/s 96 Sub-Section (4) it is provided if the amount which an insurer becomes liable under this section topay in respect of a liability incurred by a person insured by a policyexceeds the amount for which the insurer would apart from the provisions of the section be liable under the policy in respect of that liability, theinsurer shall be entitled to recover the excess from that person. It is.therefore, obvious that the statutory minimum liability at the materialdate was Rs. 20,000.00 but there is nothing in the provisions of law toprevent the parties from contracting for an insurance to cover a largeamount. In case the amount of insurance contracted between theparties is less than the amount for which the Insurance Company hasbeen held to be liable, the Insurance Company is given a statutory right torecover the excess amount from the party. The Insurance Company,therefore, does not suffer any prejudice if it finds that its liability, on theface of the insurance policy if any, does not exceed Rs. 20,000.00, as underthe law it would be entitled to recover the excess from the party to theinsurance. Mr. Monga and Mr. Malhotra both counsel have furtherpointed out that this provision of law is also reflected in the insurancepolicy and it contains a term to the effect that the insurer will repay to thecompany sums paid by the company which the company would not have alegal liability to pay. Under these circumstances, I find no substance inthe contention that the award of the Tribunal below be modified or that itwill cause any prejudice to the Insurance Company in respect of its claimon the basis of the insurance policy.

(7) As a result I find there is no force in the appeal F.A.O. 96 of1974 and the same is dismissed.

(8) The legal representatives of the deceased have filed the otherappeal (F.A.O 104 of 1974) in which they have claimed that the award beenhanced to a sum of Rs. 3,50,000.00. It is really a matter of regret that in this accident the country has lost a Scientist. The Tribunal below hasfound his salary to be Rs. 672.40 per month. Out of this amount, he hadto pay the income tax and make a contribution to the provident fund andbe was also spending something on his scooter and so the Tribunal heldthat only a sum of Rs. 275.00 was available to be spent by him on thelegal representatives and calculating it for a period of 20 years, thecompensation determined amounted to Rs. 66,000.00. I do not find anylegal infirmity with the same.

(9) The Tribunal has, however, proceeded to reduce the amount of compensation awarded on various grounds. One of the grounds whichis indisputable is pension

of Rs. 80.00 per month for a period of 20 yearswhich has been granted to Smt. Lilawati. the widow of the deceased.This amount will come to Rs. 19,200.00 and it has properly been deducted.The other deduction that the Tribunal has made, consists of the amountsof assets that the family of the deceased have obtained on account of deathof the deceased. There is no doubt that receipt of the assets of thedeceased has been accelerated in the hands of the legal representatives andso the deductions have been properly allowed. Moreover an importantfact for consideration is that the owner of the vehicle involved viz. theMotor Transport Society Limited respondent No. 5 is reported to havebeen wound up and it would be futile to pursue the assets of thetransport society in the hands of its various members in an attempt torealise any enhanced amount of compensation by the widow and herminor children. Under these circumstances, I find that the impugnedorder does not call for any interference and the appeal is, Therefore,dismissed and the award is affirmed.

(10) As a result, both the appeals are dismissed and the parties are left to bear their respective costs.