

(1974) 08 CAL CK 0021
In the Calcutta High Court
Case No : A.F.O.O. No. 701 of 1969

The Premier Insurance Co. Ltd. and Another	APPELLANT
Vs	
Sm. Gitarani Ghosh and Others	RESPONDENT

Date of Decision : 28-08-1974

Acts Referred:

Evidence Act, 1872 — Section 3
Motor Vehicles Act, 1939 — Section 110B, 110D, 96, 96(2)

Citation : AIR 1975 Cal 239 : (1975) 1 ILR (Cal) 107

Hon'ble Judges : Sen Gupta, J; R. Bhattacharya, J

Bench : Division Bench

Advocate : Syama Charan Mitter, Syamaprasanna and Roy Choudhury, for the Appellant; J. Dutt, for the Respondent

Judgement

R. Bhattacharya, J.—This is an appeal against the decision and award dated the 27th February, 1969 by the Motor Accident Claims Tribunal Calcutta, 24 parganas and Howrah at Howrah presided over by Mr. K. Chatterjee in M. A. C. Case No. 271 of 1965.

2. One Niroj Kumar Ghosh owned a Taxi cab and earned, according to the allegation in the petition, a net income of Rs. 300/- per month. On 7-11-65 at about 7 p. m. when the traffic red signal was on, he was crossing the road at the junction of Dr. Abani Dutt Road and Maulana Abul Kalam Azad Road, Salkia, Howrah. At that time a Motor lorry No. WBL 8542 fully loaded with sand and driven rashly and negligently, knocked down and ran him over. He was immediately removed to the hospital but ultimately died at about 9 p. m. that very night consequent to the injuries received. The victim was aged 45 years with sound health. His wife Sm. Gitarani filed a claim for self and on behalf of the two minor sons to the tune of Rs. 1,10,000/-. The deceased left these three persons as the only heirs of his.

3. Before the Tribunal, the owner of the lorry, Bansilal Roy, the Vanguard Insurance Company Limited of 12-A, Netaji Subhas Road, Calcutta and the

Premier Insurance Co., Ltd. of 8, Lyons Range Calcutta were impleaded as the opposite parties.

4. The defence of the owner of the lorry was that the income of the deceased was not Rs. 300/- per month. Niroj was not aged 45 years as stated. It has also been alleged that the driver of the lorry was not negligent and rash but it was Niroj who came rashly from the wrong side and dashed against the lorry. The sum and substance of the defence was that the accident was not due to the negligence of the driver but the dachas-ed was in the wrong.

5. The defence of the Vanguard Insurance Company Limited was that the lorry was insured with them only for one year upto the 23rd June, 1965. As at the time of the accident the vehicle was not insured with them, they are not liable.

6. The allegations made in the objection filed by the Premier Insurance Company Limited, in substance, is that the age and the income of the deceased are not as stated in the petition for claim. They claimed no knowledge about the accident and supposing there was any, the defence is that it was due to the fault and carelessness of the deceased who had disregarded the traffic signal and the traffic rules, that the accident took place. The driver was not negligent and the claim as made in the petition was excessive.

7. Upon hearing the parties, the Tribunal held that the driver was negligently and rashly driving his lorry violating the traffic rules and as a result thereof he knocked down Niroj who died of the injuries caused by the lorry. It was also found that the petitioners were entitled to an amount of Rs. 23,500/- as compensation. Out of the said compensation a sum of Rs. 20,000/- is payable by the Premier Insurance Co., Ltd. while a sum of Rs. 3,500/- is payable by the owner of the lorry.

8. Against that award the present appeal has been filed jointly by the Premier Insurance Company Limited and Bansilal Roy, the owner of the lorry.

9. Mr. Dutt, the learned advocate appearing on behalf of the respondent-claimants took a preliminary point regarding the maintainability of the appeal. His contention is that this appeal is liable to be dismissed in view of the provisions in Section 96 of the Motor Vehicles Act. According to Mr. Mitter, the learned advocate for the appellants, when the Premier Insurance Company Limited (hereinafter referred to as the Premier Insurance) was a party, they have, of course, a right to challenge every point in this case.

10. In this connection several decisions cited at the Bar may be considered. One such case is the New India Insurance Co. Ltd., Bombay Vs. Smt. Molia Devi and Others, which is a Division Bench decision. This was an appeal against the award of the Claims Tribunal. Here it has been held that Section 96 (2) of the Motor Vehicles Act permits the insurer to challenge the award on grounds mentioned in the Sub-section (2) and Sub-section (6) of Section 96 says that no insurer to whom the notice referred to in Sub-section (2) or Sub-section (2-A) has been

given, shall be entitled to avoid his liability to any person entitled to the benefit of any such judgment as is referred to in Sub-section (1) or Sub-section (2-A) otherwise than in the manner provided for in Sub-section (2). The Division Bench has held as follows:--

"We may observe that the insurer has only certain limited grounds on which it can avoid its liability as permitted by Section 96 (2) of the Act and Sub-section (6) of the said section clearly lays down that the liability cannot be avoided in any other manner except to the extent permitted by Sub-section (2)."

11. There is one case, viz., the case of K. Gopalakrishnan Vs. Sankara Narayanan and Others, . This is also a Division Bench decision. In this case it was found that Section 96 of the Motor Vehicles Act is applicable to proceedings before the court and not before any Claims Tribunal. The reasonings are that the section came into effect when there was no provision for setting up of Claims Tribunal and that in the section itself reference is made to the proceedings before the court. It is stated in support of this view that the decision of the Supreme Court in the British India General Insurance Co. Ltd. Vs. Captain Itbar Singh and Others, relates to a case started in a civil court and is thus distinguishable. The provision for Claims Tribunal was introduced by Act 100 of 1956. In this connection the case of the Municipal Committee, Jullundur City Vs. Shri Romesh Saggi and Others, , may be looked into. This is an appeal against the decision of a Claims Tribunal. A question arose if the tribunal is a court. R. S. Narula, J. after a long discussion was of the view that it is a court within the meaning of the definition given a Section 3 of the Evidence Act. A dispute like this again arose before a Division Bench of this High Court in the case of Hukum Chand Insurance Co. Ltd. v. Subasini Roy, reported in (1970) 74 CWN 879. The main judgment was delivered by A. K. Sinha, J. Here the appeal was taken from an award of a Claims Tribunal under the Motor Vehicles Act. The appellant was the insurer. The question arose as to the limit of the insurer's defence. Several cases including the cases of British India General Insurance Co. Ltd. Vs. Captain Itbar Singh and Others, and K. Gopalakrishnan Vs. Sankara Narayanan and Others, were considered. A. K. Sinha, J. held:--

"So, on a fair reading of Sub-sections (1) and (2) along with Sub-section (6) of Section 96 of the Act it cannot but be concluded that an insurer is not entitled to avoid his liability except on the grounds specified in Cls. (a) to (c) of Sub-section (2) of Section 96."

11-A. With reference to the word "Court" in Section 96 (2) A. K. Sinha, J. says as follows:--

"So, in the present context if the word "court" in Section 96 (2) is read as Claims Tribunal whenever necessary then such "uncertainty, friction or confusion" may be avoided and the entire scheme of adjudication by Claims Tribunal as embodied in the amended provisions of Sections 110 to 110-F can be smoothly put into effect. That being so, it seems clear that the insurer is entitled to defend

an action only on limited grounds specified in Clauses (a) to (c) with Sub-clauses enumerated therein even before the Claims Tribunal set up by notification for the purpose of adjudication of claim for compensation. Accordingly, it is not open to appellant insurer in the instant appeal to defend an action on any grounds other than those mentioned in Clauses (a) to (c) or several sub-clauses therein under Sub-section (2) of Section 96 of the Act. Clearly, therefore, the present appeal by the appellant insurer challenging the correctness of the decision of the Claims Tribunal on grounds not covered by Clauses (a) to (c) or any of the Sub-clauses therein must be held to be not maintainable."

12. Considering the aim and object of the Motor Vehicles Act as also its scheme we respectfully agree with the above decision. Previous to the amendment of the Act in 1956, the Civil Court had jurisdiction to decide the claims but after the amendment the Claims Tribunal took away jurisdiction of the civil court in the prescribed area. It is clear that at the time of the amendment in 1956, due to inadvertence appropriate words could not be inserted. Moreover, the Claims Tribunals are vested with powers of Civil Court under the CPC in some matters. According to Section 3 of the Evidence Act the Claims Tribunal may be treated as a Court having the power to record evidence of witnesses on oath. The provision in Section 96 of the Act would be nugatory if it is not made applicable in the proceedings before the Motor Accident Claims Tribunal. In the present case none of the grounds of appeal come under Sub-section (2) of Section 96 of the Act.

13. As discussed above, we must hold that the appeal of the insurer, the Premier Insurance, is not maintainable. But, as it is a joint appeal by the insurer and the owner of the lorry we hold that the appeal, as preferred by the owner of the lorry, Bansi-lal Roy, is maintainable.

14. With regards to the points urged regarding the merits of the case, the first submission of Mr. Mitter for the owner-appellant is that Niroj, the victim was negligent and while carelessly crossing the road, he dashed against the lorry and the lorry driver was not responsible for the accident as he was not rash nor negligent. On this question we have got two eye-witnesses of the occurrence viz., P. Ws. 2 and 3. P. W. 2 is a school student aged about 16 years. His evidence is that the accident took place near the crossing of the roads and at that time the tram car was stationary on the road. When Niroj was crossing the road by the side of the tram the offending lorry came at a very high speed, overtook the stationary tram and knocked Niroj down. After knocked down, Niroj went under the lorry. The witness Ranjit dragged out the injured from under the lorry and he informed the members of the family of the injured. We get from his evidence that the accident took place at a distance of about 2 or 3 cubits from the crossing of the road. We also get from him that there was a traffic light signal at the crossing. P. W, 3 is a tailor having his shop on Dr. Abani Dutt Road. He also saw the accident. He also supported the evidence of P. W. 2 substantially. He says that while the offending lorry was overtaking the stationary tram at the stop, the lorry dashed against Niroj. At that time the witness was purchasing

betel. He has stated that it was P. W. 2 who brought out the injured from underneath the lorry. This witness has clearly stated that the lorry was running at a great speed and at that time the traffic red signal was on the traffic post. We have considered the evidence of these two witnesses and we find nothing to disbelieve them. Evidence has been given in a clear and convincing manner and there can be no doubt that when the traffic signal was on, the Irani car was motionless and when Niroj was just crossing the road by the side of the tram, the driver of the lorry drove the vehicle at a very great speed to overtake the stationary tram while the red signal was burning in front and knocked down Niroj resulting in fatal injury on him. There was no reason for the lorry driver to drive the lorry at so great a speed specially when the traffic signal showed red light and the tram was not moving. In such circumstances there can be no earthly reason for the lorry driver to overtake the tram at that time and at that place and he ought to have taken caution when the tram was standing still and there was the opportunity for the pedestrians to cross the road after the red signal had been given. We have no doubt that it was the lorry driver who was driving the lorry rashly and negligently and thereby knocked down Niroj violating the traffic rules and that the victim was not in fault in any way.

15. P. W. 5, Dr. S. K. Dey came to depose from the Howrah General Hospital. From the hospital records he has given evidence that Niroj was taken to the Howrah General Hospital at 6-25 p. m. that night. P. W. 6 is another doctor who held the postmortem examination on the dead body of Niroj. He found 5 injuries on the person of the victim which are as follows :

"1. Grossly lacerated injury extending from upper third of right thigh upto 4" below the right knee joint. Lacerated muscle, vessels, tissues are widely separated exposing right femur and right knee joint. Some of the flaps of the avulsed tissues and skin are attached laterally. No fracture of bone seen.

2. One lacerated injury 6" x 4" on the right inguinal region which fractured right pubic bone associated with effused blood and blood clots seen in and around the tissues and in pelvic cavity.

3. One crushed injury 6" x 4" extending from left knee joint upto upper third of left leg with comminuted fracture of upper end of both left tibia and fibula with effused blood and blood clots underneath and in and around the lacerated tissues.

4. Multiple abrasions varying from sizes from 6" x 1" x 1/2" x 1/4" on posterior lateral aspect of left arm, fore-arm, right arm and back of left thigh associated with blackening at places.

5. One abrasion 3" x 1 1/2" on the dorsum of left foot".

16. According to the doctor, death of the victim was due to the effect of the injuries described ante-mortem and accidental in nature. He has further stated that the injuries could have been caused on being run over by a motor truck or any other heavy vehicle. During cross-examination he has asserted that the

injuries found on the person of the deceased could not have been caused by accidental fall on the road.

17. On a consideration of the evidence of this witness we are convinced that the manner in which the victim was involved in the accident as stated by the witnesses has been corroborated to prove that Niroj died as a result of the injuries caused by (he offending lorry.

18. The next point that has been urged from the side of the appellant before us is that the compensation awarded by the Claims Tribunal is excessive. It has been urged that the Tribunal ought to have considered that the deceased had some personal expenses while living and that the amount for such expenses ought to have been deducted from the net income of rupees three hundred. Mr. Dutt appearing for the respondent however urged that the learned Tribunal had made certain deductions which he should not have done under the law. These amounts related to the insurance and the payment of lump sum compensation. The claimants have not preferred any cross-objection. However, they are entitled to support the judgment and award on other points based on evidence. In this case the learned Tribunal has found that the deceased being aged 45 years was expected to live upto the age of 60 years and therefore he made a calculation on the basis of his life upto that age. There is no fixed rule of such calculation for ascertaining the compensation. It all depends upon the evidence as to the health of the victim and the history of the life span of other members of his family and other circumstances of the case. It appears that the Tribunal has deducted a sum of Rs. 100/- from the net income of Rs. 300/- of the deceased on the ground that a sum of Rs. 100/- was being received by the claimant by letting out the taxi on hire. It is curious to note that the learned Tribunal did not take into consideration the running expenses for the maintenance of the taxi in question and that the taxi cannot be in the same state of affairs for 15 years to come. This taxi was inherited by the petitioner and her children as heirs. The question of consideration of the personal expenses does not appear to be proper in view of the fact that no expense for the maintenance of the taxi was ascertained to be deducted from the sum of Rs. 100/- received by the petitioner by letting out the same, and also because it was not considered that Rs. 100/- cannot be the income from the taxi for a period of 15 years after the death of Niroj. In the facts and circumstances we do not think that the compensation awarded on the basis of the earning which was calculated at the rate of Rs. 200/- per month by the Tribunal is excessive in any manner. We accordingly think that the sum of Rs. 23,500/- as compensation is modest and reasonable and we find no reason to interfere with the same.

19. In the result, the appeal by the Premier Insurance Co. Limited is found to be not maintainable but the appeal filed by the owner has no merit. The appeal is thus dismissed on contest with costs. We assess the hearing fee payable in this appeal by the owner of the lorry Bansilal Roy to the respondent claimants at ten gold mohurs.

Sen Gupta, J.

20. I agree.