
(1987) 01 BOM CK 0028
In the Bombay High Court

United India Insurance Co. Ltd.

APPELLANT

Vs

Antonetta D" Souza and others

RESPONDENT

Date of Decision : 19-01-1987

Acts Referred:

Motor Vehicles Act, 1939 — Section 95(2)

Citation : (1987) 62 CompCas 393 : (1987) MhLj 602

Hon'ble Judges : G.F. Couto, J;G.D. Kamat, J

Bench : Division Bench

Judgement

Dr. Couto, J.—These appeals are directed against the awards made by the Motor Accidents Claims Tribunal, Margao, in four petitions for compensation filed u/s 110A of the Motor Vehicles Act, 1939. The said four petitions were filed as a result of an accident which caused the death of three people and injured a fourth. The vehicle involved in the accident is the same and the victims of the accident were passengers travelling in the said vehicle. For this reason and since the issues raised in all the appeals are the same, this common judgment.

2. An accident took place on December 20, 1980, at Vazem, Shiroda, Goa, involving bus No. GDDT-2129, belonging to the respondent, Teotonio Perira, and which was being driven at the relevant time by the respondent, Patirc D"souza. The vehicle went off the road while negotiating a turn and was balancing on the edge of the road. Some passengers tried to come out of the bus and then, the vehicle turned turtle and went down some ten meters away from the road. According to the petitioners in the said cases, the accident was due to the rash and negligent driving of the vehicle by the respondent, Patric, who did not take the necessary precautions while negotiating a turn of the road and was driving the bus at a high speed. As a result of the said accident, one Mrs. Assumption D"souza, one Ganpat Bhikaji Sawant and one Ramesh Datta Naik died and the respondent, Vijay Rama patil, sustained serious injuries.

3. The Claims Tribunal dealt with the four petitions together and ultimately passed the impugned awards. In the case filed by the heirs of Mrs. Assumption

D'souza, a compensation of Rs. 52,000 was awarded to the petitioners and directed to be paid by the respondents in the petition jointly and severally with interest at 6% from the date of the claim till complete satisfaction. In the case filed by the heirs of Ganpat Bhikaji Sawant, a compensation of Rs. 50,000 was awarded also to be paid jointly and severally by the respondents in the petition with interest at the rate of 6% from the date of the claim till satisfaction ; in the case filed by the heirs of Ramesh Datta Naik, a compensation of Rs. 78,000 was awarded and it was ordered that the amount of Rs. 75,000 was to be paid by all the respondents in the petition jointly and severally being the balance amount including interest at the rate 6% from the date of the claim till its satisfaction to respondents Nos. 1 and 2 in the petition only and in the petition filed by the injured, Vijay, a compensation of Rs. 25,000 was awarded and ordered to be paid jointly and severally with interest at 6% per annum by all the respondents.

4. These appeals were filed only by the insurance company and it is not challenged that the accident occurred due to the rash and negligent driving of the vehicle by the respondent, Patric. The amount of compensation awarded is not also challenged and the short point raised by the appellant is that its liability goes up to Rs. 75,000 only in all the four cases, but the Tribunal has awarded compensation without making it clear that the liability of the appellant was restricted in all to Rs. 75,000.

5. Mr. Rebelo, learned counsel appearing for the appellant, invited our attention to the impugned awards and specially to the fact that the four petitions claiming compensation had arisen out of the same accident and had been tried together by the Tribunal. Though the Tribunal had considered that the overall liability of the appellant towards all the passengers in the bus is limited to Rs. 75,000, yet it has awarded compensation exceeding the said limit. Learned counsel submitted, placing reliance on the decision in Shivahari Rama Tiloji and another Vs. Kashi Vishnu Agarwadekar and others, and National Insurance Co. Vs. Smt. Deepathumma Alias Beebi and others, , that the overall liability of the insurance company towards all the passengers travelling in the bus and entitled to the compensation is restricted to Rs. 75,000 only. The Tribunal, however, has wrongly awarded compensation in excess of the said limit of Rs.. 75,000, for in each of the four claim petition, it held the insurance company liable jointly and severally with the other respondents in the petitions to the payment of the compensation granted, which, taken together, exceed largely the said limit of Rs. 75,000.

6. Mr. Coalho Pereira, learned counsel appearing for the respondent, Teotonio Pereira, has, however, contended that there is no reason for interference with the awards, as the Tribunal has properly applied the law as laid down in the above decisions quoted by Mr. Rebello. He, further placing reliance on the decision of the Madhya Pradesh High Court in Sabira Begum and Others Vs. Raipur Transport Co. Pvt. Ltd. and Another, , and of the Patna High Court in Tara Pada Roy v. Dwijendra Nath Sen [1986] ACJ 299, submitted that in view of the decision of

the Supreme Court in *Motor Owners' Insurance Co. Ltd. v. Jadavji Keshavji Modi* [1981] ACJ 507 : [1982] 52 Comp Cas 454 (SC), the accident has to be looked at not from the angle of the vehicle or owner of the vehicle, but from the angle of the victims of the accident. Therefore, since four claim petitions have been filed and there were accordingly four accidents, the liability of the insurance company in each of the cases travels up to the limit of Rs. 75,000.

7. We do not think that the view advanced by learned counsel for the owner of the vehicle is correct. In *Shivahari Rama Tiloji and another Vs. Kashi Vishnu Agarwadekar and others*, one of us (Counto J.) dealing with the provisions of section 95(2)(b) of the Motor Vehicles Act had held that it cannot be disputed that in view of the provisions of section 95(2) (b)(ii)(4), an insurance policy covers only a liability incurred in respect of any accident up to the prescribed limits and that it is apparent that there are two kinds of limits, one as regards the main and overall liability and the other being the one prescribed in sub-clause (4). It was further held that the second limit postulated in sub-clause (4) is clearly subordinate to the overall limit and the effect of such subordinate is that the liability of the insurer will not go, in any event, beyond the overall limit and thus, the subordinate limit prescribed in sub-clause (4) comes into operation only where there is more than one passenger who was a victim of the accident. This limit, it was further observed, was prescribed to facilitate the apportionment of compensation among the various victims of an accident up to the overall limit of the liability of the insurer and that considering the compulsoriness of the insurance, the subordinate limit was established in order to fix a minimum limit of liability which must be covered by the insurer. This view taken in *Shivahari Rama Tiloji and another Vs. Kashi Vishnu Agarwadekar and others*, was approved by the Division Bench of this court in *National Insurance Co. Vs. Smt. Deepathamma Alias Beebi and others*, Masodkar J., speaking for the court, has indeed observed that though on a plain reading the provisions of section 95(2) are susceptible of an interpretation that the liability of the insurance company is restricted to the limit fixed in sub-clause (4) of section 95(2)(b)(ii), none the less, there is another interpretation which is equally reasonable and possible and which will further the object of the law. The said object is to provide an indemnity to the travelling passengers and to secure compensation against damages arising out of the accident. The terms "one cause" or "one accident" along with the total limit of the indemnity is meant to achieve the said object and that there hardly exists any difference in principle to depart from the decision of the Supreme Court in *Modi's case* [1981] ACJ 507 : [1982] 52 Comp Cas 454 (SC) wherein the question of "any one accident" was considered and treated such phrase occurring in section 95(2)(a) of the Act with regard to a third party liability as giving rise to independent liability qua each person involved in an accident. He further observed that the reason given for construing that provision in favour of providing such an indemnity in accident matters are equally available while interpreting the provisions of sub-section (2)(b) of section 95 of the Act. Section 95 of the Act is a compulsive and it requires a policy of insurance to

cover the liability when an accident occurs and though it does use terms like "limits", those limits and the total cover will have to be taken together for the purposes of giving effect and furthering the object of the enactment rather than deviate from it. The Division Bench, therefore, approached the problem from that angle and, after discussing in paragraphs 12, 13 and 14 (at pages 543- 546 of 61 Comp Cas) the said provisions of law, observed in para 15 that sub-clauses (2) and (4) of section 95(2)(b)(ii) read together enact a rule of maximums and not a minimums operative in different fields and that what is provided by sub-clause (2) is the maximum limit of ensured guarantee, while what is provided by sub-clause (4) is the working out of such guarantee which is always available. The term used in sub-clause (4) "subject to the limits aforesaid", is intended not to limit the maximum of the guarantee available, but a provision in the nature of a contingent one, for the term "subject to" signifies below the maximum or within it, depending upon the condition or contingency. Thus, according to the Division Bench, it would be reasonable to read the said sub-clause (4) as providing the maximum depending upon contingencies and circumstances available in each case so as to work out such maximum. Such contingent provision is not intended to affect the earlier maximum, nor to reduce it by reason of only one person being involved in the accident. It will be also pertinent to note that the Division Bench has held in para 12 (at pages 543-544 of 61 Comp Cas) that the apportionment among several claimants of the compensation up to the limit of Rs. 75,000 is to be made pro rata.

8. The learned Tribunal, while awarding the compensation in each of the petitions, made reference to a decision of the Panaji Bench of this court without citing the same. In fact, it was observed that "admittedly the deceased was a passenger of the bus involved in the accident and, as such, issue No.5 should have been answered in the positive. However, as it was held by the Hon'ble Panaji Bench of the Bombay High Court, the limit of such liability of the insurance company in respect of the insured passengers of the vehicle is to be construed as minimum limit and subordinate to the overall limit insurance liability. Therefore, if the total compensation payable to the victim or victims of a motor vehicle accident did not exceed the overall limit of the liability, the insurer would be liable to pay to such compensation in toto and it is only when the compensation awarded exceeds that outer limit the owner of the vehicle is liable for the payment of the excess thereof". Though the decision of this Bench relied upon is not identified, it would appear that that is the one delivered in Shivahari Rama Tiloji and another Vs. Kashi Vishnu Agarwadekar and others, , which was, as already said, approved by the Division Bench in National Insurance Co. Vs. Smt. Deepathumma Alias Beebi and others, . If this is so, as otherwise apparent, it is obvious that the learned judge could not, in any event, have held the insurance company liable up to the limit of Rs. 75,000 in each of the claim petitions, for it is common ground that all the claim petitions arise out of the same accident involving the same vehicle where the victims thereof were travelling as passengers. The liability of the insurance company was indeed, in the light of the

said decisions of this court, restricted to 75,000 in all the four petitions and such liability had to be apportioned pro rata among the claimants in each of the four petitions.

9. Mr. Coelho Pereira has contended that this is not the real meaning and import of the above decision of this court, for "any one accident", spoken of in sub-section (2) of section 95 has to be looked at from the angle of the victim of the accident as held in Modi's case (1981) ACJ 507: (1982) 52 Comp Cas 454 (SC), and that since there existed four separate accidents from the angle of each of the victims of the accident, the liability of the insurance company goes in each of such cases up to the limit of Rs. 75,000. We are, however, unable to accept this view. In Modi's case (1981) ACJ 507: (1982) 52 Comp Cas 454 (SC), the Supreme Court had been dealing with the provisions of section 95(2)(a), as they stood before the amendment and it was in the context of the said provisions of law that the court held that the expression "any one accident" occurring in the section had to be looked at from the point of view of the various claims, each of whom is entitled to make a separate claim for the accident suffered by him and not from the point of view of the insurer. Then, the court proceeded to make a reference, in paragraph 24 (at page 468 of 52 Comp Cas) of its judgment, in *Sheikhupura Transport Co. Ltd. Vs. Northern India Transport Insurance Co.*, to observe that the said judgment was not an authority on the interpretation of clause (a) of section 95(2), for the matter before the Supreme Court in that case was in respect of clause (b). Then, after quoting the observations made in *Sheikhupura Transport Co. Ltd. Vs. Northern India Transport Insurance Co.*, to the effect that it is clear that the statutory liability of the insurer to indemnify the insured is as prescribed in section 95(2), their Lordships observed in Modi's case (1981) ACJ 507 (1982) 52 Comp Cas 454 (SC), that in view of the limit on the insurer's liability in respect of each passenger, the argument on the construction of the words "any one accident" had no relevance and had, therefore, neither been made nor considered by the court. It was added that different considerations may arise under clause (b) as amended. It is thus clear that though in Modi's case (1981) ACJ 507: (1982) 52 Comp Cas 454 (SC), the Supreme Court has not taken a view different from the earlier view in *Sheikhupura Transport Co. Ltd. Vs. Northern India Transport Insurance Co.*, inasmuch as the statutory liability of the insurer to indemnify the insured is as prescribed in section 95(2), none the less it left the issue open. Now, as it is seen, this court has in the circumstances held in the cases of *Shivahari Rama Tiloji and another Vs. Kashi Vishnu Agarwadekar and others*, and *National Insurance Co. Vs. Smt. Deepathamma Alias Beebi and others*, that the expression "any one accident" has also to be looked at from the angle of the victim of the accident in clause (b), and considering the express provision of sub-clause (4), further held that in any event the liability of the insurance company will not exceed the outer limits fixed in the section. This view is, in our opinion, in conformity with the law laid down by the Supreme Court in *Sheikhupura Transport Co. Ltd. Vs. Northern India Transport Insurance Co.*, and Modi's case (1981) ACJ 507: (1982) 52 Comp Cas

454 (SC) , taken together and interprets it. Thus, the view taken by this Court in Shivahari Rama Tiloji and another Vs. Kashi Vishnu Agarwadekar and others, and National Insurance Co. Vs. Smt. Deepathumma Alias Beebi and others, , is binding on us, for it is well-settled that an interpretation and equally, a misinterpretation of a binding decision of the Supreme court will itself be binding subsequently on co-ordinate courts and must be got corrected by a higher court and no co-ordinate court on that ground may refuse to follow an earlier decision opining that in its view, the earlier decision had wrongly understood and improperly applied a decision of a higher court. This proposition of law gets support in the observations made in Halsbury's Laws of England, Third edition, volume 22, page 80, and in the decision of a division Bench of this court in Panjuman Hassomal Advani Vs. Harpal Singh Abnashi Singh Sawhney and Others, .

10. We have already observed that in Deepathumma's case, the Division Bench has held the liability of the insurance company is to be distributed pro rata among the several claimants. In the present cases, the amounts of compensation awarded are not the same, for in Appeal No.46 of 1985, the compensation awarded was of Rs. 52,000; in Appeal No.47 of 1985 of Rs. 50,000 ; in Appeal No. 50 of 1985 of Rs. 78,000 and finally, in Appeal No. 51 of 1985 of Rs.25,000 only. In the first three cases, the victims met their deaths in the accident, while in the fourth, the claimant got injured. We find it rather difficult to apportion the total liability (Rs.75,000) of the Insurance company (appellant) among the claimants in each of the petitions, but since the total amount of the compensation to be paid to the claimants in the four petitions is of Rs.2,05,000 and the balance of Rs. 1,30,000 is to be paid by the owner of the vehicle, we think that in the circumstances, the said liability of the appellant should be up to the limit of Rs. 18,750 in each of the petitions, the remainder of the compensation to be paid by the owner of the vehicle, the respondent, Teotonio Pereira.

11. The result is that these appeals succeed and the impugned awards are modified only to the extent that the liability of the insurance company in each of the claim petitions is restricted to Rs. 18,750. The remainder of the compensation is to be paid jointly and severally by the owner and the driver of the vehicle. Costs by the respondents.