(1986) 08 MP CK 0026

In the Madhya Pradesh High Court

United India Insurance Co. Ltd. APPELLANT

Vs

Smt. Neelambai and Others RESPONDENT

Date of Decision : 22-08-1986

Acts Referred:

Fatal Accidents Act, 1855 — Section 1, 1A, 2

Citation : (1990) 2 ACC 81

Hon'ble Judges : Gulab C. Gupta, J

Bench : Single Bench

Judgement

Gulab C. Gupta, J.—This judgment shall govern the disposal of Misc. Appeal No. 116 of 1982 (Shastri Brothers v. Mst. Neelambai and Ors.) which also arises out of the award impugned in the appeal.

2. This appeal is filed u/s 110-D of the Motor Vehicles Act by the Insurance Company who has been made jointly and severally, liable to pay compensation to the respondent on account of death of Muni Ram in an accident on 7.3.1979. Misc. Appeal No116 of 1982 is by the owners of the vehicle causing the accident. Both the appeals arc directed against the award dated 12th December, 1981 passed by Shri A.H.H. Abidi, Motor Accident Claims Tribunal, Balaghat in Claims case No. 2 of 1980. Respondents-claimants, in their claim, filed u/s 110-B of the Act claimed to be the widow and children of Mani Ram who died in the accident with bus No. M.P.J.8626 owned by the appellant Shastri Brother in M.A. No. 116 of 1982 and insured with this appellant. It is not in dispute that the deceased Mani Ram was travelling in the said bus on the fateful day and was crushed to death under its wheels. It was alleged that the deceased Mani Ram while travelling in the bus suddenly fell down from it and was crushed to death by its rear wheel. It was also alleged that the bus was being driven by respondent Sharda Prasad in a rash and negligent manner, who suddenly applied brakes as a result of which passengers lost their balance, the door of the vehicle opened and the deceased Mani Ram who was sitting near the door, fell down and crushed. Mani Ram was aged about 26 years, and engaged in agricultural operations on

his own land which was his main source of earning. The claimants therefore, claimed an amount of Rs. 1,10,800/- as compensation. The appellant Insurance Company admitted that the bus was insured with them but denied its liability to pay any compensation as no such compensation was payable by the owner. The owner-company in its written-statement denied, that the bus was driven rashly and negligently. Their specific defence was that the deceased in his hurry to get down, jumped from the moving bus and the driver in spite of his best efforts, could not save him. The learned Tribunal held that the claimants were the legal heirs of the deceased Maniram who died in the accident on 7.3.1979. He also held that the cause of accident was sudden application of brakes by the driver resulting in opening of gate and the consequent fall of Mani Ram. That is how the appellants were held liable to pay compensation. The defence that the deceased tried to get down from the moving bus was disbelieved. In spite of it the learned Tribunal only awarded a sum of Rs. 10,000/- after deducting Rs. 8, 000/- on account of uncertainties of life from the total amount of Rs. 18, 000/-calculated by it. It is this a ward which is impugned in this appeal. The claimants also felt aggrieved by the award and have preferred their cross-objection claiming an enhancement by at least Rs. 50,000/-.

3. The first question for consideration of the Court is whether deceased Mani Ram in his anxiety to get down at the village, jumped from the moving bus and died? There is no dispute that the accident has taken place before the bus could reach the village of the deceased. Indeed, from the evidence of witnesses it appear that the village of the deceased was at least a distance of 1 kilometer from the place of accident Jondhru (A.W.4) has given this distance as 3-1/2 miles (Para 7). Surajlal (A.W.5) has stated that Kanhartola was at a distance of 4-5 furlongs. H.K. Ram (N.A.W. l) who was the Head Master and must therefore be held to have better understanding of distance has deposed that the place of accident was 1 kilometer from Kauhartola. It is therefore clear that the bus has not reached Mani Ram''s village and therefore there would be no reason for the deceased to get down from the bus. It was perhaps with a view to meet this objection that H.K. Ram (N.A.W. 1) stated that the deceased while getting down from the bus, had stated that he has his agricultural fields at that place. This, however, was not put to any witnesses of the claimants now was it specifically pleaded in the written-statement. Under the circumstances, no serious notice can be taken of this assertion of the witness. Then Mani Ram the deceased was a grown up person and would normally know that it was not safe to get down from the running bus. Dayararn (A.W.3) and Jondhru (A.W.4) have clearly stated that Mani Ram was sitting near the gate of the bus. They further stated that the bus was running in a high speed and the driver suddenly applied breakes, as a result of which door got opened and the deceased fell down. According to them, the driver stopped the bus after covering a distance of 45-50 paces. Both these witnesses also state that the condition of the bus was very bad. Evidence of these witnesses is also supported by the evidence of Surajlal (A.W.5). It is true that H.K. Ram (N.A.W.-1) had tried to support the theory of deceased getting

down from the running bus but his evidence does not inspire confidence because the bus had not reached the village where the deceased had to get down. Under the circumstances, there is overwhelming evidence to hold that the bus was not in good condition and its gate got opened when the driver suddenly applied the brakes. Because of sudden application of brakes, the deceased who was sitting near the gate, fell down on the ground and crushed. Under the circumstances, the finding that the deceased died because of the negligence of the driver is the correct finding needing no interference of this Court. This would be sufficient to dismiss the appeal of the owners of the vehicle.

4. The next and important question is about the quantum of compensation. Learned Tribunal has considered the monthly income of the deceased at Rs. 423/- per month, out of which he has been held to be spending only Rs. 200/- on his wife and two children. It the intention he to ascertain real dependency of these persons this conclusion must be held to be unjustified. Even if it was to be held that the deceased was not giving these claimants more than the bare necessities of life, a sum of Rs. 200/- for three persons would be insufficient for the purpose. If we take into the consideration the fact that the lady was pregnant at the time of accident and her needs as an expecting mother were more than ordinary needs, this amount would not be sufficient to maintain the wife alone. It is true that some amount of guess work is inherent in this exercise and yet the end result or the conclusion must have a rational relationship with the realities of life. This obligation is not only inherent in every judicial process, but is the statutory requirement in view of ''Just compensation'' requiring determination u/ s 110-B of the Act. Then determination of amount of dependency is not an abstract proposition, but an exercise intended to ascertain the actual dependency of the claimants and hence can not be divorced from realities of life. Not only this, the apportionment of the family income by the Tribunal is also illogical. If the deceased was earning Rs. 423/- per month and was spending only Rs. 200/- on this wife and two children; it only means that he was spending the balance on himself. Anyone having even a little understanding of Indian family system would refuse to believe that the head of the family would enjoy such a disproportionate benefit. Indeed if Indian traditions of tolerance and sacrifice are to be taken into consideration, it will have to be held that the father as the head of the family, would prfer to better maintain his children even by sacrificing his own comfort. Under the circumstances, this court has no hesitation in holding that the conclusion that the dependency of this claimants in terms of money was only Rs. 200/- is a perverse conclusion. It must consequently be held that the impugned award does not award a "Just Compensation" and hence can not be upheld.

5. Not only the basis of the award but also the compensation awarded by the Tribunal in the instant case is not just. Even if the entire amount of Rs. 10, 000/- is invested in term deposit of nationalised Bank and earn interest at Rs. 11/- per cent per annum, it will fetch an annual income of Rs. 1100/- only. The Tribunal has held that the family would earn Rs. 1200/- per annum from the agriculture. This would thus make a total of Rs. 2300/- per year only. Can a family of four

survive with this amount? Judged from any standard, the answer must be in the negative. Indeed in these days of rising prices and inflation, they may not be able to maintain themselves even for three months, The compensation must therefore be judged as UNJUST and in uttar disregard of Section 110-B of the Act, A court of justice must therefore set-aside such an award and re-determine the just compensation.

6. What should than be the proper approach in the matter? In dealing with a matter like this, it is essential to bear in mind the main objective which is sought to be achieved by such a provision in a modern democratic welfare state like ours. It should also be released that in India, as well as in England and other democratic welfare states great inroad has been made on the traditional common law view of contractual obligations and liabilities and the law no longer accepts an unfair term or onerous condition in a contract between the parties, as these do not promote the objectives of the State. That is the reason why special tribunals, like industrial tribunals have the jurisdiction to even substitute a new contract. Indeed the emergence of the concept of a welfare state expresses the anxiety of the nation to do away with capitalistic exploitation and establish a society where justice social, economic and political, informs all institutions. Provisions like compulsory insurance of vehicle for third party risks, limited defence given to an Insurance company, establishment of a special tribunal for dealing with, compensation cases and obligation imposed upon the tribunal to award ''just'' compensation suggest that the legislature intended to provide not only the just compensation to the victims of an accident and their dependents but also wanted the said compensation to be paid to them speedily and in spite of financial stringency of the driver responsible for negligent driving. Our judicial process has only achieve these objectives by developing standards and procedures that facilitate achievement of the situation as far as possible, existing immediately before the accident. Under the circumstances it should be the obligation of the adjudicative process under the Act to see that the award, as a matter of fact, furthers achievement of these objectives and contributes to the establishment of the welfare society that our legislature so much intends. Meaning scope and purpose of Section 110-B of the Act must therefore be determined in the background of these objections. This provision requires the Claims Tribunal to determine the compensation which appears it to be just. The word ''JUST'' connotes reasonableness and something equitable and fair. What is just would depend on facts and circumstances of each case. That is the reason why it has been held in Sabira Begum v. Raipur Transport Co. 1985 (2) ACC 68 , that this provision has a wider ambit than Sections 1A and 2 of thfe Fatal Accident Act and the Tribunal in deciding the ''just'' compensation is required to bear in mind and apply principles that may promote the interest of justice on the facts and circumstances of each case. It is usually accepted that the amount of compensation should be so assessed as to make provision for the legal representatives to receive or earn such pecuniary benefit as they would have obtained from the deceased if he had lived his normal life. This principle is also

culled out from Supreme Court decisions in Gobald Motor Service Ltd. and Another Vs. R.M.K. Veluswami and Others, and Sheikhupura Transport Co. Ltd. Vs. Northern India Transport Insurance Co., . There is also a good deal of judicial opinion that the compensation awarded under this provision is not for what the deceased was earning or saving, but is for the loss of pecuniary benefit which the claimants would have derived if the deceased had not died. That is the reason why it has been held that it is not necessary that the deceased should have been earning anything. This explains why our law courts and tribunals have awarded compensation to the husband of a. housewife who was not caring K. Narayana Reddiar Vs. P. Venugopala Reddiar, , Khodabhai Bhagwan Bhai v. Hirji Tapu AIR 1980 SC 2J and Laxmi Bai v. M.P. State Road Transport Corporation 1978 ACJ 229 AP and even to the parents of minor children, Sabir Ali v. Dewalal 1979 ACJ 76 (MP). It must therefore be emphasised that though earning of the deceased and his contribution to the family is a relevant circumstances for determining the ''just'' compensation under this provision, it cannot be the sole criteria. In all such cases it must first be assessed if the claimants were being maintained by the deceased. If answer to this be in the affirmative, the standard of maintenance may be assessed with a view to determine the money value of the dependency. In such an exercise some minimum will have to be assumed, as maintenance of life would be impossible without this minimum support. As far as this minimum is concerned, money value of such a dependency will be the lower limit below which the amount of just compensation can not be awarded. The fact that the deceased was not earning even this minimum must be held to be irrelevant in such a case. There are. cases where persons do not earn enough to maintain their children and family and yet they provide the bare minimum by other means, including borrowings or obtaining doles. There may be many who may be compelled to adopt unfair means to provide a minimum for the family. In all such cases, the source of satisfaction of bare minimum need of the claimants would not matter and the fact that they were so maintained would be sufficient to give them so much of the compensation as may provide them the bare minimum for maintaining them in future. The situation may be different where the standard at which the claimants were maintained is claimed to be higher that the minimum, and the claim is for a compensation that may give them the same standard of living in future as well. In such cases, the Tribunal may require evidence of earning of the deceased and his other sources which helped him in giving such a high standard of maintenance. But the purpose of such an enquiry can only be to cross check the correctness of the conclusion that the claimants who being maintained at a level higher than the minimum. In such a case the tribunal may legitimately require proof of not only the earning spacity but also the contribution made by the deceased. But such an enquiry is irrelevant where claim is for the minimum or the lower level of "Just Compensation" Or where the Tribunal does not feel satisfied with the claim for a higher level of maintenance. Under the circumstances, it is clear that the minimum amount required for future maintenance of the claimants can be awarded on the proof of dependency alone and without any evidence regarding the earning or contribution of the deceased.

Since living conditions and cost thereof differ from place to place, the minimum will have to be judge in each case and the said minimum must also he ''Just'' and not illusory compensation. In such a situation it would not be prudent to search for precedents of fix quantum on the basis of earlier decisions. It is common knowledge that real value of our rupee has been going down as a result of inflation and hence it must be accepted that none of the earlier cases would serve as a safe guideline for determining the just compensation, which is the basic requirement of this law.

7. The fact that the deceased was maintaining his wife and two children during his life time and was hoping to maintain the third child, then in womb, being established by evidence on record, this court is duty bond to determine the minimum dependency which must form the basis of the just minimum compensation. Even if we assume that the claimants arc rustic villagers and -are not expected to have anything more than bare minimum for keeping the body and soul together, a minimum dependency of Rs. 100/- per month per person or Rs. 400/- per month for the family will have accreted as just and fair. It should not require any imagination to hold that one can not survive for anything less than this amount. This will make the minimum dependency of Rs. 4800/- per annum for the family and must beheld to be the minimum loss of future pecuniary benefit to the claimants. Any just compensation determined under this Section must therefore be sufficient to compensate for this loss. The Tribunal has found that the claimants, even after the death of the deceased would have an income of Rs. 1200/- per annum from the agriculture and hence. just compensation should be such as provides a minimum of Rs. 3600/- per year for the life time of the widow and for the minority of the children. If some consideration has to be shown to increasing future needs of these claimants and decreasing value of the money, a minimum of Rs. 40,000/- would be required to justly compensate the claimants. The amount would be higher if it has to be calculated on the basis of period of dependency and the span of life. Under the circumstances, Rs. 40.000/- would be the just compensation with a view to provide for the bare minimum necessities of the claimants and must be awarded. The impugned award is therefore, modified by awarding a compensation of Rs. 40,000/- to the claimants and making owners, driver and the Insurance company jointly and severally liable to pay the same.

8. The submission of the appellant Insurance Company that their liability in the instant case is limited to a maximum of Rs. 5000/- because of Section 95(2)(b)(ii)(4) of the Act may now be examined. This provision reads as under:

(2) Subject to the proviso to sub Section 1 namely:

(a)...

Where the vehicle

(i)...

(ii) In respect of passengers -

(1)...

(2) A limit of seventy five thousand rupees in all where the vehicle is registered to carry more than 35 but not more than 60 passengers.

(3.)...

(4) Subject to the limits a fore said 10,000/-rupees for each individual passenger where the vehicle is a motor cab and five thousand rupees in each individual passenger in any other case.

Though the provision is not very happily worded, its plain reading shows that it provides for what must be covered by an insurance policy, this, however, docs not prohibit the parties to contract to cover the higher amount of liability. In Pushpabai Purshottam Udeshi and Others Vs. Ranjit Ginning and Pressing Co. (P) Ltd. and Another, it was held by the Supreme Court that the Insurer can always take policies covering risks which are not covered by the requirements of Section 95 of the Act. Under the circumstances, it is clear that the liability of the appellant Insurance Company will have to be judged not only on the basis of the aforesaid legal provision but also on the basis of the terms of the policy. It is not disputed that only one passenger was killed in this accident. It is also not in dispute that if more than one passenger was involved in the accident, liability of the Insurance Company would not have exceeded Rs. 75,000/-. The question, however, is whether this limit can be applied in a case where only one passenger is involved in the accident. According to the learned Counsel for the Insurance Company the answer must be in the negative. According to him, liability in relation to an individual passenger is laid down in clause (4) above and cannot extend to more than Rs. 5,000/- in the instant case. If this submission be correct, then it would mean that at least 15 persons will have to be involved in an accident to make the Insurance Company liable for the entire amount of Rs. 75,000/-. In Sheikhupura Transport Co. v. Northern India Transporters Insurance Co. (supra) the Supreme Court considered Section 95(2) of the Act as it stood in 1959 and held that the maximum liability imposed on the insurer was Rs. 2,000/- per Passenger though the total liability may go upto Rs. 20,000/-. This decision is relied upon by the learned Counsel for the appellant to submit that the liability of the Insurance Co. In a case where only one passenger in the bus died would be limited only to Rs. 5, 000/- and not to Rs. 75,000/- This was a case where two persons were involved in the accident. According to the law as prevailing on the date of accident, the limit of liability of the Insurance Company was Rs. 20, 000/-, though the said liabilities in relation to a individual passenger was Rs. 2,000/- only. The High Court had held that each of the two victims were entitled to only Rs. 2,000/- each from the Insurance Co. The claimants did not challenge the decision of the High Court, but the owners went to the Supreme court challenging the same as the major portion of the (sic)

In the present case we are dealing with a vehicle in which more than six passengers were allowed to be carried. Hence the maximum liability imposed u/s 95(2) on the insurer is Rs. 2,000/- per passenger though the total liability may go upto Rs. 20,000/-. This is also the view taken by the High Court. The limit of insurer prescribed u/s 95(2) (b) of the Motor Vehicles Act can be enhanced by any contract to the contrary. Therefore, we have to see whether the contract of insurance centered into between the appellant and the insurance company provided for the payment of enhanced amount in case the owner of the bus involved in an accident is required by the decree of a court to pay any higher amount as compensation.

This passage would indicate that the Supreme Court upheld that view taken by the High Court as it found nothing to hold to the contrary. This judgment therefore, establishes that provisions of Section 95(2) of the Act are subject to the terms of the policy. It may consequently be held that if the policy be ''comprehensive'', this provision would not be at traded. This view is strengthened by the subsequent decision in Pushpa bai''s case (supra). This view was however taken when the meaning of ''any one accident'' as appearing in opening part of Section 95(2) of the Act was not authoritatively clarified and it was assumed that these words were to be considered from the stand point of vehicle meeting the accident and not the injured person. This has, however, changed and now these words have to be understood from the stand point of persons suffering injury. It is now established through Motor Owners'' Insurance Company Limited Vs. Jadavji Keshavji Modi and Others, that, if more than one person is injured during the course of the same transaction, each one of the persons has met with an accident. Now, if the submission of the learned Counsel for the appellant is to be accepted, it would only mean that the maximum limit of liability being in relation to anyone accident and these words meaning injury to only one passenger, both, the upper limit and the lower limit of the liability would apply in every case. This is however not possible. Indeed this difficulty was pointed out to the Supreme Court in Motor Owners Insurance Co. (supra) but the court refuse to decide the same as the matter did not directly arise before it. Its observation in para 26 of the judgment that,'''' different considerations may arise under clause (b), as amended by Act 36 of 1969, but we do not propose to make any observation on that aspect of the matter, since it does not directly arise before us'''' may give rise to the argument that the words ''any one accident'' appearing in this may have to be given different meaning while considering them in the context of clause (b). This would not be legal. The first part of the provision controls not only clause (a) but also the clause (b) and hence it will have to be assigned the same meaning. Even otherwise, it is not an acceptable principle of interpretation to give different meaning to the same word in different situations, particularly when the said word appears only once in the Section. It must therefore, be held that Sheikhupura Transport Co.''s case (supra) and not, by itself. So read, the minimum limit for an individual passenger in the context of any one accident must be the upper limit fixed by the Act. A Division Bench of Patna High Court in National Insurance Co. Ltd. Vs. Chhunnu Ram and Another, has adopted this very reasoning and held that in view of Motor Owners Insurance Co.'' case (supra) the liability of the Insurance Company in respect of injury to one passenger would be the higher limit of its liability.

9. The interpretation of this provision would be the same if we do not apply the decision in Sheikhpuia Transport case (supra) and consider it as it is. Liability of Rs. 5,000/- provided for an individual passenger under this clause is subject to maximum limit of Rs. 75,000/- as would be clear from the provision itself. The aforesaid provision should therefore be read as meaning that subject to the upper limit of Rs. 75,000/- the liability of the Insurance Company in respect of an individual passenger would be a minimum of Rs. 5,000/-. So read the lower limit of Rs. 5,000/- placed by this provision in respect of an individual passenger would become unalterable. The learned Counsel for the appellant agreed that though the lower limit of Rs. 5,000/- can be reduced to less than that amount in cases where the total liability of Insurance Company was to increase beyond Rs. 75,000/- did not agree that the amount of Rs. 5,000/- can similarly be increased in the context of maximum limit of Rs. 75,000/-. This, however, is illogical. If the maximum limit of Rs. 75,000/-has the effect of reducing the limit of liability in respect of an individual passenger, the said maximum limit of Rs. 75,000/- must also have the effect of increasing the limit of Rs. 5,000/- in respect of individual passengers or else the conclusion would be fallacious. Under the circumstances, this Court is notable to agree with the learned Counsel that Rs. 5,000/- is only subject to downward alteration and not upward. The view taken by this Court not only further the object and purpose of the provision but also saves it from being arbitrary. An owner having insured his vehicle to maximum limit of Rs. 75,000/- in respect of any one accident should not be required to pay unless the amount awarded is higher than this maximum limit. Then the Act has undergone several legislative changes which point to the anxiety of the legislature to give a fair deal not only to the victim but also to the owners of the vehicle. The view taken by this Court is also the view taken by Allahabad High Court in New India Insurance Co. v. Mahmood Ahmad AIR 1984 All 183. This view is also in accord with the object and purpose of insurance of the vehicle. The appellant Insurance Co. must be assumed to have charged premiums on the basis of its maximum liability and must therefore be deemed to have agreed to indemnify the insured to that extent, Learned counsel for the Insurance Company has, however, relied on The State of Madhya Pradesh Vs. Smt. Davi Rawat and Others, , Motor Owners'' Insurance Company Limited Vs. Jadavji Keshavji Modi and Others, and Sushila Devi v. Ibrahim 1974 MPLJ 169. None of these cases deal with the point under consideration and therefore cannot be accepted as the authority for the proposition canvassed by the learned Counsel for the Insurance Co. It must therefore be held that the liability of the appellant in the instant case is to a maximum of Rs. 75,000/- and hence the entire award must be satisfied by them.

10 In this connection this Court cannot but recall the sentiments expressed by the Supreme Court in Motor Owners'' Insurance Co. Ltd. v. J.K. Modi AIR 1961 SC 2059. The Supreme Court had noted that the victims of the road accident of

their dependents are driven to wage a long and unequal battle against the Insurance Companies, which deny their liability on every conceivable ground and indulge in an ingenious variety of factual disputations from'' who was driving the vehicle'' to ''whose negligence was the sine qua non of the accident.'' It also noted that apart from the delay because of the aforesaid approach, the monstrous inflation was adding to the miseries of the claimants. In such a situation the purpose of law, according to the Supreme Court, is to alleviate and not to augment the sufferings of the people. It is the considered view of this Court that the interpretation canvassed by the learned Counsel for the Insurance company will ''augment and not alleviate'' the sufferings of the claimants and would thereby defeat the purpose for which the Act make Insurance Company compulsory. Considering the purpose for which our popular Government thought of nationalizing the insurance business and provided for a nationalized agency, this Court is of the view that not only the said purpose but also the very reason for bringing into existence the appellant Insurance Company would be frustrated by accepting the submission of the learned Counsel. The view of this Court on the contrary would not only alleviate the sufferings but also make the existence of the appellant Insurance Company meaningful. Under the circumstances, this Court has no hesitation rejecting the submission and holding that the liability of the Insurance Company even in the instant case, extends to its maximum limit of Rs. 75000/-. The Insurance Company must therefore be responsible jointly and severally for discharging the liability.

11. There is yet another reason why the appellant''s submission cannot be accepted. In the instant case, though the claimants have averred that the bus was insured with the appellant and hence the liability for payment of the entire compensation claimed was that of the appellant/the appellant did not take the plea that its liability was in any way limited. Indeed, their written-statement only contained those pleas which they were not entitled to raise in law. Not only this, they did not file the policy as to show that their liability was limited only to the compulsory third party risk. It cannot be seriously disputed that if they wanted to take any special plea they were not only bound to take the same specifically in the written-statement but also filed the policy in question. (See Moolchand v. Pehlad Singh 1976 M.P. Weekly Note 34.

12. In view of the aforesaid discussion, the appeals fail and are dismissed with costs. The cross-objection succeeds and is allowed. The award is modified by directing payment of Rs. 40,000/- (Rupees Forty Thousand) as compensation to the claimants, jointly and severally payable by the owner, driver and Insurance Company. The award shall also carry interest at the rate of 12 per cent per annum calculated from the date of filing the claim i.e. 5-4-1980. Counsel''s fee Rs. 500/-.

