
(1972) 03 AHC CK 0039
In the Allahabad High Court
Case No : F.A.F.O. No. 256 of 1970

Vishwa Mitra Chhadda

APPELLANT

Vs

Smt. Amrit Kaur and Others

RESPONDENT

Date of Decision : 16-03-1972

Acts Referred:

Motor Vehicles Act, 1939 — Section 110, 110B

Citation : (1972) ACJ 213 : AIR 1972 All 408 : (1972) 42 AWR 366

Hon'ble Judges : T.S. Misra, J; Satish Chandra, J

Bench : Division Bench

Advocate : Deoki Nandan, for the Appellant; B.N. Verma and R.S. Saxena, for the Respondent

Final Decision : Dismissed

Judgement

Satish Chandra, J.—This is an appeal u/s 110-D, Motor Vehicles Act, 1939. The appellant owned an Ambassador car No. USF 3581. He was running it as a taxi between Kanpur and Lucknow, through a driver. On 11th September, 1969, this car was taking several passengers including Autar Singh from Kanpur to Lucknow. On the way It met with an accident; as a result, Autar Singh along with the driver of the vehicle, died. The legal representatives Of the deceased Autar Singh lodged a claim for recovery of Rs. 1,00,000/- as compensation against the appellant as the owner of the car and the Oriental Fire and General insurance Company Limited.

Kanpur, as the insurer of the vehicle. The Motor Accidents Claims Tribunal decreed the claim for Rs. 26,400/- out of which Rs. 4,000/- were held payable by the insurance company. The appellant was made liable to pay the rest. Aggrieved, the owner of the vehicle has come to this Court in appeal.

2. The Tribunal found that Autar Singh, the predecessor-in-interest of the respondents, was travelling in the taxi owned by the appellant and he died as a result of injuries received at the accident with the taxi. It was found that the

accident occurred due to the rash and negligent driving by the driver of the car. The claim was held to be within time.

3. Learned counsel for the appellant raised a fresh point which was not urged before the Tribunal, namely that the Tribunal was not competent to entertain the claim against the appellant as the insured person. The finding that the accident was caused due to the negligence of the driver was also challenged. Learned counsel urged that the assessment of compensation by the Tribunal was unfair and incorrect.

4. In support of the first submission it was urged that the Motor Accidents Claims Tribunal constituted by the Motor Vehicles Act was a statutory Tribunal. It had no general powers like a civil court. Its jurisdiction was dependent upon the provisions of the Motor Vehicles Act, and under it the Tribunal can entertain claims for compensation only against the insurer. The claim of the respondents in so far as it proceeded against the appellant, who was the insured, was incompetent. In support, learned counsel invited our attention to Section 96 of the Motor Vehicles Act. Under this section, where a judgment in respect of any liability covered by an insurance policy is obtained against the person insured by the policy, the insurer is liable to pay to the person entitled to the benefit of the decree any sum not exceeding the sum assured payable thereunder as if he were the judgment-debtor. Under Sub-section (2) thereof the insurer is not liable in respect of any such judgment unless the court gives notice of the proceedings to the insurer and permits it to defend the action.

5. This provision speaks of a "judgment", "decree" and "court". It was urged that this shows that the insured person can be made liable for claims of compensation in a court which can pass a decree. The Claims Tribunal is not a court of law properly so-called. It u/s 110-B can only make an award. It has no power to pass a decree. These provisions indicate that the Motor Vehicles Act does not contemplate adjudication of claims against persons other than the insurer before the Tribunal created under that Act. It leaves such claims to be decided by civil courts.

6. In addition learned counsel sought support from Section 110-B which provides:--

"Award of the Claims Tribunal-- On receipt of an application for compensation made u/s 110-A, the Claims Tribunal shall, after giving the parties an opportunity of being heard, hold an inquiry into the claim and may make an award determining the amount of compensation which appears to it to be just and specifying the person or persons to whom compensation shall be paid; and in making the award the Claims Tribunal shall specify the amount which shall be paid by the insurer".

7. Learned counsel emphasised the last clause which provides that the Claims Tribunal shall specify the amount which shall be paid by the insurer, and argued that this clearly shows that the insurer alone is liable before the Claims Tribunal.

If any one else was also to be made liable, there would have been a provision for specification of his share of the liability. It was urged that the Legislature made this clear by the Motor Vehicles (Amendment) Act 56 of 1969 by which the following phrase was added after the words "the insurer" occurring at the end of Section 110-B:--

"or owner or driver of the vehicle involved in the accident or by all or any of them, as the case may be". We are, however, not inclined to accept the submission. Section 96 is headed as: "Duty of insurers to satisfy judgments against persons insured in respect of third party risks".

It primarily deals with the insurer. Its purpose is not to define or limit the liability of the insured person.

8. Section 110-F bars the jurisdiction of civil courts. It provides:--

"110-F. Bar of jurisdiction of civil courts.-- Where any Claims Tribunal has been constituted for any area, no civil court shall have jurisdiction to entertain any question relating to any claim for compensation which may be adjudicated upon by the Claims Tribunal for that area....."

This provision shows that the Legislative intent was to bring all claims for compensation within the jurisdiction of the Claims Tribunal. The jurisdiction of the civil court was barred. The jurisdiction was barred in relation to "any question" relating to any claim for compensation which may be adjudicated upon by the Claims Tribunal. According to the submission made on behalf of the appellant, a claim for compensation against the insurance company would be barred before the civil court because it could be adjudicated upon by the Claims Tribunal. If that be so, then any question relating to such claim will be barred from the civil court. The phrase "any question relating to any claim for compensation" is so wide that it will obviously include the question of fact or law which the Claims Tribunal can adjudicate against the insurer, and which may also arise in a suit for compensation that a person may file against the insured person in the civil court in respect of the same accident.

A claim for compensation against the insurance company is entertainable by the Tribunal; even if a claim for compensation against the insured person arising out of the same accident be competent before the civil court, the civil court will, in view of Section 110-F, be barred from entertaining any question relating to such an accident. Section 110-F prohibits the civil court from deciding any such question. This would mean that the civil court cannot grant relief against the insured person at all. This destroys the very basis of the submission made before us. Learned counsel for the appellant assumed that the respondents could validly file a suit and obtain a decree for compensation against the insured person, from the civil court.

9. Section 110-B does not provide any support to the appellant. Under it the Claims Tribunal makes an award determining the amount of compensation, If the

submission is right, the only person against whom the Tribunal can make an award is the insurer; then there was no point in expressly providing that in making the award the Claims Tribunal shall specify the amount which shall be paid by the insurer. This clause would have meaning only if it was contemplated that there may be more than one defendant before the Tribunal and the Tribunal may make an award of compensation against the insurer as well as other persons.

10. The amendments made in Section 110-B only make explicit what till then was implicit in the provision, namely that the Tribunal will specify the amounts which shall be payable by the insurer even though the award against the owner or the driver of the vehicle may be collective. The Supreme Court, this Court as well as the High Courts of Punjab, Punjab and Haryana and Mysore, have entertained claims against persons other than the insured: see *Sheikhupura Transport Co. Ltd. Vs. Northern India Transport Insurance Co.*, : *Devendra Kumar Gupta Vs. The Pilokhri Brick Kiln*, *Nand Singh Viridi, Chandigarh Vs. Punjab Roadways, Amritsar* and *Another, State of Punjab Vs. V.K. Kalia*, and *Secthamma v. Benedict D'sa* AIR 1967 karn 11. In our opinion, the Claims Tribunal validly entertained the claim, against the appellant.

11. Coming to the merits of the appeal, we may note that the learned counsel for the appellant did not challenge the finding that the taxi in question met with an accident on 11th September, 1969, as alleged on behalf of the plaintiff-respondents. He also did not question the finding that Autar Singh died as a result of injuries received at the accident. Learned counsel, however, attacked the finding that the accident was caused by the rash and negligent driving of the taxi. Balak Ram (P. W. 8) and Kashi Prasad Tewari (P. W. 9) are the eye-witnesses of the occurrence. Balak Ram was a passenger travelling in the taxi in question. Kashi Prasad Tewari was coming on a bicycle. He saw the taxi and its involvement in the accident.

12. According to Balak Ram, the driver was running the taxi at a very high speed. He cautioned him but the driver made no response and continued to drive the taxi very fast. Shortly prior to the occurrence the driver engaged this taxi in a racing competition with two other taxies. The three involved taxies used to overtake each other. At the time of the occurrence the taxi in question was behind the other two. The driver made an effort to overtake the taxi in front of it. He did so at a great speed and while doing so the taxi skidded and after travelling for a few paces struck a shisham tree situate on the road side, head-on. The front portion of the taxi was totally smashed. The steering-wheel drove into the neck of the driver, causing his death instantaneously. All the passengers of the taxi were grievously hurt.

Autar Singh became unconscious. Kashi Prasad Tewari (P. W. 9) corroborates Balak Ram. His presence also cannot be doubted because he immediately after the accident made a first information report at the nearest police station. whereupon the station in charge, P. S. Krishna Nagar, Sri Virendra Pal Singh

Sirohi (P. W, 6) rushed to the scene of the occurrence and found the taxi smashed against a shisham tree. Autar Singh was lying unconscious. The driver lay dead. The other passengers were also hurt. The injured persons were sent to the hospital, where according to this witness, Autar Singh died.

13. According to these witnesses, It was drizzling at that time and the road was wet. The appellant led no evidence on this point.

14. The facts speak for themselves. The driver of the taxi in question was speeding and had engaged himself in a racing competition with two other taxies. This he did while it was drizzling and the road was wet. While trying to overtake another taxi the car skidded at the road-side. It dashed against a tree with such force that the front portion of the car was smashed out of existence and the steering-wheel thrust itself into the neck of the driver killing him. There can be no manner of doubt that the driver of the car had not taken the usual precaution of checking his speed in view of the wet condition of the road in which a car is liable to skid if driven fast. The force of the impact of the car on the tree, shows that the car must have been at a very high speed at that time. These facts clearly mean that the driver was rash and negligent. We have no hesitation in affirming the finding of the Tribunal on this point.

15. Now remains the question of assessment of compensation.

16. u/s 110-B the Claims Tribunal makes an award determining the amount of compensation which appears to it to be just. On the question as to what is just compensation, the Supreme Court in Gobald Motor Service Ltd. and Another Vs. R.M.K. Veluswami and Others, referred to the observations of Lord Wright in Davies v. Powell Duffryn Associated Collieries Ltd. 1942 AC 601 that the damages are to be based on the reasonable expectation of the pecuniary benefit or benefit reducible to money value. They also relied upon the observations of Viscount Simon in Nance v. British Columbia Electric Co. Ltd.. 1951 AC 601 :

"The claim for damages-- falls under two separate heads. First, if the deceased had not been killed, but had eked out the full span of life to which in the absence of the accident he could reasonably have looked forward, what sums during that period would he probably have applied out of his income to the maintenance of his wife and family ?"

17. In Sheikhpura Transport Co."s case AIR 1971 SC 1624 the Supreme Court reaffirmed its decision in Gobald Motor Service Ltd. and Another Vs. R.M.K. Veluswami and Others, It held that the general principle is that the pecuniary loss can be ascertained only by balancing on the one hand the loss to the claimants of the future pecuniary benefit and on the other any pecuniary advantage which from whatever sources could come to them by reason of the death, that is the balance of loss and gain to a dependant by the death must be ascertained.

18. In C.K. Subramania Iyer and Others Vs. T. Kunhikuttan Nair and Others, the

Supreme Court observed that in order to succeed the plaintiff must show that he has lost a reasonable probability of pecuniary advantage.

19. In relation to the death of the bread-winner of the family the Supreme Court referred to the following passage in Winfield on Torts. 7th Edn. at p. 135:

"The starting point is the amount of wages which the deceased was earning, the ascertainment of which to some extent may depend on the regularity of his employment. Then there is an estimate of how much was required or expended for his own personal and living expenses. The balance will give a datum or basic figure which will generally be turned into a lump sum by taking a number of years' purchase. That sum, however, has to be taxed down by having regard to the uncertainties, for instance, that the widow might have again married and thus ceased to be dependent, and other like matters of speculation and doubt. The number of years' purchase is left fluid, from twelve to fifteen has been quite a common multiple in the case of a healthy man and the number should not be materially reduced by reason of the hazardous nature of the occupation of the deceased man."

20. In accordance with these principles we have to ascertain the normal income of the deceased and then to find how much was required or expended by him for his own personal and living expenses. Thereafter we shall have to see whether the circumstances of the case demand any further taxing down of the basic figure.

21. The Tribunal below has recorded a finding that Autar Singh deceased was about 50 years old at the time of the accident. This finding was not challenged before us by either party. We have perused the evidence and we find ourselves in agreement with this finding.

22. It is admitted that the deceased Autar left two widows and 7 minor children. The two widows namely Smt. Amrit Kaur (P. W. 3) and Smt. Gur Ba-chan Kaur (P. W. 4) appeared in the witness box. They stated that the average income of the deceased was Rs. 500/- to Rs. 550/- per month. Major Hansraj (P. W. 5), a nephew of the deceased, corroborated the widows and stated that the deceased's income was about Rs. 500/- to Rs. 550/- per month. He was carrying on a provisions store at his residential place and was also doing money-lending business on a small scale. He was maintaining both his wives along with his children. The family of the deceased had no ancestral or other property. Their sole source of livelihood was the income of the deceased. According to Major Hansraj, at his death Autar Singh left materials worth about Rs. 15,000/- in the provisions store. He could not tell how much of the materials were taken by the deceased on credit. These witnesses have admitted that Autar Singh was not paying Income Tax.

The appellant led no evidence on this point. We find no valid ground to disbelieve the two widows and the nephew. They are the best persons to know the carry-home income of the deceased. On behalf of the appellant it was urged that since

Autar Singh was not paying Income Tax, his income must not have been more than the minimum exempted from Income Tax, and on this basis it was argued that the Tribunal below was justified in holding that his monthly income was about Rs. 300/-. A small businessman having an average income just above the non-taxable limit may not have bothered to file a return or pay Income Tax. The fact that he did not pay Income Tax would not mean that really his income was less than the minimum exemption limit. In our opinion, the evidence indicates that the average monthly income of the deceased was Rs. 500/- and we hold accordingly.

23. The deceased was living along with his two widows and 7 minor children. In our opinion, a sum of Rs. 100/- can be deducted for the deceased's own living expenses. The deceased must have also been saving some part of his income for his business needs and other personal requirements. Under this head another sum of Rs. 100/- may be deducted leaving a balance of Rs. 300/- per month which he could be held applying to the needs of his family. This works out to Rs. 3,600/- per year.

24. Relying upon the observations in *Winfield on Torts* as approved by the Supreme Court, learned counsel urged that a multiple of twelve would be sufficient in the case of the deceased because he was aged 50 years at the time of his death. We are prepared to accept this submission without discussing it because in our opinion it will not help the appellant. Capitalising the basic sum of Rs. 3,600/- by twelve years purchase the compensation amount will come to Rs. 43,200/-. If from this the sum of Rs. 15,000/-, the value of the provisions which came to the claimants because of the death of the deceased, is deducted, the balance is Rs. 28,200/-. The Tribunal below assessed the compensation at Rs. 26,400/- on our findings there is no room for any further reduction. Since the claimants have not come up in appeal, we need not enhance the compensation. In our opinion, the compensation assessed by the Tribunal below was just and proper.

25. In the result, the appeal fails and is accordingly dismissed with costs.