

(2001) 04 RAJ CK 0011

Rajasthan High Court (Jaipur Bench)

Case No: Civil Miscellaneous Appeal No. 316 of 1988

Kalia Devi and Others

APPELLANT

Vs

Kishan Lal Meena and
AnotherRESPONDENT

Date of Decision: April 26, 2001**Acts Referred:**

- Motor Vehicles Act, 1988 - Section 95

Citation: (2003) ACJ 897**Hon'ble Judges:** J.C. Verma, J**Bench:** Single Bench**Final Decision:** Allowed

Judgement

J.C. Verma, J.

The appellants are the claimants/legal representatives of the deceased Mohan Lal who had filed the claim application before Motor Accidents Claims Tribunal, Jaipur, claiming compensation.

2. The deceased had met with an accident on 4.12.1982 when the Matador No. RNB 2115 had hit him. The deceased was 30 years of age and was employed as a chowkidar in the Central Excise Department. At the time of death he was getting Rs. 550 p.m. as salary which was likely to be raised because of the report of the Pay Commission. They had claimed an amount of Rs. 1,54,000. The relevant issues in regard to accident, manner of accident and compensation were framed.

3. The Claims Tribunal had awarded an amount of Rs. 1,37,000 on account of different heads, i.e., Rs. 1,20,000 because of loss of income, Rs. 5,000 for loss of consortium to the widow and Rs. 2,000 to each of the daughters, along with interest at the rate of 10 per cent per annum, however, insurance company was held liable to the tune of Rs. 50,000 only.

4. The claimants are aggrieved against the order and had prayed: (1) that the compensation is too inadequate and is not in accordance with law and it should be enhanced; (2) that because of third party accident the insurance company was liable to pay whole of the amount.

5. In regard to compensation for enhancement, the Tribunal had found that the deceased at the time was a Government servant and was getting Rs. 550 p.m. as salary. Claim was filed by his widow, four daughters and parents. The Tribunal had held the dependency to be at Rs. 4,000 per year, i.e., Rs. 333 per month. It was observed by the Tribunal that he was to continue in service up to 60 years of age. The Claims Tribunal had awarded Rs. 1,20,000 as compensation. The total units in the family including the parents of the deceased were 12 and in the circumstances the value of per unit comes to Rs. 45.83 and if three units are deducted for the expenses of the deceased and for meeting the miscellaneous expenses as well, the dependency would be about Rs. 413 p.m. and about Rs. 4,950 per year. The Tribunal had not considered the increase of pay in the coming times. There was manifold increase of pay. It was a fit case where the pay should have been doubled and after applying the maximum multiplier of 18 as was done by the Tribunal, the minimum compensation awarded would come to Rs. 1,78,200. After adding other amounts as granted by the Tribunal towards miscellaneous expenses but increasing the consortium to Rs. 10,000 from Rs. 5,000 the total compensation ought to have been granted for the death of earning member of the family should not have been less than Rs. 2,00,000. Even though the less compensation has been claimed by the claimants, but as per the provisions of law, it is the duty of the Tribunal/courts to grant adequate compensation in accordance with law. In the present case for a Central Government employee where the pay structures are known and fixed, the Tribunal ought to have taken into consideration the future increments, increase of pay, etc., which had not been considered by the Tribunal.

6. For the reasons mentioned above, the compensation is enhanced. The difference of compensation should be paid by the respondents with interest at the rate of 10 per cent per annum as granted by the Tribunal.

7. In the case of [United India Insurance Company Ltd. Vs. Kamla Rani and Others](#), in regard to passenger risk in the case of a passenger, in a Tempo, it was held that the insurance policy envisages that limit of company's liability in respect of any one claim or series of claims arising out of one event is Rs. 50,000. While dealing with Section 95 of the Act where it was mentioned that the company shall not be liable in respect of death or bodily injury to any person other than a passenger carried by reason of or in pursuance of a contract of employment, being carried in or upon or entering or mounting or alighting from the motor vehicle at the time of the occurrence of the event out of which any claim arises. It was held that as per requirement of Section 95 when accident had taken place in March, 1978, the liability of the insurance company u/s 95(2) was limited only to Rs. 50,000. It was up to the applicant insured to show that the insurance company undertook an unlimited liability in respect of the death of a passenger in the vehicle.

8. In the case of [Oriental Insurance Co. Ltd. Vs. Evan Lodricks and Others](#), death of a scooterist in accident with a taxi car, it was held that the statutory liability was up to Rs. 50,000 only. On 7.11.1983 one Christopher Lodricks was going on his scooter from Ajmeri Gate to Sawai Man Singh Hospital and met with an accident with a car bearing registration No. RST 549 coming from opposite direction. Relying on Section 95(2)(b), it was held that the liability of the insurance company as per Section 95(2)(b) could not be enhanced to more than Rs. 50,000.

9. Similarly, in the case of [New India Assurance Co. Ltd. Vs. Smt. Shanti Bai and others](#), it was held that the insurance company was liable to pay Rs. 50,000 and the comprehensive insurance does not automatically cover the liability with regard to third party risk for an amount higher than the statutory liability. The claim was in respect of bus which was used for carrying passenger for hire. The deceased was a passenger in the bus.

10. In National Insurance Co. Ltd. v. Jugal Kishore 1988 ACJ 270 (SC), in an accident between a three-wheeler driven by the claimant and a bus when bus was comprehensively insured, the claimant had sustained injuries, it was held that prior to the amendment of 1969 the insurance company was liable to such amount as provided in the Motor Vehicles Act. No additional amount was paid of premium and thus the liability and the policy in the instant case was same as statutory liability contemplated under Clause (b) of Sub-section (2) of Section 95 of the Act.

11. So is the position in the case of Rajendra Kumari v. Shanti Trivedi 1989 ACJ 517 (SC), who was a passenger in the hired car. It had collided with the truck coming from the opposite direction. The deceased had died at the spot.

12. In the case of New India Assurance Co. Ltd. v. Ram Lal 1988 ACJ 754 (SC), it was held that the insurance company had limited liability of Rs. 50,000.

13. In the case of [Surjit Kaur and Others Vs. Harbhajan Singh and Others](#), it was a case where the deceased was going on scooter and was hit by an oil tanker No. PBP 6767. It was held that u/s 95(2)(b) of the Act, the liability of the insurance company was Rs. 1,50,000.

14. So was the position in the case of [Rajan Vs. Sukumaran](#), a Division Bench of the Kerala High Court and of Madhya Pradesh High Court in the case of [New India Assurance Company Ltd. Vs. Smt. Surgyan Singhaniya and Others](#), when on 6.3.1984 one Om Prakash travelling in bus No. MNP 8103 had died when the bus jumped into the gate. It was a case of the passenger himself travelling in the bus.

15. This court in the case of New India Assurance Co. Ltd. v. Badam 2001 (1) RLR 97, where the passenger travelling in Matador had died in May, 1989, the insurance company was made liable to the statutory liability only which was found to be correct.

16. There are number of authorities wherein it has been settled that before the amendment in the Motor Vehicles Act, the liability of the insurance company is limited to the extent of statutory liability and as such in the present case the award of the Tribunal wherein the accident had occurred prior to amendment is not assailable on the point of liability of the insurance company and as such is upheld.

17. However, as discussed above, the amount of compensation is enhanced to Rs. 2,00,000 with the same proportion and same rate of interest as was granted by the Tribunal. The amount already paid shall be adjusted and the claimants shall be entitled to the balance amount.

18. For the reasons and discussions mentioned above, the miscellaneous appeal is allowed, the liability of the insurance company is limited to Rs. 50,000 only. It is further ordered that whole of the amount shall be paid by the insurance company if already not paid, but the insurance company shall be entitled to recover the amount paid over and above its liability from the insured as has been held by the Hon"ble Supreme Court in Oriental Insurance Co. Ltd. v. Cheruvakkara Nafeessu 2001 ACJ 1 (SC), as under:

In the facts and circumstances of this case we find that despite holding the liability under the policy limited to the extent of Rs. 50,000, the Claims Tribunal and the High Court were not unjustified in directing the appellant company to pay the whole of the awarded amount to the claimants on the basis of the contractual obligations contained in clauses relating to the liability of the third parties and avoidance clause. However, the Claims Tribunal and the High Court were not justified in rejecting the right of the appellant company to recover from the insured the excess amount paid in execution and discharge of the award of the Tribunal.

The miscellaneous appeal is accordingly allowed.