(1985) 01 RAJ CK 0017

Rajasthan High Court (Jaipur Bench)

Case No: Civil Miscellaneous Appeal No. 95 of 1979

Badri Narain and Others	APPELLANT
Vs	
Chotu Ram and Others	RESPONDENT

Date of Decision: Jan. 1, 1985

Acts Referred:

- Central Motor Vehicles Rules, 1989 - Rule 133
- Motor Vehicles Act, 1939 - Section 110D, 95, 95(1), 95(2)

Hon'ble Judges: I.S. Israni, J

Bench: Single Bench

Advocate: T.C. Seth and R.S. Mehta, for the Appellant; S.C. Srivastava and B.P. Gupta, for the Respondent

Judgement

I.S. Israni, J.

This is an appeal u/s 110-D of the Motor Vehicles Act, 1939 against the award of learned Motor Accidents Claims Tribunal, Jaipur dated 30.12.1978 awarding Rs. 31,000/- in Claim Petition No. 288 of 1977.

2. Briefly stated the facts of the case are that on 9.5.1977 at about 10 or 11 a.m. truck No. RSM 9285 belonging to New Sethi Transport Company was driven by Chhotu Ram (Respondent No. 1) on Jaipur-Tonk Road. Some persons were travelling in the truck as passengers from village Chainpura. It is further stated that the driver of the truck drove it at very fast speed. Therefore, the passengers shouted and requested the truck driver to stop the vehicle, but he neither stopped the truck nor slowed the speed of the same. It is said that when the truck reached near village Mundiya, the passengers requested the truck driver to stop the truck and let them get down from the same as they were not willing to travel in that truck any more. However, the truck driver did not listen to them, with the result that soon thereafter the driver could not control the vehicle and due to his rash and negligent driving he lost the control and the truck overturned, which resulted in instant death of Koyali

Devi and child Ghanshyam and other passengers were also injured. The husband of Koyali Devi and father of Ghanshyam, Badri Narain and others filed claim for Rs. 3,55,000/- impleading the driver, owner and the insurance company as Respondents.

3. In the reply filed on behalf of New Sethi Transport Company and its proprietor Ved Bhushan, it has been stated that they had no knowledge of the incident, hence they were not liable for any claim. The National Insurance Company Ltd. (Respondent No. 4) in its reply has stated that the accident did not take place on account of any rash or negligent driving of the driver of the truck and deceased Koyali Devi and her son were travelling as fare paying passengers in the truck and, therefore, the insurance company is not responsible for the claim. The Respondent No. 1 driver did not file any reply to the claim petition. The Respondent Nos. 2 and 3 (Sic.) driver was independent act and not connected with the servant''s employment. Therefore, l hey cannot be held liable for the claim on the principle of master''s liability. They have further pleaded that the vehicle in question was insured at the relevant time with the National Insurance Company Ltd. and the insurance company is liable to pay*the amount of compensation under the said award. They have also denied that the accident took place on account of rash and negligent driving of driver of the truck.

4. It may be mentioned that the owner of the truck M/s. New Sethi Transport Company also filed a separate appeal bearing S.B. Civil Misc. Appeal No. Ill of 1979 and raised objection that the learned Tribunal has committed serious error of law in awarding compensation against the proprietor and owner of the truck because the truck driver was not authorised under the Rules to take the passengers. Learned Counsel for the Appellants in that appeal admitted before this Court that the Appellant had not taken this objection before the Tribunal either in the written statement or during the arguments. Learned brother G.M. Lodha, J. has stated in his judgment that the Tribunal has relied upon the oral evidence of Kala and Badri Narain and has come to a finding that the passengers were taken in the truck for the benefit of truck owner and Rs. 21- per passenger were being charged by the driver on the vehicle and that no evidence had been led by the owner of the truck in rebuttal. It was, therefore, held that the owner now cannot challenge this adverse finding against him as it was open to him to first take the plea in the written statement and then to lead evidence in support of the same. Therefore, the said appeal of the Appellant owner was dismissed summarily.

5. Learned Tribunal framed the following issues:

The Respondents did not argue anything on issue No. 1 regarding rash and negligent driving of the driver Respondent No. 1 and addressed the court only on issue No. 2.

6. Learned Counsel for the Appellants has argued that the deceased were travelling in the truck on payment and therefore, all the Respondents including the insurance company were responsible for making payment of the award. He has further pointed out that no evidence has been led before the Tribunal in rebuttal of the evidence of Badri Narain (AW 1) and Kala (AW 2), who have stated that deceased were travelling on payment of Rs. 2/- each, which the driver charged on behalf of the owners. In view of this evidence the owners of the truck, Respondent Nos. 2 and 3, are also liable for payment of the claim as admittedly the Respondent No. 1, driver of the truck was driving the truck during the course of employment of his masters. It has been further argued that the learned Tribunal has erred in not making the Respondent No. 4 insurance company liable for payment of the amount of the award.

7. Learned Counsel for Respondent Nos. 2 and 3 has also argued that the truck at the time of accident was covered by the insurance policy with the insurance company Respondent No. 4 and according to law the insurance company was also liable for making payment of the award to the claimants.

8. Learned Counsel for the Respondent No. 4 insurance company has on the other hand argued that since truck was insured for carrying the goods and not for taking the passengers on hire, therefore, the insurance company was not liable for making payment of the amount of award to the Appellants. This point was considered in detail by the Full Bench of this Court in Smt. Santra Bai and Vs. Prahlad and Others, etc. etc., The Full Bench after considering the entire case law and the provisions of Section 95 of the Act read with Rule 133 of the Rules, laid down the following principles:

(i) in case of gratuitous passenger going on joy ride or on his own responsibility, insurance company is not liable;

(ii) in case of passengers carried for hire or reward or by reason of or in pursuance of a contract of employment in any vehicle, the insurance company is liable. This would include owner of the goods as well as his employees;

(iii) the insurer shall not be liable to cover liability in respect of employee of the insured in respect of the death of, or bodily injury to, any such employee arising out of and in the course of his employment other than a liability arising under the Workmen''s Compensation Act, 1923, if such employee is (a) engaged in driving such vehicle, or (b) if it is public service vehicle engaged as a conductor of the vehicle or in examining tickets on the vehicle, or (c) if it is goods vehicle being carried in the vehicle;

(iv) the insurer shall not be liable to cover any contractual liability.

It will be seen from the above that the present case is covered by point No. 2 mentioned above because the passengers of this truck were carried for hire or

reward by the driver of the truck during the course of his employment. Therefore, not only the insurance company but the owners of the truck (Respondent Nos. 3 and 4) shall be liable for making payment of the award.

9. Learned Counsel for the Respondent No. 4 in this appeal has further argued that in view of the terms of the policy under general exceptions, especially exception No. 3 (A), which lays down that the company shall not be liable under the policy in respect of any accident, loss, damage or liability if the vehicle is used otherwise than in accordance with the limitation as to its use laid down in the policy. Chapter VIII of the Act deals with the provisions of insurance of motor vehicles against the risk of third party. Section 95 (1) (b) (i) and (ii) lays down that in order to comply with the requirements of this Chapter VIII a policy of insurance must be a policy which insures the person or classes of persons specified in the policy to the extent specified in Sub-section (2) of Section 95. These provisions fix up a statutory liability on the insurer with regard to a policy of insurance required to be made before the use of motor vehicle. Section 95(1)(b)(i) clearly lays down that such policy must be against any liability which may be incurred by him in respect of the death of or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in public place. (Emphasis added). It is, therefore, clear from the above provision that the legislature has not put any restriction regarding the use of any particular class of vehicle and the term used is only ''vehicle''. No insurer is permitted by law to wriggle out of the statutory liability by putting any adverse condition in its policy. I, therefore, hold that in view of the law and the Full Bench ruling of this Court (supra), the Respondent No. 4 insurance company will be liable to pay compensation to the claimants.

10. Regarding the quantum awarded to the claimants, the learned Counsel for the Appellants has stated that in the post-mortem report the age of deceased Koyali Devi has been given 30 years, but the learned Tribunal has taken the age of the lady to be 35 years at the time of her death. Learned Counsel for the Appellants has further stated that even though the Tribunal has held that the expected age for woman in this country is 60 years, but the Tribunal thought that the deceased would have been in position to work only up to 50 years. Even though the Tribunal thought that the deceased would have been alive and able to work for 15 years, still the compensation has been awarded on the basis of 10 years'' multiplier only. The Tribunal has further held that she was earning about Rs. 600-700/-, but she contributed Rs. 3,000/- per year towards her family and has thus awarded Rs. 30,000/- by applying 10 years'' multiplier. Learned Counsel for the Appellants has stated that the deceased could not have spent about Rs. 350/- on her own and he further stated that at the most Rs. 100/- may be taken to be spent by deceased on her own self.

11. On the other hand learned Counsel for the Respondents has supported the view taken by the learned Tribunal of fixing Rs. 3,000/- per year which deceased Koyali

Devi was contributing towards her family and urged that the amount awarded by the Tribunal should be upheld. In my opinion when the post-mortem gives the age of deceased to be 30 years, there was no reason for the Tribunal to have disbelieved the same and arbitrarily fixed the age to be 35 years, and even when the learned Tribunal was of the opinion that she would have been fit for working up to the age of 60 years, there was no reason to apply the multiplier for 10 years only. Therefore, in facts and circumstances, it will be just and reasonable to apply multiplier of 20 years, and on applying multiplier of 20 years, I award Rs. 60,000/- to the claimants on this account.

12. Learned Counsel for the Appellants has urged that the learned Tribunal has not awarded any compensation for expenses on cremation, etc., even though Rs. 5,000/- were claimed on this account. It goes without saying that some expenses are bound to take place for cremation and performance of other customary rites in this connection. I, therefore, award Rs. 1,000/- to the claimants on this account.

13. Learned Counsel for the Appellants has further stated that the learned Tribunal has erred in not awarding anything for compensation of death of child Ghanshyam, who was two years old at the time of accident. In this connection a reference may be made to the case of Abdul Wahab and Another Vs. Chandra Prakash, in which the death of a child of 2 years occurred in an accident, whose father was doing business of cycle repairing. The Tribunal denied the compensation on the ground that the child cannot render financial assistance to the parents, however, in appeal it was held that even if it is assumed that on being grown up the deceased child may not have taken to some more labour, there is no sound basis to support that he will not have, in any case, engaged himself with his father also in repairing cycles etc. and the compensation amounting to Rs. 20,000/- was awarded to the claimants. In the matter of A.S. Manjunathaiah and Another Vs. M.V. Nanjundaiah and K.S.R.T.C., on the death of a girl aged about 9-1/2 years the compensation of Rs. 12,400/- was awarded to the claimants. In case of K.L. Kasar and Another Vs. Haribhau Savlaram Shejwal and Others, on the death of a school-going boy of 10th standard, the compensation of Rs. 1,00,000/- was awarded to the claimants. In the present case, the Appellants have claimed Rs. 10,000/- on account of the death of child Ghanshyam. I am of the opinion that the amount claimed is quite reasonable and the claimants are entitled to receive compensation of Rs. 10,000/- due to death of child Ghanshyam. The claimants are thus entitled to the award of Rs. 72,000/- in all.

14. In the case of Motor Owner''s Insurance Co. Ltd. Vs. Jadavji Keshavji Modi and Others, the Supreme Court has held that an accident caused by truck resulting in death of more than one person, the insurance company is liable for payment of compensation in respect of death or injuries suffered by each one of the persons separately. The insurance company is thus liable to the extent of statutory liability in case of each death.

15. The Appellant Nos. 2, 3, 4 and 5 were minors at the time of filing claim in the year 1977. Appellant No. 2 Ghasni Lal was 14 years old at that time, but has now become major. Appellant No. 3 Surgyani Bai, Appellant No. 4 Sushila Bai and Appellant No. 5 Pappu are still minors and they are under the guardianship of their father Appellant No. 1. The amount of Rs. 31,000/- awarded by the Tribunal has already been paid to the claimants. Now the claimants are entitled to the amount of Rs. 41,000/-. Out of the total amount insurance company shall be liable to pay up to statutory liability of Rs. 50,000/- and balance shall be paid by other Respondents. Out of the amount of award, Rs. 8,200/- are awarded to each of the claimants. The amount of the minors shall be deposited in any of the Government banks in fixed deposits in their names under the guardianship of their father (Appellant No. 1). They will be entitled to receive the same when they reach age of majority. However, the Appellant No. 1 shall be entitled to receive the interest from the above fixed deposits from time to time to be spent on expenses for maintenance of the children. The Appellant Nos. 1 and 2 shall also be entitled to Rs. 8,200/- each from the amount of award. The claimants shall also be entitled to receive interest on the above amount at the rate of 6% per annum from the date of the claim petition, which shall also be divided equally amongst the 5 claimants. All the Respondents are liable jointly and severally to pay the compensation amount of the award on account of death of two persons to the Appellants-claimants, but the first liability will be that of the insurance company to the extent prescribed under law, with which the vehicle was insured at the time of accident.

The appeal is disposed of in the manner as indicated above.