(1988) 2 ACC 173 : (1988) ACJ 962

Rajasthan High Court

Case No: None

National Insurance Co. Ltd.		APPELLANT
	Vs	
Tulsi Devi and Others		RESPONDENT

Date of Decision: Dec. 17, 1987

Acts Referred:
Motor Vehicles Act, 1939 â€” Section 110C(2A), 96(2)

Citation: (1988) 2 ACC 173 : (1988) ACJ 962

Hon'ble Judges: Inder Sen Israni, J

Bench: Single Bench

Judgement

Inder Sen Israni, J.
These two appeals arise out of the same award dated August 24, 1985 passed by the Motor Accident Claims

Tribunal, Jaipur, therefore, they are decided by this one judgment.

2. It will suffice for the purposes of these appeals to state that on May 29, 1978, the claimants-respondents No. 1 to 3 filed a claim petition for

sum of Rs. 9,10,000/- against the appellant and the respondents No. 4 to 7, before the Motor Accident Claims Tribunal, Jaipur. On December

27, 1977 at about 3-00 P.M. deceased Uma Shanker, deceased Kumari Meghna alongwith Smt. Tulsi Devi one of the claimants, were going to

Ludhiana from Jaipur via Delhi in a Ambassador Car No. WMC 7749 of M/s Gold Spot Agencies. The car was driven by deceased Girdhari Lal.

When the car reached near Chandwaji village, a truck bearing No. HRR 8215 driven by Madanlal, respondent No. 2 dashed against the car, which resulted in death of the above 3 persons. The Tribunal, after recording evidence and bearing all the parties, passed an award for the amount

mentioned above and two appellant and respondents No. 3, 4 and 5 to be liable for payment of compensation amount jointly and severally.

3. The contention of Shri B.P. Gupta, learned Counsel for the appellant National Insurance Company is that in the claim petitions, it was mentioned

by the claimants that the accident took place on account of rash and negligent driving of the truck by driver Madan Lal. It is, therefore, submitted

that no liability could be fixed on the appellant Company with which the car was insured for the simple reason that no rash or negligent driving on

the part of the deceased driver of the car was alleged in the petition. It is given out that the appellant-company was permitted to cross examine the

witnesses produced on behalf of the claimants, which shows that it was allowed to participate by the Tribunal on defence out side the scope of

Section 96(2) of the Motor Vehicles Act, 1939 (hereinafter called as ""the Act""). It is stated that the driver of the car expired in the accident and

the owner of the car did not appear inspite of the notice given by the Tribunal. It is further contended by the learned Counsel that under the

amended provisions of Section 110-C(2-A) of the Act, the Tribunal has been empowered to allow the insurer who may be liable in respect of

such claims to be impleaded as party to the proceedings and the insurer so impleaded shall thereupon have the right to contest the claim on all or

any of the grounds that are available to the person against whom the claim has been filed, provided the Tribunal after enquiry is satisfied that there

is collusion between the person making claim and the person against whom the claim is made or the persons against whom the claim is made has

failed to contest the claim. It is, therefore, submitted that keeping in view the above provision of the Act, the Tribunal allowed the appellant,

Insurance Company to cross-examine the witnesses of the claimants on all grounds which are usually available to a person against whom the claim is filed. It is submitted by the learned Counsel that subsequently the claim petition was amended and it was pleaded in the amended claim petition

that the accident was result of composite negligence by drivers of both the vehicles. It is also contended that since the occupants of the car who

died, were travelling in the borrowed car, therefore, the Insurance Company is not liable for payment of any compensation as awarded by the

Tribunal. It is, therefore, contended that even if it is held that the accident was result of composite negligence of drivers of both the vehicles, the

driver of the truck should have been placed with greater liability as the accident resulted on account of negligence of the driver of the truck.

Therefore, the Tribunal has erred in keeping the negligence of driver Girdhari of the Car at 50% in the claim filed by Mst. Shanti Devi and others,

the legal representatives of the driver of the car, Girdhari Lal. Reliance has been placed on Bengard Insurance Company Ltd. v. Raghunath Patra

and Ors. 1976 ACJ 12 in which it was held that when insurer does not contest the claim before the Tribunal and the claimants did not raise any

objection at the time when the insurer cross-examine the claimant''s witnesses on the question of damages and the appeal has been filed by the

Insurance Company alone against the award, the appellant Insurance Company can take the pleas on merits.

4. Regarding the contention that the insurer shall not be liable for payment of claim amount to the occupants of the car, reliance has been placed on

Kishan Srup Thapa v. Dr. Lakhbir Sood and Ors. in which it was held that the Insurance Company is not liable to pay compensation to the injured

passengers in a private car because no such risk is required to be covered. In the case of Tarawati v. Gurmail Singh and Ors. 1982 ACJ 622 it

was held that the Insurance Company is not required to cover the risk of passengers travelling in private car and is, therefore, not liable to pay

compensation even though the policy may be comprehensive. United Insurance Company Ltd. v. Nagamal and Ors. 1983 ACJ 541 was a case in which a passenger of the car died due to the negligence of the owner-driver of the car. The deceased was not carried in the car by reason of or in

pursuance of a contract of employment. It was held that in such circumstances the Insurance Company was not liable to pay any compensation to

the insured passengers.

5. As regards the allegations of composite negligence, reliance has been placed on the case of Lajwanti and Anr. v. Keshav Prasad Soni 1984

ACJ 664. This was a case in which at the inter-section of two roads, there was an accident between truck and a tempo. The driver of the truck

was not produced, hence adverse inference was drawn. In the matter of Bhagwant Devi v. Krishan Kumar Saini and Ors. 1986 ACJ 331 the

same view was taken. In Sohun Lal and Anr. v. Bal Swarup Bhatnagar and Ors. 1987 ACJ 113 it was held by this Court that when a vehicle is

left on a road in dangerous position, it becomes case of composite negligence. In such matters the liability of the truck on the road, which was

standing without any signal, was aportioned at 25% and that of the car which dashed the truck was kept at 75%.

6. Shri G.C. Mathur, learned Counsel appearing for the claimants-respondents, who has also filed cross objections on their behalf regarding

enhancement of the claim, has raised preliminary objection that in view of the provisions of Section 96(2) of the Act, the appellant Insurance

Company has no right to prefer the appeals. It is contended by the learned Counsel that the Insurance company can raise only such defences

which are allowed in the above mentioned section. It is pointed out that Section 110 C(2-A) of the Act is of no help to the appellant Insurance

Company. Under this section, it is submitted that an enquiry is essential to be held by the Tribunal and only when the Tribunal is satisfied that there

is collusion between a person making claim and the person against whom the claim is made or the person against whom the claim is made, has

failed to contest the claim, then alone the Tribunal after recording reasons in writing direct that the Insurer shall be pleaded as party and may be given right to contest the claim on all or any of the grounds that are available to the person against whom the claim has been made. It is pointed out

that in the present case the facts are totally different, in as much as the owner of the truck and the driver filed reply to the claim petition and were

through out represented by a, lawyer. The driver of the car unfortunately lost his life in the accident, therefore, mere appearance of the owner of

the car would not throw any light on the circumstances in which the accident took place. It is therefore, contended that even if the owner of the car

did not put any appearance, it shall not make any difference evidently because he had no personal knowledge of the accident and the driver of the

car was already killed in the accident It is also contended that many a times the courts including the tribunals permit the counsel for Insurance

Companies to cross examine the witnesses only with a view to get a balanced view on the issues to be decided in the claims filed by the claimants.

In this respect reliance has been placed on Oriental Fire and General Insurance Company v. Hanunaka 1982 ACJ 372 in which it was held that

merely because counsel for the Insurance Company was permitted to cross-examine the witnesses examined on behalf of the claimants and

contested the case on all grounds available to the owner it cannot be implied that the Tribunal had granted permission under the provisions of

Section 110-C(2-A)of the Act. It was, therefore, held that this only means that the insurer has done something beyond its rights and it is not

supported on any legal basis for this act. It was, therefore, held that this part of the evidence which is ill-cited in the cross examination by the

insurer going beyond its power has to be eschewed. It is pointed out that in such circumstances when the Insurance Company wants to invoke the

provisions of Section 110-C(2-A) the application is necessarily given in the Tribunal to enable it to have an enquiry and come to a conclusion

regarding any collusion etc. and pass an order in writing stating reasons thereof. No such enquiry has been done in this case. It is, therefore, contended that such part of the evidence, in which cross-examination has been done by the appellant Insurance Company shall not be read while

considering the appeal filed by the Insurance Company or the cross-objections filed by the claimants. In the case of Kantilal and Brothers v.

Ramarani Bai and Ors. 1980 ACJ 501 it was held that in an appeal filed by the Insurance Company, only the defences as per the provisions of

Section 96(2) of the Act were available to it and it cannot be allowed to challenge the quantum of the compensation. This was a case in which an

appeal was Sled by Kantilal and others alongwith Woolcon Insurance Company Ltd. against the award made by the Tribunal. It was further held

that since the amount of compensation has to be paid by the Insurance Company, even the owner cannot file an appeal as there had been no legal

or practical injury to the owner. Reliance has also been placed on the case of Bhawanimal Mathur v. Smt. Bhagwati S.B. Civil Misc. Appeal No.

186/82, decided on October 7, 1986, in which it was held by this Court that the owner of the car was not an aggrieved person within the meaning

of Section 110-D of the Act as the compensation amount had to be paid by the Insurance Company and, therefore, was not entitled to prefer any

appeal against the award passed by the Tribunal. Another appeal was also filed against the same award by Yad Ram and Insurance Company

jointly (SB. Civil Misc. Appeal No. 7/83), which was also decided by the same judgment and it was held that the Insurance Company is not

entitled to file appeal except on the grounds mentioned under the provisions of Section 96(2) of the Act. In the case of United India Fire and

General Insurance Company v. Laxmi Shod Ganjoo and Anr. 1982 ACJ 470 , the Full Bench of Jammu and Kashmir High Court held that the

insurer is not entitled to resist the award where the insurer has been found liable, oh the grounds not enumerated u/s 96(2) of the Act, except in

cases where the terms of the policy of the Insurance provides that the insurer has a right to defend the action in the name of insurer and if it appears that the claimant and the insurer have colluded, then after receiving permission of the Tribunal u/s 110-C(2-A), the insurer can defend the claim as

well as the award on all grounds, which are available to the insurer. It is, therefore, pointed out by the learned Counsel that none of the grounds

specified above exist in the appeal filed by the Insurance Company. In the case of British India General Insurance Co. Ltd. Vs. Captain Itbar Singh

and Others, , it was held that apart from the statute the insurer has no right to be made a party to the action by the insured against the insurer

causing injury. Section 96(2) of the Act however gives him right to be made a party to the suit and to defend it. The right, therefore, is created by

the statute and its contents necessarily depends on the provisions of the statute. Sub-section (2) clearly provides that the insurer in a defence to the

action is not entitled to take any defence which is not specified in it. When the grounds of defence have been specified, they cannot be added to.

The same view was taken by the Division Bench of this Court in the case of Roop Narain and Ors. v. Avatar Singh and Ors. 1987 ACJ 336. It is,

therefore, pointed out by the learned Counsel that the appellant Insurance Company did not raise any objection in the reply filed before the

Tribunal that it was not liable for payment of compensation as the occupants of the car who lost their lives in the accident. It is contended that such

defences was not taken in the Tribunal and the Insurance Company cannot be now permitted to raise such a defence.

7. Learned Counsel Shri S.C. Srivastava, appearing on behalf of respondent No. 6 Oriental Fire and General Insurance Company submits that so

far as cross-objections filed by the claimants are concerned, even if the amount of compensation is enhanced, the respondent No. 6 should not be

made liable for any enhanced compensation as such a liability cannot be fashioned on a co-respondent as the objections have been filed by some

of the respondents in the appeals filed by the Insurance Company. It is contended that no copy of the cross-objections was given to the respondent No. 6, therefore, they had no knowledge of any such cross-objections having been filed by the claimants/co-respondents. Reliance has

been placed on Pannalal Vs. State Bombay and Others, , in which it was pointed out that Order 41 Rule 22 permits, as a general rule, a

respondent to prefer an objection directing only against the appellant and it is only in exceptional cases that the relief may also be granted against

the co-respondents. It was Further pointed out that wide wording of Order 41 Rule 33 was intended to empower the appellate court to make

whatever order, it thinks fit, but only as between the appellant and the respondents but also as between the respondents and a respondent. In the

case of Murari Lal Vs. Gomati Devi and Others, it was held by this Court that the provisions of Order 41 Rule 33 C.P.C. should be applied when

the order is inconsistent or contrary or unequitable or so much inter-mixed that the application of rule is necessary and in a beneficial legislation, a

very technical meaning should not be given to the law.

8. I have considered the various arguments advanced at the bar regarding the preliminary objection raised against filing of the appeal by the

Insurance Company. Admittedly, the Insurance Company is permitted by the statute to raise only such defences, which are permitted under the

provisions of Section 96(2) of the Act and nothing more can be added to the same. I have already discussed the law above on this point. This

Court as well as the Apex Court have consistently taken this view. So far as the contention of learned Counsel for the appellant regarding having

cross examining the witnesses of the claimants is concerned, merely because the Tribunal permitted the appellant to cross-examine the witnesses, it

cannot be said that the Tribunal granted permission to the appellant within the provisions of Section 110-C(2-A) of the Act. An application may or

may not be filed by either of the parties, but it is necessary that the Tribunal must held an enquiry and in the course of enquiry if satisfied, that there

exists collusion between the person making the claim and the person against whom the claim is made or the person against whom the claim is made has failed to contest the claim and it must recorded reasons in writing for reaching this conclusion before the Insurance Company can be allowed

the right to contest the claim on all or any of the grounds available to the person against whom the claim has been filed. Admittedly, no such enquiry

was made by the Tribunal and no such permission in writing allowing the Insurance Company was recorded by the Tribunal. I, therefore, hold that

the appellant cannot take any advantage of the provisions of Section 110-C(2-A) of the Act to enable it to file an appeal against the award before

this Court.

9. As regards the contention of learned Counsel for the appellant that the Insurance Company is not liable for payment of any compensation to the

passengers who lost their lives while travelling in the car, it may be mentioned to make the things clear that the policy of the Insurance Company

itself mentions in Section 2 regarding liability to 3rd party that it shall be liable to pay in respect of death or bodily injury to any person including

occupants carried in the motor car, provided they are not carried for hire or reward. This contention of the learned Counsel for the appellant has,

therefore, no force. Since I have held that the appellant Insurance Company has no night to file this appeal, I K therefore, do not deem it necessary

to deal with some of the other contentions raised by the learned Counsel for the appellant.

10. Coming to the cross objections, filed by the claimants-respondents, it is contended that claim No. 61/76 filed by Tulsi Devi and others has

been wrongly shown as claim No. 164/81. It is pointed out that the age of the deceased was 36 years, who was doing business. Ex. 5 is the

certificate of Income Tax department, which shows the income of the deceased for the years 1976-77, 1977-78 and 1978-79. In the last year the

income of the deceased is stated to be 34670/- per year. However, the Tribunal in its own wisdom took the yearly income at Rs. 30,000/- only

and after deducting l/3rd for the personal expenses of the deceased, kept the dependency amount at Rs. 20,000/- per year. It is contended that when the certificates of income tax are on record, there is no reason for the Tribunal to have reduced the income.

11. The next contention of the learned Counsel is that the deceased was 36 years old, but the Tribunal has applied the multiplier of 20 years only.

It is, therefore, contended that usual span of life in India by various courts is now kept at 70 years and this should be taken to be the age for

earning of the deceased also as he was doing his private business. It is contended that Smt. Tulsi Devi was a young lady of 34 years when she lost

her husband in this unfortunate accident. This Court has been awarding in such unfortunate circumstances the amount of Rs. 15000/- for loss of

consortium and the same may be awarded to her also. The Tribunal has awarded Rs. 10,000/- as loss of consortium. It is also contended that

nothing has been awarded on account of loss of love and affection to respondents No. 2 and 3, the children of the deceased. It is contended that

Rs. 4000/- each may be awarded as loss of love and affection to the children. It is further pointed out that the Tribunal has awarded interest at the

rate of 10% p a. from the date of filing of the petition, which in view of the decision of the Apex Court in Jagbir Singh and Others Vs. General

Manager Punjab Roadways and Others, , should be raised to 12% p.a.

12. Keeping the documentary evidence produced by the claimants in view, there is no reason to reduce the income of the deceased, on which he

was paying Income Tax at the time of his death. I therefore, hold that the income of the deceased as certified in Ex. 5 be kept at Rs. 34670/- per

year and after deducting 1/3rd amount i.e. 11556/- the amount of dependency comes to Rs. 23114/-, which is rounded at Rs. 23000/- for the

purposes of calculation.

13. As regards the multiplier, the deceased was 36 years old at the time of death and there is no reason why the age of life be kept less than 60

years. I, therefore, hold that it will be reasonable to apply the multiplier of 24 years to the income. The same view was taken by this Court in

Gunwant Kanwar v. Sardar Sadhu Singh 1987 (1) R.L.R. 1020 and Smt. Phula Devi v. Inderjeet Singh S.B. Civil Misc. Appeal No. 139/86

decided on 7-12-87. This view has been taken by this Court in several other decisions also. The claimants-respondents shall, therefore, be entitled

to receive Rs. 23,000/- x 24 = Rs. 5,52,000/- as compensation under this head.

14. Regarding loss of consortium, it is evident that the life of unfortunate widow suddenly became dark on account of this accident. It has been

held by this Court in several decisions that in such circumstances, amount of Rs. 15,000/- be awarded to the widow as loss of consortium. It is,

therefore, held that Smt. Tulsi shall be entitled to receive Rs. 15000/- as loss of consortium. The Full Bench of this Court in the case of R.S.R.T.C.

v. Kashtoori Devi 1986 ACJ 960 has held that the children are entitled to receive compensation on account of loss of love and affection. I,

therefore, award Rs. 2,000/- each to the respondent No. 2 Kumari Ismita and respondent No. 3 Ravi Shanker on account of loss of love and

affection.

15. As regards interest, I hold that the claimants shall be entitled to receive interest at the rate of 12% p.a. from the date of filing of the claim

petition. If any amount has been deposited or paid, the interest shall be paid only till the date of such payment or deposit on such amount. The

award as passed by the Tribunal is maintained in all other respects.

16. Taking the cross objections filed on behalf of Shanti Devi and her son Raj Kumar, the deceased Girdhari Lal driver of the car was 29 years

old when he lost his life in this accident. Smt. Shanti Devi was 22 years old at that time. The contention of learned Counsel Shri Mathur is that the

Tribunal has accepted the monthly income of the deceased driver to be at Rs. 250/-, but has not taken into consideration that he was drawing Rs.

20/- per day as out side allowance and was also getting food, clothes and accommodation in his employment. Thus there were hardly any

expenses on his ownself, which were taken care of by the employer. The contention of learned Counsel is that in view of the fact that deceased was earning Rs. 20/- per day apart from his salary of Rs. 250/- and was also getting food, clothes and accommodation, his net income should be

kept at Rs. 250/- and not at Rs. 200/-. AW/4 Shanti Devi has also stated in her statement that her husband gave her Rs. 250/- p.m. and clothes

etc. whenever he came home. AW/3 Babu Lal has also supported the statement of Shanti Devi on the emoluments earned by the deceased. I,

therefore, hold that it will be reasonable to keep the amount of dependency at Rs. 250/- per month.

17. The next contention of the learned Counsel is that the age of the deceased was 29 years at the time of accident and, therefore, there is no

reason to keep his earning age at less than 60 years. Therefore, it is submitted that accordingly multiplier of 36 years be applied to calculate the

amount of compensation to be paid.

18. Keeping in view the hard life a driver has to live, I hold that it will be reasonable to keep 60 years as the age of earning of the deceased.

Therefore, it will be reasonable to apply the multiplier of 31 years to calculate the compensation under this head. The claimants shall, therefore, be

entitled to receive 250 x 12 x 31 = Rs. 93,000/- under this head.

19. The next contention of the learned Counsel is that Smt. Shanti Devi was a young lady of 22 years at the time when she lost her husband. The

Tribunal has awarded Rs. 5000/- on account of loss of consortium, which should be raised to at-least Rs. 15000/-, if not more keeping in view the

age of widow. There is no doubt that the life of the young widow suddenly became dark on account of this accident and she deserves to be given

some reasonable compensation on this account. I, therefore, award Rs. 15,000/- as loss of consortium to her.

20. Learned Counsel contends that the Tribunal has awarded nothing for loss of love and affection. The amount of Rs. 4000/- be awarded to the

child, respondent No. 2. It is contended that nothing has been awarded on account of funeral and Rs. 4000/- may also be awarded under this head. The interest has been awarded @ 10% p.a. from the date of filing of the claim petition, which also needs to be raised to 12% p.a.

21. I have already discussed the relevant law above and I award the amount of Rs. 2000/- to the minor son Raj Kumar on account of loss of love

and affection. There is no doubt that some expenses have to be made on funeral and other connected ceremonies and I award Rs. 2000/- on this

account to the claimants. The claimants shall also be entitled to receive interest @ 12% pa. from the date of claim petition. If any amount has been

deposited or paid to the claimants, the interest shall not be payable after the date of such payment or deposit of the amount. It is made clear that

since deceased Girdhari Lal, driver of the car has also been held to be responsible for contributory negligence to the extent of 50%, therefore the

claimants shall be entitled to receive the enhanced amount to the extent of 50% only.

22. Regarding the contention of Shri S.C. Srivastava, appearing on behalf of Oriental Fire and General Insurance Company, the matter becomes

quite clear from the decision of the Apax Court in the case of Panna Lal (supra) etc. It has been held in this decision that the appellate court can

give relief to a respondent as against other respondents also when cross objections are filed or not filed by the respondent. The contention of the

learned Counsel is that in view of Order 41 Rule 22 CPC since the cross objections have been filed, therefore, co-respondent should not be

saddled with the liability of enhanced compensation. In this case the relief granted is inter-mixed regarding all respondents. In the appeals, the

owner of the car viz. Gold-spot agency shall also be liable so far as the enhanced amount is concerned. This act is a beneficial legislation inacted

with a view to give quick and substantial relief to the claimants who suffer on account of unfortunate accidents for none of their fault. In the case of

Murari Lal (supra), this Court had held that when order is inter-mixed, the provisions of Order 41 Rule 33 can be made applicable as this act is a

beneficial legislation and technical meaning should not be given to the law. I, therefore, hold that in the facts and circumstances, all the respondents shall be liable to pay the enhanced amount to the claimants.

23. In the result, both the appeals are dismissed and the cross objections filed by the claimants are allowed as indicated above. There will be no

order as to costs.