

(2014) 02 RAJ CK 0178

Rajasthan High Court

Case No: Civil Misc. Appeal No. 1 of 2012

Vanita Ben

APPELLANT

Vs

Devshi Bhai

RESPONDENT

Date of Decision: Feb. 12, 2014

Acts Referred:

- Motor Vehicles Act, 1988 - Section 147, 147(1), 147(2), 217, 217(2)

Citation: (2014) 3 ACC 417 : (2015) ACJ 315 : (2014) 2 AnWR 197 : (2014) 2 RLW 1325

Hon'ble Judges: Sandeep Mehta, J

Bench: Single Bench

Advocate: Anil Bhandari, Advocate for the Appellant; Varun Gupta, Advocate for the Respondent

Final Decision: Allowed

Judgement

Sandeep Mehta, J.

The instant misc. appeal is directed against the judgment dated 4.3.1998 passed by the learned Judge, Motor Accident Claims Tribunal, Pali in MAC No. 45/94 whereby the learned Judge awarded a total sum of Rs. 11,54,152/- to the appellants claimants as compensation for the death of Mukundbhai Devji Bhai Kotecha. Out of the said compensation amount, a sum of Rs. 15,000/- was directed to be paid by the insurance company respondent No. 3 as limited liability whereas, the appellants were left to recover the remaining compensation amount from the owner of the offending vehicle. Briefly stated the facts of the case are that the appellant No. 1's husband late Shri Mukundbhai Devjibhai Kotecha was travelling in a bus bearing registration No. GRP 3584 which was being driven by one Upendra Jayantilal Thakar. The owner of the vehicle was Devashibhai Dungarbbhai Radanya. The vehicle was insured by the Oriental Insurance Co. Ltd. under the Act of 1939 for a limited liability. The said vehicle met with an accident on 9.11.1989 by colliding against a tree near village Dhola, District Pali. Mukundbhai who was sitting in the vehicle alongwith his younger brother Nilesh received head injuries as a result of the

accident and expired later on. At the relevant time, Mukundbhai was 39 years of age and was working in a concern named R.K. Goel & Co. Ltd. at Leicester (U.K.).

2. A claim was filed by his wife and three minor daughters in the court of the learned Judge, Motor Accident Claims Tribunal praying for compensation of Rs. 25 lacs under various heads. In support of the claim petition, the salary/pay certificates issued by the employer of Mukundbha certifying that he was drawing a salary of 120 pounds per week i.e. 6240 pounds per annum were filed and exhibited.

3. The learned Tribunal framed following six issues to be decided by it:

(1) Whether the vehicle was being driven rashly and negligently by its driver and therefore, the same met with an accident resulting into the death of Mukundbhai,

(2) Whether the claimants are entitled to a claim of Rs. 25 lacs with interest

(3) Whether the insurance company is having a limited liability to make payment towards the claim.

(4) Whether the vehicle in question was not being driven under a valid permit or licence and thus, the respondent No. 3 insurance company was absolved of the liability to make payment of the compensation.

(5) Whether the respondent No. 2 the owner did not give intimation of the accident to the insurance company and thus, the insurance company is absolved of its liability.

(6) Relief .

4. The issue No. 1 was decided in favour of the appellants. It has not been challenged by any of the respondents and thus, it has become final in favour of the appellants. Issues No. 4 and 5 were not contested by the insurance company and thus, the same were decided in favour of the claimants. The said findings have also not been challenged and thus, have become final. The issue No. 6 regarding the compensation payable to the claimants was decided by the learned Tribunal as indicated above by awarding a total sum of Rs. 11,54,152/- as compensation to the claimants, Issue No. 3 was decided in favour of the insurance company and the insurance company was held to be liable to a limited extent of Rs. 15,000/- out of total compensation of Rs. 11,54,152/-.

5. The present appeal is preferred challenging the findings and decision of the learned Tribunal.

6. Shri Anil Bhandari learned counsel appearing for the appellants vehemently contended that the learned Tribunal committed a grave error in holding that the provisions of the new Act i.e. Motor Vehicles Act 1988 would not be applicable to the case at hand. He urged that the insurance policy was issued under the old Act i.e. Motor Vehicles Act 1939 and was valid from 22.4.198a to 21.4.1990. He submitted

that the Act of 1988 came into force w e.f. 1.7.1989.

7. He referred to the saving clause u/s 217 of the Act of 1988 in order to buttress his contention that the insurance company could not escape from the liability to satisfy the claim in entirety and could not be permitted to take the shield behind the veil of the limited liability clause.

8. In view of the aforesaid provision and the interpretation given thereto in various decisions, he submitted that from the date of the coming into force of the New Act, the policy issue under the old Act would continue to remain in effective under the corresponding provisions of the Act of 1988. Learned counsel submitted that the policy would have to be construed as having been issued under the corresponding provisions of the Act of 1988 under the saving clause. Therefore, he urged that the finding recorded by the learned Tribunal that the policy would only be effective to a limited extent for which it was issued is illegal and deserves to be set aside.

9. He relied upon the decision rendered by the Hon"ble Division Bench of Hon"ble Gujarat High Court in the case of [Kacharabhai L. Limbachia Vs. Ratansinh J. Rathod-Patel and Others](#), and submitted that the view taken in the said decision was endorsed by the Hon"ble Supreme Court in the case of [National Insurance Company Ltd. Vs. Behari Lal and Others](#). He submitted that it was held in Kacharabhai's case that the insurance company could not be permitted to hide behind the shield that its liability was limited to only Rs. 15,000/- per passenger because the policy was issued u/s 95(2) of the Act of 1939. Learned counsel thus submitted that the finding recorded by the learned Tribunal as regards the issue No. 3 deserves to be reversed.

10. Learned counsel for the appellant further submitted that the rate of conversion of Great Britain Pound applied by the learned Tribunal was also erroneous. He urged that the conversion rate of the pounds to Indian rupees should have been accepted at the prevalent market rate when the appeal was being decided or at least it should relate to the date when the award was passed.

11. Shri Bhandari also relied upon the decision of the Hon"ble Supreme Court in the case of [Ibrahim Vs. Raju and Others](#), mentioned in order to buttress his contention that the final award looking to the change in circumstances can exceed the amount mentioned in the claim petition. He submitted that the accident took place in the year 1989 and the appellants have been deprived of compensation for the last nearly 35 years. Thus, he submitted that the award should be enhanced so as to be appropriate to the circumstances prevalent today even if the same exceeds the amount claimed in the petition.

12. Shri Varun Gupta learned counsel appearing for the insurance company could not cite any law to the contrary and thus was not in a position to dispute the proposition of law cited at bar by the learned counsel for the appellants.

13. Having gone through the two judgments referred to above, this Court is also of the opinion that in view of the saving clause provided u/s 217 of the New Act, the insurance policy issued under the old Act would continue to be effective as if the same was issued under the Act of 1988. As soon as the new Act came into force, the policy assumed the character of a policy issued u/s 147 of the new Act, which does not allow for any limited liability of the insurance company even in relation to an Act only Policy Section 217 of the Act of 1988 saves the character of the policy for four months under the provisions of the old Act till 1.11.1989. If the policy was valid thereafter, then it would assume the character of and would remain in force as if it had been issued u/s 147 of the Act of 1988. The policy in the case at hand was valid upto 21.4.1990. Therefore, it has to be concluded that a policy assumed the character of the policy issued u/s 147 of the Act of 1988 from 1.11.1989 onwards. As the accident in the case at hand took place on 9.11.1989, the proviso to Section 147(2) of the new Act would be applicable and the liability of the insurance company to satisfy the claim could not be limited by the effect of the conditions of the policy or the provisions of the Act of 1939. Therefore, the issue No. 3 was wrongly decided by the learned Tribunal in this case. It cannot be disputed that the liability of the insurance company would be deemed to cover the total risk of the third party from 1.11.1989 onwards.

14. In view of the interpretation given to the provisions by the Hon"ble Division Bench of Hon"ble Gujarat High Court in the case of Kacharabhi's case (supra), which was subsequently endorsed by the Hon"ble Supreme Court in the case of Behari Lai's case (supra) and as soon as the Act of 1988 came into force, any insurance policy issued for limited liability of the insurance company would be deemed to have been issued under the Act of 1988 and the veil of limited liability would be lifted.

15. The Hon"ble Supreme Court in the case of Behari Lal (supra) went a step further and whilst dealing with the argument that the liability of the insurance company was limited in view of the proviso to sub-sec. (2) of Sec. 147 of the Act when the policy was issued under the old Act, held as under:

"7. It is quite clear that sub-section (2) of Section 147 of the New Act directs that subject to proviso to sub-section (1), a statutory policy shall cover the amount of liability incurred except in respect of damage to any property of a third party for which a limit of rupees six thousand is specified. A careful reading of the proviso to sub-section (2) discloses that any policy of insurance, issued with any limited liability and in force immediately before the commencement of the New Act, shall continue to be effective for a period of four months after such commencement or till the date of expiry of such policy whichever is earlier.

8. Now, a policy of insurance may be a contract policy or a statutory policy. The proviso does not deal with unlimited liability which an insurer may undertake under a contract policy. It deals with a statutory policy with limited liability. The question, which, arises here is: what is the import of the phrase, with any limited liability and

in force? To understand the meaning of this phrase, it becomes necessary to refer to Section 95 of the Old Act which deals with requirements of policies and limits of liability. Under sub-section (2) of Section 95 a policy of insurance (a statutory policy) was required to cover any liability incurred in respect of any one accident, in the case of a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment: (1) in respect of persons other than passengers carried for hire or reward, a limit of one lakh and fifty thousand rupees in all; and (2) in respect of passengers a limit of fifteen thousand rupees for each individual passenger. Therefore, the phrase means a statutory policy under the Old Act with the limit prescribed therein which was valid immediately before the commencement of the New Act. The words are not employed to limit the liability of an insurance company to the amount specified in the policy by virtue of the provisions of Section 95(2) of the Old Act either for a period of four months or for a lesser period during which the policy is valid. It is argued by Mr. Sharma that by the proviso the liability of the Insurance Company is limited to the amount mentioned in the existing statutory policy issued under the Old Act. We are afraid, we cannot accede to this contention and he can derive no benefit by relying on the following observation of this Court in [New India Assurance Company Vs. Shri Satpal Singh and Others](#),

"The legislature has also taken care of even the policies which were in force on the date of commencement of the Act by specifically providing that any policy of insurance containing any limit regarding the insurers liability shall continue to be effective for a period of four months from commencement of the Act or till the date of expiry of such policy, whichever is earlier. This means, after the said period of four months, a new insurance policy consistent with the new Act is required to be obtained."

9. There the question before this Court was with regard to liability of the Insurance Company in case of death of a gratuitous passenger in the truck which met with an accident resulting in his death. We cannot read the observation, quoted above, as laying down the law that the amount specified in the policy in force on the date of the commencement of the New Act will be payable for a period of four months after such commencement or till the date of expiry of such policy, whichever is earlier.

10. In our view, the proviso cannot be so interpreted as to subject the insurance companies to different maximum liabilities under statutory policies in respect of accidents occurring during the same period. We do not think that this could be the intention of the Parliament. Having fixed a date for enforcement of the New Act incorporating the requirement of a statutory policy u/s 147(1) thereof, the effect of the provision could not have been whittled down during the period which may vary from one day to four months depending upon when the existing policy expires within the said period of four months. It merely indicates the span of validity of existing policy. Here, it is pertinent to notice the provisions of Section 217(2) of the

New Act which deal with the effect of repeal of the Old Act (under which a statutory policy was taken) on coming into force of the New Act. Sub-sec. (1) of Sec. 217 repeals, inter alia, the Old Act Clause (c) of sub-sec. (2), which is relevant, provides that notwithstanding the repeal under sub-sec. (1) of the Old Act any document, referring to any of the repealed enactments or the provisions thereof, shall be construed as referring to the New Act or the corresponding provisions thereof.

11. In this context, it will be useful to refer to the decision of this Court in [Padma Srinivasan Vs. Premier Insurance Company Limited](#), In that case after the policy was taken u/s 95(2)(a) of the Old Act, it was amended in 1969 so as to increase the liability of the insurer from Rs. 15,000/- to Rs. 50,000/-. The accident which gave rise to the appeal occurred after the amended provision came into force. Chandrachud, C.J. speaking for a three-Judge Bench observed:

"Since the liability of the insurer to pay a claim under a motor accident policy arises on the occurrence of the accident and not until then, one must necessarily have regard to the state of the law obtaining at the time of the accident for determining the extent of the insurers liability under a statutory policy. In this behalf, the governing factor for determining the application of the appropriate law is not the date on which the policy of insurance came into force but the date on which the cause of action accrued for enforcing liability arising under the terms of the policy. That we consider to be a reasonable manner in which to understand and interpret the contract of insurance entered into by the insured and the insurer in this case."

We are not persuaded to accept the contention of Mr. Sharma that the proviso in question is incorporated to nullify the effect of that judgment. The proviso to sub-section (2) of Section 147 cannot be read as a proviso to Section 217(2)(c) of the New Act and it does not, in case of the existing policy being in force on the date of the occurrence of the accident, limit the liability of the Insurance Company to the amount mentioned in Section 95(2) of the Old Act.

12. From the above discussion, it follows that, the proviso to sub-section (2) of Section 147 does not limit the liability of insurance Companies to payment of compensation to the extent specified in the policy of insurance in terms of Section 95(2) of the Old Act which is in force before the commencement of the New Act for a period of four months after commencement of the New Act or till the date of expiry of such a policy, whichever is earlier. In this view of the matter, we endorse the view taken by the Division Bench of the High Court of [Kacharabhai L. Limbachia Vs. Ratansinh J. Rathod-Patel and Others](#), and by the Division Bench of the Punjab & Haryana High Court in [National Insurance Company Limited Vs. Puja Roller Flour Mills \(Pvt.\) Ltd. and Others](#),

16. In the case of Kacharabhai (supra), the accident occurred on 12.2.1990. The Hon"ble Division Bench of Hon"ble Gujarat High Court held that the limited liability of the insurance company would continue to be effective for a period of four

months only and thereafter, the liability would become unlimited. Accordingly, even though the policy was issued u/s 95 of the Old Act for limited liability and the accident took place on 12.2.1990, the liability of the insurance was held to be unlimited in that case. The said decision was endorsed by the Hon"ble Supreme Court while dealing with this issue in the case of Behari Lal (supra).

17. Now coming to the facts in hand. The accident in question took place on 9.11.1989. Therefore, even if a restrictive interpretation is made, then also the veil or shield of limited liability available to the insurance company would be lifted from 1.11.1989 onwards and the liability of the insurance company would become unlimited subsequent to that date. The policy in the case at hand was effective till 21.4.1990. Therefore, by virtue of Section 217 of the Act, which is a saving clause, it would be deemed to cover an unlimited risk till the date it was in force. Therefore, the liability to satisfy the award in this case is held to be of the insurance company jointly and severally with the driver and owner of the offending vehicle to an unlimited extent.

Quantum of Compensation:

18. Next comes the question of quantum of compensation awardable to the appellants. The appellants claimants in their claim petition stated that the deceased was 39 years of age and was working in a concern named R.K. Goel & Co. Ltd. at Leicester (U.K.) at the time of accident. The age of the deceased was not disputed by any of the respondents. The learned Tribunal assessed the annual income of the deceased to be 5000 pounds per annum. The said amount upon being calculated in term of Indian currency with the conversion of Rs. 30= 1 GBP at the time of the accident, came to be Rs. 1,50,000/- i.e. a monthly income of Rs. 12,500/-. Out of the said amount, a deduction of Rs. 3572/- was made for personal expenditure and Rs. 1786/- was reduced for pocket money and thus, a total deduction of Rs. 5358/- was made from the monthly income of the deceased for two heads mentioned above. Accordingly, the total dependency of the claimants was assessed to be Rs. 85,704/- per annum. To that, under different heads like loss of consortium and love and affection, a sum of Rs. 30,000/- was added and a multiplier of 13 was applied and the total amount of compensation was calculated at Rs. 11,54,152/-.

19. Learned counsel submitted that the calculations made by the learned Tribunal for arriving at the final award are absolutely erroneous and inappropriate. He contended that the fact regarding the deceased drawing a salary of 480 pounds per month i.e. 5760 pounds per annum was not controverted by any of the respondents. He contended that addition towards future prospects and increase in income was not considered at all by the learned Tribunal. The deduction of Rs. 5358/- per month towards personal expenditure and pocket money made by the learned Tribunal was unreasonable. He further contended that the amount granted to the claimants towards loss of love and affection and loss of consortium is grossly inadequate. He further contended that as per the age of the deceased (39 years) at the time of the

accident, the multiplier to be applied would be of 15 instead of 13 as used by the Tribunal. He, therefore, prayed that the amount of compensation awarded by the learned Tribunal be appropriately enhanced by applying the appropriate criterion as enunciated by the Hon"ble Supreme Court in [Rajesh and Others Vs. Rajbir Singh and Others,](#)

20. Per contra, Shri Varun Gupta learned counsel appearing for the insurance company vehemently opposed the submissions advanced by the learned counsel for the appellants. However, he was not able to dispute the fact that the documents and evidence regarding the income of the deceased were not controverted before the Tribunal.

21. In view of the facts and circumstances noticed above and the evidence led before the learned Tribunal, this Court is of the opinion that calculations made and conclusions drawn by the learned Tribunal while granting compensation to the appellants were unreasonable and unjustly on the lower side.

22. Positive documentary and oral evidence was led before the learned Tribunal to prove the fact that the deceased was drawing a salary of 5760 pounds per annum at the time of the accident. The evidence was not controverted by the respondent and thus, there was no justification for reducing the said sum and bringing the same down to 5000 pounds. Furthermore, looking to the fact that the claimants are four in number, only 1/4th deduction could be permitted from the total earnings of the deceased towards his personal expenditure and needs.

23. However, the contention advanced by the learned counsel for the appellants regarding the application of the conversion rate of the salary from pounds to rupees at the present rate or the rate when the award was passed is unacceptable in view of the decision rendered by the Hon"ble Supreme Court in the case of [Jiju Kuruvila and Others Vs. Kunjamma Mohan and Others,](#)

24. The learned Tribunal also ignored to add future prospects and rise in income to the earnings of the deceased. As the deceased was just about 40 years of age at the time of the accident, addition in income by future prospects can be accepted @ 40% in my view in view of the decision rendered by the Hon"ble Supreme Court in the case of [Santosh Devi Vs. National Insurance Company Ltd. and Others,](#) wherein the Hon"ble Supreme Court held as under:

"(i) Addition to income for future prospects

In Susamma Thomas this Court increased the income by nearly 100%, in Sarla Dixit the income was increased only by 50% and in Abati Bezbaruah the income was increased by a mere 7%. In view of the imponderables and uncertainties, we are in favour of adopting as a rule of thumb, an addition of 50% of actual salary to the actual salary income of the deceased towards future prospects, where the deceased had a permanent job and was below 40 years. (Where the annual income is in the

taxable range, the words "actual salary" should be read as "actual salary less tax"). The addition should be only 30% if the age of the deceased was 40 to 50 years, There should be no addition, where the age of the deceased is more than 50 years.

Though the evidence may indicate a different percentage of increase, it is necessary to standardise the addition to avoid different yardsticks being applied or different methods of calculation being adopted. Where the deceased was self-employed or was on a fixed salary (without provision for annual increments, etc.), the courts will usually take only the actual income at the time of death. A departure therefrom should be made only in rare and exceptional cases involving special circumstances."

25. Therefore, the calculations and conclusions for assessing the quantum of award to which the appellants are entitled is tabulated as below:

26. The claimants shall be entitled to interest on the original amount at the rate decided by the learned Tribunal i.e. 12% per annum. On the enhanced amount, the interest applicable would be 7.5% per annum from the date of filing of the claim petition till realization.

27. The insurance company respondent No. 3 is granted four weeks time to deposit the awarded amount.

28. As the daughters of the deceased have all attained majority by now, therefore, they shall be entitled to 1/3rd of the awarded amount in equal share whereas remaining 2/3rd shall be disbursed to the motor claimant No. 1.

29. As all the appellants are residents of Great Britain, the awarded amount shall be disbursed by appropriate Bank security (bankers cheque/demand draft) prepared as per the prayer of the appellants and shall be handed over to any of the appellants, upon being authorised by the remaining appellants in this regard. The appeal is allowed in the above terms.