(1979) 04 AHC CK 0032

Allahabad High Court

Case No: F.A.F.O. No. 195 of 1974

Desraj and Others	APPELLANT
Vs	
Ram Narain and Others	RESPONDENT

Date of Decision: April 18, 1979

Acts Referred:

- Motor Vehicles Act, 1939 - Section 110C, 95, 95(2), 96(2)

Citation: (1980) ACJ 202 : AIR 1979 All 328 : (1979) AWC 477

Hon'ble Judges: H.N. Seth, J; B.N. Sapru, J

Bench: Division Bench

Advocate: B.C. Dey, for the Appellant; L.P. Naithani and K.P. Agarwal, for the Respondent

Final Decision: Disposed Of

Judgement

H.N. Seth, J.

These two first appeals u/s 110-D of the Motor Vehicles Act are directed against a common award made by the Motor Accidents Claims Tribunal Jhansi, in two claim petition Nos. 57 of 1970 and 70 of 1970 on 8-4-1974, and they can conveniently be disposed of by a common judgment.

2. On 18-4-1970 at about 5.30 or 6 p.m. bus No. USG. 4587 which was being driven by Mohan met with serious accident near village Bachkaoli. In that accident two passengers viz. Sita Ram and Radhey sustained fatal injuries. It was claimed that in that accident Smt. Muliya wife of Sita Ram and Smt. Chitiya daughter-in-law and Hira Lal grandson of Radhey who had been travelling in the bus also received injuries.

3. Whereas claim petition No. 57 of 1970 was filed by Smt, Muliya, Kumari Kesar, Ashok Kumar and Pappu claiming Rs. 20,000/- as compensation on account of the death of Sita Ram and Rs. 5000/- as compensation for the injuries sustained by Smt. Muliya, the claimants in claim petition No. 70 of 1970 were Des Raj, Punna, Smt. Chitiya and Hira Lal who claimed Rs. 20,000/- as compensation on account of Radhey''s death and Rs. 5000/- each for injuries sustained by Smt. Chitiya and Hira

Lal.

4. In both the petitions apart from Mohan Lal driver of the bus, Ram Narain Lal owner of the bus and New India Insurance Co. which had insured the bus were impleaded as opposite parties.

5. According to the claimants both the fatal accidents in question took place because of rash and negligent driving by Mohan Lal and therefore the three opposite parties were liable to compensate them to the extent mentioned in their claim petitions.

6. The opposite parties however contested the claim and alleged that at the relevant time the bus was being driven at a moderate speed of 35 km. per hour with due care and caution. Suddenly a few bullocks got astray and ran across the road. In order to save the bullocks the driver turned the vehicle towards his right and unfortunately the accident, in which Sita Ram and Radhey Lal lost their lives took place. According to them as there was no rashness or negligence on the part of the driver they were not liable to compensate the claimants. They also did not accept the nature and extent of injuries that were said to have been sustained by Smt. Muliya, Smt. Chitiya and Hira Lal.

7. The Claims Tribunal found that the accident in question had taken place because the bus was being driven by the driver rashly and negligently. So far as the injuries claimed to have been sustained by Smt. Muliya, Smt. Chitiya and Hiralal were concerned, the Claims Tribunal held that the claimants had failed to produce any evidence with regard to their nature and extent. In the circumstances their claim in respect of such injuries could not be accepted.

8. So far as Sita Ram was concerned the Tribunal found that at the time of his death he was 45 years old and that the dependency on him of claimants in claim petition No. 57 of 1970 was to the extent of Rs. 80/-. p. m. After giving allowance for the period during which the claimants would have remained dependants on the deceased as also for lump sum receipt of the amount, the Tribunal ruled that claimants would be entitled to Rs. 9600/- as compensation for the loss suffered by them on account of the death of Sita Ram. As, however, the bus in question had been comprehensively insured for a sum of Rs. 50,000/- the entire liability was to be met by New India Insurance Company.

9. While dealing with claim for compensation suffered by the claimants in claim petition No. 70 of 1970, on account of the death of Radhey, the Tribunal found that at the relevant time Radhey was 60 years old and he was not earning anything. The claimants were not dependant upon him and they did not suffer any monetary loss on account of his death. It, therefore, held that the claimants were not entitled to any compensation.

10. In the result in claim petition No. 57 of 1970 the Tribunal awarded a sum of Rs. 9600/- to the claimants and made the New India Insurance Company liable to pay

the whole of the amount so awarded. It rejected the claim made in petition No. 70 of 1970.

11. Being aggrieved by the award making New India Insurance Company liable for the entire amount awarded in respect of Sita Ram''s death in claim petition No. 57 of 1970, the New India Insurance Company has come up before this Court and has filed F.A.F.O. No. 195 of 1974. After notice of the appeal was issued to the claimants they filed a cross objection on 28-10-1974 and claimed that the Tribunal should have awarded compensation for the death of Sita Ram and the injuries sustained by Smt. Muliya as claimed by them. It may at this very stage be pointed out that as held by this Court in the case of Virendra Singh Vs. Phoolmati, the cross-objection is not maintainable and deserves to be rejected as such.

12. F. A. F. O. No. 324 of 1974 is by Desraj and others who are aggrieved by the award of the Tribunal rejecting claim petition No. 70 of 1970 for the death of Radhey Lal as also for the injuries suffered by Smt. Chitiya and Hiralal.

13. Ram Narain Lal and Mohan Lal owner and driver respectively of bus No. USG 4587 have submitted to the finding recorded by the Tribunal that the accident in question took place because of rash and negligent act of Mohan Lal and that the amount of compensation payable in respect of the death of Sita Ram would be Rs. 9600/-. They did not challenge those two findings by filing an appeal. Before us neither of the two learned counsel appearing for Ram Narain Lal and the Insurance Company addressed any argument in this regard. We will, therefore, proceed to deal with the case on the footing that the accident in question took place because of rash and negligent driving by Mohan Lal, and that the loss suffered by the claimants in respect of Sita Ram''s death was rupees 9600/-.

14. Sri B.C. Dey, learned counsel appearing for the appellant, New India Insurance Co. Ltd. in F. A. F. O. No 195 of 1974 argued that Section 95(2)(b) of the Motor Vehicles Act, as it stood at the relevant time, laid down that a policy of insurance was to cover any liability incurred in respect of an accident in respect of a passenger vehicle upto rupees 20,000/-, but then that liability was not to exceed Rs. 2,000/- in respect of an individual passenger. The insured obtained an insurance policy whereunder the vehicle had been insured for Rs. 50,000/- but the third party risk was covered to the extent mentioned in Section 95(2) of the Act. He also produced the insurance policy for our. persual. Sri Naithani, learned counsel appearing for Ram Narain Lal, after looking into the policy did not dispute that the third party risk in respect of one accident was covered to the maximum extent of Rs. 2000/- Sri Dey, therefore, argued that the Claims Tribunal was not justified in directing that the entire amount of Rs. 9600/-awarded by it was to be paid by the Insurance Company. From out of the compensation so awarded the Insurance Company was liable to pay Rs. 2000/- and the balance amount had to be paid by the driver and owner of bus No. USG 4587.

15. Sri Naithani learned counsel appearing for Ram Narain Lal, owner of the vehicle, urged that while it was true that Section 95(2) lays down the statutory limit to which an owner is bound to cover the risk even qua an individual passenger but then it does not mean that the Insurance Company is precluded from covering under a contract of insurance, a risk to a greater extent. Section 110-B provides that while making the award the Claims Tribunal has to specify the amount which is to be paid by the insurer or the owner or driver of the vehicle involved in the accident or by all or any of them as the case may be. The Claims Tribunal in this case specified that the entire amount of rupees 9600/- had to be paid by the insurer. The insurer who is a party to the proceeding cannot succeed in showing that the direction given by the Tribunal on this point is erroneous merely on the basis of statutory limit for covering such risk prescribed by Section 95(2). It had to, for this purpose file the insurance policy before the Tribunal which it failed to do. As the policy is not there on the record it cannot be said that the direction given in the award is erroneous. (According to him this Court should not look into the policy produced by the appellant for our perusal). In the alternative, the learned counsel submitted that after the accident in question took place the Legislature intervened and amended Section 95(2) of the Act whereby the minimum amount for which the Insurance Company became bound to cover the third party risk was raised to Rs. 50,000/- in respect of one accident and to Rs. 5,000/- in in respect of an individual passenger. Accordingly, in any case the liability of the Insurance Company to pay compensation extended upto Rs. 5,000/- and the owner of the vehicle is liable to satisfy the claim up to 4,600/- only.

16. We are unable to accept either of the two submissions made by Sri Naithani. So far as the first submission is concerned the position of an insurance Company with regard to the claims arising out of an accident involving a motor vehicle is that of a person who has contracted to indemnify the insured, to the extent mentioned in the policy, as against claim made by third parties. Of course Section 95 contemplates that where an insurance company enters into a contract for such indemnity it will not undertake to indemnify the insured to an extent below that prescribed in the section. Prior to the enactment of Section 96 of the Motor Vehicles Act the legal position wag that the third parties could not directly enforce its claim against the insurance company. They had to proceed and enforce their claim against the insured and the insured could in his turn proceed to enforce the aforesaid contract of indemnity against the insurance company. However the Legislature intervened and enacted Section 96 of the Motor Vehicles Act by which it enabled the third parses to enforce such contract of indemnity directly as against the insurance Company provided notice of the proceedings had been given to the Insurance Company through court. Sub-section (2) of Section 96 merely enables the Insurance Company to which notice is given to, if so advised, apply to the Tribunal for being made a party to the proceedings only for the purpose of showing that it has ceased to be liable for the claim for any of the reasons mentioned in that sub-section, and

for no other purpose. While becoming a party to the proceedings under this section, the Insurance Company cannot be allowed to adduce evidence or to file documents for substantiating a case which does not fall within its purview. It is not disputed that the plea sought to be urged by the Insurance Company viz. that under the contract of insurance its liability to indemnify the insured did not extend beyond Rs. 2,000/- did not fall in the category of pleas that could be raised u/s 96(2). Accordingly, even if it be assumed that the insurance company had been impleaded as a party to the proceedings u/s 96(2) of the Motor Vehicles Act., it was not open to it to file the insurance policy or to produce any evidence as it was not seeking to raise any of the pleas permitted to it under that section. It is Section 110-C (2) of the Motor Vehicles Act which enables the Tribunal to, in cases where there is a fraud or collusion between the claimant and the insured or where the insured does not contest the claim to permit the insurance company to be made a party to the proceedings and to defend the claim on all the grounds that may have been open to it. It, therefore, follows that merely because the notice of proceedings is given to the insurance company which had been shown in the array of parties, it does not become a party to the proceedings for any purpose other than that specified in Section 96(2) of the Act and in case the company does not propose to defend the action on one of the grounds mentioned in that section, it was not open to it to, at that stage, file the insurance policy indicating the extent of its liability,

17. However, where existence of an insurance policy covering the risk to a third party is admitted, the Tribunal, while determining the amount payable u/s 110C can, in view of the provision contained in Section 95(2) of the Act, presume that the Insurance Company must have in any case covered the risk up to the statutory limit mentioned therein and in the absence of Insurance Policy it can safely direct payment of such an amount, by the Insurance Company. If, however, any person claims that under the contract of insurance, the Insurance Company had undertaken to indemnify the insured, for a larger sum he has to get the policy made available for perusal of the Tribunal. In absence of Insurance policy and without perusing the same the Tribunal could not fix any liability higher than that mentioned in Section 95 of the Act. As in this case the insurance Policy had not been filed, the insurance company could not, u/s 110C be saddled with a liability in excess at an amount higher than Rs. 2,000/-.

18. So far as the second submission of Sri Naithani is concerned, Section 95 of the Motor Vehicles Act by itself does not provide for the extent of liability of an Insurance Company. All that it lays down is the minimum risk which an insurance company must cover while entering into a contract of insurance of the nature mentioned therein, The amendment made in Section 95 is not intended to cover those contracts which had already been entered into. The liability to indemnify flows from the contract and not from Section 95. In the circumstances merely because after entering into the contract the minimum extent to which the insurance company was required to cover the risk was raised, it did not mean that the liability

of the insurance company was automatically raised to Rs. 5,000/-.

19. In the result the F.A.F.O. No. 194 of 1974 is to be allowed and the liability of the Insurance Company has to be specified at Rs. 2,000/- only with the liability of balance amount of Rs. 7,600/-to be borne by Ram Narain and Mohan Lal.

20. Coming now to appeal No. 324 of 1974 filed by Desraj and others we find that so far as the claim for compensation in respect of injuries said to have been sustained by Smt. Chitia and Hira Lal is concerned the Claims Tribunal rightly pointed out that the claimants did not produce any medical evidence on the basis of which its nature and extent could be determined. In absence of any such evidence it is clearly not possible to determine the extent of damage suffered by the claimant and to make an award compensating them for such loss, We, therefore, agree with the Tribunal that the claimants were not entitled to any compensation on this account.

21. So far as the compensation for the death of Radhey is concerned, the Tribunal correctly pointed out that as disclosed by the Post Mortem report, his age at the time of his death was about 60 years. According to the claimants he was earning an amount of Rs. 200 per month from agriculture and by working as a labourer. The Tribunal, in our opinion, correctly pointed out that inasmuch as Radhey did not have any land in his name and all the land stood recorded in the name of his brother it was not possible to accept that he was deriving any income from cultivation. So far as the claim that he derived income by working as a labourer is concerned, the Tribunal correctly rejected that claim on the ground that Radhey was an old person and that it was unlikely that he was working as a casual labourers. This conclusion is supported by the fact that this fact had not been mentioned in the claim. In the circumstances the inference drawn by the Claims Tribunal that Radhey had no source of income and that the claimants did not suffer any monetary loss because of his death appears to be reasonable and it rightly rejected the claim in respect of loss of his life.

22. In the result, F.A.F.O. No. 195 of 1974 is allowed. It is directed that the liability of the Insurance Company under the award will be to the extent of Rs. 2,000/- only and the respondents Ram Narain Lal and Mohan Lal shall be liable to pay the balance amount of Rs. 7600/- to the claimants. The cross objection filed by Smt. Muliya as also F.A.F.O. No. 324 of 1974 are dismissed In the circumstances parties are directed to bear their own costs in all these proceedings.