Desraj and Others Vs Ram Narain and Others

Court: Allahabad High Court

Date of Decision: April 18, 1979

Acts Referred: Motor Vehicles Act, 1939 â€" 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.