(1984) 06 GAU CK 0006

Gauhati High Court

Case No: M.A. (F) No. 39 of 1978

New India Assurance Company — APPELLANT

Vs

Haren Das and Another — RESPONDENT

Date of Decision: June 26, 1984

Acts Referred:

- Motor Vehicles Act, 1939 - Section 95(2)

Citation: (1987) 61 CompCas 747

Hon'ble Judges: S. Haque, J; K.N. Saikia, J

Bench: Division Bench

Advocate: P. Choudhury and A.K. Choudhury, for the Appellant; K. Sarma, K.C. Das and J. Das, for the Respondent

Final Decision: Allowed

Judgement

K.N. Saikia, J.

The insurer herein appeals from the award dated April 3, 1978, of the Motor Accidents Claims Tribunal, Nowgong, in M.A.C. Case No. 13 of 1976 allowing compensation of Rs. 56,000 out of which the insurer is to pay Rs. 51,000 and the insured Rs. 5,000.

2. The first respondent, Haren Das, was travelling by bus No. ASZ 851 on January 8, 1976, from Udari to Jaluguti and when the bus came near Danduapathar, at a distance of about 4 miles east from Morigaon Police Station, it capsized and fell into a ditch when its wheels ran over heeps of chips stacked on the road. The claimant-first respondent received several injuries. His right leg was fractured and left hand was cut by the glass of the bus. He had to be treated at Marigaon State Dispensary and then at the Nowgong Civil Hospital. Because of the fractured right leg, he has been permanently disabled and his leg has been shortened and he is unable to walk erect without the help of a stick and is unable to perform his normal work like cultivating his own land and managing his grocery shop. He claimed Rs.

1,00,000 as compensation impleading both the insurer, the present appellant, and the insured, the owner of the vehicle, the second respondent both of whom appeared before the Tribunal, but the latter did not file any written statement.

3. The learned Tribunal framed five issues and decided all of them in favour of the claimant-first respondent. The claimant examined Dr. K.K. Medhi, as P.W. 1, who examined the claimant-first respondent at the Nowgong Civil Hospital. According to him, injury No. 3, i.e., fracture of right leg, was of grievous nature and it would take at least two months time to recover. P.W. 2, Dr. B.C. Talukdar, who treated the claimant after his discharge from the hospital, clearly stated that the injury to the right leg made the claimant permanently disabled as his right leg has been shortened and bent due to the injuries sustained by him. He, of course, stated that this sort of permanent disablement could be cured if some finer operations were done by proper surgery ; but there was no evidence of such operation having been performed. It is in evidence that the claimant being a poor villager could not afford to have such finer operation because of paucity of finance. The Tribunal clearly found that the accident made the claimant permanently disabled and he has been unable to walk erect without the help of a stick not to speak of performing his normal work.

4. As regards the quantum of compensation, the learned Tribunal observed that the claimant spent Rs. 5,906.33 on treatment and his income from his grocery shop has been considerably reduced because of his inability to carry on purchase and transport of the grocery for his shop. Further, his annual income from his landed property, which was Rs. 300 per month, has also been considerably lessened. The claimant was aged 45 years and has seven dependants in his family. Considering the above facts, the Tribunal awarded Rs. 50,000 as compensation for his permanent disablement and also Rs. 6,000 being the amount spent on treatment. This was apportioned between the insurer, who was to pay Rs. 51,000, and the owner, who was to pay Rs. 5,000.

5. Mr. A.K. Choudhury, learned counsel for the appellant-insurer, submits, inter alia, that the impugned compensation awarded is excessive considering the nature of the injury sustained and that the coverage of the insurance policy having been only for Rs. 50,000 and the insurer''s maximum statutory liability having also been Rs. 50,000 for one accident, the Tribunal erred in law in awarding more than this amount.

6. Mr. K. Sarma, learned counsel for the claimant-first respondents, submits that considering the nature of the grievous injury resulting in permanent disablement of the claimant-first respondent and the drastic reduction of his income from his grocery shop as well as from his landed properties for the rest of his life, and also considering the soaring prices of essential commodities, the amount of compensation cannot be said to be excessive. Mr. Sarma also submits that he has filed a cross-objection wherein he has reiterated the claim of Rs. 1,00,000.

7. The submission of Mr. Choudhury that in this case the insurer''s liability in respect of each individual passenger was limited to Rs. 5,000 only, is not tenable. u/s 95(2) of the Motor Vehicles Act, 1939, shortly " the Act", subject to the proviso to Sub-section (1) of that section, a policy of insurance shall cover any liability incurred in respect of any one accident up to the following limits, namely :

" (b) where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment,--

(i) in respect of persons other than passengers carried for hire or reward, a limit of fifty thousand rupees in all ;

(ii) in respect of passengers,--

(1) a limit of fifty thousand rupees in all where the vehicle is registered to carry not more than thirty passengers ;

(2) a limit of seventy-five thousand rupees in all where the vehicle is registered to carry more than thirty but not more than sixty passengers ;

(3) a limit of one lakh rupees in all where the vehicle is registered to carry more than sixty passengers ; and

(4) subject to the limits aforesaid, ten thousand rupees for each individual passenger where the vehicle is a motor cab, and five thousand rupees for each individual passenger in any other case."

8. Admittedly, the bus concerned was registered to carry 39 passengers and thus the limit would be seventy-five thousand rupees and subject to the above limit, five thousand rupees for each individual passenger. In this case, the claimant-first respondent is the only claimant in this claim, but submits Mr. Choudhury that there are two other claimants whose claim petitions have been dismissed on the ground of limitation and who have now appealed to this court in M.A.(F) No. 54 of 1978 (Niranjan Kaur v. New India Assurance Co. Ltd. [1987] 61 Comp Cas 737 (Gau) (supra)). Here, however, one accident has to be understood from the point of view of each individual meeting with the accident. In Motor Owners'' Insurance Company Limited Vs. Jadavji Keshavji Modi and Others, it has been clearly ruled that the expression " any one accident" in Subsection (2) of Section 95 of the Act is susceptible of two equally reasonable meanings or interpretations. In the context of the purpose of the Act, it signifies as many accidents as the number of persons injured in an accident. In matters involving third party risks, it is the subjective considerations which must prevail and the occurrence has to be looked at from the point of view of those who are immediately affected by it. If the insurer''s liability is looked at from an objective point of view, the insurer''s liability will extend to the maximum prescribed in the case of each one of the persons who has met with the accident. Therefore, the limit of seventy-five thousand rupees in one accident will mean accident to each individual who met with an accident and will not mean for

the entire transaction of accident, i.e., the accident met with by the bus itself, irrespective of the number of persons meeting with accidents.

9. As regards the quantum of compensation, we feel that the amount of costs could have been covered within the amount of compensation and the total liability thus reduced to fifty thousand only. Mr. Choudhury frankly states that the limit of liability covered by the insurance policy was rupees fifty thousand only. Considering the facts and circumstances of the case, the appellant being only 45 years of age and his monthly income drastically reduced, we are of the view that for the ends of justice, the total compensation should be reduced to Rs. 50,000 (rupees fifty thousand) and we reduce it accordingly.

10. Next arises the question of apportionment. In Mehta Madan Lal Vs. National Insurance Company Limited and Others, their Lordships of the Supreme Court held that when the compensation of Rs. 42,000 did not exceed the statutory limit of Rs. 50,000 and thus it was within the limit of statutory liability of the insurance company, the statutory liability not being divisible and the owner and the insurance company being jointly and severally liable, apportionment of compensation between the insurer and the owner of the vehicle was invalid. In the instant case, after we reduced the total award to Rs. 50,000, it is within the limit of statutory liability of the insurance company and the insurer and the insured are jointly and severally liable for it ; and there is no need for any apportionment of that liability between the insurer and the insured. The entire amount of Rs. 50,000 shall, therefore, be payable to the claimant-first respondent by the appellant-insurer, namely, the New India Assurance Company Limited.

11. The accident occurred as far back as January 8, 1976. Mr. Choudhury states that an amount of Rs. 5,000 has already been paid as per order of the court. The balance of Rs. 45,000 shall now be paid within two months from today.

12. In the result, this appeal is allowed to the above extent. Under the facts and circumstances of the case, we make no order as to costs.

13. The first respondent filed a cross-objection in this appeal. We have reduced the amount of compensation from Rs. 56,000 to Rs. 50,000 ; the cross-objection filed by the claimant-first respondent is accordingly dismissed.