

## **Oriental Fire and Genl Ins. Co. Ltd. and Another Vs Josheda alias Joshoda Bala Ghanta and Another**

**Court:** Calcutta High Court

**Date of Decision:** April 20, 1989

**Acts Referred:** Motor Vehicles Act, 1988 " Section 95

**Citation:** (1991) ACJ 349

**Hon'ble Judges:** S.S. Ganguly, J; Ajit Kumar Nayak, J

**Bench:** Division Bench

**Advocate:** N.R. Majumdar, M.K. Bose and Amal Kumar Mitra, for the Appellant; Samindra Kumar Das, for the Respondent

**Final Decision:** Dismissed

### **Judgement**

Ajit Kumar Nayak, J.

The only short question that has been raised in these two appeals heard analogously, viz., Nos. 406 and 407 of

1980, arising out of the decision of the Claims Tribunal Judge, dated 18th September, 1979, is the extent of liability of the appellant insurance

company. It has been urged that in view of the specific provisions contained in Section 95(2)(b) of the Motor Vehicles Act, the upper limit of

liability of an insurer cannot exceed Rs. 5,000/- in any one accident, involving a vehicle carrying passengers.

2. It is an admitted position that following an accident on 19.6.1977, involving passenger bus No. WWB 2226, in the district of Midnapore, two

claim petitions were filed before the Claims Tribunal Judge, Midnapore, one in respect of deceased passenger, Hemanta Kumar Samanta,

travelling by the said bus and the other in respect of a helper employee, Binoy Krishna Ghanta, of the offending bus meeting the same fate. Both

the claim petitions were tried and heard analogously and disposed of by the same judgment by the Tribunal Judge, awarding compensation of Rs.

45,000/- to the heirs of the deceased passenger and Rs. 27,000/- in respect of the helper employee.

3. The findings of the Tribunal Judge on the points of incident, death of the persons concerned and negligence in driving the offending vehicle at the

relevant time have not been questioned or pressed before us. The only points that have been urged are the extent of liability of the appellant

insurance company and denial of such liability for the deceased helper as an employee of the bus in question.

4. It may be stated at the very outset that we have no reason to take a different view in the matter and finding recorded by the Tribunal Judge for

very cogent reasons as given by him, on the point that deceased Binoy Krishna was an employee who used to draw a salary of Rs. 300/- per

month and we confirm the same.

5. In order to appreciate the question and the extent of liability of the appellant insurance company, it will be convenient to place the relevant

provisions of Section 95 of the Motor Vehicles Act as the main thrust in the argument of the learned counsel for the appellant is that in view of

Sub-clause (4) of Section 95(2)(b), the liability of the insurance company cannot exceed a sum of Rs. 5,000/-for the death or injury to any one

passenger.

Section 95(1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which-

(a) is issued by a person who is an authorised insurer or..., and

(b) insures the person or classes of persons specified in the policy to the extent specified in Sub-section (2)-

XXX XXX XXX

(2) Subject to the proviso to Sub-section (1), a policy of insurance shall cover any liability incurred in respect of any one accident up to the

following limits, namely-

(a) XXX XXX XXX

(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) XXX XXX XXX

(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;

(5) Notwithstanding anything elsewhere contained in any law, a person issuing a policy of insurance under this section shall be liable to indemnify

the person or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of that person or

those classes of persons.

6. Undisputedly, the deceased Hemanta Kumar Samanta was a passenger in the ill-fated bus which was covered by the insurance policy of the

appellant company, issued in the name of the owner, respondent No. 2, M/s. Sahid Smriti Samabay Paribahan Samity Ltd., covering risk in

respect of death or injury to third person.

7. According to the appellant insurance company, the liability coming under a policy of insurance as in the instant case shall cover up to the limits as

stated in clause (b), Sub-section (2), subject further to the provision of Sub-clause (4) of Sub-section (2) of Section 95. Reading clause (b) in the

light of such limit would show as regards passengers who are being carried for hire and reward, the overall limit of liability undertaken by the

insurance policy would vary from Rs. 50,000/- to Rs. 1,00,000/- depending upon its registered capacity and Rs. 5,000/- for each individual

passenger. That being so, in a case of one accident where only one person has either died or is injured, the limit of Rs. 5,000/- would not apply in

view of the overall limit prescribed in Sub-clauses (1), (2) and (3) of Sub-section (2) of Section 95. The real intention of the legislature in a case

like this is to ensure payment of at least Rs. 5,000/- and owner's liability to that extent is secured thereby. Undoubtedly, the owner can and is free

to contract for a larger amount to cover any increased risk. Sub-clause (4) therefore does not mean that the liability of the insurance company is

just limited to Rs. 5,000/-, irrespective of the number of persons injured or killed in an accident. In view of the fixation of an upper limit as

aforesaid the insurance company is bound to indemnify the claim against the owner for each individual claimant and would be entitled to be

indemnified to the extent of Rs. 5,000/- at least. Reference may be made in this connection to the Supreme Court decision in Motor Owners"

Insurance Co. Ltd. v. Jadavji Keshavji Modi 1981 ACJ 507 (SC), where the expressions "in any one accident" in Section 95(2) and the liability

to the extent of Rs. 50,000/- "in all" in the said section were interpreted not from the point of view of the vehicle but from the point of view of each

individual person injured or losing life and was held accordingly that expression "in all" referred to each such individual separately. Although

Supreme Court made such an interpretation while dealing with the case coming u/s 95(2)(a) of the Motor Vehicles Act, such an interpretation can

also be extended to a case coming under clause (b) of Sub-section (2) of Section 95 and the ambiguity in the expression "in any one accident" of

overall limits as provided in Sub-clauses (1), (2) and (3) can be reconciled having regard to the underlying intention of the legislature as contained

in Chapter VIII of the Motor Vehicles Act which deals with third party risk. In reconciling such apparent ambiguity as in the instant case in the

opening part of Section 95(2) and Sub-clause (4), the court of law should not look only into the formal expression and language literally but should

be sympathetic and imaginative enough to fill in the gaps, clear doubts and mitigate hardships. In relying upon and referring in this connection to the

English decision in *Cabell v. Markman* (1945) 148 F 2d 737, the Supreme Court further observed that:

there is no Table of logarithms to guide or govern statutory construction in this area, which leaves a sufficient and desirable discretion for the

Judges to interpret laws in the light of their purpose, where the language used by the lawmakers does not yield to one and one meaning only.

Considering the matter that way, we are of the opinion that it is appropriate to hold that the word "accident" is used in the expression "any one

accident" from the point of view of the various claimants, each of whom is entitled to make a separate claim for the accident suffered by him and

not from the point of view of the insurer.

8. The relevant provision of Section 95 appeared to the Supreme Court to be ambiguous and inequitable without any valid basis for differentiation

between the different provisions. The court therefore drew the attention of the legislature to remove such disparity by observing:

We hope and trust that our lawmakers will give serious attention to this aspect of the matter and remove the serious lacuna in Section 95(2)(b),

Motor Vehicles Act. We would also like to suggest that instead of limiting the liability of the insurance companies to a specified sum of money as

representing the value of human life, the amount should be left to be determined by a court in the special circumstances of each case.

9. It appears therefore subject to the limits specified under Sub-clauses (1), (2) and (3) of Section 95(2)(b), the liability of the insurance company

to reimburse would at least be Rs. 5,000/- for each individual. As in the instant case only one passenger lost his life and claim has been preferred in

respect of such claim of the passenger. The other person being an employee the limit placed by Sub-clause (4) will not apply. Statutory liability of

the insurance company being upto the extent of at least Rs. 75,000/- (the insurance covered being for a number of 35 passengers vide Exh. A,

insurance policy) the appellant insurance company would be liable for the entire claim amount as awarded by the Claims Tribunal Judge in respect

of such passengers.

10. As regards the helper employee Binoy Krishna Ghanta his claim is covered by the insurance policy in respect of any employee as cleaner

coming under additional Clause 13(a) of the insurance policy in question vide Exh. A. The insurance company as it appears from the contract of

insurance vide Exh. A contracted a wider liability in receipt of an additional premium at the rate of Rs. 6/-per passenger as well as for the

employee in question. In the case of the deceased employee an amount of Rs. 27,000/- was awarded as compensation by the Tribunal Judge. A

statutory duty is cast upon the insurer under Sub-section (1) read with proviso (i) of Section 95 to indemnify the insured against any liability to pay

compensation to his employee under the Workmen's Compensation Act and such a provision has been made in the insurance policy. In view of

the additional premium for wider coverage of the risk the insurer would be liable to pay compensation in excess of that payable under the

Workmen's Compensation Act to the extent payable under the common law. Reference may be made in this connection to the ruling reported in

The General Assurance Society Ltd. Vs. Jayalakhmi Ammal and Others, As the heirs of the deceased employee have chosen the forum of the

Claims Tribunal Judge instead of the Commissioner, Workmen's Compensation, they are entitled to receive such compensation as awarded by the

Tribunal Judge though the same may appear to be somewhat in excess of that might be awarded under the Workmen's Compensation Act

[reference may be made in this connection to the ruling reported in Ogeti Pedda Ranganna Vs. Zaleka Bee and Another,

11. Next, it has been urged on behalf of the respondents that no interest has been granted by the Tribunal Judge on the sums awarded by way of

compensation, which they are entitled to in view of the decision of Justice P.N. Bhagwati, reported in Smt. Chameli Wati and Another Vs.

Municipal Corporation of Delhi and Others, We are also inclined to take the view as supported by the said Supreme Court decision to grant

interest on the sums awarded from the date of filing the applications by the claimants and not from the date of award.

12. In view of what has been discussed and our findings above, both the appeals fail and same are dismissed accordingly. The judgment and

award passed by the Tribunal Judge awarding compensation of Rs. 45,000/-and Rs. 27,000/- respectively, are upheld and the respondent-

claimants are also held to be entitled to get interest on the sums so awarded from the date of filing the applications by them and not from the date

of award. No further order is made as to costs.

S.S. Ganguly, J.

13. I agree.