Smt. Lachmi and Others Vs Vijender Singh and Others

Court: Delhi High Court

Date of Decision: Sept. 20, 2011

Hon'ble Judges: Reva Khetrapal, J

Bench: Single Bench

Advocate: O.P. Mannie, for the Appellant; K.L. Nandwani, Advocate for the Respondent No. 3, for the Respondent

Final Decision: Allowed

Judgement

Reva Khetrapal, J.
This appeal is directed against the judgment and award of the Motor Accidents Claims Tribunal dated 15.03.1996,

passed in Suit No. 239/85 titled Ã¯Â¿Â½Smt. Lachmi and Ors. v. Vijender Singh and Ors.Ã¯Â¿Â½. The Appellants are the claimants, being the legal

representatives of the deceased Jai Narain, who died in a road accident on 05.07.1985 while he was alighting from the bus in which he was

travelling near ISBT, Delhi.

2. Although a number of grounds were raised in the Memorandum of Appeal to assail the award of the learned Tribunal, Mr. O.P. Mannie, the

Learned Counsel for the Appellants, at the time of hearing of the appeal, confined his arguments to the following four grounds:

(i) The learned Tribunal erred in holding that the facts disclosed in the petition and the evidence adduced by the Petitioners proved negligence on

the part of the deceased, and that the deceased was also partly responsible for the accident. Consequently, the learned Tribunal erred in deducting

30% of the award amount of Rs. 57,600/- on account of its finding of contributory negligence of the deceased.

(ii) The choice of the multiplier adopted by the learned Tribunal for augmenting the multiplicand constituting the average annual loss of dependency

of the Appellants was not appropriate, inasmuch as the multiplier of 9 would have been the appropriate multiplier and not the multiplier of 8 which

was applied by the Tribunal.

(iii) No amount whatsoever has been awarded towards the non-pecuniary damages under the heads of loss of love and affection and loss of estate

and towards the funeral expenses of the deceased.

(iv) The learned Tribunal erred in holding that the liability of the Insurance Company was limited to the extent of Rs. 15,000/-, inasmuch as the

policy shows that Rs. 75/- was paid as extra premium by the insured for unlimited liability.

3. For appreciating the aforesaid contentions of the Learned Counsel for the Appellants, it is necessary to advert to a few facts. In paragraph 23 of

the Claim Petition, it is pleaded that on 05.07.1985, the deceased along with one Rishal Singh boarded bus No. DEP-5650, plying on route No.

135 from Narela to ISBT, for coming to Tis Hazari Courts, but when the bus reached ISBT on Bouleward Road, the Respondent No. 1, who

was driving the said bus, stopped the bus on the request of the passengers, including the deceased, who wanted to alight from the bus at the said

place. Thereupon, some of the passengers including Shri Rishal Singh alighted from the bus and when the deceased Jai Narain was alighting from

the bus, the Respondent No. 1 drove the bus all of a sudden and in a rash and negligent manner, without giving any warning, with the result that the

said Jai Narain fell down and came under the rear left wheel of the bus.

4. In order to substantiate the aforesaid allegations, the Appellants/claimants examined Shri Rishal Singh as an eye witness, who appeared in the

witness box as PW4, and deposed that when the bus reached the red light of ISBT, the bus stopped there and the passengers started alighting,

including himself and Jai Narain. He further deposed that the driver, even after having been informed by Jai Narain while he was in the process of

alighting, suddenly started the bus, as a result of which Jai Narain fell down and the rear wheel of the bus passed over him. In the course of his

cross-examination, however, he stated that the place of the accident was the bus stop and categorically denied the suggestion that there was no

bus stop where the accident took place.

5. The Investigating Officer of the case SI Amar Singh, who appeared in the witness box as PW3, testified that he had prepared the site plan at the

spot of the accident, to which he had returned along with Rishal Singh and that true copy of the same was Ex.PW3/1 with correct marginal notes.

A bare glance at the site plan Ex.PW3/1 shows that the accident occurred close to the bus stand.

6. The learned Tribunal held that it was on their own that the passengers took the risk of alighting at the red light signal where there was no bus

stop at all and in the circumstances, the driver and the conductor alone could not be held responsible for the accident and the liability of the

accident deserved to be apportioned in the ratio of 70:30, that is, 70% of the Respondents and 30% of the deceased himself.

7. I am not inclined to agree with the aforesaid finding of the learned Tribunal as the facts proved on record do not support the same. The eye-

witness to the accident, PW-4 Rishal Singh, unequivocally stated that the accident took place due to the irresponsibility and fault of the driver, and

categorically denied the suggestion put to him that the passengers alighted from a running bus. In such circumstances, it was incumbent upon the

Respondents to have examined the driver and the conductor of the bus, who were the best persons to delineate the precise manner in which the

accident took place. Their non-production impels me to draw adverse inference against them and to presume that the accident was the outcome of

their irresponsible and negligent conduct. Had it been otherwise, they would have most certainly appeared in the witness box to place the blame of

the accident on the passengers who were alighting from the bus. I am fortified in coming to the aforesaid conclusion from the fact that the site plan

shows that the accident took place near the bus stand and not near the red light on the ISBT Chowk.

8. Reference in the aforesaid context may be made to the judgment of the Supreme Court in the case of Pallavan Transport Corporation Ltd. Vs.

M. Jagannathan, . In the said case, the bus stopped at a place due to a traffic jam and the conductor asked the passengers whose destination was

the next stop to get down. Many of the passengers got down but when the claimant was still in the process of getting down, the driver suddenly

started the bus, as a result of which the claimant fell down and the wheel of the bus ran over his left leg. The conductor denied that he had asked

the passengers to get down and deposed that the claimant had got down from the moving bus. The Tribunal held that the claimant was solely

negligent and that the accident had occurred because the claimant had fallen down while getting down from the moving bus. The High Court set

aside the findings of the Tribunal and held that compensation could not be denied to the victim as the conductor and the driver had to be more

careful when passengers alight from the bus between two bus stops. The Supreme Court affirmed the findings of the High Court and held: (ACJ,

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It is always important to have coordination between the conductor and the driver, whenever passengers start getting down or are led to get down,

to see that before any signal is given by the conductor, in any form, as normally there is a bell in most of the buses which, conductor rings signaling

the driver to start the bus, the driver should not restart the bus. In the absence of coherence or lack of coordination between the two it is bound to

result in accident, which has happened in the present case. This would constitute to be negligence on the part of both the conductor and the driver.

9. In view of the aforesaid factual and legal position, I have no hesitation in holding that the accident was the outcome of the rashness and

negligence of the driver and conductor of the offending bus, and in the circumstances, the apportionment of negligence made by the learned

Tribunal cannot be sustained and is accordingly set aside.

10. As regards the question as to the appropriate multiplier to be applied in the instant case, indisputably the deceased was 60 years of age on the

date of the accident and the multiplier approved of and tabulated by the Supreme Court in the case of Smt. Sarla Verma and Others Vs. Delhi

Transport Corporation and Another, for the age group of deceased persons between 56 to 60 years of age is the multiplier of 9. Accordingly, I

have no hesitation in accepting the contention of Mr. Mannie, the Learned Counsel for the Appellants that the appropriate multiplier in the instant

case would be the multiplier of 9, instead of the multiplier of 8 which has been applied by the learned Tribunal. Thus calculated, the average annual

loss of dependency of the Appellants would come to Rs. 64,800/- per annum, that is Rs. 7,200/- per annum (income of the deceased) x 9

(multiplier) = Rs. 64,800/-, which may be rounded off to Rs. 65,000/- (Rupees Sixty Five Thousand Only).

11. As regards non-pecuniary damages claimed by the Appellants in addition to the sum of Rs. 10,000/- awarded by the Tribunal towards the loss

of consortium, it is deemed just and fair to award a sum of Rs. 10,000/- each for the loss of love and affection and loss of estate of the deceased,

and a further sum of Rs. 5,000/- towards the funeral expenses of the deceased. Thus, in all, the Appellants are held entitled to a sum of Rs.

1,00,000/- (Rupees One Lac Only) with interest as awarded by the Tribunal, that is, at the rate of 12% per annum from the date of filing of the

petition till realization. Resultantly, the award amount stands enhanced from Rs. 50,320/- to Rs. 1,00,000/- (Rupees One Lac Only).

12. Adverting now to the last contention of Mr. Mannie, the Learned Counsel for the Appellants, that the learned Tribunal erred in holding that the

liability of the Insurance Company was limited to the extent of Rs. 15,000/- whereas in fact the liability was unlimited, I am not inclined to agree

with the said contention. A bare glance at the insurance policy Exhibit RW1/2 shows that to cover the risk of liability towards passengers, a sum of

Rs. 12/- each was paid for 53 passengers, in all, Rs. 636/-. The copy of the tariff, which is exhibited as Ex.RW1/1 further shows that where a sum

of Rs. 12/- is paid per passenger by the insured, the liability of the Insurance Company will be limited to Rs. 15,000/- only, and that for unlimited

liability the tariff prescribed is Rs. 50/- per passenger. The submission of Mr. Mannie that the Insurance Policy shows that Rs. 75/- was paid as

extra premium is also without merit as clearly the said amount was paid towards the unlimited third party liability. The relevant part of the tariff

placed on record reads as under:

EXTRA BENEFITS

Liability to the Public Risks

The indemnity granted to the insured may be increased in respect of the undernoted vehicles by payment of any additional premium on the

following scale. In cases where the limits of indemnity provided under the standard policy exceed Rs. 50,000/- such limits may be increased in

accordance with the scale at an additional premium equivalent to the difference between the scale rates for such standard Policy limits and those

for the required increased limits.

Limit of Liability (a) Scale of rates applicable to All (b) Scale of rates applicable to

Commercial Vehicle except (i) GoodsGoods carrying Vehicles General

Carrying Vehicles-General Cartage Cartage-Class A (2)

Class A (2) and (ii) Motor Trade-

Road Risk only Class E.

Per Vehicle Per Trailer Per Vehicle Per Trailer

i) Unlimited Personal 50 25 100 50

injury Rs. 1,50,000/-

Property Damage

ii) Unlimited personal 75 35 150 60

injury Rs. 3,00,000/-

Property Damage

For Unlimited Personal Above rate Plus Above rate Plus

injury and for every Rs. 2.50 Rs. 5.00

additional Rs. 1,00,000/-

or part thereof, of

Property damage in

excess of Rs. 3,00,000/-

up to a maximum of Rs.

10,00,000/-

Notes: The property damage limit in respect of vehicles rated under Class "E" may be increased in accordance with the above scale by charging

50 percent of the above rates.

13. There is, thus, no manner of doubt that the liability of the Insurance Company per passenger was limited to the extent of Rs. 15,000/- only.

Significantly, however, the insurance policy Ex.RW1/2 contains an Ã¯Â¿Â½Avoidance ClauseÃ¯Â¿Â½, in view of which it is held that the Insurance

Company is liable to satisfy the award passed in favour of the claimants/appellants in the first instance and then recover the amount paid in excess

of its limited liability from the owner and the driver of the offending vehicle. (See Gurcharan Kaur and Anr. v. Raja Ram and Anr. 2011 (6) AD

(Delhi) 36, Lata Goel and Ors. v. Rishipal and Ors., FAO No. 254/1993 decided on September 23, 2011 and Bimla Gupta and Ors. v.

Mahinder Singh and Ors., FAO No. 51/1991 decided on September 26, 2011).

14. Resultantly, the appeal is allowed to the extent that the award amount is enhanced by a sum of Rs. 49,680/- with interest thereon. The

Insurance Company is directed to deposit the entire amount of compensation along with interest as aforesaid by depositing the same with the

Registrar General of this Court within 30 days from the date of the passing of this order, which amount shall be released to the Appellants on such

deposit being made. Liberty is given to the Insurance Company to recover the amount paid by it over and above its limited liability of Rs. 15,000/-

along with proportionate interest thereon from the insured-respondent No. 2 in accordance with law.

15. Records of the Tribunal are sent back to the concerned Tribunal.