

Jay Singh Vs. Lal Muni Devi and anr.

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Court : Patna

Decided On : Jun-21-1999

Judge : R.A. Sharma and A.K. Prasad, JJ.

Acts : [Motor Vehicles Act, 1939](#) - Sections 95(2), 110B and 110D; Code of Civil Procedure (CPC) - Order 41, Rules 22 and 33

Appeal No. : Letters Patent Appeal No. 243 of 1998(R)

Appellant : Jay Singh

Respondent : Lal Muni Devi and anr.

Advocate for Def. : G.C. Jha, Insurance Company

Advocate for Pet/Ap. : Badri Narain Prasad and Vijay Gopal

Disposition : Appeal partly allowed

Judgement :

Prasad, J.

1. This Letters Patent Appeal arises out of the judgment dated 24-3-1998 passed in M. A. No. 520 of 1991(R): (reported In 1999 AIHC 2440), whereby and whereunder the learned single Judge of this Court alleged the appeal of the Oriental Insurance Co. Ltd. to the effect that its liability was limited to the extent of

Rs. 15,000/- for payment of compensation and the cross-appeal by the claimant was allowed in part enhancing the amount of compensation from Rs. 95,000/- to Rs. 1,25,000/- with interest @ 12% from the date of filing of the claim petition and there is direction that the appellant-owner (respondent No. 2 therein) of the offending vehicle shall pay the balance sum of the awarded compensation of Rs. 1,10,000/- to the claimant.

2. Briefly put, the facts giving rise to the instant appeal are as under :

On 12-5-1987 Surendra Kumar Gupta (a contractor by profession), aged about 24 years, the son of the claimant (Lalmuni Devi), A.W. 5, boarded Amit Bus No. BPQ, 9900 at Ramgarh within the district of Hazaribagh for Gaya, but on the National High Way around 5.15 p.m. near village Mastpiri, within the Police Station, Sadar (Muffasil), District. Hazaribagh, the bus, which was being driven rashly and negligently by the bus driver, met with the accident in which Surendra Kumar Gupta sustained head injury and he died on the spot. Thereafter Hazaribagh Sadar (Muffasil) P. S. Case No. 5 of 1987 came to be instituted regarding the incident.

3. It is an admitted fact that Jay Singh (appellant herein) is the owner of Bus No. BPQ 9900. It is also an admitted fact that on the date of the incident, the bus was insured with the Oriental Insurance Co. Ltd. Gaya Branch. Lalmuni Devi (Respondent No. 1 herein) brought Compensation (Claim Case No. 63 of 1987) under Section 110-A of the [Motor Vehicles Act, 1939](#), before the Tribunal for compensation on the ground of death of her son Surendra Prasad Gupta. She , claimed compensation to the tune of Rs. 6,48,000/-.

Jay Singh by filing written statement resisted the claim petition, contending, inter alia that the death of the deceased was due to an unknown Coach Bus, which was negligently driven and there was no liability on him to pay the compensation and that the income of the deceased, shown by the claimant was excessive.

The Oriental Insurance Company too contested the claim and denied its responsibility in the written statement, mainly on the grounds that the vehicle in question was plying without permit and in the alternative its stand was that its

liability was limited to the extent as laid down under Section 95(2)(b)(ii) of the said Motor Vehicles Act (hereinafter to be referred to as 'the Act').

4. The Tribunal, on consideration of the evidence and materials on record, held that the accident occurred due to rash and negligent driving of the Bus No. BPQ 9900 by the bus driver. It assessed the compensation of Rs. 95,000/- only and held that under the Insurance Policy the Insurance Company was liable to pay the entire compensation amount, and accordingly award was made.

Being aggrieved by it, the Insurance Company preferred Misc, Appeal No. 520 of 1991 (R) amongst other grounds that the Amit Bus was not involved in the accident in which the deceased was travelling; that the driver of Amit Bus was not at fault and the accident was caused by an unidentified bus and that at best its liability was limited to the extent of Rs. 15,000/-only under Section 95 (2) (b) (ii) of the said Act for the death of the deceased. The claimant preferred cross appeal under Order 41, Rule 22 of the C.P.C. for enhancement of the compensation amount.

It was urged by the Insurance Company Appellant in Misc. Appeal No. 520 of 1991(R) before the learned single Judge that Amit Bus was not involved in the accident on 12-5-1987 and the deceased was not travelling in it. The learned single Judge affirmed the finding of the Tribunal that on 12-5-1987 Amit Bus met with the accident, in which the deceased was travelling and the contention of the appellant-Company therein was not accepted by him. Further, the learned single Judge taking into consideration the decisions of the Apex Court in National Insurance Company v. Jugal Kishore, (1988) 1 SCC 626 : (AIR 1988 SC 719) and in New India Assurance Co. Ltd. v. Shanti Bai, AIR 1995 SC 1113 as well as on examination of the copy of the Insurance Policy (Exhibit C) found that the premium of Rs. 624/- was paid for covering the risk of 52 passengers for meeting the requirements of the Motor Vehicles Act and as no additional premium has been paid, the liability of the Insurance Company was restricted to Rs. 15,000/- per passenger and unlimited liability could not be fastened on the Company simply because the Insurance Policy was comprehensive policy and hence, gave a finding that the Insurance Company was liable to pay Rs. 15,000/- only, out of the

total compensation amount. Further, the learned single Judge on the basis of the monthly income of Rs. 1000/- of the deceased, as assessed by the Tribunal, and after deducting one third out of it towards the personal expenses of the deceased, worked out the loss of dependency around Rs. 667/- per month, which comes to annual Rs. 8000/- approx and presumably applying the multiplier of 16, he was of the view that the compensation would be at least Rs. 1,27,000/- and, ultimately, he enhanced the compensation sum to Rs. 1,25,000/-, which in his opinion was just and reasonable compensation. Accordingly, he allowed the miscellaneous appeal and the cross-appeal in part, as stated above.

5. Mr. Badri Narain Prasad, learned counsel for the appellant-vehicle owner has assailed the impugned Judgment mainly on the ground that the cross-appeal by the claimant in the miscellaneous appeal brought by the Insurance Company was not maintainable and the learned single Judge erred in enhancing the quantum of compensation and that as the vehicle No. BPQ 9900 was comprehensively Insured, the liability of the company was not limited and it was liable to pay the entire awarded compensation sum and the finding of the learned single Judge that its liability was limited to Rs. 15,000/- only is bad in law. He also feebly urged that the driver of BPQ 9900 was not at fault when the accident took place, but this was not pressed by him later in the argument.

6. Mr. G. C. Jha, learned counsel for the Insurance Company, on the other hand, contended that there is the concurrent finding of the Tribunal and the learned single Judge that the accident took place on 12-5-1987 due to rash and negligent act of the driver of Amit Bus No. BPQ 9900 and the liability of the Company was limited to Rs. 15,000/-only in terms of the Insurance Policy and in absence of payment of additional premiums, the liability of the Company for the death of a passenger does not become unlimited, simply because the vehicle is covered by the comprehensive policy.

7. The Claims Tribunal on consideration of the documents filed by the parties and on appraisal of the evidence by the claimant, including that of A.W. 2 (Manoj Kumar) a co-traveller of the deceased in Amit Bus, and a victim of the Incident, recorded a finding that the deceased (Surendra Kumar Gupta), died in the motor

accident which was due to rash and negligent act of the driver of Amit Bus BPQ 9900. The learned single Judge affirmed this finding of the Claims Tribunal. The vehicle owner did not examine the driver of the bus to explain that the accident did not take place due to his fault. There is concurrent finding of the two Courts that the deceased died in the accident on 12-5-1987 while travelling In Amit Bus and Its driver was at fault. There is no reason to disagree with the concurrent finding of the two Courts.

7-A. One may now come to the question regarding the liability of the Insurance Company for payment of compensation in respect of the death of the deceased Surendra Kumar Gupta in the accident. It Is the stand of the learned counsel for the appellant vehicle owner that as the bus was covered by comprehensive insurance policy, there was unlimited liability of the insurance company to pay the compensation amount to the claimant. The contention of the learned counsel for the Insurance company, on the other hand, is that there was the statutory liability of the insurance company under Section 95(2)(b)(ii) of the Act to pay the sum of Rs. 15.000/- only as compensation because no additional premium to cover the liability beyond it, has been paid by the vehicle owner to the insurance company. It is not disputed that as the vehicle involved in this case was a passenger bus In which passengers were carried for hire or reward, the provision of Section 95(l)(b)(ii) of the Act Is applicable. At the time of the accident, the express provision of Sub-section (2}(b) of the Act stood as follows :

'Section 95(1): xxxxxxxx

(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) x x x x x x

(b) Where the vehicle is a vehicle in which passengers are carried for hire reward or by reason of or in pursuance of a contract of employment.

(l) 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, a limit of fifteen thousand rupees for each individual passenger;'

8. Now, one may scrutinise the insurance policy, issued in the present case. The policy Indicates the limits of the liability and the amount of premium, paid. In the column INSURED'S ESTIMATED VALUE 'including the accessories the amount of Rs. 2,75,000/- has been shown and on the top of it a sum of Rs. 3446/- is mentioned in the column 'Premium' and In seating capacity column, the figure- '52 + 3' is mentioned. The policy is in two parts -- Schedules A and B. Schedule A Is 'OWN DAMAGE BASIC' and Absolute Net Premium in Schedule 'A', is mentioned as - Rs. 2598-75. Obviously, Schedule 'A' does not cover the liability to public risk or passengers. Schedule 'B' of the policy speaks about the 'LIABILITY TO PUBLIC RISK' and the premium. The amount, shown in Schedule 'B' Is as under :

'B. LIABILITY TO PUBLIC RISK

-

Rs. 240.00

Add : for LL to passengers as per End. IMT 13(52)

-

Rs. 624.00

(India Motor Tariffs)

Add.....

-

Rs. 24.00

Below It, Absolute Net Premium 'A' sum of Rs. 2598.00 has been added, and under it has been shown that Rs. 150.00 has been added as 'Unlimited' which is for the damage to property to third party, caused by use of the vehicle, and after giving discount the total Net Premium of Schedule A + B is shown as Rs. 3446.00. The column in Schedule 'B' against limit per passengers is blank. The comprehensive policy Issued in the present case, on the basis of the estimated value of Rs. 2,75,000/- of the bus, cannot automatically cover the liability with regard to the passengers for the amount higher than the statutory limit. The bus in question was insured for 52 passengers and the insurance company had charged the premium of Rs. 624/- (r) Rs. 12/- per passengers. The charging of the amount of Rs. 12/-per passengers cannot be said to be the premium, payable to cover unlimited liability as it has not been mentioned so in the policy, The column 'Limit per passengers 'in Schedule B' to the premium is blank and it was left blank because no additional premium to cover liability beyond the statutory limit has been paid. It has been pointed out by the learned counsel for the Insurance company with reference to tariff In respect of 'LEGAL LIABILITY FOR ACCIDENTS TO PASSENGERS', that If the limit of liability for any one passenger Is fifteen thousand rupees, the rate of annual premium, per passenger, is Rs. 12/-. If the limit is Rs. 20.000/- the rate of premium, per passenger, Is Rs. 23/- and so on, and In respect of unlimited liability, the premium payable per passenger Is Rs. 50/-. It is well settled that the comprehensive policy only entitles the owner to claim reimbursement of the entire amount of loss or damage suffered up to the estimated value of the vehicle. It does not mean that liability with respect to 3rd party risk or in respect of a passenger In accident becomes unlimited or higher than the statutory liability fixed under Sub-section (2) of Section 95 of the Act. For this purpose, specific agreement has to be arrived at between the owner and the insurance company and separate premium has to be paid on the amount of liability undertaken by the insurance company In this behalf, and in absence of such an express agreement, the policy covers only the statutory liability. This proposition of law has been laid down by the Apex Court In National Insurance Company (AIR 1988 SC 719) (supra), the three Hon'ble Judges decision in New India Assurance Co. Ltd. (AIR 1995 SC 1113) (supra) and in Road Transport Company v. Bham

Singh. 1998 Ace CJ 1101 : (AIR 1998 SC 2487). In the present case, the premium which has been paid is @ Rs. 12/- per passenger and is clearly referable to the statutory liability of Rs. 15.000A per passenger under Section 95(2)(b)(II) of the Act. Further, In the instant case, there is no special contract between the insurance company and the vehicle owner to cover unlimited liability In respect of accident to a passenger. In absence of such an express agreement, the policy covers only the statutory liability. Exactly in similar circumstances, the Apex Court In New India Insurance Co. Ltd. (supra) held that the liability of the insurance company was limited to Rs. 15.000/- . Hence, the learned single Judge was justified and rightly held that the liability of the insurance company was limited to Rs. 15,000/-only.

9. The next point, which arises for consideration is: whether the cross-appeal by the claimant for enhancement of compensation was maintainable. It is the stand of the learned counsel for the vehicle owner that the Misc. Appeal No. 520 of 1991 (P) had been preferred by the insurance company and, therefore, no cross-objection/cross-appeal filed by the claimant for enhancement of compensation could have been entertained. This point was not pressed by the vehicle owner before the learned single Judge in the Misc. Appeal. It is suffice to say that there is no specific prohibition under the Act to entertain cross-objection/cross-appeal filed by the claimant under Order 41, Rule 22 of the Civil Procedure Code for enhancement of compensation and under the provision of Order 41, Rule 33 of the Code, the appellate Court can make appropriate order to do complete justice between the parties and to decide the matter in a way that a claimant is given just compensation (Ref:- Manjit Singh v. Rattan Singh. 1987 ACJ 1204 (sic); Nirmal Singh v. C. M. Jaya. 1997 Ace CJ 44 (Delhi).)

10. Learned counsel for the appellant-vehicle owner, on the other hand, has relied on a decision of a learned single Judge of this Court in New India Assurance Company v. Maimun Nisha, (1996) 2 Pat LJR 848 in support of the contention that the cross-objection by a claimant under Order 41, Rule 22 of the Code of Civil Procedure could not be entertained in an appeal filed by the insurance company. In that case, the quantum of compensation had not been challenged by the Insurance company and It had only challenged its liability. But in the instant case,

the insurance company has challenged its liability as well as the quantum of compensation. It has been held in that case that where only the liability of the Insurance Company has been challenged and quantum which has become final between the co-respondents, cannot by way of cross-objection, be challenged in the appeal. The aforesaid decision in Maimun Nisha (supra) has no application to the facts of the present case.

11. Lastly, one may come to the quantum of the compensation assessed by the Tribunal and enhancement in the Miscellaneous Appeal by the learned single Judge. Both the Courts below assessed the monthly income of the deceased as Rs. 1000/-. It is well settled that 1/3rd of the Income has to be deducted towards personal expenses of the deceased. After such deduction, the loss of monthly dependency would come to Rs. 667/- and its annual figure (Rs. 667 x 12) would be Rs. 8000/- approx. The mother is the claimant of the deceased. Her age in May, 1989, was fifty years. Both the learned Courts below applied the multiplier of 16 for ultimate assessment of the compensation amount. The choice of the multiplier is determined by the age of the deceased as well as that of the claimant. In the instant case, the suitable multiplier should have been 12 and not 16. On applying the multiplier of 12 the compensation amount comes to Rs. 96000/- only. This, in my view, is the Just and reasonable compensation to which the Claimant is entitled. Hence, the compensation sum of Rs. 1,26,000/-, awarded by the Learned single Judge, is modified accordingly.

12. In the result, this appeal is allowed in part. The liability of the Insurance company (respondent No. 2 herein) is limited to Rs. 15,000/- only. The appellant-vehicle owner shall be liable to pay the balance compensation sum of Rs. 81,000/- . The amount of compensation shall carry interest @ 12% per annum from the date of Institution of the claim petition, i.e. 1-8-1987, till the date of its payment. In the circumstances of this appeal, no order as to cost is made.

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