

National Insurance Co. Ltd. Vs. Chandra Devi and ors.

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Court : Allahabad

Decided On : Feb-25-1988

Reported in : I(1988)ACC565

Judge : B.L. Yadav and K.K. Birla, JJ.

Appellant : National Insurance Co. Ltd.

Respondent : Chandra Devi and ors.

Advocate for Pet/Ap. : Sri. N.B. Nigam

Judgement :

B.L. Yadav, J.

1. This is a First Appeal preferred by the National Insurance Company Ltd. against an award of Claims Tribunal, under Section 110-D of the Motor Vehicles Act 1939 (for short the Act), awarding a sum of Rs. 30,000/- (thirty thousand to respondents 1 to 5, the heirs of deceased Surendra Lal who died in an accident while travelling in a Bus as the left rear wheel of the bus in which he was travelling was detached from its original place on 4-5-1973.

2. The events leading to the present appeal are that Surendra Lal was in the employment of the District Board Almora as a clerk drawing emoluments to the tune of Rs. 282/- per month with dearness etc in addition. He was travelling by a

Bus along with the members of his family but on 4-5-1973 the Bus met an accident and he fell down by the side of door and died. It was alleged that the claimants, the respondents 1 to 5 were entitled to the compensation for a sum of Rs. 30,000/- under Section 110 A of the Act. The Insurance Company filed written statement and was made party but did not turn up to contest the claim on the date of hearing hence the Tribunal proceeded ex parte against it. The respondent No. 6, the owner of the vehicle however, contested the claim denying his liability from the payment of the compensation. After considering the evidence on the record the Motor Accident Claims Tribunal held that the death of the deceased occurred due to striking against the drain upon which he was thrown off from the vehicle which was in motion and he died on account of accident and not due to his voluntarily jumping from the vehicle. The compensation was awarded only against the Insurance Company. Against the order awarding compensation present appeal has been filed by the Insurance Company.

3. Sri N.B. Nigam, learned Counsel for the appellant urged that under Section 95(2)(ii) (4) of the Act and the maximum liability was only Rs. 5,000/- only. He placed reliance on M.K. Kunhimohammed v.P.A. Ahmedkutty and Ors. : [1987]3SCR1149 .

4. Learned Counsel for the respondents supported the impugned order.

5. Having heard learned Counsel for the parties the point for determination is as to what was the liability of the Insurance Company, the present appellant on the death of individual passenger travelling in the stage carriage. In fact Section 95(2) of the Act is relevant for the all purposes indicating the liability of the Insurer in case of an accident. Section 95(2)(a) deals in the case of a goods vehicle and the liability of the insurer would be Rs. 50,000/- in all, whereas in case the passengers are being carried, the relevant provision is Section.95 (2)(b) of the Act. In case the death of the persons other than the passengers i.e. persons who might be standing or walking on the road and died on account of this accident, the liability of the insurer is Rs. 50,000/- in all, whereas in respect of the death of passengers (more than one) the relevant provision is Section 95(2)(b)(ii)(i) and the liability is Rs. 50,000/- and under Section 95(2)(b)(ii)(4) the liability is only Rs. 10,000/- in all,

in case the vehicle Motor Cab. The liability of insurance company in case of individual passenger is Rs. 5,000/- only in case vehicle is other than motor cab. In the present case the vehicle was stage carriage hence the liability would be up to Rs. 5,000/-.

6. In *M/s Sheikhpura Transport Co. Ltd. v. Northern India Transporters Insurance Co. Ltd. and Anr.* : AIR 1971 SC1624 it was held that the statutory liability of the insurer to indemnify the insured is as prescribed under Section 95(2). Section 95(2)(b) as it existed before its amendment in 1982 dealt with the limits of the liability of an insurer in the case of motor vehicles in which passengers were carried for hire or reward or by reason of or in pursuance of a contract of employment.

7. In *M.K. Kunhimohammed v. P. A. Ahmedkutti and Ors.* : [1987]3SCR1149 at page 2162 it was held that under Section 95(2)(bXii)(4) of the Act the liability in the case of death of individual passenger was only Rs. 5,000/-. This was the correct interpretation on the date when the accident occurred as the vehicle carrying the deceased was a bus.

8. In *Motor Owner's Insurance Co. Ltd. v, Jadavji Keshavji Modi and Ors.* : [1982]1SCR860 it was observed that in the case covered by Section 95(2) the liability of the Insurance Company was less than what is ought to have been considering the value of life of an individual passenger. In our opinion it would be better to quote those observations here:

While our Legislature has made laws to cover every possible situation, yet it is well nigh impossible to make provisions for all kinds of situations. Nevertheless where the social need of the hour requires that precious human lives lost in motor accidents leaving a trail of economic disaster in the shape of their unprovided for families call for special attention of the law makers to meet this social need by providing for heavy and adequate compensation particularly through insurance companies. It is true that while our law makers are the best judges of the requirements of the society, yet it is indeed surprising that such an important aspect of the matter has missed their attention. Our country can ill-afford the loss of a precious life when we are building a progressive society and if any person

engaged in industry, office, business or any other occupation dies, a void is created which is bound to result in a serious set back to the industry of occupation concerned. Apart from that the death of a worker creates a serious economic problem for the family which he leaves behind. In these circumstances it is only just and fair that the legislature should make a suitable provision so as to pay adequate compensation by properly evaluating the precious life of a citizen in its true perspective rather than devaluing human lives on the basis of an artificial mathematical formula. It is common knowledge that where a passenger travelling by a plane dies in an accident, he gets a compensation of Rs. 1,00,000/- or like large sums, and yet when death comes to him not through a plane but through a motor vehicle he is entitled only to Rs. 2,000/- Does it indicate that the life of a passenger travelling by plane becomes more precious merely because he has chosen a particular conveyance and the value of his life is considerably reduced if he happens to choose a conveyance of a lesser value like a motor vehicle. Such an invidious distinction is absolutely shocking to any judicial or social conscience and yet Section 95(2)(d), Motor Vehicles Act, seems to suggest such a distinction. We hope and trust that our law makers will give serious attention to this aspect of the matter and remove this serious lacuna in Section 95(2)(d) of Motor Vehicles Act.

9. Under the circumstances we are of the opinion that the task of law makers in a democratic society like ours, is of considerably immense responsibility, particularly when the preamble of our sacred Constitution is to constitute this great nation into a sovereign, socialist, secular, Democratic Republic and to secure to all its citizens, justice, social, economic and political and equality of status and opportunity. It needs no emphasis that our Constitution is a living document, it need not be interpreted as a narrow pedantic sense. The law givers have equally heavy responsibility to see that legislation is made commensurate with the spirit of the preamble of our sacred Constitution, there appears no justification for making discrimination in providing different amount of compensation payable to the heirs of a passenger in an aeroplane and that of a Bus. A slight distinction could be comprehensible but not that of a degree of an open mouthed astonishment. The importance for the present purpose is, ideal of socialism, economic justice and equality of status. It must be reflected in the relevant statutory provisions. The

amendment under Section 95(2)(d) of the Motor Vehicles Act must be in conformity with the spirit of socialism enshrined, in our Constitution. Law must always be just, virtuous and capable of bringing human prosperity and not arbitrary, unjust and in violation of the Constitution. We positively hope and sincerely trust that the law makers would rectify the distinction in respect of compensation payable to the heirs of a passenger either of a Bus or Air-Bus.

10. In the present case the liability of the Insurance Company the present appellant would come to Rs. 5,000/-. After considering entire evidence on the record, the finding of the Claims Tribunal on page 9 is as follows: 'The case of the opposite party can be believed to the extent that the death of the deceased was caused due to his striking against the drain upon which he was thrown off from the vehicle while in motion. I, therefore, hold that the death of the deceased took place due to the accident pure and simple and not due to his voluntarily jumping from the vehicle while it was in motion'

11. In view of the findings of the Claims Tribunal which has not been challenged by the appellant nor by the owner of the vehicle, Smt. Par-vati Devi, respondent No. 6 and in view of the discussion aforesaid a sum of Rs. 5,000/- is payable by the appellant and remaining amount of Rs. 25,000/- would be payable by the respondent No. 6 to the respondents 1 to 5, the heirs of the deceased. Under the circumstances of the case we direct the appellant and respondent No. 6 to pay the aforesaid amount along with the interest at the rate of Rs. 6% per annum since the date of application.

12. In view of the aforesaid premises the present appeal succeeds and is allowed. The appellant is directed to pay a sum of Rs. 5,000/- to the respondents 1 to 5 whereas a sum of Rs. 25,000/- would be payable by the respondent No. 6 Smt. Parvati Devi to the respondents 1 to 5, the heirs of the deceased. The appellant as well as the respondent No. 6 would also pay the interest on the amount awarded to the respondents 1 to 5 at the rate of 6% per annum since the date of application for compensation. There shall however, be no order as to costs.