

Amar Singh and Another Vs. Atma Singh and Others

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Court : Delhi

Decided On : Aug-07-1985

Reported in : [1987]62CompCas353(Delhi)

Judge : Sultan Singh, J.

Acts : [Motor Vehicles Act, 1939](#) - Sections 96 and 96(4)

Appellant : Amar Singh and Another

Respondent : Atma Singh and Others

Judgement :

Sultan Singh, J.

1. This appeal under section 110D of the Motor Vehicles act, 1939 (hereinafter called 'the Act'), is directed against the award of the Motor Accidents Claims Tribunal, Delhi, dated October 19, 1973, granting a sum of Rs. 5,000 as compensation to the appellants against the owner and driver of the vehicle. They were allowed two months' time to deposit the amount and in default, future interest at 6% per annum was payable from the date of the award till realisation.

2. Romesh, son Amar Singh aged about 6 years met with an accident on July 18, 1966, at about 5.45 p.m. on the road connecting Railway Phatak and Shahdara Main Bazar, Delhi. He received injuries on head, chest, etc. He was removed to

hospital where he died. It has been alleged that the accident took place due to the negligence, carelessness and recklessness of the driver of motor truck No. DLG 1023 while driving the same in due course of his employment with the knowledge, permission, express or implied of the owner of the vehicle, that the truck was coming at high speed from Railway Phatak side and knocked down the deceased from the front portion. The Claims Tribunal held that Romesh, aged 6 years, died as a result of injury sustained by him in a motor vehicle accident due to rash and negligent driving on the part of the driver, that Romesh was not guilty of contributory negligence and the appellants who are the parents of the deceased were entitled to claim compensation. The Tribunal, however, held that the insurer, M/S. Vanguard Insurance Co., was not liable on the ground that the claimants-appellants had not led any evidence to establish the insurance of the said vehicle.

3. The appellants have filed this appeal for enhancement of compensation to Rs. 15,000 as originally claimed by them and interest from the date of the compensation application till realisation. They further claim that the insurance company is liable for entire amount.

4. Learned counsel for the appellants submits that the claim of Rs. 15,000 as compensation on account of the death of the good health, he was admitted by a private school for education and his father was to give him higher education. His father aged 43/44 at that time has been a contractor earning about of Rs. 500 to 600 per month. Learned counsel submits that the sum of Rs. 5,000 awarded by the Claims Tribunal was highly inadequate. He submits that normal expectancy of life of the deceased and the mental shock suffered by the parents on account of the loss of their child, are the two criteria for determination of compensation. He submits that the deceased was six years of age when he met with the accident and in the ordinary course he was expected to live for 70 years. The father of the deceased was a contractor and was earning Rs. 500 to 600 per month and it would be reasonable to expect that if the deceased had survived, he would have certainly gone to school and would have completed his education at the age of 21 years and thereafter he thereafter he would have done some work or service. His father has been earning Rs. 500 to 600 and the deceased would have also earned that much. The deceased would have worked for a about 35 years. His income

would have been much more than Rs. 15,000 claimed by the appellants. Moreover, the appellants had suffered mental shock. This aspect of the case has not been dealt with by the Claims Tribunal. Considering the income of the father of the deceased at Rs. 500 per month, I am of the opinion that a sum of Rs. 5,000 as compensation is not just but highly inadequate. I am, therefore, of the opinion that the Claims Tribunal ought to have awarded the sum of Rs. 15,000 to the claimants as claimed by them. In *Rashid Husain v. Union of India* [1984] ACJ 635 (All), a child of five years met with an accident. His father was drawing Rs. 480 per month as a clerk. He was awarded Rs. 15,000 as claimed by him.

5. The next question is about the interest on the awarded amount. The accident took place in 1966. It appears that the owner deposited the sum of Rs. 5,000 before the Tribunal which amount has since been paid to the claimants-appellants. In view of the present economic conditions and the bank rate of interest, it would be reasonable to award interest at 12 per cent per annum (See *Narcinva V. Kamat v. Alfredo Antonio Doe Martino* [1985] 58 Comp Case 383 ; [1985] ACJ 397 . The appellants are thus held entitled to interest under section 110CC of the Act at 12 per cent per annum from the date of the claim petition till the date of realisation.

6. Learned counsel next submits that the Tribunal erred in not making the insurance company liable to pay the amount of compensation. He submits that under section 96 of the Act when the owner-insured has been held liable, the insurance company is liable to satisfy the award. He further submits that the insurance company, in its written statement, admitted that the vehicle was insured with it, and, therefore, the onus was upon the respondent-insurance company to place material on record to show that it was not liable for the entire amount of compensation. He submits that the Tribunal erred in holding that it was for the appellants to place material on record to show that the vehicle in question was insured with the insurance company.. I do not appreciate how the appellants are required to prove that the vehicle was insured with the insurance company, when the insurance company itself admits that the vehicle was insured. In the written statement, the fact of insurance of the vehicle was admitted. The plea was that there was transfer of ownership and, therefore, the insurance policy lapsed on transfer of the vehicle. The insurance company did not place any copy of the

insurance policy. No evidence was produced to show that the vehicle in question was ever transferred.. It is admitted that the contract of insurance has not been proved. If no insurance contract is proved, its liability in respect of the accident must be held to be for the full amount. The remedy of the insurer, if any, against the insured is provided in section 96(4) of the Act. It has been held in *Oriental Fire and General Insurance Co. Ltd. v. Mrs. Leelavati Radianathaya*, *Shyam Lal v. New India Assurance Co. Ltd.* [1979] ACJ 208 and *National Insurance Co. Ltd. v. Narendra Kumar* [1981] ACJ 93 ; [1983] 53 Comp Case 669 (All), that if the insurance company failed to prove the contract of insurance, it must bear the consequences and the insurance company was held liable for the full amount.

7. Learned counsel for the insurer submits that section 95(2) of the Act prescribes the minimum requirement of insurance policy and , therefore, the insurer is not liable to pay more than the limit prescribed under the said section. It is correct but the insurance company has failed to prove the terms of the policy. It, is open to the insurer to cover the risk to a larger extent. As the insurance company did not prove the contract of insurance, it must be held that the insurance company is liable for the full amount.

8. Learned counsel for the owner has argued that he is not liable and only the insurance company is liable for the full amount. I do not agree. There is joint liability. The owner has filed an application (C. M. No. 4701 of 1984) under Order 41, rule 27, of the Code, along with a copy of the insurance policy 326715 in respect of Truck No. DLG 1023 in the name of Atma Singh valid for the period from June 2, 1966, to June 1, 1967. It is alleged that the original policy was filed by the owner in another litigation between the owner and the insurance company which is pending before the trial court. A copy of the insurance policy cannot be taken on record at this stage. In *State of U.P. v. Manbodhan Lal Srivastava*, : (1958)IILLJ273SC , it has been held that additional evidence should not be permitted at the appellate stage in order to enable one of the parties to remove certain lacunae in presenting its case at the proper stage and to fill inn gaps. It has further been observed that the position is different where the appellate court itself requires certain evidence to be adduced in order to enable it to do justice between the parties. Similar observations have been made in *Natha Singh v. Financial*

Commissioner, Taxation, Punjab, : [1976]3SCR620 . This court does not require any additional evidence. The material on record is sufficient for the disposal of the present appeal. The application for additional evidence is, therefore, dismissed.

9. M/S/ Vanguard Insurance Co. Ltd. was the insurer of the vehicle in question. Section 16 of the General Insurance (Nationalisation) Act, 1972, provides for merger of one insurance company with another insurance company. The Central Government by Notification No. S.O. 803(E) dated December 31, 1973, Ministry of Finance (Department of Revenue and Insurance) framed a scheme amalgamating the Vanguard Insurance Company Ltd. with other companies and the business thereof was transferred to the New India Assurance Company Ltd. with effect from January 1, 1974. This notification is published in the Gazette of India, Extraordinary, Part II, section 3, sub-section (ii), dated December 31, 1973. Thus, the effect of the transfer is that New India Assurance Co. Ltd. is liable to satisfy the amount awarded against Vanguard Insurance Co. Ltd.

10. This appeal is accordingly accepted. The amount of compensations enhanced from Rs. 5,000 to Rs. 15,000 with interest at 12 per cent per annum from the date of filing of the claim, i.e., September 16, 1966, till payment, with costs of the proceedings before the Claims Tribunal and the costs of this appeal in favor of the appellants against the respondents. The entire amount shall be payable by the New India Assurance Co. Ltd. and the owner, Atma Singh, jointly and severally. The appellants shall be entitled to realise the entire amount from the insurance company. In case the insurance company is not liable for any reason, it may seek its remedy against the insured under section 96(4) of the Motor Vehicles Act. 1939.