

Nazeema Vs. Sebastian

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Court : Kerala

Decided On : Aug-14-1986

Reported in : II(1987)ACC218

Judge : Sivaraman Nair and; John Mathew, JJ.

Appellant : Nazeema

Respondent : Sebastian

Judgement :

Sivaraman Nair, J.

1. The appellants are the widow and children of late Shri Abdul Khader, who died as a result of an accident on 25-11-1978 involving a goods vehicle, KLO 2607. The vehicle was owned by the second respondent. At the time of the accident the vehicle was being driven by the first respondent. The third respondent is the insurer. At the time of his death, late Shri Abdul Khader was aged 28 years, and the appellants were depending entirely on him for sustenance. The loss suffered by his death was assessed by them as Rs. 3,00,000/-, and a further amount of Rs. 10,000/- was claimed for pain and suffering of the deceased.

2. The Motor Accidents Claims Tribunal, Eraakulam awarded an amount of Rs. 40,000/- with interest at 6 per cent from 25-5-1979, on the finding that the first respondent was driving the vehicle rashly and negligently, and that occasioned the

accident and the consequent death of Shri Abdul Khader. It was, however, found that since the deceased was a passenger in the goods vehicle, the third respondent-insurer was not liable. The first appellant was allowed to realise Rs. 10,000/- out of the amount of compensation, and the costs of the petition. The remaining amount of Rs. 30,000/- was directed to be deposited in a Nationalised Bank in equal shares in the names of the second and third appellants till they attain majority. The first appellant was, however, allowed to receive interest on the deposit till the 2nd and 3rd appellants attained majority. The appellants assailed the award on two grounds. Firstly, that the insurer also should have been made liable for payment of compensation, and secondly that a higher amount should have been awarded as compensation.

3. Counsel for the appellants submits that the Tribunal went wrong in holding that a passenger in a goods vehicle is not liable to be compensated by the insurer since such liability is outside the purview of the terms of the contract of insurance. It is his submission that the Tribunal should have found that the only provision which applied to the claim of the appellants was Section 95(2)(a) of the Motor Vehicles Act, which at the relevant time, required the insurer to cover the claims relating to accidents involving goods vehicle to the extent of Rs. 50,000/-. He submits that the deceased was, admittedly, employed in the loading of timber in the goods vehicle. On the date of the accident, the deceased was engaged in that work and the vehicle was returning after loading rubber trees. It is, therefore, submitted that he was an employee travelling in the goods vehicle and was therefore covered by the provisions of Section 95(2)(a) of the Act.

4. The Tribunal exonerated the insurer for the only reason that the written statement of the third respondent indicated that the insurer was not liable because the deceased was a traveller in the goods vehicle, and no contract of employment was established. This approach of the Tribunal does not seem to us to be correct. Section 96(2)(a) of the Act deals with claims arising out of accidents involving goods vehicle. The Tribunal appears to have assumed that no person can travel in goods vehicle other than its crew. This is evidently unsustainable.

5. Counsel for the third respondent-insurer submitted that the deceased Abdul Khader could, at best, be considered only as a gratuitous passenger in a passenger vehicle and cannot, therefore, claim compensation under any of the provisions of Section 95 of the Motor Vehicles Act or the policy of insurance. Since we felt that it was necessary to see the policy of insurance to determine this question, we had requested the third respondent-insurer to produce the same. The policy of insurance has been produced, which shows that there was unlimited liability for the company in respect of Section 11-(i)/Section 11-1(a), and there was liability upto Rs. 1,50,000/- in respect of any one claim or series of claims arising out of any one event such amount as is necessary to meet the requirements of Section 95 of the Motor Vehicles Act. Endorsement No. 14(b) annexed to the policy shows that in consideration of the payment of an additional premium of Rs. 19/- and notwithstanding anything to the contrary contained in Section 11-1(c), it was understood and agreed that the company would indemnify the insured against his liability other than liability under statute (except the Fatal Accidents Act, 1855) in respect of death of or bodily injury to any person not being an employee of the insured, nor carried for hire or reward whilst being carried in or upon or entering or mounting or alighting from the Motor Vehicle described in the Schedule to the Policy but such indemnity is limited to the sum of Rs. 10,000/- in respect of any one such person and subject to the aforesaid limit in respect of any one person to Rs. 50,000/- in respect of any number of claims in connection with any one such vehicle arising out of one cause. We are making this document as Exhibit C-1.

6. Counsel for the third respondent submitted that even assuming the liability of the insured beyond the statutory limits are covered by reason of the Endorsement, such liability has to be limited of Rs. 10,000/- in respect of one person and Rs. 50,000/- in respect of one accident. Reliance was placed on the decision of the Supreme Court reported in Pushpabai Purushottam Udeshi v. Ranjit Ginning and Pressing Co. 1977 ACJ 343.

7. Counsel for the appellants relied on the decision of the Supreme Court reported in Motor Owners' Insurance Co. Ltd. v. J.K. Modi AIR 1981 SC 2059. That was a case which arose under Section 95(2)(a) of the Motor Vehicles Act in respect of an accident involving a goods vehicle. The Supreme Court observed, that if more

than one person was involved in one accident, the limit of Rs. 50,000/- mentioned in Section 95(2)(a) would not preclude the Tribunal from granting Rs. 50,000/- as compensation in respect of each such person because in respect of each of them, it would be one accident and the limit would apply to each such accident. Reference was also made to the decision of the High Court of Rajasthan reported in *Santra Bai v. Prahlad* AIR 1986 Rajasthan 101, and *Sushila Pandey v. New India Assurance Co. Ltd.* AIR 1983 ACJ 525. Particular reference was made to a decision of this Court reported in *State Insurance Department v. Sosamma* 1978 KLT 634, where this Court held that an employee travelling in a goods vehicle need not be the employee of the owner of the goods vehicle, and such a person would be entitled to claim compensation under Section 95(2)(a) of the Motor Vehicles Act. In the decision reported in *Kelappan v. Vijayan* 1986 KLT 874 where the driver and owner of the vehicle were made *ex parte*, and the insurer alone contested, this Court had justified the award of compensation to persons involved in the accident. It was, therefore, submitted that the Tribunal was wrong in coming to the conclusion that the deceased being a traveller in the goods vehicle, could not claim any compensation from the insurer at all.

8. On a consideration of the provisions of Section 95(2)(a) of the Motor Vehicles Act, we are satisfied that a person who is employed either by the owner of the vehicle or the owner of the goods, and even a person who is employed in connection with the work in which the vehicle was involved, is entitled to claim compensation from the insurer in terms of Section 95(2)(a) of the Act. We are also of the opinion that the Tribunal went wrong in assuming that under no circumstances can a traveller in a goods vehicle be entitled to claim compensation under Section 95 of the Motor Vehicles Act. It is evident from the certificate of insurance that the limit of liability of the insurer for claims under Section 95 of the Act has been specified as Rs. 1,50,000/-, and an additional liability has been undertaken in respect of each person to the extent of Rs. 10,000/-, subject to a maximum of Rs. 50,000/- for the entire accident. This may perhaps restrict the limit of liability by virtue of the contract to Rs. 50,000/-, subject to the limit of Rs. 1,50,000 as undertaken by the insurer. We are only indicating that this conclusion is possible on reading of the provisions contained in the certificate of insurance. It is not necessary for us to draw any such inference for disposing of the present

appeal.

9. We are certain that the insurer can be made liable in a case covered by Section 96(2)(a) of the Motor Vehicles Act for claims upto Rs. 50,000/- at the relevant time. There is no fixation of any limit in respect of individuals involved in an accident as in the case of Section 95(2)(b) of the Act. Nor need we in this case go to the extent of saying, as the Supreme Court did, in *Motor Owners' Insurance Co. Ltd. v. J.K. Modi* AIR 1981 SC 2059, that in respect of each person involved in the accident, the Tribunal can award compensation to the extent of Rs. 50,000/-. The only question which need really have been considered by the Tribunal was as to whether the deceased Abdul Khader was an employee travelling in the goods vehicle. In ascertaining that, there are sufficient guidelines available in the decision of this Court reported in *State Insurance Department v. Sosamma* 1978 KLT 634.

10. The respondent has produced a copy of the policy of insurance issued in respect of the vehicle and submitted that endorsement No. 14 covers the excess liability in respect of gratuitous passengers and that liability is limited to Rs. 10,000/- per person and Rs. 50,000/- per accident. It was therefore submitted that the appellant cannot claim more than Rs. 10,000/- from the insurer. We need only state that the insurance cover is unlimited under Section 11-1(i) and 11-1(a) and Rs. 1,50,000/- under Section 11-1 (ii) and 11-1(b) and the statutory limit in other cases. There does not appear to be any limit specifically fixed in condition 14(b) in respect of persons travelling in a goods vehicle pursuant to a contract of employment or third parties. The limits applicable to them are those prescribed in Section 95(2)(a) of the Motor Vehicles Act.

11. Section 95 of the Motor Vehicles Act deals with requirements of policies and limits of liability. That provision is extracted below to the extent to which it is relevant:

95. Requirements of policies and limits of liability.--

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

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

(i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place:

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Provided that a policy shall not be required--

(i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment, other than a liability arising under the Workmen's Compensation Act, 1923 (8 of 1923), in respect of the death of, or bodily injury to, any such employee--

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(c) if it is a goods vehicle, being carried in the vehicle; or

(ii) except 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, to cover liability in respect of the death of or bodily injury to persons being carried in or upon or entering or mounting or alighting from the vehicle at the time of the occurrence of the event out of which a claim arises, or

(iii) to cover any contractual liability.

Sub-section (2)(a), which is material for our purposes, is in the following terms:

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

(a) where the vehicle is a goods vehicle, a limit of fifty thousand rupees in all, including the liabilities, if any, arising under the Workmen's Compensation Act, 1923, in respect of the death of, or bodily injury to, employees (other than the driver), not exceeding six in number, being carried in the vehicle;

Sub-clause (b) dealing with passengers who are carried for hire or reward may not apply for purposes of the present case.

12. From the extract of the relevant statutory provisions, it is evident that the policy of insurance shall be such as insures the insured to the extent specified in Sub-section (2) against any liability which may be incurred by the insured in respect of the death of or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place. The proviso carves out exception from liability in respect of various categories. Sub-clause (ii) thereof is a further exception to that exception. The effect of this exception to exception is that the insurer must cover the liability in respect of persons who were mentioned in Clause (ii) to the proviso. Therefore, the insurer has to cover the liability in respect of the death or bodily injury to persons being carried in or upon or entering or mounting or alighting from the vehicle if that vehicle was a vehicle in which passengers were carried for hire or reward or if they were carried by reason of or in pursuance of a contract of employment. Section 95(2)(a) of the Act, dealing with the limit of liability also provides for liability of the insurer in respect of death or bodily injury to employees not exceeding six in number being carried in a goods vehicle. It is evident from a reading of these statutory provisions that a person travelling in a goods vehicle either as owner of the goods or by reason of or in pursuance of a contract of employment would be covered by the statutory insurance. The limit of such liability is set by Section 95(2)(a) of the Act. We may also usefully refer to the provisions of the Kerala Motor Vehicles Rules, which also permit carriage of persons not exceeding six in the cabin of the vehicle. The evidence before the Tribunal was that the deceased Abdul Khader was travelling in the vehicle in pursuance of a contract of employment, and that he was travelling in the cabin of the goods vehicle.

13. Counsel for the third respondent submitted that the deceased Abdul Khader, at best, could have been a gratuitous passenger, and the insurer has no liability in respect of such a passenger in view of the decision of the Supreme Court reported in *Pushpabai Punhcttam Udeshi v. Ranjit Ginning and Pressing Co.* 1977 ACJ 343. The appellant has no case that deceased Abdul Khadtr was a gratuitous passenger. On the other hand, the case of the appellant is that he was travelling in the goods vehicle in pursuance of a contract of employment. He submitted that the contract of employment was spelt out from the evidence adduced before the Tribunal and the Tribunal rejected the evidence apparently for the only reason that the contract was not reduced to writing.

14. A similar contention was considered by this Court in the decision reported in *State Insurance Department v. Sosamma* 1978 KLT 634. The question which arose for consideration was whether an owner of goods travelling in a goods vehicle was covered by the policy of insurance or whether he shall be treated as a gratuitous passenger, who was neither a third party nor a person entitled to statutory coverage. On an analysis of Section 95 of the Motor Vehicles Act, this Court held, that the owner of the goods vehicle or one of his employees accompanying the goods in pursuance of a contract of employment would still be covered by statutory insurance. The same view has been taken by the Karnataka High Court in the decision reported in *Channappa Chanaviruppa Katti v. Laxman Bhimappa* AIR 1979 Karnataka 93, the Bombay High Court in *Nasibdas Suba Fakir v. Adhia and Company* 1983 ACJ 264, and the Rajasthan High Court in *SantraBai v. Prahlad* AIR 1986 Rajasthan 101. The decision of the Rajasthan High. Court, which is the latest in the series was of a Full Bench and was rendered after a comprehensive review of the case law on the subject. It was held, that an owner of the goods travelling in the goods vehicle along with the goods is not a gratuitous passenger and does so pursuant to a contract with consideration for transporting his goods; and in such circumstances, the insurer should be liable in respect of the death or bodily injury of such persons being carried in or upon or entering or mounting or alighting from the vehicle at the time of the occurrence of the event out of which a claim arises. The decision of a Division Bench of the Bombay High Court reported in 1983 ACJ 264 also contains detailed consideration of the decisions that far on the subject., Those decisions are in accord with the

decision of this Court in State Insurance Department v. Sosamma 1978 KLT 654 to which we respectfully assent We are, therefore, of the opinion that the Tribunal went wrong in rejecting the claim of the appellant for the reason that the deceased was a traveller in the goods vehicle and no contract of employment was proved. As we have stated earlier, we are satisfied that the unchallenged testimony of the appellant as PW-1 made out that the deceased was an employee travelling in the goods vehicle in pursuance of a contract of employment.

15. We have now to consider an objection raised by counsel for the third respondent to the effect that the appellant having obtained an award from the Tribunal cannot be considered as a person aggrieved and cannot therefore sustain the appeal. It is also submitted that the appeal is filed against the insurer in collusion with the owner and driver so as to recover the entire amount of compensation from the insurer. Counsel for the appellant submitted that revenue recovery proceedings are pending against the insured. He also submitted that if the insurance coverage was available the insurer cannot be heard to say that the claim shall be enforced only against the insured and not against the insurer. We cannot accept the submission that there was any collusion between the claimant and the insured in the absence of any positive evidence in that regard. We cannot accept the objection of the third respondent for more reasons than one. It was competent for the appellant to appeal that decision refusing to grant the entire amount of compensation as sought in her claim petition. If the award was passed only against a few out of the many against whom reliefs were sought, the appeal against the refusal of relief against them cannot be considered as unsustainable. Secondly, the claim of the appellant before the Tribunal was for an amount of Rs. 1,10,000/-, against which an amount of Rs. 40,000/- alone was granted.

16. The appellant assails the fixation of compensation as Rs. 40,000/- as too meagre and unsustainable. The Tribunal fixed the annual income of the deceased as Rs. 8,000/- from which one-half was set apart for his expenses. From the remaining Rs. 4000/- one-quarter was deducted for future vagaries and a further one-third was deducted for lumpsum payment. The annual contribution of the deceased to the claimant was fixed as Rs. 2000/- and that was multiplied by 20 since the deceased was 28 years old at the time of the accident and the appellant

was aged 24 years at that time.

17. In an appropriate case where more evidence would be available, the method of calculation adopted by the Tribunal may perhaps be successfully assailed. It appears that the parties concentrated their attention only on one aspect, the annual earnings of the deceased and the multiplier to be adopted. He cannot, however, approve the deduction of one-half of Rs. 4000/- towards future vagarise and lumpsum payment. We are of the opinion that such deductions should have been confined to an amount of Rs. 1,500/-per annum in the peculiar facts of this case. The annual dependency will, therefore, be determined as Rs. 2,500/- and the total amount of compensation will be fixed as Rs. 50,000/- adopting a multiplier of 20.

18. The appeal is therefore allowed, determining the amount of compensation payable as Rs. 50,000/- against Rs. 40,000/- along with interest at the same rate as awarded by the Tribunal. There will be a further direction that the insurer-third respondent will be liable to pay the amount of compensation. The 1st appellant will be entitled to draw the amount of Rs. 10,000 as directed by the Tribunal along with the entire costs and interest due till payment of Rs. 10,000/-. The balance amount inclusive of Rs. 10,000/-now awarded and interest thereon shall be deposited in the names of the 2nd and 3rd appellants subject to the conditions specified by the Tribunal. The appellant will be entitled to costs including Advocate's fee of Rs. 250/-.