

**Durgadevi and ors. Vs. Shivkumar and ors.**

**Durgadevi and ors. Vs. Shivkumar and ors.**

**SooperKanoon Citation :** [sooperkanoon.com/758214](http://sooperkanoon.com/758214)

**Court :** Rajasthan

**Decided On :** Sep-09-1984

**Reported in :** 1985(1)WLN459

**Judge :** G.M. Lodha, J.

**Appeal No. :** S.B. Civil Misc. Appeal No. 19 of 1975

**Appellant :** Durgadevi and ors.

**Respondent :** Shivkumar and ors.

**Advocate for Pet/Ap. :** Mr. Agarwal

**Judgement :**

**G.M. Lodha, J.**

1. This appeal relates to an accident that took place on 23rd, Nov. 1956 at 9.00 a.m. in the City of Jaipur when Car No. RJL 1777 struck the Cyclist Gyarsilal. Before the cyclist could remove himself from the accident site, the Bus No. RJL 9231 coming from the other side took him under it's body. Ultimately Gyarsilal died with the injuries in this accident. The tribunal has allowed compensation of Rs. 36,000/- against Gurendra Gupta who was ultimately found to be the owner of the Car but dismissed the claim against all others. The Car earlier belonged to Dr. Jainath and it was insured with one New India Assurance Company. The bus

belonged to M/s Central Transport Service which was owned by M/s Kamal & Company, and insured with the New Great insurance Company of India.

2. The Car changed its ownership and on account of that on the date of the accident Gurendra Gupta was the owner and therefore, the tribunal found that Insurance Company cannot be held liable. So far as the bus is concerned, it was held that there was no negligence or rashness of the driver of the bus in this accident and therefore M/s Kamal & Company and its insurer New Great Insurance Company both were held not to be liable for payments of any claim.

3. Mr. Agarwal learned Counsel for the appellants has challenged these findings and prayed for decree against both the Insurance Companies and M/s Kamal & Company who owned the bus and Shivkumar the earlier owner of the car. The learned counsel for the respondent have resisted the prayer and supported the finding of the tribunal.

4. However, without adjudicating the liability of M/s Kamal & Company and the two Insurance Companies namely, M/s New India Assurance Company and the New Great Insurance Company of India, in view of the humanitarian aspect involved in such compensation cases, it was suggested by the Court that both the Insurance Companies should pay Rs. 10,000/- each ex-gratia to the claimants in the facts and circumstances of the case. Fortunately the learned Counsel Mr. Srivastava and Mr. Bhargava representing the two Insurance Companies have, keeping in view the overall facts and circumstances of the case agreed to the above suggestion.

5. Mr. Agrawal in view of the above has agreed not to press the appeal as such.

6. As a result of the above the award is modified as under:

(1) The award of Rs. 30,000/- against Shri Gurendra Gupta is confirmed and it is directed that it would bear interest @12% per annum from the date of application till the date of realisation. M/s New India Assurance Company India Ltd., M.I. Road, Jaipur, insurer of vehicle No. RJL 1777 would pay Rs. 10,000/- ex-gratia to the claimant appellants.

(2) The New Great Insurance Company of India Ltd. now merged in Oriental Insurance Company Ltd. insurer of bus No. RJL 9231 would pay Rs. 10,000/- to the appellants. The above amount of Rs. 20,000/- would be adjusted in the amount of award Rs. 30,000/-.

7. The appeal is partly allowed, as indicated-above without any order as to costs. Ex-gratia payment would be made within two months.

8. Before parting with this judgment, I must put on record great appreciation for the co-operation and enlightenment shown by the learned Counsel for the Insurance Companies in rightly according the suggestions of the Court for making payment ex-gratia without insisting on technicalities. If all the learned Counsel representing the Insurance Companies, Corporations and the State rise to the occasion and follow the example of Mr. Srivastava and Mr. Bhargava, the dream for administering social justice with speedy and free of cost, by overriding legal technicalities and quibbles, can come out to be true much earlier than expected. The Insurance Companies should also encourage this social justice, by just and equitable approach of their counsel, in accident cases where unfortunate victims deserve sympathy of all concerned. The present judgment in this perspective would be eye opener land-mark for the goodwill gesture of the Insurance Companies and the members of Bar representing them for relieving from suffering the victims of the accidents by making ex-gratia payments in suitable cases and I am sure that all the Insurance Companies, Roadways Corporations, State Undertakings and the State Governments, Law Officers would take inspiration from Mr. Srivastava and Mr. Bhargava in this respect. That way alone the judiciary can pay the real homage to the preamble of the Constitution which proclaims justice, social and economic also in addition to political.