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Court : Rajasthan

Decided On : May-08-1996

Reported in : 1998ACJ418; 1996(3)WLC356

Judge : Gopal Lal Gupta, J.

Appeal No. : S.B. Civil Misc. Appeal Nos. 243 and 244 of 1988 and 623 of 1992

Appellant : Draupadi Devi and ors.

Respondent : Inder Kumar and anr.

Advocate for Def. : S.C. Srivastava and; G.K. Bhartiya, Advs.

Advocate for Pet/Ap. : Sandeep Mathur, Adv.

Disposition : Appeal allowed

Judgement :

Gopal Lal Gupta, J.

1. The above mentioned three appeals have arisen out of the award dated 7.7.1988 passed in Claim Case Nos. 62 and 63 of 1983. Appeal Nos. 244 and 243 of 1988 have been preferred by the claimants for enhancement of the award and appeal No. 623 of 1992 has been preferred by the owner for holding that the insurance company is liable for the entire amount.

2. The accident occurred on 17.10.1982 on Jaipur-Sambhar road. Prem Kumar and Anil Kumar were going on scooter No. RRB 6515. Anil Kumar was riding on the pillion. Truck No. RSC 4494 driven the award dated 7.7.1988 passed in Claim by Joginder Singh, hit the scooter from behind with the result that scooter came under the truck and Prem Kumar and Anil Kumar, both received fatal injuries. They died on the spot. The legal representatives of Prem Kumar and Anil Kumar filed separate claim applications. The owner and driver did not appear despite service. Insurance company took legal objections. One of the legal objections was that the liability of the insurance company was limited to Rs. 1,50,000/- by virtue of Sections 95 and 96 of the Motor Vehicles Act.

3. The learned Tribunal framed four issues. Claimants Draupadi Devi, Deen Dayal, Shyam Narain and Nirmala Devi entered into the witness-box and examined Ramavtar, AW 2 and Dr. CM. Mahesh-wari, AW 3. In rebuttal, the insurance company examined M.L. Tehriya and B.P. Arya. The learned Tribunal after hearing the parties held under issue No. 1 that the accident had occurred because of the rash and negligent driving of the truck. Under issue No. 2, Rs. 3,54,000/- were decreed in Claim Case No. 62 of 1983. Rs. 72,000 were decreed in Claim Case No. 63 of 1983.

4. Mr. Mathur has contended that the learned Tribunal has erred in holding the loss of dependency at Rs. 1,500/- p.m. only in Claim Case No. 62 of 1983. According to him the loss of dependency should have been assessed at least at Rs. 3,500/- p.m. On the other hand, the learned Counsel for the respondents has tried to support the judgment of the learned Tribunal.

5. I find force in the arguments of the learned Counsel for the appellants.

6. The learned Tribunal has observed at page 5 of the judgment that the certificate, Exh. 8, produced by the claimants indicates that the deceased used to earn Rs. 5,400/- p.m. However, in the very next paragraph, the learned Tribunal has observed that the loss of dependency was only Rs. 1,500/- p.m. It is not understood as to on what basis, the learned Tribunal has calculated the loss of dependency at such low figure. As a matter of fact, 2/3rd income of the deceased ought to have been considered as the loss of dependency which comes to Rs.

3,500/- p.m. Thus, the loss of dependency was Rs. 42,600/- p.a. The deceased was 38 years old at the time of accident. The appropriate multiplier is '12'. If this amount is multiplied by '12', the loss of dependency works out to be Rs. 5,11,200/- . The learned Tribunal has further awarded a sum of Rs. 9,000/- on account of loss of consortium and loss of love and affection. On adding this amount, the just compensation works out to be Rs. 5,20,200/-.

7. In respect of Appeal No. 243 of 1988, the contention of Mr. Mathur was that grossly inadequate amount has been awarded.

8. The deceased was 21 years of age and was student of B.Com. third year. The two claimants are parents. It was pleaded that besides study, the deceased used to earn Rs. 500/- p.m. by doing typing work. The learned Tribunal has observed that the deceased was bound to marry and in that case, he could not spend more than Rs. 300/- p.m. on his parents and applying the multiplier of 20, a sum of Rs. 72,000 has been assessed as loss of dependency. The learned Tribunal has observed at page 7 that there was merit in the contention of the learned Counsel for the claimants that the appellant would have become an advocate and certainly could earn more than Rs. 1,000/- p.m. Looking to the family background of the deceased, it can safely be said that he would have earned at least Rs. 1,500/- p.m. which a graduate could easily earn during those days. In that case, he could not spend more than Rs. 500/- on his parents as after marriage, he was bound to support his own family. Thus, the loss to the parents comes to Rs. 6,000/- p.a. The average age of Indians is 65 years and therefore, the parents would suffer for about 23 years. The appropriate multiplier can be '16'. By adopting the multiplier of '16', the loss of dependency works out to be Rs. 96,000/-. The Tribunal has awarded Rs. 5,000/- on other counts. On adding this amount, the just compensation works out to be Rs. 1,01,000/-.

9. Now, the next important question that arises for determination is whether the liability of the insurance company is limited to Rs. 1,50,000/- only.

10. Mr. Mathur and Mr. Srivastava have contended that the premium of Rs. 240/- was charged and even as per the tariff produced in the case, Rs. 200/- could only be charged for third party risk and as Rs. 40/- more had been charged, it should

be held that the company had accepted unlimited liability. It has been further argued that in the policy, the column regarding the limit of liability for the death or bodily injury of third party was left blank and therefore, the liability should be held to be unlimited. Reliance has been placed on the case of *Oriental Fire & Genl. Ins. Co. Ltd. v. Shanta Kanwar* 1992 ACJ 903 (Rajasthan).

11. The contention of Mr. Bhartiya, learned Counsel for the insurance company is that Rs. 40/- extra were charged for covering the extra risk of the property of third party and it was not for the personal injury or the death. He has relied on the tariff produced in the case. His further contention is that the column regarding the limit of liability was not left blank in the policy but since there was no space available because of some typed matter the seal regarding the limit of liability was imposed at some distance from the space provided for.

12. I have carefully considered these arguments. When the arguments were heard on earlier date, I wanted the learned Counsel for the insurance company to put up the notification regarding tariff applicable in the year 1982. However, during the arguments on 7.5.1996, the order/ notification regarding tariff applicable in the year 1982 was not produced. Mr. G.K. Bhartiya has relied on the booklet known as the 'India Motor Tariff Schedule of Premium with effect from 1st June, 1985'. The vehicle insured was the truck which falls in the category of goods carrying vehicle. For Class A-(2), it is recorded at page 15 of the booklet that for the 'Act only' policy premium was Rs. 200/- and for the policy of 'Public risks', the premium was Rs. 240. Obviously, these rates came into force from 1.6.1985. It is not known as to what was the rate of premium for the 'Act only' policy in respect of such trucks in the year 1982. The document Exh. A-2 produced by the insurance company, before the learned Tribunal also indicates that the premium for 'Act only' policy was Rs. 200/- and for the 'Public risks', Rs. 240/-. This document does not indicate as to for which year this tariff was applicable. It appears that this document is nothing but the copy of tariff which came into force from 1.6.1985.

13. Since even after the opportunity given to the insurance company to produce the tariff applicable for the year 1982, the order/notification has not been produced, it is not possible to hold that for the 'Act only', policy Rs. 200/- was the

premium in the year 1982.

14. Be that as it may, even if we accept that Rs. 200/- was the premium for the 'Act only' policy and Rs. 240/- was the premium for the liability to the 'Public risks', then also it is difficult to hold that Rs. 40/- were not collected by the insurer for covering the risk of death or bodily injury of the third party.

15. There is no material on record to hold that Rs. 40/- extra premium were charged for covering additional risk of the property of the third party as argued by Mr. G.K. Bhartiya. It has come in the statement of M.L. Tehriya, NAW 1, who was Assistant Manager that Rs. 40/- were charged for increasing third party risk. It has then come in the statement of B.P. Sharma, Sr. Divisional Manager, NAW 2, that in this particular case, no extra premium was charged for the damage to the property of third party. It is, thus, obvious that Rs. 40/- were not charged for covering the liability arising from the damage of the property. Mr. B.P. Sharma has further deposed that Rs. 240/- were charged for the third party risk. In the policy Exh. 1, the details of the premium of Rs. 240/- have not been given. It is, therefore, not possible to hold that Rs. 40 extra premium were charged for the damage to property of the third party. As already pointed out, Mr. B.P. Sharma has deposed that no extra premium was charged for damage to property. That being so, the only inference can be drawn is that Rs. 40/- were charged extra for covering the liability for the death or bodily injury of the third party.

16. It may be that the extra premium for unlimited liability was Rs. 100/- in the year 1985 but when it is not known as to what was the rate of extra premium of covering the unlimited liability in 1982, it is not possible to hold that Rs. 40/- were not charged for covering the risk of death or bodily injury of the third party.

17. Apart from this, this fact also cannot be lost sight of that the limit of liability has not been stated in the space meant for the purpose. The place has been left blank. The seal which reads as 'the amount as is necessary to meet requirement of the Motor Vehicles Act, 1939' is imposed in front of item No. 2 which pertains to damage of property. Therefore, only it can be found that this seal pertains to item No. 2, i.e., the limit of liability regarding the damage to the property. It is true that some matter is typed in front of item No. 1 pertaining to limit of liability regarding

the injury or death. However, the seal could very well be imposed, before the relevant item as there was some space available. Even the arrow has not been put showing that the seal pertains to item No. 1. There is, therefore, merit in the contention of the learned Counsel for the appellants that the column of limit of liability of the insurance company regarding the death or bodily injury of the third party was left blank and thereby the liability of the insurance company is unlimited. In the case of *Oriental Fire & General Ins. Co. Ltd. v. Shanta Kanwar* 1992 ACJ 903 (Rajasthan), the space regarding the limit of liability was left blank. It was held that the policy had unlimited coverage. I am, therefore, of the view that when the said column has been left blank and it is an admitted fact that extra premium of Rs. 40 was charged, it has to be held that the insurance company had accepted unlimited liability in respect of the death and bodily injury of the third party.

18. Mr. Bhartiya in order to emphasise that no extra premium was charged for covering the liability for the death or bodily injury of the third party has also produced a book known as 'Insurance Association of India Motor Tariff. This book contains the tariff applicable in sixties. No help can be taken from these tariffs. The relevant tariff is which was in force in 1982.

19. That being so, all the three appeals succeed.

20. In Appeal No. 243 of 1988 preferred by Nirmala Devi, the award is modified and it is held that the claimants-appellants are entitled to get a sum of Rs. 1,01,000/- from the respondents with interest at the rate of 12 per cent per annum from the date of claim application to the date of payment.

21. In Appeal No. 244 of 1988 also the award is modified to this extent that the claimants are entitled to recover a sum of Rs. 5,20,200/- from the respondents with interest at the rate of 12 per cent per annum from the date of claim application to the date of payment.

22. Appeal No. 623 of 1992 of the owner is allowed and it is held that the insurance company is liable to pay full payment to the claimants as per this modified award.

