

Shefali Devnath @ Anjali (Smt.) and anr. Vs. Ram Kumar and ors.

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Court : Rajasthan

Decided On : Dec-07-2005

Reported in : RLW2006(1)Raj801

Judge : Narendra Kumar Jain, J.

Appeal No. : S.B. Civil Miscellaneous Appeal No. 782 of 1993

Appellant : Shefali Devnath @ Anjali (Smt.) and anr.

Respondent : Ram Kumar and ors.

Advocate for Def. : Raj Sharma, Adv.

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

Judgement :

Narendra Kumar Jain, J.

1. Heard learned Counsel for the parties.
2. These five appeals, arise out of one accident and are directed against the common judgment/award dated 12.7.1993 passed by the Motor Accident Claims Tribunal, Jaipur District Jaipur, therefore, all these appeals are being disposed of by this common order.

3. The claimants filed four applications for compensation before the Motor Accident Claims Tribunal, Jaipur District Jaipur in respect of death of Baldev Nath, Dhani Ram and Gargi Dullam, and one injured namely; Kamal Kumar. Their claim applications were registered as Motor Accident Claims Case Nos. 345/93, 346/93, 811/93 and 343/1986.

4. Learned Tribunal awarded Rs. 35,000/- in favour of the claimants Shafali and Ors. in respect of death of Baldev Nath, Rs. 81,900/- in favour of the claimants Krishnandhan Dutt and Others in respect of death of Dhani Ram, Rs. 2,38,000/- in favour of the claimants Tapi Dullam in respect of death of Gargi Dullam and Rs. 42,000/- in favour of injured claimant Kamal Kumar. Being aggrieved with the same, the claimants filed four appeals in this Court for enhancement of the amount of compensation, whereas one appeal i.e., SB CMA No. 8 of 1994 has been filed on behalf the Insurance Company on the ground that their liability to indemnify the amount of compensation was limited up to Rs.1,50,000/-.

5. Learned Counsel for the claimants appellant Mr. Sandeep Mathur, contended only two submissions: one about the composite negligence and second about deduction on account of lump sum payment. His contention is that this is a case, wherein there was collision in between the Truck and Car. The deceased and injured person were travelling in the Car. The Tribunal decided Issue No. 1 to the effect that the Truck driver was responsible up to 70%, whereas the Car driver up to 30% for this accident. He contended that the finding of the learned Tribunal is contrary to the settled proposition of law about composite negligence. He also contended that while making a lump sum payment, the Tribunal committed an illegality in deducting amount of 20% in the case of appellant Krishnandhan Dutt and 40% in the case of Tapi Dullam on account of lump sum payment. He contended that the controversy in this regard has now been resolved by the Supreme Court and no deduction is liable to be made on account of lump sum payment thereof.

6. Learned Counsel for the respondents contended that the amount of compensation awarded in the present case is just and reasonable and the learned Tribunal has not committed any illegality in deducting the amount on account of

contributory negligence and lump sum payment, as mentioned above,

7. So far as the appeal filed by the Insurance Company is concerned, learned Counsel for the Insurance Company contended that the copy of the Insurance Policy was placed on record, whereby, it was clear that their liability was limited up to Rs. 1,50,000/-. The Tribunal committed an illegality in holding that the Insurance Policy in this case is not proved, as only a carbon copy of it was produced.

8. Learned Counsel for the claimant contended that mere filing a carbon copy of the Insurance Policy is not sufficient. The said policy has not been proved by any one on behalf of the Insurance Company. Therefore, the learned Tribunal was justified in deciding this issue against the insurance company. In alternative,- he contended that this is a case, wherein the insurance company accepted Rs. 240/- as extra premium for its unlimited liability, which is clear from the carbon copy of the insurance policy also, therefore, there was unlimited liability of the insurance company to indemnify the amount of compensation.

9. I have considered the rival submissions and examined the impugned judgment as well as the record of the Tribunal.

10. Undisputed facts in the present case are that this is a case of collision in between the car and truck. Baldev Nath, Dhani Ram, Gargi Dullam, who died in this accident and Kamal, who sustained injury, were travelling in the Car. The Car was being driven by deceased Dhani Ram. The claim application was filed only against the driver, owner and the insurance company of the Truck. The driver, owner and the insurance company of the Car were not impleaded as parties-non-claimants in the claim application filed before the Tribunal. The tribunal recorded a finding that it is a case of contributory negligence, therefore, deduced 30% amount on account of 30% negligence on the part of the car driver.

11. There is a distinction in between the case of contributory negligence and composite negligence. The theory of contributory negligence comes into play only when the person, who suffers injury or died in an accident is found to have contributed to the occurrence. In the present case, the deceased Baldev Nath, Gargi Dullam and injured Kamla, were sitting in the Car, whereas the deceased

Dhani Ram was driving the Car. Therefore, as per admitted facts of the case, I find that it is a case of contributory negligence for the purpose of filing of claim application in respect of deceased Dhani Ram, who was driver of the Car, but so far as the claim applications in respect of Baldev Nath, Gargi Dullam and Kamal, are concerned, it is a case of composite negligence and cannot be a case of contributory negligence.

12. The question of composite negligence and liability of the insured and insurer in this regard has been considered by the Single Bench as well as the Division Bench of this Court on number of occasions and it was held that it is open for the legal representatives of the deceased or for the injured to file the claim application against both the tortfeasors or against any one and their liability is joint and several.

13. The Division Bench of this Court in National Insurance Company Ltd. v. Kastoori Devi and Ors., 1988 ACJ Page 8, held as under:

It has been held in United India Fire and General Insurance Company Ltd. v. Sayar Kanwar, 1976 ACJ 26 (Rajasthan), by a Division Bench of this Court that there is a Division Bench of this Court that there is a difference between a composite negligence and contributory negligence. In case of composite negligence liability cannot be apportioned. We are clearly of the view that in the facts and circumstances of this case merely because Arvind Kumar was carrying 3 more persons on the pillion of the motor cycle, it cannot be inferred that he was responsible for contributory negligence in the accident. The motor cycle was insured comprehensively as is evident from Exh.AW 15/1, the policy of National Insurance Company. Such policies cover the risk of any person including third party and as such it would cover the risk of the driver of the motor cycle as well as of the pillion riders. It was a case of composite negligence of the drivers of motor cycle as well the truck as such insurance companies of both the vehicles would be liable to pay the compensation jointly and severally.

14. In Sampat Kanwar Bai and Anr. v. Gurmeet Singh and Anr., 1988 ACJ Page 342, this Court held as under;

The principle of 'composite negligence' is, where more than one person are responsible in the commission of the wrong, the person wronged has a choice of proceeding against all or anyone or more than one of wrongdoers. Every wrongdoer is liable for the whole damage if it is otherwise made out, and it does not lie in the mouth of one wrongdoer to say though. I am also responsible, yet, the other man was also equally responsible for the wrong and on this basis he cannot avoid the liability to the person wronged.

It can, therefore, be said that in case a person is injured without any negligence on his part and he is no way contributed to the negligence, no case of contributory negligence, no question of apportionment of compensation is made out. In case an accident occurs in which a person dies and the accident is the result of the composite negligence of both the parties it is open for the legal representatives of the deceased to claim compensation from the joint tortfeasors, who are liable jointly or severally. This Court (G.M. Lodha, J.) in the case of Mohan Lal v. Balwant Kaur, 1 (1985) AC 322, held that the joint tortfeasors are jointly liable in the accident cases for the negligence, can be made liable jointly and severally. A logical and legal deduction from the above is that the claimant can choose to file claim petition against any one of them and recover the damages from any one of them. It was further held that the contention that unless the joint tort-feasors are made parties, a claim petition cannot survive, is not supported by any decision. In view of the learned Judge joint tort-feasors may be proper parties but cannot be necessary parties.

15. In Rama Nand and Ors. v. Smt. Lalita Sharma and Ors. 1992 Vol. I. WLC (Raj) Page 250, the Single Bench of this Court held as under.

I have heard the parties and gone through the documents and evidence on record. From the facts and circumstances, mentioned above, it is clear that the deceased was going on his cycle on proper side, in normal speed, when he was knocked down by the bus. Thereafter, the tractor ran over him. This shows that the driver of the bus was driving his vehicle rashly and negligently and struck the deceased from behind. The learned Tribunal has also given finding that the driver of the tractor was also driving it rashly and negligently. In fact, if he were to drive

cautiously and carefully, perhaps, he could have stopped his tractor and save the life of the deceased. Thus, it is clear that the death of the deceased occurred on account of rash and negligent driving on the part of both the drivers of the vehicles. In these circumstances, there is no question of fixing up contributory liability separately on each of the drivers of the vehicles. This, in fact, is a case of composite negligence, as the death of the deceased has occurred, on account of rash and negligent driving by the drivers of both the vehicles. The learned Tribunal has, therefore, erred in fixing up 70% liability on the driver/owner of the bus and 30% liability on the driver/owner/insurance company of the tractor.

16. The aforesaid judgment was challenged before the Division Bench by the New India Assurance Company Ltd., and while rejecting the appeal of the Assurance Company, the Division Bench in *New India Assurance Company Ltd. v. Rama Nand and Ors.* 1992 Vol. II WLC (Raj.) Page 344, held as under;

Shri Alok Sharma lastly argued that it was a case of contributory negligence and not a case of composite negligence and, therefore, a serious error has been committed by the learned Single Judge in reversing the finding of the Tribunal. The facts which have come on record nowhere show as to how the deceased was in any manner, . responsible for the accident. The theory of contributory negligence comes into play only when the person who suffers injury or dies in an accident is found to have contributed to the occurrence. Neither there is any plea or any evidence to support the theory of contributory negligence. Therefore, the contention of the learned Counsel that the liability is fastened on the appellant alone cannot be accepted.

17. In *Mst. Rahmat and Ors. v. Ram Chandi and Anr.* SB CMA No. 744 of 1997, decided on 1.6.2005, this Court held as under;

In the matter of composite liability, that is where the accident occurred due to the negligence of drivers of two vehicles and therein a person dies or sustains injuries, the claimants are entitled legally to recover the amount of compensation from the tortfeasors or against any one as their liability is joint and several. Even if the owner or the insurance company of either of the vehicle is not impleaded as party to the claim petitioner, it will not materially affect the merits of the claim made by

the claimants. My this view is supported by the decision of this Court in the case of Sampat Kumar Bail and Anr. v. Gurmeet Singh and Anr., 1988 ACJ 342.

18. So far as the deduction on account of lump sum payment is concerned, the Hon'ble Supreme Court in the case of Hardeo Kaur and Ors. v. Rajasthan State Road Transport Corporation and Anr., : [1992]2SCR272 , held as under;

We are of the view that deduction of 1/3rd out of the assessed compensation on account of lump sum payment is not justified. The accident took place in July, 1977 and the litigation has come to an end, hopefully, today, 15 years thereafter. This Court in Motor Owners' Insurance Co. Ltd., v. J.K. Modi, 1981 ACJ 507 (SC), held that the delay in the final disposal of motor accident compensation cases, as in all other classes of litigation, takes a sting out of the laws of compensation and added to that the monstrous inflation and the consequent fall in the value of rupee makes the compensation demanded years ago less than quarter of its value when it is received after such a long time. In Manjushri Rahav. B.L. Gupta, 1977 ACJ 134 (SC), this Court awarded compensation by multiplying the life expectancy without making any deductions. With the value of rupee dwindling due to high rate of inflation, there is no justification for making deduction due to lump sum payment. We, therefore, hold that the Courts below were not justified in making lump sum deduction in this case.

19. The aforesaid decisions of the Single Bench, Division Bench and the Supreme Court show that both controversy involved in the present matter are covered by the aforesaid decisions.

20. In view of above facts and circumstances and the position of law, I find that the learned Tribunal committed an illegality in deducting 30% amount on account of contributory negligence on the part of the driver of the Car except in claim in respect of deceased Dhani Ram, wherein the Tribunal was right in deducting 30% amount on account of contributory negligence as deceased Dhani Ram himself was driver of the Car. Therefore, the finding of the tribunal to that extent is set aside and it is held that in the case of death of Baldev Nath, Gargi Dulam and injured Kamal, no deduction of 30% will be made from the amount of compensation, but 30% deduction will be made for contributory negligence in the

case of deceased Dhani Ram.

21. So far as deduction of 20% and 40% on account of lump sum payment in the case of deceased Dhani Ram and Gargi are concerned, the award of the tribunal to that extent is also set aside and it is held that no deduction can be made on account of lump sum payment to the claimants.

22. So far as the appeal filed on behalf of the insurance company is concerned, I find that the insurance policy was placed on record as Ex.A-3 and Ashok Kumar was examined on behalf of the insurance company, but the tribunal did not decide this issue in favour of the insurance company only on the ground that the original insurance policy was not produced and Ex-A-3 was only a carbon copy of it. The tribunal has observed that if the original policy would have been produced, than it would have been fruitful to the insurance company. I find that once a policy is proved and exhibited, than it was admissible in evidence and observations of the tribunal in this regard is not correct and the same are set aside. However, from Ex-A-3 insurance policy itself, it is clear that Rs. 240/- extra premium was charged in the present case and this premium was charged for accepting unlimited liability by the insurance company.

23. The Division Bench in the case of National Insurance Company Ltd. v. Laxmi and Ors., considered the question of unlimited liability of the insurance company, where Rs. 240/- was accepted by the insurance company as extra premium.

24. The Division Bench in the aforesaid case, after considering the said point, held as under;

Pursuant thereto, the Motor Accidents Claims Tribunal framed a fresh issue 'whether non-applicant No. 3, National Insurance Co. Ltd. is liable only to the extent of Rs. 50,000/- or its liability is unlimited'. After considering the material, which was brought on record by the parties during the proceedings after remand from the Supreme Court, it was found by the Tribunal that a premium for the 'Act only policy' was Rs. 200, the premium charged from the owner of the vehicle in the present case is Rs. 240/-, which was captioned under 'liability to public risk Act only', which under the insurance jargon considered as 'third party risk policy' by

charging higher than the 'Act only policy' and on that premise, it came to the conclusion that the insurance company has charged additional premium for public risk and its liability towards 'third party risk' was unlimited. Consequently, the insurance company was held liable for the entire claim to the extent the owner was liable in respect of injury caused to the third party.

25. In view of above observations of the Division Bench, I do not find any force in the appeal filed by the insurance company.

26. Consequently, the SB GMA No. 782/1993, 691/1993 and 811/1993 are allowed. The SB CMA No. 783/1993 is partly allowed. The SB CMA No. 8/1994 filed by the Insurance Company is dismissed.

27. It is held that the claimants in SB CMA No. 782/1993 will be entitled to a total amount of compensation as Rs. 50,000/- in place of Rs. 35,000/- awarded by the Tribunal/The claimant Krishandhan Dutt in SB CMA No. 783/1993 will be entitled to a total compensation of Rs. 1,01,500/- (Rs. 1,45,000/- Rs. 43,500/- being 30%) in place of Rs. 81,900/- as awarded by the Tribunal. The claimant Tapi Dullam in SB CMA No. 811/1993 will be entitled to a total compensation of Rs. 5,20,000/- in place of Rs. 2,38,000/- awarded by the Tribunal. The injured Kamal in SB CMA No. 691/1993 will be entitled to a total compensation of Rs. 60,000/- in place of Rs. 42,000/-,

28. The respondents have already paid the amount of compensation as awarded by the Tribunal. Therefore, the respondents will now make the payment of only remaining amount i.e., Rs. 15,000/-, Rs. 19,600/-, Rs. 1,82,000/- and Rs. 18,000/- respectively within a period of two months with interest at the rate of 6% per annum from the date of filing of the claim application till the date of payment thereof. The Tribunal is directed to deposit the entire amount in the Monthly Income Scheme of the Post Office in the name of the appellants for a period of six years, with liberty to them to withdraw the monthly interest accrued thereon. No order as to costs.