

Hukum Devi and ors. Vs. Chander Bhan and ors.

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Court : Delhi

Decided On : May-31-2010

Judge : Shiv Narayan Dhingra, J.

Acts : [Motor Vehicles Act, 1939](#) - Section 95(2)

Appeal No. : F.A.O. 210 of 1995 and 36 of 1996

Appellant : Hukum Devi and ors.;national Insurance Co. Ltd.

Respondent : Chander Bhan and ors.;smt. Hukami Devi and ors.

Advocate for Def. : L.K. Tyagi, Adv. for R-3 in FAO 210 of 1995 and; Varun Kumar and;

Advocate for Pet/Ap. : Varun Kumar and; Navneet Goyal, Advs. in FAO 210 of 1995 and;

Judgement :

Shiv Narayan Dhingra, J.

1. By this judgment, I shall dispose of above four appeals.

2. Succinctly stated the facts relevant for the purpose of deciding these appeals are that on 2nd February, 1984 Mr. Chander Bhan was driving a taxi, number DLT 6201 with four passengers in it, in a reckless and negligent manner and he banged

his taxi against rear portion of a statutory truck parked at Palam Road near Higher Secondary School. As a result of this accident Dilsukh Saini, one of the passengers in the taxi, died while Suraj Mal Saini and Prem Singh, other two passengers sustained grievous injuries. Three claim petitions were filed, one by Lrs of deceased and two by the injured passengers. The learned Tribunal came to conclusion that the accident took place due to composite negligence of taxi driver and the truck driver since the truck was parked on the road without its backlights on, and there was no attendant along the truck and the taxi was being driven in a rash and negligent manner by its driver. The Tribunal awarded a compensation of Rs. 1,50,000/- to the Lrs of Dilsukh Saini. With regard to other two injured, the Tribunal passed award of Rs. 50,000/- and Rs. 55,000/-respectively.

3. Vide appeal FAO No. 210 of 1995, Lrs of Dilsukh Saini have assailed the award on the ground that compensation awarded was inadequate. The other three appeals have been filed by the insurance company on the ground that the Tribunal wrongly held that the liability of insurance company as unlimited.

4. A perusal of record would show that Dilsukh Saini was aged around 42 years at the time of accident and was drawing a salary of Rs. 774.30. The Tribunal considered that in 1986 i.e. about two years after the accident, pay commission had come and his salary would have increased and hence Tribunal took average salary of deceased as Rs. 1500/- and deducted Rs. 500/-towards personal expenses and took Rs. 1000/- as the amount available to dependents, multiplied it with multiplier of 11 and came to conclusion that Rs. 1,32,000/- would be just compensation. To this, Rs. 15,000/- on account of loss of consortium, loss of estate etc. was added to make it Rs. 1,47,000/-. This amount was rounded as Rs. 1,50,000/-.

5. If we apply parameters as laid down by Supreme Court in Sarla Varma's case, since there were five dependents, the deduction towards personal expenses out of the salary would be 1/4th. The salary being 774.30, the deduction towards personal income would be around 194/- and the balance available to the claimants would be Rs. 580/- since the deceased was 42 years of age, 30% of his salary would be added towards future prospects. That means Rs. 174/- would be added

to Rs. 580/- and the per month income for the purpose of calculating the compensation would be Rs. 754/-. If we apply multiplier of 15 as per Second Schedule (multiplier as per Sarla Varma's case, is 14), the total compensation payable to the claimants would be Rs. 1,35,720/- and if we add Rs. 5,000/- towards loss of estate and Rs. 5,000/- towards loss of consortium and Rs. 4,000/- towards funeral expenses, the result would be same and the total compensation payable to the claimants would be around Rs. 1,50,000/- only. I, therefore, consider that the compensation awarded by the Tribunal to the Lrs of deceased Dilsukh Saini was just and proper. I find no ground to interfere with the award passed by the Tribunal on account of compensation. The appeal FAO 210 of 1995 is accordingly dismissed.

6. The award passed by the Tribunal has been assailed in other three appeals by the insurance company, insurer of the taxi, alleging therein that the Tribunal wrongly came to conclusion that the liability of the insurer was unlimited. It is submitted by counsel for insurance company that the injured persons and deceased in this case were passengers in the taxi and the liability of the insurance company towards the passengers, as per insurance policy proved on record by insurance company, was Rs. 15,000/- per passenger and it was not unlimited. It is submitted that the insurance company had proved and exhibited before the Tribunal its policy but the Tribunal wrongly interpreted the terms and conditions of the policy.

7. A perusal of record of Tribunal would show that two insurance companies were involved, one respondent No. 3 and other respondent No. 6 (before Tribunal). Respondent No. 3 was insurance company of the taxi. Respondent No. 3 examined its witness RW3 Ram Lal an Assistant from its office, who proved that the insurance company had issued a notice to insured to produce original policy but the insured failed to produce the original policy despite service of notice Ex.PWR/3/A and insurance company (respondent No. 3) was given liberty to lead secondary evidence. In secondary evidence, respondent No. 3 brought on record the carbon copy of the insurance policy and Schedule of Policy. A perusal of the Schedule of policy issued by insurance company would show that a premium of Rs. 48 was charged for four passengers and it was mentioned in the policy itself

that the liability of the insurance company was limited to Rs. 15,000/- per passenger in respect of any one accident. The learned Tribunal, however, observed that in the policy, including endorsement, it was nowhere mentioned that liability of insurance company per passenger was limited to Rs. 15,000/- and, therefore, rejected the plea of limited liability

8. This Court in *Neeta Trehan and Ors. v. Gopal Krishan and Ors.* FAO 257 of 1991 decided on 17th May, 2010 observed that the liability of insurance company has to be commensurate with premium charged by it since, the premium is specified and prescribed by Advisory Board. There is no dispute in this case that the premium charged for four passengers was Rs. 48/- i.e. Rs. 12 was the premium per passenger. In *New India Insurance Company Ltd. v Shanti Bai and Ors* : I (1995) ACC 667 (SC), the Supreme Court had considered the limitation of liability of insurance company in respect of passengers and observed as under:

9 In the present case, the premium which has been paid is at the rate of Rs. 12/- per passenger and is clearly referable to the statutory liability of fifteen thousand rupees per passenger under Section 95(2)(b)(ii) of the [Motor Vehicles Act, 1939](#). In the present case, there is no special contract between the appellant-company and respondent No. 4 to cover unlimited liability in respect of an accident to a passenger. In the absence of such an express agreement, the policy covers only the statutory liability. The mere fact that the insurance policy is a comprehensive policy will not help the respondents in any manner. As pointed out by this Court in the case of *National Insurance Co. Ltd. v. Jugal Kishore and Ors.* (supra) comprehensive policy only entitles the owner to claim reimbursement of the entire amount of loss or damage suffered up to the estimated value of the vehicle. It does not mean that the limit of liability with regard to third party risk becomes unlimited or higher than the statutory liability. For this purpose, a specific agreement is necessary which is absent in the present case. Reference in this connection may also be made to the case of *M.K. Kunhimohammed v. P.A. Ahmedkutty and Ors.* : 1987 (3) SCR 1149. The appellant company is, therefore, entitled to succeed to the extent that it has been directed to pay to respondents 1 to 3 any amount in excess of Rs. 15,000/-.

9. A perusal of tariff roll would also show that in case of passengers where the premium charged is Rs. 12, the insurance cover provided by insurance company is of Rs. 15,000/-. I, therefore, uphold the plea raised by insurance company. The three appeals i.e. FAO No. 36,37 and 38 of 1996 preferred by insurance company are allowed and I hold that the liability of insurance company was limited to Rs. 15,000/-. Amount in excess to its liability if already paid would be recoverable by it from the owner of the taxi and not from claimants.

10. All the four appeals stand disposed of with above order.

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