

Narmala Devi and ors. Vs Subey Singh and ors.

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Court : Delhi

Decided On : Jun-01-2010

Judge : Mr. Shiv Narayan Dhingra, J.

Acts : minimum liability Act - Section 95

Appeal No. : FAO 108/1996 ; FAO 31/1996

Appellant : Narmala Devi and ors.

Respondent : Subey Singh and ors.

Advocate for Def. : Mr. O.P. Mannie, Adv.

Advocate for Pet/Ap. : Mr. Navneet Goyal, Adv.

Judgement :

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether judgment should be reported in Digest?

1. By this judgment I shall dispose of the above two appeals arising out of an award dated 6th October, 1995 of Motor Accident Claims Tribunal. Appeal No. 31 of 1996 has been filed by claimants seeking enhancement in the compensation and Appeal No. 108 of 1996 has been filed by the owner of offending vehicle assailing the award on the ground that there was no negligence of the driver and

that the Tribunal wrongly held that the liability of the insurance company was limited to Rs. 1,50,000/-. Both these appeals have been contested by the insurance company, who supported the order of the Trial Court on the issue of its liability being limited to Rs. 1,50,000/-.

2. Brief facts necessary for deciding these two appeals are that on 7th June, 1985 Devinder Kumar, police Constable, aged 22 years was hit by Truck No. DEG 3386, while he was crossing Bawana Road at about 6.50 p.m. He got fatal injuries. He remained admitted in hospital from 7 th June, 1985 to 10th June, 1985 when he breathed his last. During trial to prove that the accident had taken place due to negligence of Truck driver, the claimants examined two witnesses PW-1 and PW-2, who described the accident and testified that truck No. DEG 3386 was being driven by truck driver in a rash and negligent manner. After the accident, the deceased was dragged by the truck to some distance. Statement of PW-1 was recorded on the spot by police. The respondents i.e. truck driver and owner in the Written Statement took a plea that accident took place because the deceased was in a hurry to cross the road and he came running on the road and struck against the truck, but no evidence was led to prove this. No suggestion was given to PW-1 during cross examination that the deceased was running on the road at the time of crossing it. However, PW-2, who was given this suggestion, denied the same. The Trial Court, after appreciating entire evidence came to conclusion that the accident took place due to rash and negligent driving of the truck by its driver.

3. The deceased was a Constable in Delhi Police and his salary was proved as Rs. 982.05 per month. The Tribunal in order to calculate the compensation rounded it up to Rs. 1,000/- and made it double i.e. Rs. 2,000/- and after deducting 1/3rd of the amount for his personal expenses, considered the dependency of the claimants around Rs. 1400/- per month. The Tribunal applied a multiplier of 20 and assessed compensation as Rs. 3,36,000/-.

4. The counsel for the claimants pleaded that the Tribunal should have deducted only 1/4th of the amount towards personal expenses as the persons dependent on deceased were four in this case. This plea must be rejected since dependents in this case were wife, one minor son and mother. There is no evidence that father

was dependent on the deceased.

I, therefore, consider that 1/3rd of the income was rightly taken by the Tribunal towards personal expenses of the deceased. Since the Tribunal had taken into consideration future benefits and applied a multiplier of 20, I consider that the compensation awarded by the Tribunal was just and fair. I find no force in this appeal made by the claimants regarding the enhancement of compensation.

5. The plea taken by the owner in the appeal that there was no negligence on the part of the driver also must fail as the respondent had failed to prove negligence of deceased in meeting the accident. I consider that the learned Tribunal had rightly appreciated the evidence of two eye witnesses who were present on the spot and whose presence was fortified from the fact that their names were also there in the police investigation.

6. As far as liability of the insurance company is concerned, the Tribunal has observed that the premium paid in this case was Rs. 240/-. It is observed by the Tribunal that there was no plea of additional premium, over and above Rs. 240/-, having been paid and therefore the liability of insurance company was limited. The tribunal did not refer to the prevalent tariff rates which provided different premiums for "Act only Liability" and "Public Risk Liability". It is only if the premium for Act Only Liability is charged, that liability of the insurance company is limited to Rs. 1,50,000/-. Where premium is charged for "Public Risk Liability", the liability of insurance company cannot be said to be limited to Rs. 1, 50,000/-.

7. The premium as prescribed in tariff schedule at relevant time was as under:

CLASS A(2) GOODS CARRYING VEHICLES-GENERAL CARTAGE (PUBLIC CARRIER) PREMIUM FOR

Licensed Carrying Own Damage Liability Act Capacity of the Cover to the Only Vehicle Public Risks

(a) Not exceeding Rs.340 Plus Rs.120/- Rs.100/- 1016 Kgs. (1 Ton) 1.05% on I.E.V.

(b) Not exceeding Rs.550 Plus 3048 Kgs. (3 Tons) 1.10% on I.E.V. Rs.240/- Rs.200/-

(c) Not exceeding Rs.850 1.10% on 5080 Kgs. (5 Tons) I.E.V. Rs.240/- Rs.200/-

(d) Exceeding 5080 Rs.850 plus Kgs. (5 Tons) Rs.200 for each additional 1016 Rs.240/- Rs.200/- Kgs. (1 Ton) or part thereof plus 1.10 on I.E.V. N.B.: Vide Note to IMT Endorsement No.26 special Exclusions (Commercial Vehicles Policies only)

8. This Court has considered the issue of liability in Neeta Trehan & Ors v. Gopal Krishan & Ors, FAO 257 of 1991, decided on 17 th May, 2010, and observed as under:

14. The issue arises whether this insurance cover obtained by the insured was limited to a liability of Rs.1,50,000/- being the minimum liability for which a vehicle was required to be insured by the owner or this premium covered wider liability. Counsel for the appellants has drawn my attention to the judgment in Veena Pruthi's case (supra) given by the Division Bench of this court where the Division Bench of this court held that if the premium was Rs.125/-, the liability would be limited to Rs.1,50,000/- and not unlimited. On the same logic it is stated that if the premium was Rs.240/- for class A(2) vehicle, the liability of insurance company would be limited to Rs.1,50,000/-.

15. Where obtaining of an insurance cover is made mandatory by statute, the contract is to be interpreted in the light of statutory provisions. In case of motor vehicles, obtaining of an insurance cover by the owners of vehicles is a statutory requirement. Thus, an insurance policy has to be interpreted keeping in view the statutory provisions and the rules of tariff as framed by the Advisory Board. Under the tariff rules, two separate tariffs are provided for 'Act Only Liability' and for 'Public Risk'. It cannot be said that the Advisory Board provided tariff for 'Act Only Liability' as a superfluous phenomenon. The Advisory Board was having in mind that where the owner wants to take an insurance policy covering the minimum liability under Section 95 of the Act, then the premium should be different. If the owner wants wider liability then the premium should be different and that is the

reason that for 'Act Only Liability', a premium of Rs.200/- was provided and for 'Public Risk', a premium of Rs.240/- was provided. Public risk is a wider term and takes into account the entire risk faced by the owner for bringing vehicle on road. If there had been no compulsion under the Act to obtain an insurance policy, the only insurance cover which owner could have obtained from an insurance company for covering public risk would have been this that he would pay Rs.240/- and get the public risk covered. If the Act would have not prescribed any limit, the public risk would naturally have been unlimited. The Act prescribed that every owner of vehicle should get insurance cover covering a minimum amount. Beyond that, the Act did not provide anything. It is under these circumstances that the Tariff Advisory Committee prescribed separate premium for 'Act Only Policy' and separate premium for a 'Public Risk Policy'. I, therefore, consider that the 'Public Risk' premium would cover unlimited amount of risk and would not cover a limited amount of risk.

18. There is another aspect to be kept in mind. When an owner approaches insurance agent for insurance, he is told what would be the tariff payable by him and on payment of tariff, an insurance certificate or cover note is issued. The contract of insurance, thus, stands concluded on receipt of tariff/premium in terms of the tariff schedule as laid down by Advisory Board.

Insurance policy is subsequently mailed to owner by insurance company. If insurance company unilaterally inserts a clause in the policy which is contrary to tariff regulations, such a clause is not binding. All insurance policies are in the shape of one standard performa used for different kinds of coverage. If while sending insurance policy to owner the company official does not score off non-applicable clauses or inserts a limited liability clause which is contrary to the tariff charged from owner, such a clause is not binding.

9. I find that liability of insurance company has been wrongly held by the Tribunal to be limited but the same is not limited as the premium charged by the insurance company was not for "Act Only Liability" but for "Public Risk Liability". The appeal of the owner as well as of the claimants, to this extent, is allowed. It will be responsibility of the insurance company to pay the entire compensation as

awarded by the Tribunal.

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