M/s. Sheikhupura Transport Co. Ltd.

Vs

Northern India Transport Insurance Co.

Civil Appeals Nos. 501 to 504 of 1967

(K. S. Hegde, P. Jagmohan Reddy JJ)

16.03.1971

JUDGMENT

HEGDE, J. -

A passenger bus belonging to the appellant while travelling from Ludhiana to Raikot met with an accident at about 9 a.m. on February 11, 1959. As a result of this accident, two persons namely Bachan Singh and Narinder Nath died on the spot and some others received minor injuries. The legal representatives of the deceased persons applied for compensation before the tribunal appointed under the Motor Vehicles Act. Their claim was opposed by the appellant as well as by the insurance company. Overruling the objections of the appellant as well as the insurance company, the tribunal found that the accident was due to the negligence of the driver and therefore the claimants were entitled to compensation. The tribunal computed the compensation due to the legal representatives of Bachan Singh at Rs. 18,000/-. Out of that sum it determined the compensation due to the widow at Rs. 8,000/-; Rs. 4,000/- to his daughter Harbans Kaur and Rs. 6,000/- to his another daughter Balbir Kaur. But as the daughters had not made their claims within the prescribed time, it disallowed the compensation due to them and only granted a decree in favour of the widow of Bachan Singh. In the case of Narinder Nath, it computed the total compensation payable at Rs. 18,000/- and granted that sum to the legal representatives of Narinder Nath. It directed that the entire sum payable by the appellant should be paid by the insurance company. The insurance company as well as the legal representatives of the deceased persons appealed to the High Court. The High Court enhanced the compensation payable to the legal representatives of both Bachan Singh and Narinder Nath from Rs. 18,000/- to Rs. 36,000/-. It condoned the delay in making the claim by the daughters of Bachan Singh and consequently made the entire sum payable to his legal representatives. It also allowed the appeal of the insurance company and limited the amount payable by the insurance company to Rs. 2,000/- in the case of each one of the deceased persons. Aggrieved by the decisions of the High Court, these appeals have been brought by special leave.

2. Now coming to the enhancement made by the High Court both Bachan Singh and Narinder Nath were 42 to 43 years old at the time of their death; both the tribunal and the High Court have come to the conclusion that Bachan Singh had an annual income of about Rs. 9,000/-. Out of Rs. 9,000/-, Rs. 2,000/- was his income from immovable property; that income continued to accrue to the benefit of his wife and children; therefore only the income other than the income from immovable property which Bachan Singh was earning from his contract was taken into consideration. The High Court has come to the conclusion that Bachan Singh must have been spending at least Rs. 200/- on his family every month. It must be remembered that Bachan Singh had to marry two daughters. Therefore whatever he might have been able to save after meeting the family expenses and his own, the same would have been utilised for the marriage expenses of the daughters. Both the tribunal and

the High Court have computed the loss to the family of Bachan Singh by capitalising the benefit that the family was getting from him during his life-time. The High Court did not accept the computation of the tribunal that Bachan Singh would have spent only Rs. 100/- on his family during his life-time. We think that High Court was right in its conclusion. Taking into consideration the total income of Bachan Singh as well as the requirements of the family, it is reasonable to hold that he would have spent at least Rs. 200/- per month on his family. We cannot also overlook the fact that Bachan Singh in a reasonable possibility would have been able to earn more in the years to come, if he had not died.

3. It is true that Bachan Singh's daughters were not made parties to the petition filed by the widow of Bachan Singh, when she filed that petition, but later on they were impleaded. By the time they were impleaded, the time for filing application for compensation by the daughters had elapsed. It is conceded that under law, the tribunal had jurisdiction to condone the delay in making the claim. The tribunal had not chosen to condone the delay

But the High Court has in its discretion condoned the delay. It is seen that the wife of Bachan Singh was an illiterate lady. She appears to have been quite helpless. In fact in her petition she specifically stated that she had no assistance and therefore she requested the court to give her the assistance of some lawyer. We do not thing that well will be justified in interfering with the discretion exercised by the High Court in condoning he delay in question.

4. In the case of Narinder Nath, the evidence adduced on behalf of the claimants clearly establishes that he was earning about Rs. 6,000/- per year as Commission Agent and that his income was going up from year to year. But yet the tribunal thought that his income could be computed at Rs. 5,000/- per year. There was no basis for such a conclusion. Further the tribunal held that Narinder Nath must have been spending about Rs. 100/- per month on his family. This conclusion is a wholly fallacious one. The evidence disclosed that he was spending on his family about two to three hundred rupees a month. The High Court has arrived at the conclusion that he must have been spending Rs. 200/- per month on his family. Here again it may be noted that he had the prospect of earning more in the years to come and consequently he would have spent more on his family if he had lived longer. On the basis that he was spending about Rs. 200/- per month on his family, the High Court has computed the total compensation at Rs. 36,000/-. It has computed the compensation on the basis of 15 years' purchase of the benefits that were accruing to the family as in the case of Bachan Singh.

5. It was contended on behalf of the appellants that the computation of compensation was excessive and the High Court erred in not giving due deductions for circumstances like the widow remarrying, the possibility of the deceased persons dying they reached the age of 58 years and the children of the deceased persons getting other source of income after they completed their education.

6. Under Section 110-B of the Motor Vehicles Act, 1939 the tribunal is required to fix such compensation which appears to it to be just. The power given to the tribunal in the matter of fixing compensation under that provisions is wide. Even if we assume (we do not propose to decide that question in this case) that compensation under that provision has to be fixed on the same basis as is required to be done under Fatal Accidents Act, 1855 (Act 13 of 1855), the pecuniary loss to the aggrieved party would depend upon data which cannot be ascertained accurately but must necessarily be an estimate or even partly a conjecture. The general principle is that the pecuniary loss can be ascertained only be balancing on the one hand the loss to the claimants of the future pecuniary benefit an on the other any pecuniary advantage which from whatever sources come to

them by reason of the death, that is, the balance of loss and gain to a dependent by the death must be ascertained - see Gobald Motor Service Ltd., and Another v. R. N. K. Veluswami and Others. ((1962) 1 SCR 929 : AIR 1962 SC 1 : (1962) 1 SCJ 206.)

7. The determination of the question of compensation depends on several imponderables. In the assessment of those imponderables, there is likely to be a margin of error. If the assessment made by the High Court cannot be considered to be unreasonable - and we do not think it to be unreasonable - it will not be proper for this Court to interfere with the same. Taking an overall assessment of the facts and circumstances of this case we are unable to agree with the contention of the appellants' counsel that the compensation awarded to the legal representatives of the deceased persons is excessive. Nor are we able to accept the contention that the High Court erred in condoning the delay in the matter of the claim made by the daughters of Bachan Singh.

8. This takes us to the question as to the extent of the liability of the insurance company. The measure of liability of the insurer has to be ascertained with reference to Section 95(2) of the Motor Vehicles Act. Section 94 of that Act requires that every passenger bus should be insured against third party risk. Section 95(1) prescribes the requirements of policies. The provision relevant for our present purpose is Section 95(2). That provision as it stood at the relevant time read thus :

> "Subject to the proviso to sub-section (1) a policy of insurance shall cover any liability incurred in respect of any one accident up to the following limits namely :
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> (a) Where the vehicle is a goods vehicle, a limit of twenty thousand rupees in all, including the liabilities, if any arising under the Workmen's Compensation Act, 1923, in respect of the death of, or bodily injury to employees (other than the driver), not exceeding six in number, being carried in the vehicle;
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> (b) where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment, in respect of persons other than passengers carried for hire or reward, a limit of twenty thousand rupees; and in respect of passengers a limit of twenty thousand rupees in all, and four thousand rupees in respect of an individual passenger if the vehicle is registered to carry not more than six passengers excluding the driver or two thousand rupees in respect of an individual passenger, if the vehicle is registered to carry more than six passengers excluding the driver;
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> (c) where the vehicle is a vehicle of any other class, the amount of the liability incurred."

9. In the present case we are dealing with a vehicle in which more than six passengers were allowed to be carried. Hence the maximum liability imposed under Section 95(2) on the insurer is Rs. 2,000/- per passenger though the total liability may go up to Rs. 20,000/-. This is also the view taken by the High Court. The limit of insurer prescribed under Section 95(2)(b) of the Motor Vehicles Act can be enhanced by any contract to the contrary. Therefore we have to see whether the contract of insurance entered into between the appellant and the insurance company provided for the payment of enhanced amount in case the owner of the bus involved in an accident is required by the decree of a Court to pay any higher amount as compensation. The insurance policy issued by the insurer is marked as Exh. R.W. 3/B. Clause (1) of that policy says :

> "Subject to the limit of liability the Company will indemnify the insured in the event of accident caused by or arising out of the use of the Motor Vehicle in a public place against all sums including claimants costs and expenses which the insured shall become liable to pay in respect of death of or bodily injury to any person."

10. The opening words of this clause "subject to the limit of liability the Company" evidently refer to the limit prescribed under Section 95(2)(b) of the Motor Vehicles Act. No clause in the insurance policy specifically providing for the payment of any amount higher than that fixed under Section 95(2) (b) was brought to our notice. The clause dealing with avoidance of certain terms and the right of recovery reads :

> "Nothing in this policy or any endorsement thereon shall affect the right of any person indemnified by this policy or any other person to recover an amount under or by virtue of the provisions of the Motor Vehicles Act, 1939, Section 96."

11. This clause makes it abundantly clear that the extent of the right of the person indemnified is as prescribed in Section 96 of the Motor Vehicles Act. Under that provision the amount to be recovered is that covered by clause (b) of sub-section (1) of Section 95. Clause (b) of Section 95(1) says :

> "In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which -
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> (b) insures the person or classes of persons specified in the policy to the extent specified in sub-section (2) against any liability which may be incurred by him or them in respect of the death of or bodily injury to any person caused by or arising out of the use of the vehicle in a public place . . . . ."

12. Reading all these provisions together, it is clear that the statutory liability of the insurer to indemnify the insured is as prescribed in Section 95(2). Hence the High Court was right in its conclusion that the liability of the insurer in the present case only extends up to Rs. 2,000/- each, in the case of Bachan Singh and Narinder Nath.

13. For the reasons mentioned above these appeals fail and they are dismissed with costs.

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