

M. K. Kunhimohammed

Vs

P. A. Ahmedkutty and Others

Special Leave Petition (Civil) No. 7534 of 1987

(E. S. Venkataramiah, K. N. Singh JJ)

01.09.1987

ORDER

VENKATARAMIAH, J. -

1. The petitioner was the owner of a bus bearing No. KLD-9327 which was being run as a stage carriage. On July 24, 1978 while the said bus was carrying passengers it met with an accident and Saheeda, who was one of the passengers in the bus, died as a consequence of the said accident. The accident took place according to the Motor Accidents Claims Tribunal, due to the negligence on the part of the driver of the vehicle who had been employed by the petitioner. The Tribunal found that the compensation payable by the petitioner to the legal representatives of Saheeda was Rs. 56,800. It however held that the liability of the insurer to indemnify the petitioner was limited to Rs. 5000 as the policy specifically limited the insurer's liability to what had been provided by section 95(2)(b)(ii)(2) and (4) of Motor Vehicles Act, 1939 (hereinafter referred to as 'the Act'). Aggrieved by the decision of the Tribunal the petitioner filed an appeal before the High Court of Kerala. The said appeal was dismissed. This petition is filed under Article 136 of the Constitution for special leave to appeal against the judgment of the High Court.

2. The contention of the petitioner before this Court is that insurer was liable to indemnify the petitioner up to a limit of Rs. 75,000 under Section 95(2)(b)(ii)(2) of the Act and that the further limit mentioned in Section 95(2)(b)(ii) (4) of the Act was inapplicable to the case of the petitioner. The relevant part of Section 95 of the Act during the relevant time read as follows :

95(2) 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 -

(a) Where the vehicle is a goods vehicle a limit of fifty thousand rupees in all including the liabilities, if any, arising under the Workmen's Compensation Act, 1923 (8 of 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;

(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, -

(i) in respect of persons other than passengers carried for hire or reward, a limit of fifty thousand rupees in all;

(ii) in respect of passenger, -

- (1) a limit of fifty thousand rupees in all where the vehicle is registered to carry not more than thirty passengers;
 - (2) a limit of seventy-five thousand rupees in all where the vehicle is registered to carry more than thirty but not more than sixty passengers;
 - (3) a limit of one lakh rupees in all where the vehicle is registered to carry more than sixty passengers; and
 - (4) subject to the limits aforesaid, ten thousand rupees for each individual passenger where the vehicle is a motor cab, and five thousand rupees for each individual passenger in any other case;
- (c) save as provided in clause (d), where the vehicle is a vehicle of any other class, the amount of liability incurred;
- (d) irrespective of the class of the vehicle, a limit of rupees two thousand in all in respect of damage to any property of a third party.

3. Section 95 of the Act sets out the requirements of the policies of insurance which must be taken by the owners of motor vehicles and the limits of liabilities thereunder. A policy of insurance should subject to the proviso to sub-section (1) of Section 95 of the Act cover any liability incurred in respect of any one accident up to the limits specified in sub-section (2) of Section 95 of the Act. Clause (a) of Section 95(2) of the Act during the relevant time provided that where the vehicle was a goods vehicle the policy should cover the liability up to Rs. 50,000 in all including the liabilities, if any, arising under the workmen's compensation Act, 1923 in respect of death of or bodily injury to the workmen (other than the driver) not exceeding six in number being carried in the vehicle. This clause came up for consideration before this Court in *Motor Owners Insurance Co. Ltd. v. Jadavji Keshavji Modi* ((1982) 1 SCR 860 : (1981) 4 SCC 660 : 1982 SCC (Cri) 28 : (1982) 52 Com Cas 454). In that case this Court held that clause (a) of Section 95(2) of the Act qualified the extent of the insurer's liability by the use of the unambiguous expression "in all" and since that expression was specially introduced by an amendment it must be allowed its full pay. The legislature must be presumed to have intended what it had plainly said. But clause (a) did not stand alone and was not only provision to be considered for determining the outside limit of the insurer's liability. It was necessary to give effect to the words "any one accident" which formed part in the opening part of sub-section (2) of Section 95 of the Act. The court therefore, held that if more than one person was injured during the course of the same transaction each one of the persons must be deemed to have met with an accident. Accordingly, the court held that each of the persons who was entitled to claim compensation under clause (a) of sub-section (2) of Section 95 of the Act was entitled to claim a sum of Rs. 50,000 which was the limit prescribed by the said clause on the date on which the accident, referred to in that case, occurred. The court, however, distinguished the decision of this court in *Sheikhupura Transport Co. Ltd. V. Northern India Transport Insurance Co.* (1971 Supp SCR 20 : (1971) 1 SCC 785 : AIR 1971 SC 1624) which was a case in which clause (b) of sub-section (2) of Section 95 of the Act had arisen for consideration. In doing so the court observed thus : (SCC p. 673 Para 26)

The judgment of the Punjab High Court was brought in appeal to this Court in *Sheikhupura Transport Co. Ltd. V. Northern India Transport Insurance Co.* (1971 Supp SCR 20 : (1971) 1 SCC 785 : AIR 1971 SC 1624) For reasons aforesaid, the judgment in that case is not an authority on the

interpretation of clause (a) of Section 95(2). After setting out the relevant provisions of Section 95(2) at pages 24 and 25 of the Report, Hegde, J. speaking for himself and Jaganmohan Reddy, J. concluded : (SCC p. 789, para 9)

In present case we are dealing with a vehicle in which more than six passenger were allowed to be carried. Hence the maximum liability imposed under Section 95(2) on the insurer is Rs. 2000 per passenger though the total liability may go up to Rs. 20,000.

Towards the end of the judgment, it was observed that reading the provisions contained in Sections 95 and 96 together (SCC pp. 789-90 para 12) "... 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. 2000 each, in the case of Bachan Singh and Narinder Nath". In view of the limit on the insurer's liability in respect of each passenger, the argument on the construction of the words "any one accident" had no relevance and was therefore neither made nor considered by the court. Different considerations may arise under clause (b), as amended by Act 56 to 1969, but we do not propose to make any observations on that aspect of the matter, since it does not directly arise before us.

4. Section 95(2)(b) as it existed before its amendment in 1982 dealt with the limits of the liability of an insurer in the case of motor vehicles in which passengers were carried for hire or reward or by reason of or in pursuance of a contract of employment. Sub-clause (i) of Section 95(2)(b) provided that in respect of death of or injury to persons other than passenger carried for hire or reward a limit of Rs. 50,000 in all was the limit of the liability of the insurer Sub-clause (ii) dealt with the liability in respect of death of or injury to passengers. Under that sub-clause there were two specific limits on the liability of the insurer in the case of motor vehicles carrying passengers. The first limit related to the aggregate liability of the insurer in any one accident. It was fixed at Rs. 50,000 in all where the vehicle was registered to carry not more than thirty passengers, at Rs. 75,000 in all where the vehicle was registered to carry more than thirty but not more than sixty passengers and at Rs. 1,00,000 in all where the vehicle was registered to carry more than sixty passengers. The said sub-clause proceeded to lay down the other limit in respect of each passenger by providing that subject to the limits aforesaid as regards the aggregate liability extended up to Rs. 10,000 for each individual passenger where the vehicle was a motor cab and Rs. 5000 for each individual passenger in any other case. Neither of the two limits can be ignored. In the present case the vehicle in question being a bus carrying passengers for hire or reward registered to carry more than thirty but not more than sixty passengers the limit of the aggregate liability of the insurer in any one accident was Rs. 75,000 and subject to the said limit the liability in respect of each individual passenger was Rs. 5000. We find it difficult to hold that the limit prescribed in Section 95(2)(b)(ii)(4) was only the minimum liability prescribed by law. The amount mentioned in that provision provides the maximum amount payable by an insurer in respect of each passenger who has suffered on account of the accident. This appears to us to be a fair construction of Section 95(2) of the Act as it existed at the time when the accident took place. Our view receives support from at least two decisions of this Court.

5. In *Sheikhupura Transport Co. Ltd. V. Northern India Transport Insurance Co.* (1971 Supp SCR 20 : (1971) 1 SCC 785 : AIR 1971 SC 1624) the motor vehicle involved was a passenger bus. On account of an accident which took place on account of the negligence of the driver of the said vehicles two persons died on the spot. Their legal representative claimed compensation before the Motor Accidents Claims Tribunal. The Tribunal found that the legal representatives of each of the two persons who had died on account of the accident, were entitled to compensation of Rs. 18,000

and directed that the entire sum should be paid by the insurance company. On appeal by the legal representatives as well as by the insurance company the High Court enhanced the compensation payable to the legal representatives of each of the two deceased persons to Rs. 36,000 and also allowed the appeal of the insurance company and limited its liability to the tune of Rs. 2000 in respect of each of the two deceased persons in accordance with Section 95(2)(b) of the Act as it stood at the relevant time which provided that where the vehicle was a vehicle in which passengers were 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 Rs. 20,000 and in respect of passengers a limit of Rs. 20,000 and respect of passengers a limit of Rs. 20,000 in all and Rs. 2000 in respect of an individual passenger if the vehicle was registered to carry more than six persons excluding the driver. The court observed that since in the said case the vehicle was one in which more than six persons were allowed to be carried the maximum liability imposed under Section 95(2) of the Act on the insurer was Rs. 2000 per passenger though the total liability might go up to Rs. 20,000 in a given case where large number of persons had suffered on account of the accident. Accordingly the court affirmed the judgment of the High Court insofar as the question of the liability of the insurer was concerned.

6. Clause (b) of Section 95(2) of the Act again came up for consideration before this Court in *Manjushri Raha v. B. L. Gupta* ((1977) 2 SCR 944 : (1977) 2 SCC 174 : AIR 1977 SC 1158). In that case also the motor vehicle which was involved in the accident was a bus carrying passengers on a route in the State of Madhya Pradesh. The court followed the decision in the case of *Sheikhupura Transport Co. Ltd. v. Northern India Transport Insurance Co.* (1971 Supp SCR 20 : (1971) 1 SCC 785 : AIR 1971 SC 1624) and limited the liability of the insurer to Rs. 2000 as provided by the Act at that time. The court found itself in complete agreement with the observations made by the Kerala High Court in *P. B. Kader v. Thatchamma* (AIR 1970 Ker 241, 251 : 1969 Ker LJ 491 : 1970 Lab IC 1273) and approved the following observations made by the Kerala High Court : (quoted at SCC pp. 180-81, para 12)

It is sad that an Indian life should be so devalued by an Indian law as to cost only Rs. 2000, a part from the fact that the value of the Indian rupee has been eroded and Indian life has become dearer since the time the statute was enacted, and the consciousness of the comforts and amenities of life in the Indian community has arisen, it would have been quite appropriate to revise this fossil figure of Rs. 2000 per individual, involved in an accident, to make it more realistic and humane, but that is made is calculated to remind the law makers that humansism is the basis of law and justice.

7. The court also suggested on its own that instead of limiting the liability of the insurance companies to a specified sum of rupees as representing the value of human life, the amount should be left to be determined by a court in the special circumstances of each case, even in the case where passenger vehicles were responsible for the incident. Fazal Ali, J. who delivered the judgment in the above case further observed at pages 950-951 thus : (SCC p. 180, para 10)

While our legislature has made laws to cover every possible situation, yet it is well nigh impossible to make provisions for all kinds of situations. Nevertheless where the social need of the hour requires that precious human lives lost in motor accidents leaving a trail of economic disaster in the shape of their unprovided for families call for special attention of the law makers to meet this social need by providing for heavy and adequate compensation particularly through insurance companies. It is true that while our law makers are the best judges of the requirements of the society, yet it is indeed surprising that such an important aspect of the matter has missed their attention. Our country can ill-afford the loss of a precious life when we are building a progressive society and if any person

engaged in industry, office, business or any other occupation dies, a void is created which is bound to result in a serious set back to the industry or occupation concerned. Apart from that the death of a worker creates a serious economic problem for the family which he leaves behind. In these circumstances it is only just and fair that the legislature should make a suitable provision so as to pay adequate compensation by properly evaluating the precious life of a citizen in its true perspective rather than devaluing human lives on the basis of an artificial mathematical formula. It is common knowledge that where a passenger travelling by a plane dies in an accident, he gets a compensation of Rs. 1,00,000 or like large sums, and yet when death comes to him not through a plane but through a motor vehicle he is entitled only to Rs. 2000. Does it indicate that the life of a passenger travelling by plane becomes more precious merely because he has chosen a particular conveyance and the value of his life is considerably reduced if he happens to choose a conveyance of a lesser value like a motor vehicle ? Such an invidious distinction is absolutely shocking to any judicial or social conscience and yet Section 95(2)(d) of the Motor Vehicles Act seems to suggest such a distinction. We hope and trust that our law makers will give serious attention to this aspect of the matter and remove this serious lacuna in Section 95(2) (d) of the Motor Vehicles Act.

8. These observations were quoted with approval by this Court in the course of its judgment in *Motor Owners Insurance Co. Ltd. v. Jadavji Keshavji Modi* ((1982) 1 SCR 860 : (1981) 4 SCC 660 : 1982 SCC (Cri) 28 : (1982) 52 Com Cas 454) and while doing the above observations were still languishing in the cold storage of pious wishes. Immediately after the decision in the *Motor Owners Insurance Co. Ltd. v. Jadavji Keshavji Modi* ((1982) 1 SCR 860 : (1981) 4 SCC 660 : 1982 SCC (Cri) 28 : (1982) 52 Com Cas 454) Parliament took steps to amend sub-clause (ii) of clause (b) of Section 95(2) of the Act by Act 47 of 1982. After the said amendment sub-clause (ii) of clause (b) of Section 95(2) of the Act reads thus :

95(2)(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, -

* * *##

(ii) in respect of passengers, a limit of fifteen thousand rupees for each individual passenger.

9. As the law stands today the insurer is liable to pay up to Rs. 15,000 in respect of death of any passenger or any injury caused to him. In the Statement of Objects and Reasons attached to the Bill which ultimately became Act 47 of 1982 it was stated that the limit with respect to an Insurer's liability to a passenger involved in an accident in a public service vehicle was being fixed at Rs. 15,000. After the above amendment, which was intended to increase the liability of the insurer, instead of Rs. 10,000 in the case of each individual passenger where the vehicle was a motor cab and Rs. 5000 for each individual passenger in other cases which were the limits in force immediately prior to the said amendment the liability in respect of an individual passenger is now raised to Rs. 15,000. This clearly demonstrates that Parliament never intended that the aggregate liability of the insurer mentioned in sub-clauses (1), (2) and (3) of Section 95(2)(b)(ii) of the Act would be the liability of the insurer even when one passenger had died or suffered injury on account of an accident. Such liability was always further limited by sub-clause (4) of Section 95(2)(b)(ii) of the Act. Even in the latest Bill, i.e. Bill No. 56 of 1987 which was introduced in the Lok Sabha on May 11, 1987 for the purpose of consolidating and amending the law in regard to the motor vehicles it is proposed by Section 147 to retain the provision regarding the limit of the insurer's liability in respect of vehicles in which passenger are carried for hire or reward or by reason of or in pursuance

of a contract of employment as it was provided by Act 47 of 1982. Section 147(2)(b) (ii) of the Bill reads thus :

147(2) 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 :

* * *##

(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; -

* * *##

(ii) in respect of passengers, a limit of fifteen thousand rupees for each individual passenger,

* * *##

10. Having regard to the large number of motor vehicles accidents which are taking place on roads and also to the fact that a large number of public service vehicles carrying passengers are involved in them, we are of the view that the limit of Rs. 15,000 fixed in the case of the each passenger appears to be still meagre and we hope that Parliament while enacting the Bill into law would take steps to increase the insurer's liability keeping in view the need for providing for adequate compensation as a measure of social security.

11. We should at this stage state that the High Court of Madras in *K. R. Sivagami, Proprietor, Rajendran Tourist v. Mahaboob Nisa Bi* (1981 ACJ 399) has taken the same view as regards the effect of Section 95(2)(b)(ii) of the Act as it stood before its amendment in 1982. It has observed that the said provision specifically provided for two limitations on the liability of the insurer in respect of an accident in which a vehicle carrying passengers was involved, the first limitation being the limitation contained in sub-clauses (1), (2) and (3) of Section 95(2)(b)(ii) which provided that for the aggregate liability of the insurer in an accident and the second limitation being the one contained in sub-clause (4) of Section 95(2)(b)(ii) which provided that subject to the limits aforesaid Rs. 10,000 for each individual passenger where the vehicle was a motor cab and Rs. 5000 for each individual passenger in any other case. *Khalid, J.*, as he then was, of the Kerala High Court has also accepted the same construction of Section 95(2)(b) in *Madras Motor and General Insurance Co. Ltd. by its successor : The United Fire and General Insurance Co. Ltd. v. V. P. Balakrishnan* (1982 ACJ 460).

12. The High Court of Allahabad in *New India Assurance Co. Ltd. v. Mahmood Ahmad* (1984 ACJ 390), the High Court of Bombay in *Shivahari Rama Tiloji v. Kashi Vishnu Agarwadekar* (1985 ACJ 494) and the High Court of Patna in *National Insurance Co. Ltd. v. Shanim Ahmad* (1985 ACJ 749) and in *Tara Pada Roy v. Dwijendra Nath Sen* (1986 ACJ 299) have overlooked the cumulative effect of sub-clauses (1), (2) and (3) and of sub-clause (4) of Section 95(2)(b)(ii) of the Act. They have failed to give effect to Section 95(2)(b)(ii)(4) of the Act. We are of the view that these decisions do not lay down the correct view. We may, however, state here that in *Noor Mohammad v. Phoola Rani* (1984 ACJ 518) and in *Raghib Nasim v. Naseem Ahmad* (1986 ACJ 405) two Division Benches of the Allahabad High Court have construed the provision in question as we have done in this case. The decision of the Single Judge of the Allahabad High Court in *New India Assurance Co. Ltd. v. Mahmood Ahmad* (1984 ACJ 390) is dissented from in the later decision of the Division Bench of

the Allahabad High Court in *Raghib Nasim v. Naseem Ahmad* (1986 ACJ 405).

13. Having regard to the statute as it stood prior to the amendments by Act 47 of 1982 we hold that the insurer was liable to pay up to Rs. 10,000 for each individual passenger where the vehicle involved was a motor cab and up to Rs. 5000 for each individual passenger in any other case. The judgment of the Kerala High Court against which this petition is filed has followed the above construction. We do not find any ground to interfere with it. This petition is therefore, dismissed.

14. In the end we propose to make a few suggestions to the Central Government in respect of certain provisions in Chapters X, XI and XII of the Motor Vehicles Bill No. 56 of 1987 now pending before Parliament which relate to the liability without fault in certain cases, insurance of motor vehicles against third party risks and Claims Tribunals. Sections 140, 147, 161 and 166 in the Motor Vehicles Bill No. 56 of 1987 correspond to Sections 92-A, 95, 109-A and 110-A of the present Act. The Bill does not propose to introduce any change in Sections 140, 147, 161 and 166 of the Bill from what the law is today. They are almost identical with the existing provisions. In Section 140 of the Bill which corresponds to Section 92-A of the Act the liability to pay compensation in the case of death of any person or in the case of permanent disablement of any person is proposed to be retained at Rs. 15,000 and Rs. 7500 respectively in the same way in which the law stand today. Having regard to the inflationary pressures and the consequent loss of purchasing power of the rupee we feel that the amount of Rs. 15,000 and the amount of Rs. 7500 in the above provisions appear to have become unrealistic. We, therefore, suggest that the limits of compensation in respect of death and in respect of permanent disablement, payable in the event of there being no proof of fault, should be raised adequately to meet the current situation. Section 147 in the Bill corresponds to Section 95 of the present Act. Here again the government may consider whether it is necessary to continue the distinction between public service vehicles and other motor vehicles in regard to the liability of the insurer to pay compensation. We also do not find any justification for continuing the distinction between the liability of the insurer to pay compensation to passengers and the liability of the insurer to pay compensation to other third parties under the said provisions. Even among the public service vehicles a distinction is made in the said provisions between vehicles used as goods carriages and vehicles used for the purpose of carrying passengers. The Central Government may consider whether the limits of liability of the insurer now incorporated in Section 147 of the Bill should not be altered suitably. Section 161 in the Bill corresponds to Section 109-A of the present Act which makes special provisions as to compensation payable in cases of hit and run motor accidents. This provision provides for payment of Rs. 5000 in respect of death of any person resulting from a hit and run motor accident and for the payment of Rs. 1000 in respect of grievous injury to a person from a hit and run motor accident. It is a matter of common knowledge that hit and run motor accidents are increasing in number. The society and the State which are responsible for such large number of motor vehicles being put on road should carry also the responsibility of protecting the interests of the innocent victims of hit and run motor accidents. A sum of Rs. 5000 and a sum of Rs. 1000 provided as compensation in respect of death or grievous hurt respectively appears to be highly inadequate. The government may consider whether these figures should not be increased in an appropriate manner. Lastly we come to Section 166 of the Bill which corresponds to Section 110-A of the present Act. This contains the provisions relating to application for compensation to be filed before Claims Tribunals. It is stated therein that where death has resulted from the accident an application for compensation may be made by all or any of the legal representatives of the deceased. The expression 'legal representative' has not been defined in the act and it has led to serious doubts in the course of judicial proceedings. Attention of the government is drawn to decision of this Court in *Gujarat State Road Transport Corporation, Ahmedabad v. Ramanbhai Prabhatbhai* ((1987) 3 SCC 234) and the reference made in the said decision to the Report of the English Royal Commission on

Civil Liberty and Compensation for Personal Injury under the Chairmanship of Lord Person. The government may consider whether it would not be advisable to define the expression 'legal representative' for purposes of making claims before Claims Tribunal where death has resulted from a motor vehicle accident in the same way in which the English law has been amended. Since the Bill is on the anvil of Parliament we feel that this is the appropriate time for the Central Government to reconsider the above issues. A copy of this order may be sent to the Secretary to the Government of India, Ministry of Transport, for information.

</html