ALLAHABAD HIGH COURT

Noor Mohammad

Vs.

Phoola Rani

F.A.F.O. No. 3 of 1976

(A. Banerji and U.C. Srivastava, JJ.)

18.04.1984

JUDGEMENT

A. Banerji, J.

1. This appeal arises out of an Award made by the Motor Accidents Claims Tribunal, Jhansi, dated the 16th Oct. 1975. As a sequel to an accident on the 18th Nov. 1971, one Badri Prasad, a passenger in the vehicle died. The heris of the deceased, Respondents 1, 2, 3 and 3A, filed a claim petition for compensation before the Tribunal. After contest by the two appellants owner and driver of the vehicle and by the Insurance Company, Respondent No.4 the Tribunal allowed the Petition and awarded a compensation in the sum of Rs. 42,000/- apportioning the amount to be paid to each of the heirs. Interest at the rate of six per cent per annum and proportionate costs were also granted. The Tribunal however specified that the liability of the Insurance Company would be Rs. 5,000/- only. Aggrieved, the appellants have filed the present appeal.

2. The relevant facts briefly stated are as follows:- Badri Prasad was a member of a marriage party travelling in Bus No. USU 518 from village Kharela to Garotha on 18-11-1971. Noor Mohammad was the owner of the Bus and the Bus was being driven by Mohammad Ismail. It met with an accident 3-miles from Mauranipur, at about 4.30 p.m. with the result that the passengers but Badri Prasad received serious injuries, inasmuch as he had injuries on his head, chest ribs lungs and fractures on many parts of his body. He was taken to Chhaarpur hospital where on arrival he was declared dead. Hi body was thereafter taken for post-mortem examination. A notice was served on the owner of the vehicle but to no avail. Even the name of the Insurance Company was not disclosed.

3. It was stated in the Claim Petition that Badri Prasad was the sole bread winner of the family and had an income of Rs. 1250/- per month. He left behind his widow respondent No.1 two sons and a daughter, respondents 2,3 and 3A. One of the sons was minor and another was barely 18-years of age. It was also stated that the driver was driving the Bus rashly and in great speed and the accident occurred when the Bus struck a road side tree. Compensation was claimed from the owner, driver as also from the Insurance Company, respondent No. 4.

4. The defense of the appellants was that they were not responsible for the accident or the resultant death of Sri Badri Prasad. The accident was due to a tyre burst caused by a boulder on the road and the bus going out of control. The bus was not being driven rashly, and on the contrary, it was being driven at a normal speed with all care and caution. It was urged that the appellants 1 to 3A were not legal representatives of Sri Badri Prasad deceased; Smt. Leela Pathak was neither the heir nor legal representative of the deceased and she had no right to move the application. She was married and not living with the deceased. The accident was 70 years and he was a liability of the family members because of his old age. The income of the deceased shown in the Claim Petition was excessive and imaginary. Lastly, it was urged that the amount claimed as compensation was excessive and in any event the Insurance company was liable to pay the same.

5. The Insurance Company, defendant-respondent No.4, raised a preliminary objection that the Claim Petition was not made within time and was liable to be dismissed and the liability of the Insurance Company under Section 95 of the Motor Vehicles Act was limited to Rs. 5,000/- only. The Insurance Company further denied that the deceased was earning Rs. 1250/- per month. Rest of the objections of the Insurance Company proceeded more or less on the same ground as that of the other two defendants.

6. The Tribunal during the course of the trial recorded oral evidence and took on record documentary evidence and took on record documentary evidence. Nine witnesses were examined for the appellants and three for the defendants. The Tribunal framed the following two issues:-

"1. Whether the opposite party No. 1 was driving the bus at the seed of 70 miles per hour at the time of the accident ? Was the accident due to his rash and negligent act ? If so, its effect ?
2. To what amount of compensation, if any, and which of the petitioners is entitled and from which opposite parties?"

7. The Tribunal answered issue No. 1 in the affirmative that the Bus was being driven at a speed of 70-miles and the accident took place as a result of negligence and rashness of the driver Mohammad Ismail. On issue No. 2, the Tribunal held that the petitioners are entitled to compensation in the sum of Rs. 42,000/- with interest at 6 per cent. Out of dais sum the Tribunal apportioned Rs. 22,000/- for the widow. Rs. 5,000/- to Shanker Saran, Rs. 10,000/- to Uma Shanker and Rs. 5,000/- to Smt. Leela Pathak. The Tribunal fur held that there were 57 seats in the Bus including those of the driver and the Conductor and consequently the liability of the Insurance Company was limited to Rs. 5000/- along with proportionate interest. The owner of the Bus and the driver have filed the present appeal. The Insurance Company has been arrayed as respondent No. 4.
8. Learned counsel for the appellants argued that the finding on Issue No. 1 viz., that the Bus was being driven at a high speed rashly and negligently was erroneous. Secondly, that the amount of compensation awarded was excessive and thirdly, the conclusion that the Insurance Company was liable to the extent of Rs. 5,000/- with proportionate interest was also erroneous. It was urged that the liability of the insurance Company would be to the extent of Rs. 50,000/- and as such no part of the amount of compensation could be recovered from the appellants.

9. We have heard learned counsel for the appellants as well as respondents at some length. Learned counsel for the appellants could not point out any error of law or fact in the finding arrived at by the Tribunal on issue No. 1. The preponderance of evidence on the point that the vehicle was being driven at a high speed at the time when it met with the accident appears to be consistent and reliable. The Tribunal has referred to all the evidence on the point and in our opinion, considered them properly and come to the right conclusion. We do not feel it necessary to refer to ail the evidence in this judgment, for the point

was not pressed during the arguments. Similarly the quantum of compensation awarded was also not challenged during the course of argument. The principal contention of the learned counsel for the appellants was that no part of the amount of compensation could be realized from the appellants. It was urged that since the liability of the Insurance Company was to the extent of Rupees 50,000/-, the entire sum of Rupees 42,000/- was liable to be recovered from the Insurance Company. For this learned counsel relied on the provisions of Section 95 of the Motor Vehicles Act, 1939 hereinafter referred to as, the Act.,

10. Learned counsel appearing for the Insurance Company vehemently argued that, the liability of the insurance Company was limited to the extent of Rupees 5,000/- for each individual passenger in view of the provisions of Section 95 (2), (b) (ii) (4) of the Act. It was argued that the liability of the Insurance Company was to the extent of Rupees 75,000/- where the vehicle is registered to carry more than thirty but not snore than sixty passengers, but the liability for each individual passenger was limited to Rs. 5,000/- only. It was, therefore urged that the liability of the Insurance Company was only to the extent of Rs. 5,000/- in this case and the award did not call for any interference. When the point was urged we felt it necessary to look at the original deed of Insurance to find out the terms of the contract entered into between the parties. Time and opportunity was granted to the appellants to produce the original Insurance policy or cover, but it could not be produced. Meanwhile, learned counsel for the appellants was elevated to the Bench of this Court and the case remained pending for a considerable period of time to enable the appellants to engage another counsel. Ultimately, the Insurance Company as able to produce a duplicate copy of the deed of Insurance in the present case and it was taken on the record on April 11, 1984.

11. We have examined the duplicate copy of the original Insurance cover and it reveals that the vehicle carrying registration No. USC 518 had the seating capacity of 55, passengers and one driver and was insured for Rs. 65,000/-. This contract was entered into on the 24th May, 1971. The deed also showed that the Insurance cover was subject to Clauses 10, 13, 16, 21, 23, and 26. Clause 13 indicated that the Company would indemnify the insured against liability of Law for compensation for death or bodily injury to any person to the extent of Rs. 5,000/- in respect of any one person and subject to the aforesaid limit in

respect of any one person to Rupees 50,000/- in respect of any number of claims arising out of one cause.

12. It is apparent from the above that in case of death or bodily injury to any person due to accident, the Insurance Company would pay to the insured or any one on his behalf a sum of Rupees 5, 000/- in respect of any person and in any event not more than Rs, 50,000/- in all in respect of several claims arising out of the same accident. This means that not more than a sum of Rs. 5,000/- was liable to be paid by the Insurance Company for the death or bodily injury to one person. In the present case, the claim has been made only on behalf of one person who was fatally injured. There is no dispute that the duplicate copy filed is a true copy and the terms and conditions therein are binding on the parties.

13. A perusal of the provision of Section 95 (2) (b) (ii) (4) of the Act shows that the liability of the Insurance Company was to the extent of Rs. 5,000/- for each individual passenger. The relevant provision may be quoted:-

> " Section 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) omitted.
> (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) (omitted).
> (ii) in respect of passengers-
> (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."

14. It is apparent from the above that the policy of Insurance covered the

liability in respect of any one accident to the extent of ten thousand rupees for each individual passenger where the vehicle is a motor cab and carries passengers. Where the vehicle is not a motor cab the liability to pay compensation for each individual is five thousand rupees. The above provision makes it clear that the liability of the Insurance Company is limited to a maximum of Rs. 5,000/- for death or bodily injury caused to any one passenger. It is true that the amount of compensation could be even less than five thousand rupees each in some cases. Where a large number of persons received injuries or died but the total compensation payable by the Insurance Company was limited it has to be shared amongst all of them. Since the total liability of an Insurance Company in case of a vehicle registered to carry more than 30 passengers but not more than sixty passengers was limited to seventy five thousand rupees sixteen or more claimants would receive less than five thousand rupees each. The Act as well as the contract makes it clear that the upper limit of the liability of the Insurance Company in respect of any individual person who is subject to accident and has either died or received bodily injury is Rs. 5,000/-.

15. In the present case, the claim has been made only on behalf of the person, namely, Badri Prasad, who died in the accident. The maximum amount of liability of the Insurance Company would be thus Rs. 5,000/- only. The Claims Tribunal awarded Rs. 42,000/- out of which the liability of the Insurance Company was adjusted to be an amount of Rupees 5,000/- with proportionate interest at 6 per cent. We do not find any error of law in interpreting the provisions of Section 95 (2) of the Act and in making the award against the Insurance Company by the Tribunal. All the contentions raised on behalf of the Appellants in this regard are without any substance.

16. For the reasons indicated above this appeal has no merits and must fail. We accordingly dismiss the appeal with costs.

Appeal dismissed.