

# RAJASTHAN HIGH COURT

Natha Lal

Vs.

Lala @ Dhaval

S.B. Civil Misc. Appeal No. 163 of 2007 and 5 others  
(Prakash Tatia, J.)

28.11.2008

## JUDGMENT

### **Prakash Tatia, J.**

1. In one unfortunate accident, 6 family members of appellant died and, therefore, 6 claim petitions were filed before the Motor Accident Claims Tribunal, which was decided by common award dated 2nd June, 2006 by the Motor Accident Claims Tribunal (Court of Addl. District & Sessions Judge (Fast Track) No. 5, Udaipur Headquarter Salumbar). The tribunal awarded compensation of Rs. 4,02,000/- in total on account of death of 6 persons out of whom 4 were minor sons and daughters of the appellant, one was wife of the appellant and one was the mother of the appellant. The appellant, therefore, has preferred this appeal for enhancement of the compensation amount.

2. Brief facts of the case are that on 11th July, 1994 deceased Smt. Vimla, Miss Parisha, Miss Hetal, Master Hitesh, Master Nilesh and Smt. Ganga were travelling in jeep No. GJ-9B-2234 alongwith the appellant. The jeep owner Ashok Kumar was driving the jeep and as per the allegation of the claimant, Ashok Kumar driven the jeep rashly and negligently and the jeep went out of control and fell in the Well, which was near the side of the road after breaking the boundary wall of the Well resulting into death of 6 persons named above. Subsequently, the owner-cum-driver Ashok Kumar also died leaving behind his only minor son Lala.

3. For this accident, FIR No. 03/1994 was registered in Police Station Pahada, however under Section 174 Criminal Procedure Code In the said First Information Report under Section 174 Criminal Procedure Code Final Report was submitted in court.

4. The claimant being father of four minor children and being husband of Smt. Vimla and as son of Smt. Ganga submitted 6 claims petitions namely, Claim Case No. 287/2005, due to death of Miss Hetal, age 3 years claiming compensation of Rs. 6,12,000/-, Claim Case No. 286/2005, due to death of appellant's daughter Miss Parisha, age 7 years, claiming compensation of Rs. 7,12,000/-. Claim Case No. 288/2005 due to death of Master Hitesh, age 10 years claiming compensation of Rs. 5,62,000/-, Claim Case No. 289/2005 due to death of Master Nilesh, age 5 years claiming compensation of Rs. 6,62,000/-, Claim Case No. 290/2005 due to death of claimant's appellant's mother Smt. Ganga, age 65 years claiming Rs. 3,57,000/-, Claim Case No. 285/2005 due to death of appellant's wife Smt. Vimla, age 34 years claiming compensation of Rs. 7,82,000/-

5. The claim was contested by the respondent Insurance Company and was not contested by the respondent Lala - son of owner-cum-driver of the vehicle. The respondent Insurance Company submitted that it was not a case of accident, but it was an act of God and case under Section 174 Criminal Procedure Code was registered and, therefore, there was no negligence on the part of the driver of the vehicle. It is also submitted that more persons than the capacity of the vehicle were travelling in the vehicle at the time of accident and thereby, the owner of the vehicle breached the condition of the Policy. It is also submitted that was the rainy day and the Well was sub-merged and the driver could not know about the Well and because of this act of God, the accident occurred resulting into death of 6 persons.

6. Before the tribunal Natha alone gave his statement and produced the copies obtained from the Police challan, which includes the copy of the Insurance Policy and the driving license of the deceased Ashok Kumar and site report. No evidence was produced by any of the non-claimants respondents. The tribunal after considering the plea of the respondent of act of God and documentary evidence, held that the driver of the vehicle Ashok Kumar was negligent and driving the vehicle rashly, which caused the death of 6 persons. However, while granting compensation, the tribunal was of the view that in peculiar facts of the case it is not appropriate to assess and award to the separate compensation for each death to the appellant and the consolidated compensation will be just and proper. The tribunal assessed the income of the mother, wife of the appellant, two minor sons and two minor daughters as Rs. 3,000/- per month consolidated and deducted Rs. 1,000/- per month with the help of Second Schedule appended to the Motor Vehicles Act, 1988 held that the appellant is entitled to compensation of Rs. 2,000/- per month on account of death of 6 persons referred

above. The tribunal applied the multiplier of 15 and awarded compensation of Rs. 3,60,000/- on this count. In addition to above, the tribunal awarded Rs. 5,000/- in each case on account of loss of love and affection etc of mother, wife, sons and daughters of the appellant, which is in total Rs. 30,000/-. Rs. 2,000/- as funeral expenses for each dead person amounting to Rs. 12,000/- were also awarded. In total compensation awarded to the appellant was Rs. 4,02,000/-.

7. Learned counsel for the appellant submitted that the tribunal committed serious error of fact and law in awarding compensation which is 1/6th of the total compensation suffered by the appellant. It is submitted that the tribunal virtually consolidated 6 persons into one person merely because they all died in one accident. According to learned counsel for the appellant, the consolidated income of 6 persons could not have been determined Rs. 3,000/- per month only when the schedule appended to the Motor Vehicles Act itself prescribed the compensation by accepting the monthly income as Rs. 3,000/- per month for one person and this compensation is being allowed even in the cases where the tribunal as well as the court finds that there is no positive evidence of income of the deceased and for loss to the claimant. It is also submitted that the unfortunate circumstance of death of 6 persons of appellant's family in one accident cannot be a fortuitous circumstance for the respondents.

8. Learned counsel for the respondent Insurance Company submitted that in view of the fact that all persons including the insured died together in one accident, therefore, in view of Section 155 of the Motor Vehicles Act it is not the case of death of the owner-driver-insured Ashok Kumar after the death of other persons so as to exclude the application of *maxim actio personalis motitur cum personan*. It is also submitted that Section 155 of the Motor Vehicles Act clearly says that when death of insured occurs after happening of accident giving rise to claim under Motor Vehicles Act then that death of insured shall not be a bar to the survival of any cause of action arising out of the said accident against the insurer. Therefore, claim against insured is maintainable only if insured was alive at the time of accrual of cause of action. The insurer also covers risk and liability of insured, With the death of insured, the contract for insurance came to an end and insured had no one to reimburse. It is also submitted that with the death of insured, the contract of insurance came to an end and, therefore, the Insurance Company cannot be asked to pay the compensation amount. It is also submitted that the respondent Lala has been impleaded as party in the claim petition as son of the deceased owner-cum-driver of the vehicle, but he was not registered owner of the vehicle and the Insurance Company has not covered the risk of the owner

of the vehicle, who is not registered owner. It is also submitted that in a case of simultaneous death i.e., death of the insured with the death of victim, the Insurance Company cannot be held liable to pay the compensation to the claimants claiming compensation due to death of other victim travelling with insured.

9. I considered the submissions of learned counsel for the parties and perused the record.

10. The plea raised by the respondent insurance Company as respondent in this appeal on the basis of Section 155 of Motor Vehicles Act is based on question fact and not a question of law. The plea is dependent upon the fact that when insured died? Whether in the accident insured died before the other victim died or insured died after the death of other victims. If insured died after the accident, then as per Section 155 of the Act of 1955 itself the death of insured shall not be bar to survival of cause of action arising out of accident against the insurer. The special provision has been made in the beneficial provision of law in the Motor Vehicles Act, 1988 to over come from the hardship which otherwise would have been due to general principle of law of end of personal cause of action with the death of wrong doer. Therefore, where insured dies after the accrual of cause of action on account of accident the cause of action survives even after the death of insured and insurer is liable to satisfy the liability of insured even after insured's death. So far as factual aspect is concerned, there is no such defiance of the insurer that the driver of the vehicle, who was also owner of the vehicle and who took the Insurance Policy died before 6 persons died in the accident because of which claim petitions have been filed by the appellant. Had it has been the defiance of the insurer, it could have been adequately met by the claimant as otherwise also it established from the challan papers of criminal case that the owner of the vehicle (insured) died after all 6 other persons died. In the claim petitions it is clearly mentioned that all the 6 victims - the appellant's mother, wife, two son's and two daughters died on the spot. As per the report submitted by the Police after registering criminal case, Ashok Kumar, the owner of the vehicle and the appellant two alone came out alive from the Well. Section 155 of the Motor Vehicles Act in fact is exception to Section 306 of the Indian Succession Act and specific provision recognizing liability of the insurer in a case where after happening of accident if the insured dies, therefore, in fact, the Section 155 of the Motor Vehicles Act makes the insurer fully liable to reimburse/pay the compensation to the claimants in the facts of this case as insured died after the death of all 6 victims. There is no force in the plea taken by the Insurance Company as respondent in appeal preferred by the appellant

for enhancement of the compensation and, therefore, rejected on merit.

11. In view of this fact situation that insured died after the death of the other victims in the accident, the contract of insurance come to an end and only after the death of the other victims travelling in the same vehicle in which insured was travelling, therefore, cause of action accrued for the claimant to claim compensation from the insured during life time of the insured and by virtue of Section 155 of the Motor Vehicles Act, there is no bar against raising claim for compensation against the estate of the deceased and insurer. The estate of deceased is represented by his natural heir and who has been impleaded as party non-claimant in the claim petition. His capacity as legal representative is two fold, one to represent the estate of the deceased so as to enable the tribunal to pass a binding decree/award to bind the estate of deceased so that in case necessity arises, the claimant may recover the award amount from the estate of the deceased, which may be in the hands of the heir or in the hands of legal representative of the deceased. It is not a case of coverage of risk of deceased's legal representative or heir, but its a case where the liability of deceased attached with deceased's estate will be affected and, therefore, the respondent Lala - heir and legal representative of deceased was rightly impleaded as party in the claim petition, which has been misunderstood by the Insurance Company and therefore, it has been argued that the claimant is seeking enforcement of Insurance Policy against deceased insured's legal heir or legal representative.

12. In this unfortunate accident 6 family members of the appellant Natha Lal died, who are his mother, wife, two minor sons and two daughters. It is true that the compensation is required to be awarded appropriate and if it is found that the compensation by any structure formula or by adopting usual mode of calculation will be excessive, the only reasonable compensation can be awarded. There appears to be no reason for awarding consolidated one compensation for the death of 6 persons merely because they all died in one accident. The tribunal without assigning any reason awarded virtually consolidated 6 deaths as one for the purpose of assessing compensation for appellant, which appears to be because of the reason that all amount will go in the hands of one person. It is not the fortuitous circumstance for the claimant appellant nor it can be made fortuitous circumstance for the respondent because of the death of 6 persons in one accident. The claimant if is entitled to compensation, he should be given and awarded compensation for which he is legally entitled. I do not find any exception circumstance because of which the compensation to appellant can be denied when he is entitled to only minimum compensation, which

is normally awarded as per the schedule appended to the Motor Vehicles Act, 1988. Some deductions have been made while awarding compensation due to death of two daughters but for that, the reasoning's are applied. In the present case, the accident occurred in the year 1994 and at that time claimant was of the age of 40 years as per the learned counsel for the appellant and the claim petitions have been filed in the year 2001. Looking to the age of four children of the appellant, the future was uncertain or at least had some important material facts to effect the dependency benefit of the appellant. Two victims deceased were the daughters of the appellant with the age of 3 years and 7 years. They would have married after some time, may be after some years and they would have gone to their in-laws house. The appellant would have to incur more money for their marriages. The two other victims are sons of the appellant, who were of the age of 5 and 10 years at the time of their death. They would have grown and would have started earning to support the appellant and at the same time, would have married after some time to have their own families. In view of the above reasons, it would be appropriate to assess the loss to the appellant by adopting the formula applied by the tribunal itself, but not as single income for 6 persons but as individual income of the deceased with the appropriate deductions. For the claim arising out of death of Miss Parisha, Miss Hetal, their notional income is assessed. Rs. 3,000/- per month and 1/3rd is deducted out of it and, therefore, the loss of income would be Rs. 2,000/- per month and Rs. 24,000/- per annum. Multiplier of 15 is applied and the total loss of income to can be assessed to Rs. 3,60,000/- for each daughter and for two daughters comes to Rs. 7,20,000/-. The reasonable deduction in peculiar facts of the case from above amount can be 50% of the above amount because of the reason that two daughters would have gone to their in laws, house as well as the appellant would have suffered the expenses for their marriage. Therefore, on account of death of Miss Parisha, age 7 years and Miss Hetal age 3 years, the appellant is held entitled to Rs. 1,80,000/- in each case.

13. So far as claim on account of death of Master Hitesh and Master Nilesh age 10 and 5 years respectively are concerned, there Is no reason to give any deduction, which was given in the cases of death of two daughters of the appellant, but here the claimant is the father and not a lenient decedents of the victim. The father was of the age of 40 years at the time of death of his two sons and the sons Were of the age of 10 and 5 years only. Therefore, a longer period was left for the expenses to be incurred for these two minor children before they could have started earning. Therefore, it will be appropriate to award lump sum compensation of Rs. 2 lacs in each claim case i.e., claim case arising out of death of two sons of the appellant, which will form total

compensation of Rs. 4 lacs for appellant.

14. For appellant's mother Smt. Ganga, who had age of 65 years, the notional income can be assessed to Rs. 10,000/- per annum and looking to the age it will be appropriate to award lump sum compensation of Rs. 1 lac to the appellant.

15. The appellant's wife was of the age of less than 40 years. Her notional income is assessed Rs. 3,000/- per month and other deduction of 1/3rd loss to the appellant is assessed to Rs. 2,000 x12x15 amounting to Rs. 3,60,000/-.

16. In view of the above reasons, the appeals are allowed and it is held that appellant shall be entitled to compensation of Rs. 1,80,000/- and Rs. 1,80,000/- in each claim case Nos. 287/2005 and 286/2005 due to death of his two minor daughters Miss Parish and Miss Hetal, and Rs. 2 lacs in each claim case due to death of his two minor sons Master Hitesh and Master Nilesh (in claim case Nos. 288/2005 and 289/2005), Rs. 1 lac in claim case No. 290/2005 due to death of his mother Smt. Ganga and Rs. 3,60,000/- in claim case No. 285/2005 due to death of his wife Smt. Vimla. Rest of the amount awarded on other count by the tribunal shall remain as it is. The claimant shall be entitled to the interest over enhanced amount @ 6% per annum from the date of filing of claim petition.

17. No order as to costs.