

## **Oriental Insurance Co. Ltd vs Syed Ibrahim & Ors on 17 September, 2007**

**Equivalent citations: AIR 2008 SUPREME COURT 103, 2007 AIR SCW 6197, 2007 (6) AIR KAR R 481, 2008 (2) SCC(CRI) 57, 2008 (1) ANDH LD 12, (2007) 4 JCR 205 (SC), 2007 (6) MADLJ1477, 2007 (11) SCALE 184, 2007 (11) SCC 512, (2007) 59 ALLINDCAS 243 (SC), 2007 (59) ALLINDCAS 243, 2007 (4) MADLW 782, (2007) ILR (KANT) 4862, (2007) 4 TAC 385, (2007) 2 WLC(SC)CVL 797, (2007) 4 ACJ 2816, (2007) 11 SCALE 184, (2007) 69 ALL LR 315, (2007) 4 KER LT 319, (2007) 38 OCR 657, (2007) 6 SUPREME 574, (2007) 4 RECCIVR 351, (2008) 1 ACC 406, (2007) 4 ALL WC 3556, (2008) 1 KANT LJ 63**

**Author: Arijit Pasayat**

**Bench: Arijit Pasayat, Lokeshwar Singh Panta**

CASE NO.:

Appeal (civil) 4308 of 2007

PETITIONER:

Oriental Insurance Co. Ltd

RESPONDENT:

Syed Ibrahim & Ors

DATE OF JUDGMENT: 17/09/2007

BENCH:

Dr. ARIJIT PASAYAT & LOKESHWAR SINGH PANTA

JUDGMENT:

**J U D G M E N T** CIVIL APPEAL NOS. 4308 OF 2007 (Arising out of SLP (C) Nos.8499-8500 of 2005) Dr. ARIJIT PASAYAT, J.

1. Leave granted.

2. Challenge in these appeals is to the order passed by a learned Single Judge of the Karnataka High Court. Appeal was preferred before the High Court questioning correctness of the judgment and Award dated 18.01.2000 passed by the Motor Accidents Claims Tribunal, Shimoga (in short the 'Tribunal'). The owner of lorry bearing registration No.MYJ- 6666 had filed an appeal questioning correctness of the order passed by the Tribunal fixing the liability on him to pay compensation awarded. A cross-objection was filed by the complainants questioning the correctness of the compensation granted. The claim petition related to an accident which occurred on 20.11.1994 when

a child aged seven years, who was the son of claimants, had lost his life. The claimants had filed the cross objections for enhancement of the compensation. Considering the materials on record, the Tribunal awarded a sum of Rs.51,500/- as compensation. The High Court by the impugned order enhanced the sum to Rs.1,52,000/-. The appellant (hereinafter referred to as the 'insurer') was directed to indemnify the award. Insurer's stand before the Tribunal and the High Court was that the driver driving the lorry was not authorized to drive the lorry because he was only licenced to drive a Light Motor Vehicle (in short the 'LMV'). When the accident took place, i.e. on 20.11.1994, the driver was authorized to drive LMV. Subsequently, on 11.10.1996 at the time of renewal of licence it was endorsed that he was authorized to drive Heavy Goods Vehicle (in short the 'HGV'). The High Court was of the view that the owner is not expected to know as to what type of licence the driver possessed. If the driver was authorized to drive one type of vehicle and was driving another type of vehicle, it cannot be said that there was wilful breach on the part of insured. The insurer was required to prove that there was violation of terms and conditions of the policy and wilful breach on the part of insured as he was holding the licence to drive any type of vehicle for which he was not licenced. It was noted by the High Court that the owner of the vehicle may not be knowing as to what was the nature of the licence held by the driver. Accordingly, the quantum of compensation was enhanced and the appellant was held to be liable to pay the entire compensation.

3. Learned counsel for the appellant-insurer submitted that the quantum, as fixed, is extremely high and is without any basis. Further the insured was the father of the driver and it is hard to believe that he did not know as to what type of vehicle the driver was authorized to drive. Reliance is placed on National Insurance Co. Ltd. v. Swaran Singh (2004 (3) SCC

297) to contend that on the facts established and proved appellant has no liability.

4. Learned counsel for the respondents submitted that a very young child lost his life and the insurance company should not take such technical stand.

5. In State of Haryana and Anr. v. Jasbir Kaur and Ors. (2003(7) SCC 484) it was held as under:

"7. It has to be kept in view that the Tribunal constituted under the Act as provided in Section 168 is required to make an award determining the amount of compensation which is to be in the real sense "damages"

which in turn appears to it to be "just and reasonable". It has to be borne in mind that compensation for loss of limbs or life can hardly be weighed in golden scales. But at the same time it has to be borne in mind that the compensation is not expected to be a windfall for the victim. Statutory provisions clearly indicate that the compensation must be "just" and it cannot be a bonanza; not a source of profit; but the same should not be a pittance. The courts and tribunals have a duty to weigh the various factors and quantify the amount of compensation, which should be just. What would be 'just' compensation is a vexed question. There can be no golden rule applicable to all cases for measuring the value of human life or a limb. Measure of damages cannot be arrived at by precise mathematical calculations. It would depend upon the particular facts and circumstances, and attending peculiar or special features, if any. Every method or mode adopted for assessing

compensation has to be considered in the background of 'just' compensation which is the pivotal consideration. Though by use of the expression "which appears to it to be just" a wide discretion is vested in the Tribunal, the determination has to be rational, to be done by a judicious approach and not the outcome of whims, wild guesses and arbitrariness. The expression 'just' denotes equitability, fairness and reasonableness, and non-arbitrary. If it is not so it cannot be just. (See *Helen C. Rebello v. Maharashtra SRTC* (1999(1) SCC 90))

6. There are some aspects of human life which are capable of monetary measurement, but the totality of human life is like the beauty of sunrise or the splendor of the stars, beyond the reach of monetary tape-measure. The determination of damages for loss of human life is an extremely difficult task and it becomes all the more baffling when the deceased is a child and/or a non-earning person. The future of a child is uncertain. Where the deceased was a child, he was earning nothing but had a prospect to earn. The question of assessment of compensation, therefore, becomes stiffer. The figure of compensation in such cases involves a good deal of guesswork. In cases, where parents are claimants, relevant factor would be age of parents.

7. In case of the death of an infant, there may have been no actual pecuniary benefit derived by the parents during the child's life-time. But this will not necessarily bar the parents' claim and prospective loss will find a valid claim provided the parents establish that they had a reasonable expectation of pecuniary benefit if the child had lived. This principle was laid down by the House of Lords in the famous case of *Taff Vale Rly. V. Jenkins* (1913) AC 1, and Lord Atkinson said thus:

".....all that is necessary is that a reasonable expectation of pecuniary benefit should be entertained by the person who sues. It is quite true that the existence of this expectation is an inference of fact - there must be a basis of fact from which the inference can reasonably be drawn; but I wish to express my emphatic dissent from the proposition that it is necessary that two of the facts without which the inference cannot be drawn are, first that the deceased earned money in the past, and, second, that he or she contributed to the support of the plaintiff. These are, no doubt, pregnant pieces of evidence, but they are only pieces of evidence; and the necessary inference can I think, be drawn from circumstances other than and different from them." (See *Lata Wadhwa and Ors. v. State of Bihar and Ors.* (2001 (8) SCC 197))

8. This Court in *Lata Wadhwa's* case (supra) while computing compensation made distinction between deceased children falling within the age group of 5 to 10 years and age group of 10 to 15 years.

9. In cases of young children of tender age, in view of uncertainties abound, neither their income at the time of death nor the prospects of the future increase in their income nor chances of advancement of their career are capable of proper determination on estimated basis. The reason is that at such an early age, the uncertainties in regard to their academic pursuits, achievements in career and thereafter advancement in life are so many that nothing can be assumed with reasonable certainty. Therefore, neither the income of the deceased child is capable of assessment on estimated basis nor the financial loss suffered by the parents is capable of mathematical computation.

10. In view of what has been stated in Swaran Singh's case (supra) we are of the view that the appellant insurer was not liable to indemnify the award. However, at this juncture it would be relevant to take note of paragraphs 11 and 19 of National Insurance Co. Ltd. v. Kusum Rai and Others [2006(4) SCC 250]. The quantum, as awarded by the Tribunal and deposited pursuant to the order of this Court dated 29.4.2005, is maintained. The claimants shall be permitted to withdraw the amount so deposited along with accrued interest.

11. The appeals are allowed to the aforesaid extent with no order as to costs.