Sheikhupura Transport Co. Ltd vs Northern India Transport Insurance Co on 16 March, 1971

Equivalent citations: 1971 AIR 1624, 1971 SCR 20, AIR 1971 SUPREME COURT 1624

Author: K.S. Hegde

Bench: K.S. Hegde, P. Jaganmohan Reddy

PETITIONER:
SHEIKHUPURA TRANSPORT CO. LTD.

Vs.

RESPONDENT:
NORTHERN INDIA TRANSPORT INSURANCE CO.

DATE OF JUDGMENT16/03/1971

BENCH:
HEGDE, K.S.
BENCH:
HEGDE, K.S.
REDDY, P. JAGANMOHAN

CITATION:
1971 AIR 1624 1971 SCR 20
CITATOR INFO :
F 1977 SC1158 (11)
D 1981 SC2059 (20,26)
RF 1987 SC2158 (3,5,6)

ACT:
Motor Vehicles Act, 1939 s. 110B and s. 95(2)(b)--Principles of compensation to be granted to legal representatives of person dying in accident under s. 110B--Maximum amount of liability of insurer under s. 95(2)(b).

HEADNOTE:
A passenger bus belonging to the appellant met with an accident, as a result of which two persons B and N died on the spot. 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. 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 B at Rs. 18000. Out of that sum determined the compensation due to the widow at Rs. 8000; the compensation due to one of his daughters was fixed at Rs. 4000 and to the other at Rs. 6000. But as the daughters had not made their claims during the prescribed time, the Tribunal disallowed the compensation due to them and granted a decree in favour only of B's widow. In the case of N the tribunal computed the total compensation payable at Rs. 18000 and granted that sum to his legal representatives. 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 B and N from Rs. 18000 to Rs. 36000. It condoned the delay in making the claim by the daughters of B and 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. 2000 in the case of each of the deceased persons in accordance with s. 95(2) of the Motor Vehicles Act. By special leave appeals were filed in this Court. The appellant challenged (i) the amount of compensation as granted by the High Court, (ii) the condonation of delay in the case of B's daughters and (iii) the limiting of the amount payable by the insurance company to Rs. 2000.

HELD: (i) Under s. 110B of the Motor Vehicles Act, 1939 the tribunal is required to fix such compensation as appears to it to be just. The power given to the tribunal is wide. The pecuniary loss to the aggrieved party would depend on 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 by balancing on the one hand the loss to the claimants of the future pecuniary benefit, and on the other any pecuniary advantage which from whatever sources comes to them by reasons of the death, that is, the balance of loss and gain to a dependent by the death must be ascertained. [25B-D]

Gobald Motor Service Ltd. v. R. M. K. Veluswami & Ors., [1962] 1 S.C.R. 929, relied on.

The determination of the question of compensation depends on several imponderable. In the assessment of those imponderables there is likely to be a margin of error. If the assessment made by the High Court cannot

21

be considered to be unreasonable-and in the present case it could not be said 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 the present case it could not be held that the compensation awarded to the legal representatives of the deceased persons by the High Court was excessive. [24E]

(ii) By the time B's daughters were impleadedthe time for filing applications for compensation by them had elapsed.It was conceded that 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. The wife of B was an illiterate lady ; she was helpless and without assistance. In the circumstances this Court would not be justified in interfering with the discretion exercised by the High Court in condoning the delay in question. [23C-D]

(iii)Reading together the provisions in ss. 95(1) (b), 95(2) and 96 of the. Motor Vehicles Act it is clear that the statutory liability of the insurer to indemnify the insured is as prescribed in s. 95(2). Under that section the maximum liability on an insurer in the case of a vehicle carrying more than six passengers is Rs. 2000 per passenger and the maximum total liability is Rs. 20000. In the, present case the vehicle was one in which more than six passengers were allowed to be carried. The limit of liability of the insurer prescribed under s. 95(2) (b) can be enhanced by a contract to the contrary. No clause of the policy issued to the appellant in the present cast provided for the payment of any amount higher than that fixed by s. 95(2) (b). The High Court was therefore right in its conclusion that the liability of the insurer in the present case only extended up to Rs. 2000. [24G, 25D, 26B, D]

JUDGMENT:

CIVIL APPELLATE JURISDICTION' Civil Appeals Nos. 501 to 504 of 1967.

Appeals from the judgments and orders dated December 15, 1965 of the Punjab High Court in First Appeals from Order Nos. 145 and 155 of 1960 and 6 and 7 of 1961.

S. K. Mehta, K. L. Mehta and K. R. Nagarala for the appellant(in all the appeals).

Hardev Singh and H. L. Kapur, for respondent No. 1 (in C. A. Nos. 501 and 502 of 1967) respondent No. 4 (in C. A. No. 503/67) and respondent No. 10 (in C. A. No. 504 of 1967).

S.K. Bagga, B. K. Bagga and S. Bagga, for respondent Nos. 2 (in C. A. No. 501 of 1967) respondent Nos. 1 to 8 (in C. A. No. 504 of 1967) respondent No. 2 (in C. A. No. 502 of 1967 and respondents Nos. 1 and 2 (in C. A. No. 503 of 1967).

The Judgment of the Court was delivered by Hegde, J. A passenger bus belonging to the appellant while travelling from Ludhiana to Rajkot 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 decision of the High Court, these appeals have been brought by special leave. 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 utilized 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 capitalizing 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 the 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 all reasonable possibility would have been able to earn more in the years to come, if he had not died.

It is true that Bachan Singh's daughters were not made parties to the petition filed by the widow of Bachan Singh, when she field 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 hag 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 think that we will be justified in interfering with the discretion exercised by the High Court in condoning the delay in question. 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.

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 before they reached the age of 58 years and the children of the deceased persons getting other source of income after they completed their education.

Under S. 110B 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 provision 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 by balancing on the one hand the loss to the claimants of the future pecu- niary benefit and 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 anr. v. R.N.K. Veluswami and ors.(1) The determination of the question of compensation depends on several imponderables. In the assessment of those imponder- ables, 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 appellant's 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. 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 S. 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 S. 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:-
>
> (a) where the vehicle is a goods vehicle, a limit of twenty thousand rupees in all including the liabilities, if any, (1) [1962]1 S. C. R. 929.

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.

(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;

(c) where the vehicle is a vehicle of any other, class, the amount of the liability incurred."

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 S. 95(2) on the insurer is Rs. 2,000/per passenger though the total liability may go upto Rs. 20,000/-. This is also the view taken by the High Court. The limit of insurer prescribed under S. 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 amo- unt 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 ex- penses which the insured shall become legally liable to pay in respect of death of or bodily injury to any person."

The opening words of the clause "subject to the limit of liability the Company" evidently refer to the limit prescribed under S. 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 S. 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".

This clause makes it abundantly clear that the extent of the right of the person indemnified is as prescribed in S. 96 of the Motor Vehicles Act. Under that provision the amount to be recovered is that covered by cl. (b) of sub-s. (1) of S.

95. Clause (b) of S. 95(1) says:

> "In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which-
>
> (b)insures the person or classes of person 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.....

Reading all these provisions together, it is clear- that the statutory liability of the insurer to indemnify the insured is as prescribed in. S. 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. For the reasons mentioned above these appeals. fail and. they are dismissed with costs.

G.C. Appeals dismissed.