SMT. RAJENDRA KUMARI & ANR.

v.

SMT. SHANTA TRIVEDI & ORS.

FEBRUARY 20, 1989

[MURARI MOHON DUTT AND T.K. THOMMEN, JJ.]

Motor Vehicles Act, 1939: Sections 93, 94 and 95—Motor accident—Fatal—Claim—Reasonableness of compensation—Computation of—Insurance Company's liability admitted—Whether incumbent on Insurance Company to file policy.

Appellants 1 and 2 are the wife and daughter respectively of the deceased who died in a road accident, while travelling in a hired car, which collided with a truck. He died on the spot. At the time of his death he was 25.

Appellants filed a petition before the Motor Accident Claims Tribunal claiming a compensation of Rs.1 lac. The Tribunal's finding was that the accident was due to rash and negligent driving of the car. Without giving reasons, the Tribunal awarded only Rs.10,000 against the owner of the car and the truck driver, and also assessed the liability of the Insurance Company to the extent of Rs.4,000.

Against the award the appellants filed an appeal to the High Court challenging the adequacy of the compensation awarded. The owner of the car filed a cross-objection. The High Court affirmed the award and dismissed the appeal, as also the cross-objection, stating that the compensation awarded was just and proper.

This appeal, by special leave, is against the High Court's judgment affirming the Tribunal's award. On behalf of the appellants, it was contended that High Court was not justified in affirming the Tribunal's award of only Rs.10,000 as compensation.

Allowing the appeal,

HELD: 1. The appellants are entitled to a sum of Rs.1 lac on account of compensation. Out of this amount the Insurance Company, i.e., Respondent No. 4 is liable to pay Rs.4,000 and the other respondents are jointly and severally liable to pay to the appellants the remaining amount. [766C]

2. It is true that the deceased was a student at the time of his death, but he was also looking after the business of his father and earning about Rs.1,000 a month. Even at the modest computation, the contribution of the deceased towards his family could not be less than Rs.500 per month, i.e. Rs.6,000 per year. Taking the normal span of life to be 60 years, he would have lived for another 35 years. It is apparent that the appellants have been deprived of more than a lac of rupees and, accordingly their claim for Rs.1 lac on account of compensation was quite reasonable. Both the Tribunal and the High Court were not justified in assessing the amount of compensation payable to the appellants at Rs.10,000 only. [765B-D]

3. As the law stood at the material time, the maximum liability of the Insurance Company in such a case was only to the tune of Rs.4,000. In the appeal before the High Court, the appellants did not challenge the finding of the Tribunal that the statutory liability of the Insurance Company was Rs.4,000 only as conceded to by the appellants themselves. In the circumstances, it was not incumbent upon the Insurance Company to file the policy. [766A-B]

National Insurance Co. Ltd. **v.** *Jugal Kishore & Ors.*, **[1988] ACJ 270, distinguished.**

[This Court directed that the decretal amount should be paid within two months and in case of default, it will bear interest at the rate of 12% per annum till realisation.] [766D]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2086 (N) of 1978.

From the Judgment and Order dated 10.12.1976 of the Rajasthan High Court in D.B. Civil Misc. Appeal No. 73 of 1970.

C.M. Lodha and H.M. Singh for the Appellants.

B.R. Sabharwal, P.R. Ramasesh and H. Wahi for the Respondents.

The Judgment of the Court was delivered by

DUTT, J. This appeal is directed against the judgment and decree of the Rajasthan High Court affirming the award made by the Motor Accident Claims Tribunal, Udaipur.

In the night between the 3rd and 4th December, 1966, Hari Singh, since deceased, the husband of the appellant No. 1 and the father of the appellant No. 2, hired an Ambassador car belonging to the Rajasthan Mahila Parishad for going to his native village at Kangeti in Madhya Pradesh from Udaipur in Rajasthan. When the car had gone 21 miles from Udaipur, it collided with a truck coming from the opposite direction. It skidded and hit against a tree. As a result of the accident, Hari Singh died on the spot and one Shanker Lal who was also travelling in the same car and happened to be the friend of Hari Singh received some injuries.

At the time of his death, Hari Singh was only 25. He left behind him his wife, the appellant No. 1 who was only 18 and the appellant No. 2, his daughter, then only a child.

The appellants filed a petition before the Motor Accident Claims Tribunal, Udaipur, claiming a sum of Rs. 1 lac as compensation.

The Tribunal came to the finding that the accident which resulted in the death of Hari Singh was due to the rash and negligent driving of the car. The Tribunal disposed of the issue as to the claim of the appellants for compensation of Rs. 1 lac as follows:

> "Claimants of Casse No. 3 of 1967 have claimed compensation of Rs. 1 lac which appears to be excessive. In my opinion an amount of Rs. 10,000 would be adequate. The issue is decided accordingly."

The Tribunal has not given any reason why the claim of the appellants for compensation of Rs. 1 lac could not be accepted. At this stage, it may be stated that the case of the Insurance Company which was the opposite party No. 3 before the Tribunal was that its liability was only up to a sum of Rs. 4,000. Issue No. 7 that was framed by the Tribunal relating to the liability of the Insurance Company is extracted below:

> "7. Whether the liability of opposite-party No. 3 cannot exceed Rs. 4,000 in each case."

The finding of the Tribunal on Issue No. 7 is as follows:

> "The learned counsel for the claimants conceded that the liability of the Insurance Company could not exceed

A Rs.4,000 in each case. Issue is accordingly decided in favour of the Opposite Party No.3."

Upon the said findings, the Tribunal made an award for Rs.10,000 in favour of the appellants against the opposite parties including the Rajasthan Mahila Parishad and the driver of the truck B assessing the liability of the Insurance Company to the extent of Rs.4,000 only.

Being aggrieved by the award of the Tribunal, the appellants preferred an appeal to the Rajasthan High Court challenging only the adequacy of the amount of compensation as awarded by the Tribunal. A cross-objection was also filed by the Rajasthan Mahila Parishad, the C owner of the car. The High Court, as stated already, affirmed the award and dismissed the appeal and the cross-objection. Hence this appeal by special leave.

The first point that has been urged by Mr. Lodha, learned D counsel appearing on behalf of the appellants, is that the High Court was not justified in affirming the award of the Tribunal for Rs.10,000 only as compensation. It appears from the evidence of the appellant No. 1 that the father of the deceased had a dairy farm, a poultry farm, a flour mill and an agricultural farm. The deceased used to look after the business and his monthly income was about Rs.1,000 and that out E of the said income, about Rs.700 used to be spent and the total saving was only Rs.300 a month. As against this evidence, no evidence was led by the respondents regarding the income of the deceased. The High Court, in affirming the award of the Tribunal as to the quantum of compensation observed as follows:

F "It appears to us from the evidence so led by the claimants that Hari Singh at the time of his death was in fact a student and may be that whenever he could spare time, he looked after the various business activities of his father which according to Rajendra Kumari are still running. He had devoted himself to the family business and had no pros- G pects whatever dependent upon education. While estimating the benefits derived from the various business activities one cannot lose sight of the contingencies of losses and fluctuations in income that occur in such types of business. We do realise that the loss of a husband to a young Rajput girl is something which no amount of money can compen- H sate, yet in the circumstances of the case, we do not find

that the amount of compensation fixed by the Tribunal was too high or too low. We feel that it represents the just and proper compensation." A

We are unable to understand the reasons given by the High Court in finding that the amount of compensation as awarded by the Tribunal was quite adequate. The High Court has not disbelieved the B evidence of the appellant No. 1 that her husband had an income of Rs.1,000 a month. It is true that Hari Singh was a student at the time of his death, but he was also looking after the business of his father and earning a sum of Rs.1,000 a month. There is no reason to disbelieve the evidence of the appellant No. 1 about the income of Hari Singh.

Even at the modest computation, the contribution of Hari Singh C towards his family could not be less than Rs.500 per month, that is, Rs.6,000 per year. Taking the normal span of life to be 60 years, Hari Singh would have lived for another 35 years. It is apparent that the appellants have been deprived of more than a lac of rupees and, accordingly, their claim for Rs. 1 lac on account of compensation was D quite reasonable. Both the Tribunal and the High Court were not justified in assessing the amount of compensation payable to the appellants at Rs.10,000 only.

The next question is as to the liability of the Insurance Company, the respondent No. 4 herein. It has been already noticed that the E appellants conceded before the Tribunal that the liability of the Insurance Company did not exceed the sum of Rs.4,000. Indeed, as the law stood at the material time, the maximum liability of the Insurance Company in such a case was only to the tune of Rs.4,000. In the appeal before the High Court, the appellants did not challenge the finding of the Tribunal that the statutory liability of the Insurance F Company was Rs.4,000 only as conceded to by the appellants. For the first time in this Court, it is submitted that the respondent No. 4 is liable for the entire amount of compensation. It is urged by Mr. Lodha appearing for the appellants that it was incumbent upon the respondent No. 4 to file before the Tribunal the policy of Insurance in order to show that apart from the statutory liability up to Rs.4,000, the G respondent No. 4 had no further liability under the policy in excess of the statutory liability. In support of the contention, much reliance has been placed by the learned counsel on a decision of this Court in *National Insurance Co. Ltd.* v. *Jugal Kishore & Ors.*, [1988] ACJ 270. In that case, it has been observed that where the Insurance Company concerned wishes to take a defence in a claim petition that its liability H

A is not in excess of the statutory liability, it should file a copy of the Insurance policy along with its defence. This decision, in our opinion, is not applicable to the facts of the instant case. It has been already noticed that before the Tribunal the appellants had categorically admitted that the liability of the Insurance Company extended to Rs.4,000 only. In the circumstances, we do not think that it was incumB bent upon the Insurance Company to file the policy. The contention made on behalf of the appellants is, accordingly, rejected.

In the result, we direct that the appellants are entitled to a sum of Rs. 1 lac (Rupees one lac only) on account of compensation. Out of the said sum, the Insurance Company, the respondent No. 4, is liable to C pay Rs.4,000 only and the respondent Nos. 1, 2 and 3 including the Rajasthan Mahila Parishad are jointly and severally liable to pay to the appellants the remaining amount. The respondent shall deposit the decretal amount to the extent of their respective liabilities in the Motor Accident Claims Tribunal, Udaipur, within two months from date; in default, the decretal amount or so much thereof as will remain D outstanding will bear interest at twelve per cent per annum till realisation.

The appeal is allowed. The judgment and decree of the High Court are modified to the extent indicated above. There will be no order as to costs.

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G.N. Appeal allowed.