

Surindersingh Aleg and Another Vs. M.G. Gurunathan and Others

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Court : Mumbai

Decided On : Mar-24-1984

Reported in : [1986]60CompCas1001(Bom)

Judge : M.M. Qazi and ;V.V. Vaze, JJ.

Acts : Motor Vehicles Act - Sections 95(2) and 96(4); (English) Road Traffic Act, 1972 - Sections 149

Appeal No. : First Appeals Nos. 44, 45 and 46 of 1981

Appellant : Surindersingh Aleg and Another

Respondent : M.G. Gurunathan and Others

Judgement :

Vaze, J.

1. The City of Nagpur is bisected by an overhead railway bridge running north-south and the road under the bridge forms a conduit through which old and new Nagpur are joined. To ease the resultant traffic congestion, vehicular traffic coming from eastern Nagpur is not permitted to take the straight road to Sitabuldi, which has been declared a one way catering to the traffic coming from Sitabuldi and proceeding towards the railway station.

2. Thanks to the anathema of civic authorities towards shifting of temples howsoever ill-located, a temple situated towards west of the bridge serves as a traffic island. Further north, one comes across Manas Chowk wherein meet three roads, one coming from Sitabuldi, another from Morris College and the third from the railway station. A statue of Netaji Subhashchandra Bose overlooks the Chowk being situated at the intersection of the roads coming from Morris College and the railway station. An old Bhonsala fort on an adjoining hill feature oversees the scene.

3. K. Ramakrishna, working as an accountant in the Indian Overseas Bank, was proceeding on his Yezdi motor cycle towards the railway station on June 15, 1978, to catch the Kerala-Karnataka Express which leaves at night. He wanted to attend the marriage of his sister to be performed at Renigunta in Andhra. His friend, K. V. Raghavalu, a junior assistant master in the weaving department of the Empress Mills was on the pillion seat. M. R. Gurunathan, another friend, walking on the road under the railway over bridge spotted the pair and accosted them, upon which Ramakrishna slowed down the motor cycle and brought it to a halt in the Manas Chowk. The trio started chatting about the trip to Renigunta. Suddenly, Gurunathan felt a violent push from behind upon which he raised a cry and was knocked down unconscious. After he

recovered consciousness, he found his left leg fractured, right leg injured, left heel smashed and his friends, Ramakrishna and Raghavalu, lying dead on the spot. A crowd had collected but instead of helping them, some tried to rob the victims. Ultimately, good conscience prevailed and one of the onlookers, who was in an intoxicated condition, rendered help to the victims. The motor cycle was smashed by motor Truck No. MHG 3505, belonging to Surendersingh Aleg and driven by Narayansingh Premsingh. Ramakrishna and Raghavalu died at the spot and the sole survivor of the tragedy, Gurunathan, remains to tell the tale.

4. Claim Petitions Nos. 20 of 1978, 31 of 1978 and 32 of 1978 were filed by the dependents of Ramakrishna, injured Gurunathan and the dependents of Raghavalu before the Motor Accidents Claims Tribunal, Nagpur. The Tribunal made an award of Rs. 43,400, Rs. 10,300 and Rs. 1,49,500, respectively, against which First Appeals Nos. 44 of 1981, 45 of 1981 and 46 of 1981 have been consolidated and this judgment will govern and dispose of these three appeals.

5. As adumbrated above, the sole survivor, Gurunathan, and the driver of the truck are the only persons who can give us some account of the manner in which the accident took place. As the incident has been described by Gurunathan, it was a head-on knocking done of three stationary persons who were chatting at the Manas Chowk by a truck which was coming from Sitabuldi and proceeding towards Morris College Road. As could be anticipated, the story given by the driver is just the reverse. According to him, he came from Umred with a loaded truck, took a right turn at the Mandir traffic island, proceeded towards north and turned left at the Manas Chowk to take the road leading to Morris College. A motor-cycle came down the hill from Morris College at a high speed from the opposite direction, miscalculated the clearance available and came on the wrong side only to brush against the left side of his truck. The motor cycle had three riders and all of them were thrown on the ground as a result of the impact. He wanted to render medical aid but was frightened as a crowd that had gathered at the spot menacingly demanded his blood.

6. As the evidence consists of the statements of two witnesses on oath, the veracity of their narrations can best be judged only by the contents of the panchanama which was made immediately after the incident by the police. The road was 52 feet wide and the truck was facing west. Two dead bodies were lying behind the truck. The front right wheel and the rear right wheel were at a distance of 19 and 21 feet from the right hand kerb of the Morris College Road. The front and rear left wheels were 21 feet and 23 feet from the left kerb of the road. The first body was at 8 feet while the second at 16 feet behind the truck. In between the two dead bodies, the motor cycle which was in a damaged condition was found.

7. Considering the topography of the scene of the accident and the fact that the victims were lying behind the truck, the story given by the driver of the truck is almost unrealistic. The road leading towards Morris College has a steep gradient and a motor cyclist coming from Morris College to Manas Chowk is not likely to speed up, more so when he has to take a hair pin bend towards the left for reaching the railway station. It seems to be more probable that the truck driver upon reaching Manas Chowk, negligently misjudged the turning circle and clearance of his truck and rashly hit the three victims who were chatting amongst themselves. It is not the case of the driver that there was heavy traffic on the Morris College Road and hence there was no reason for the motor cyclist to swerve towards the right when the width of the road is about 52 feet at the spot. It is common ground that Gurunathan was found

injured at the spot. The location of the bodies vis-a-vis the truck fits the narration of Gurunathan regarding his sighting his two friends on motor cycle. We agree with the Tribunal that the truck driver was negligent in driving the truck.

8. As regards the interpretation put on the expression 'any one accident' occurring in section 95(2)(a) of the Act, Shri D. N. Kukday and Shri Pathak for National Insurance Company fairly concede that in view of the pronouncement of the Supreme Court in Motor Owners' Insurance Co. Ltd. v. Jadavji Keshavji Modi [1982] 52 Com Cas 454, the limit of compensation of Rs. 50,000 extends to each claim and it signifies as many accidents as the number of persons injured in the accident. In First Appeal No. 44 of 1981, the amount awarded is Rs. 10,300, while in First Appeal No. 46 of 1981, it is Rs. 43,400. Both these amounts, being below the statutory maximum limit, would be satisfied by the New India Assurance Co. Ltd.

9. While computing damages, the Tribunal took note of the fact that Raghavalu had a dependent mother, Smt. K. Laxmidevi, who was receiving monetary aid. The Tribunal took the life span of Laxmidevi as 65, the figure of 'year purchase' at 28 and made a deduction of Rs. 30,000 which the widow received from her husband's provident fund and another Rs. 30,000 from the Life Insurance Corporation and also deducted the amount so arrived at by 25% to make allowance for uncertainties of life and the fact that the dependents are getting the amount in lump sum.

10. Though Shri Thakur criticised the computation as well as quantification for the mother, we find that even after making an allowance for his personal expenses, Raghavalu could spend for his wife and children and also spend about Rs. 200 for the maintenance of his mother, younger brothers and unmarried sisters. It was urged that the exact figures of the provident fund and the life insurance policy amounts which were within the knowledge of the widow should have been proved by her as she had promised to do during the hearing before the Tribunal. We find that the marginal differences have been well taken care of because the Tribunal had pegged down the earning of the deceased at the present pay level and it would be unrealistic to presume that Raghavalu would not have - during his long career - climbed up the ladder in the hierarchy in the Empress Mills. Thus, we do not think it desirable to interfere with the quantum of damages awarded by the Tribunal.

11. An interesting interpretation has been put on sub-section (4) of section 96 of the Motor Vehicles Act by counsel for the appellants who wants this court to hold that the assurance company is liable to pay the entire amount of the award rather than leave them to execute the same against the truck driver and the truck owner who may not be men of substance. The excess over the contracted amount may be recovered - so the argument proceeds - by the insurer from the insured, under section 96(4) of the Motor Vehicles Act. In support, counsel relies on the following passage from New Asiatic Insurance Co. Ltd. v. Pessumal Dhanamal Aswani [1964] 34 Com Cas 693.

12. 'The Act contemplates the possibility of the policy of insurance undertaking liability to third parties providing such a contract between the insurer and the insured, that is, the person who effected the policy, as would make the company entitled to recover the whole or part of the amount it has paid to the third party from the insured. The insurer thus acts as security for the third party with respect to its realising damages for the injuries suffered, but vis-a-vis the insured, the company does not undertake the liability or undertakes it to a limited extent.'

13. After underscoring the use of the word 'security', in the above observations, counsel places reliance on the observations in an earlier Supreme Court decision in *British India General Insurance Co. Ltd. v. Captain Itbar Singh* [1959] 29 Com Cas 60 :

'Secondly, if he has been made to pay something which on the contract of the policy he was not bound to pay, he can under the proviso to sub-section (3) and under sub-section (4) recover it from the assured. It was said that the assured might be a man of straw and the insurer might not be able to recover anything from him. But the answer to that is that it is the insurer's bad luck. In such circumstances, the injured person also would not have been able to recover the damages suffered by him from the assured, the person causing the injuries. The loss had to fall on some one and the statute has thought fit that it shall be borne by the insurer. That also seems to us to be equitable for the loss falls on the insurer in the course of his carrying on his business, a business out of which he makes profit, and he could so arrange his business that in the net result he would never suffer a loss. On the other hand, if the loss fell on the injured person, it would be due to no fault of his; it would have been a loss suffered by him arising out of an accident in the happening of which he had no hand at all.'

14. In *Pessumal's case* [1964] 34 Com Cas 693 A, who owned a car had insured it with the appellant insurance company, but permitted B to drive that car. The policy, which was a comprehensive policy, inter alia, insured A, who effected the insurance in the event of an accident caused by or arising out of the use of the car against all sums which he might become legally liable to pay in respect of death, or bodily injury to, any person. The observations in *Pessumal's case* [1964] 34 Com Cas 693 regarding the insurance policy being a security, were predicated upon a true construction of the terms of the comprehensive policy and were not intended to read into a policy of limited liability for a goods vehicle an unlimited liability vis-a-vis a third party with a right conferred on the insurer to obtain reimbursement under section 96(4) of the Act from the insured. In *British India General Insurance Co.'s case* [1959] 29 Com Cas 60 , the Supreme Court has referred to the untenability of the restrictive clauses of the policy within the meaning of sub-section (3) as respects the third party and the enabling effect of the proviso to that sub-section against the insured. The insurance company, in that case, complained that even though section 96(4) entitles it to recover the difference from the insured, it may not be practicable for it to do so if the assured is a man of straw. The observations of the court regarding the manner in which the company has to put its house in order by adjusting its rates of premium were in answer to that argument.

15. If section 96(4) is read to create a liability against the insurance company so as to make it a security for any amount which may be awarded by the Tribunal, we would be putting in the Act words which are not there. We have all sympathy for the victims and are alive to the fact that the victims may not be able to recover the excess over the statutory liability from the truck owner or the truck driver who may not be men of substance. But, remedial action, if any, will have to be taken by the Legislature as has been done in the U.K. as a result of an agreement reached between the Motor Insurance Bureau and the Secretary of State. The Motor Insurance Bureau compensates the victim of a road accident where the negligent driver has not sufficient means to meet the claim or who, for some cause or the other, was not insured at all or was not covered by the policy in force in respect of the use of the vehicle causing the injuries. The Bureau has gone a step further and has also

undertaken to compensate the victim where the negligent driver was unidentified and untraced (the so-called 'hit and run' driver). As regards liability of the insurers, section 149 of the (English) Road Traffic Act, 1972, provides that when any judgment in respect of a liability is obtained against any person who is insured by the policy, then notwithstanding that the insurer may be entitled to avoid or cancel the policy of security, he shall pay to the person entitled to the benefit of the judgment any sum payable thereunder in respect of the liability subject to certain exceptions. The use of the words in section 149 of the English Act that 'the insurer shall pay to the person entitled to the benefit of the judgment any sum payable thereunder in respect of the liability including any amount payable in respect of costs and any sum payable in respect of interest on that sum' do not find place in our Motor Vehicles Act as respects goods vehicle though similar words, viz., 'the amount of the liability incurred', occur in section 95(2)(c) in respect of vehicles other than goods or contract carriages. Rather the Act has been from time to time raising the maximum amount of the amended compulsory statutory liability and at the time of the accident, it stood at Rs. 50,000 (which limit has since been raised to Rs. 1,50,000). The contention of the appellant is thus totally unfounded.

16. The appeals are partly allowed and the following order is passed :

Respondent No. 1, C. Kannaiah, and respondent No. 2, Smt. Susheela w/o Kannaiah, in First Appeal No. 46 of 1981 do recover an amount of Rs. 43,400 from appellants Nos. 1 and 2 and respondent No. 3.

Respondent No. 1, M. G. Gurunathan, in First Appeal No. 44 of 1981 do recover Rs. 10,300 from appellants Nos. 1 and 2 and respondent No. 2.

Respondent No. 1, Smt. K. Jagdishwari, wd/o Raghavalu, respondents No. 2, K. Ramakrishna (minor), in First Appeal No. 45 of 1981 do recover Rs. 1,24,500 and respondent No. 3, K. Laxmi devi, do recover Rs. 25,000 from appellants Nos. 1, 2 and respondent No. 4.

17. The liability of the New India Assurance Co. Ltd. is restricted to the amounts payable in First Appeals Nos. 46 of 1981 and 44 of 1981 as the amounts awarded are below Rs. 50,000.

18. As regards First Appeal No. 45 of 1981, the liability of respondent No. 4, New India Assurance Co., is limited to Rs. 50,000 only.

19. No order as to costs.

20. At this stage, counsel for the appellants submits that leave to appeal to the Supreme Court may be granted. In view of the observations of the Supreme Court in the cases quoted above, we are of the opinion that the question regarding the liability of the insurance company in the case of accidents arising out of goods vehicles involves a substantial question of general importance affecting a large number of victims and needs to be decided by the Supreme Court. It is so certified.

21. Appeals party allowed.