Before S. S. Sodhi, J.

SUDHA BAHRI AND ANOTHER,—*Appellants.*

versus

SARVJIT SINGH AND OTHERS,—*Respondents.*

First Appeal From Order No. 387 *of* 1981

November 14, 1985.

Motor Vehicles Act (IV of 1939)—Section 95(2) and 110-A—Code of Civil Procedure (V of 1908)—Order 6 Rule 17 and Order 41 Rule 27—Motor accident resulting in death—Compensation awarded to the claimants—No plea by the insurer that its liability was limited to any particular amount—Liability of the insurer in such a case— Whether would be deemed to be unlimited—Application for amendment of pleadings at the appellate stage to include such a plea—Policy of insurance also sought to be placed by way of additional evidence—Such amendment and additional evidence—Whether could be allowed.

Held, that the law is indeed well-settled that the Court possesses a wide discretion in the matter of amendment of pleadings, but it is a discretion to be exercised judiciously so as to advance the cause of substantial justice and avoid injustice. The ultimate test being, can an amendment be allowed without injustice to the other side ?. No one is entitled to seek amendment of pleadings as a matter of right, particularly in appeals. It is only where the Court finds that the proposed amendment is necessary for determination of the controversy between the parties that it may be allowed even at a late stage. The jurisdiction of the appellate Court in the matter is, further limited as rights of parties come into being after the passing of the decree by the trial Court. A strong case has thus to be made out why the plea sought to be taken by the amendment could not be put-forth earlier. In this situation, delay has also to be explained to the satisfaction of the Court. The law relating to compensation to victims of motor accidents is but a species of welfare laws and has thus to be considered and construed from the stand point of the claimants. There is a facility and certainty of recovery of compensation from the Insurance Company which is so vividly in contrast with the delays and obstacles that claimants often counter from the other parties liable, for example, the driver and the owner. It is, thus, a valuable right conferred upon the claimants to recover compensation from the insurance company which it would clearly be unjust to deprive them of by the amendment so belatedly sought. Further, it is quite possible that in the intervening period, the other parties liable may have disposed of their assets with a view to defeat the claimants from recovering the compensation awarded. In these circumstances, mere payment of costs cannot obviously provide them adequate recompense and it would thus work injustice to the claimants to permit such an amendment at the appellate stage. As

regards the Insurance Company, it has the provision of Section 96 of the Motor Vehicles Act to fall back upon to seek its remedy against the insured. No occasion is thus provided for granting the Insurance Company permission to amend the written statement. (Paras 14, 15, 17 and 18)

Held, that additional evidence at the appellate stage should not be permitted to enable one of the parties to remove a lacuna in presenting its case at the proper stage or to fill up gaps in its evidence. Since this is not a case where the appellate Court itself requires this evidence to be adduced in order to enable it to do justice between the parties, an application for permission to adduce additional evidence cannot be allowed. (Para 19)

First Appeal from the order of the Court of Shri Jai Singh Sekhon, Motor Accident Claims Tribunal, Jullundur, dated 3rd April, 1981 awarding a total compensation of Rs. 10,500 to be paid by respondent No. 3. Out of this amount, Rs. 5,000 shall be paid to Sudha while Kishore Chand will get Rs. 5,500. The applicants are also entitled to costs of the application and 6 per cent interest per annum in case of default to deposit the amount within two months of this award.

D. S. Bali, Advocate with D. V. Gupta, Advocate, *for the Appellant.*

L. M. Suri, Advocate, *for the Respondent.*

JUDGMENT

S. S. Sodhi, J.

(1) The claim in appeal here is for enhanced compensation.

(2) Shyam Kumar Bahri and his brother Ashok Kumar Bahri were both killed when their motor cycle met with an accident with the truck PUJ 1299 coming from the opposite direction. This happened on July 11, 1979, at about 9 p.m. on the Hoshiarpur-Jullundur road. The Tribunal held this to be a case of contributory negligence with both the truck driver and Shyam Kumar Bahri deceased being equally to blame. A sum of Rs. 39,000 was awarded as compensation to the father, widow and the two minor sons of Shyam Kumar Bahri and Rs. 10,500 to the father and widow of Ashok Kumar Bahri.

(3) The finding of contributory negligence cannot indeed be sustained. The version of the accident, as given in the claim application, was that the truck was being driven without head-lights and

it came on to the wrong side of the road at a very fast speed and hit into the motor cycle and thus caused the accident. The respondent truck driver, owner as also the Insurance Company denied any negligence on the part of the truck driver but it is pertinent to note that no counter-version of the accident was put-forth by either of them. What is more, no evidence was forthcoming from the side of the respondents. Even the truck driver was not examined as a witness in this case.

(4) The case of the claimants rests upon the testimony of A.W. 2 Girdhari Lal and A.W. 3 Romesh Kumar who were both brothers-in-law of the two deceased. Being relations, their testimony does indeed deserve to be scrutinised with care. A reading thereof would, however, show that both came forth with a consistent account of the occurrence and counsel for the respondents could point to no discrepencies or contradictions in their evidence to create any doubt in their veracity. Both deposed to the truck coming at a fast speed without any head lights and further that the truck came on to the wrong side of the road and hit into the motor cycle. They also stated that after causing the accident, the driver ran away. In cross-examination, there was no challenge to their testimony that the truck was being driven without head lights. What was suggested was that there was a cart going ahead of the motor cycle of the deceased and the accident occurred when they were trying to overtake it. As mentioned earlier, no counter-version had been put-forth by the respondents in their written statement. It was, thus, for the first time when these two witnesses were examined in Court that such a suggestion was made to them.

(5) A matter of material significance here is the prompt lodging of the first information report relating to this incident by A.W.2 Girdhari Lal. This report was made within an hour of the occurrence and the account of the accident as contained therein is wholly in consonance with what the two eye-witnesses deposed to in Court.

(6) Taking an overall view of the evidence on record and the circumstances of the case, there can be no manner of doubt that it was the truck driver who was wholly to blame for the accident. The finding on the issue of negligence must thus be modified accordingly.

(7) As regards the quantum of compensation payable to the claimants, in the case of Shyam Kumar deceased, dependency of the

claimants was computed at Rs. 500 per month. The error complained of here was in 13 being taken as the multiplier. It is now well-settled that the usual multiplier in such cases should be 16. Compensation in this case thus deserves to be computed at Rs. 500 per month with a multiplier of 16. This would work out to Rs. 96,000 which may be rounded off to Rs. 1,00,000 (Rupees one lac).

(8) A similar error was committed by the Tribunal in the case of Ashok Kumar Bahri deceased too, where, after holding that the dependency of the claimants upon the deceased was to the extent of Rs. 350 per month, a multiplier of 5 was adopted. Here again, counsel for the claimants rightly contended that the appropriate multiplier should have been 16. This would work out to Rs. 67,200 which may be rounded off to Rs. 70,000 (Rupees seventy thousand).

(9) The claimants in the case of Shyam Kumar Bahri deceased are accordingly hereby awarded Rs. 1,00,000 as compensation while those in the case of Ashok Kumar Bahri Rs. 70,000. Out of the amount awarded, a sum of Rs. 10,000 shall be payable to the father of Shyam Kumar Bahri deceased, Rs. 20,000 each to his two sons and the balance to his widow, while in the case of Ashok Kumar Bahri deceased, a sum of Rs. 10,000 shall be paid to his father and the balance to his widow. The claimants shall be entitled to the amount awarded along with interest at the rate of 12 per cent per annum from the date of the application to the date of payment of the amount awarded. The compensation payable to the minor claimants shall be paid to them in such manner as the Tribunal may deem to be in their best interest.

(10) Here, Mr. L. M. Suri, counsel for the respondent-Insurance Company sought to contend that the liability of the Insurance Company must be held to be limited to Rs. 50,000 in each case. He adverted in this behalf to the provisions of section 95(2) of the Motor Vehicles Act, 1939 (hereinafter referred to as the Act). The argument being that as no plea had been put-forth by the claimants that the liability of the Insurance Company exceeded this amount, it must be held to be limited to Rs. 50,000, which was the sum mentioned in Section 95(2) of the Act. He cited in support *Hamirpur Cooperative Transport Society Ltd.* v. *Kaushalya Devi and others.* (1) *Des Raj and others* v. *Ram Narain and others* (2)

(1) 1983 A.C.J. 70
(2) 1930 A.C.J. 202

M/s Automobile Transport (Rajasthan) Private Ltd. and another v. *Dewalal and others,* (3) *and Bal Dahiben* v. *Jesingbhai Bijalbhai and others,* (4) In all these authorities, there were observations to the effect that in the absence of a plea to the contrary, the liability of the Insurance Company must be held to be limited to the amount mentioned in section 95(2) of the Act.

(11) Recently, this Court had occasion to consider the matter in *Smt. Harjeet Kaur and others* v. *Balvinder Singh and others,* (5) where it was observed:—

> "It has been taken to be well-settled by our Court that Section 95(2) of the Act merely prescribes the minimum but not the maximum liability of the Insurance Company. In other words, the insurance cover cannot be less than the sum mentioned in Section 95(2) of the Act but it does not preclude a higher risk being covered by the Insurance Company, and, therefore, in the absence of a specific plea by the Insurance Company that its liability is limited to any particular sum (not less than the minimum prescribed) and the policy of insurance being placed on record in support of such plea, the liability of the Insurance Company must be held to extend to the entire amount awarded. Reference here may be made to the judgement of the Division Bench in *Ajit Singh* v. *Sham Lal* (6) as also the two earlier judgements of this Court in (*Dr. Karan Singh* v. *Dhian Singh*), (7), and (*The New India Assurance Company Ltd.* v. *Smt. Mohinder Kaur* (8) No policy of insurance having been placed on record in the present case, the liability of the Insurance Company "must be held to extend to the entire amount awarded."

No plea was raised in the present case regarding any limitation in the liability of the Insurance Company. This being so, it must

(3) 1977 A.C.J. 150
(4) 1984 ACJ. 150
(5) F.A.O. 265 of 1982 decided on 6.9.1985.
(6) 1984 P.L.R. 314
(7) F.A.O. 106/1976 decided on 1-8-1983.
(8) F.A.O. 735/79 decided on 12.7.84

be held that the Insurance Company was liable for the entire amount awarded in both these cases.

(12) Faced with this situation, counsel for the Insurance Company sought amendment of the written statement to raise the plea, not taken earlier, that its liability was limited to Rs. 50,000 and also by a separate application sought permission to adduce additional evidence to place on record the policy of insurance.

(13) Counsel cited a number of authorities with regard to the scope and ambit of the power of the Court to allow amendment of pleadings under Order 6, rule 17 of the Code of Civil Procedure. Reliance was, in the main, pleaced upon *Sardar Hari Bachan Singh* v. *Major S. Har Bhajan Singh and another* (9), where it was observed, "It is well-settled law that however neligent or careless may have been the first omission and however late the proposed amendment, the amendment should be allowed if it can be made without injustice to the other side. There is no injustice if the other side can be compensated for by costs. . . . ." Reference was also made to *Smt. Dulia Devi* v. *Smt. Ram Kaur and others* (10) and *Puran Chand* v. *Harjinder Singh and others*, (11), where similar views were expressed.

(14) The law is indeed well-settled that the Court possesses a wide discretion in the matter of amendment of pleadings, but it is a discretion to be exercised judiciously so as to advance the cause of substantial justice and avoid injustice. The ultimate test, as held by the Supreme Court in *Piroonda Hongonda Patil* v. *Kalgonda Shidoonda Patil and others* (12) being, can the amendment be allowed without injustice to the other side?

(15) As regards amendment of pleadings at the appellate stage, reference must be made to the judgement of J. V. Gupta J. in *Ranjit Kaur* v. *Ajaib Singh* (13) where it was observed that no one is entitled to seek amendment of pleadings as a matter of right, particularly in appeals. It is only where the Court finds that the

(9) A.I.R. 1975 PB. & HY 205.
(10) 1975 PLR 739.
(11) 1984 PLR 294
(12) AIR 1957 S.C. 363
(13) 1984 PLR 608

proposed amendment is necessary for determination of the contoversy between the parties that it may be allowed even at a late stage. The jurisdiction of the appellate Court in the matter is further limited as rights of parties come into being after the passing of the decree by the trial Court. A strong case has thus to be made out why the plea sought to be taken by the amendment could not be put forth earlier. In this situation, delay has also to be explained to the satisfaction of the Court.

(16) There is no explanation for the delay in seeking amendment in the present case. The record of the case would show that the accident here took place in July 1979 and the claims for compensation were filed in September 1979. The Tribunal made its award on April 3, 1981, and the appeals were filed by the claimants on September 4, 1981. No cross-objections were filed by the Insurance Company. On May, 20, 1985, the appeals came up on the cause list. The applications for amendment of the written statement and for permission to adduce additional evidence were filed about two months thereafter on June 7, 1985. Unjustified delay is thus writ large.

(17) The law relating to compensation to victims of motor accidents is but a species of welfare laws and has thus to be considered and construed from the stand point of the claimants.. There is a facility and certainty of recovery of compensation from the Insurance Company which is so vividly in contrast with the delays and obstacles that claimants often encounter from the other parties liable, for example, the driver and owner. It is thus a valuable right conferred upon the claimants to recover compensation from the Insurance Company, which it would clearly be unjust to deprive them of by the amendment so belatedly sought. Further, it is quite possible that in the intervening period, the other parties liable may have disposed of their assets with a view to defeat the claimants from recovering the compensation awarded. In these circumstances, mere payment of costs cannot obviously provide them adequate recompense and it would thus work injustice to the claimants to permit such an amendment at this stage. As regards the Insurance Company, it has the provisions of section 96 of Motor Vehicles Act to fall back upon to seek its remedy against the insured.

(18) No occasion is thus provided for granting the Insurance Company permission to amend the written statement as prayed for

(19) As regards the additional evidence being allowed at this stage, it is well-settled that it should not be permitted merely to enable one of the parties to remove a lacuna in presenting its case at the proper stage or to fill up gaps in its evidence. This is not a case where the appellate Court itself requires this evidence to be adduced in order to enable it to do justice between the parties. In this view of the matter, the application for permission to adduce additional evidence too cannot be allowed. Both the applications are accordingly hereby dismissed.

(20) In the result, the appeals are hereby accepted with costs. Counsel's fee Rs. 500 (one set only).

N.K.S.

Before : *S. S. Kang, J.*

JAGDISH RAI,—*Petitioner.*

versus

PARVEEN BALA,—*Respondent.*

Civil Revision No. 2425 *of* 1985.

December 4, 1985.

Hindu Marriage Act (*XXV of* 1955)—*Sections* 9, 21 *and* 28—*Code of Civil Procedure* (*V of* 1908)—*Order* 9 *Rule* 13—Ex-parte *order passed in a matrimonial cause under the Act—Application under order* 9 *rule* 13 *for setting aside that order—Whether competent.*

Held, that it is manifest from a reading of Sections 21 and 28 of the Hindu Marriage Act, 1955, that decree passed in the proceedings under the Act shall be appealable. It is also clear that the proceedings under the Act are governed and regulated by the Code of Civil Procedure only. This is, however, subject to other provisions contained in the Act which may have bearing on the issue in question. From a conjoint reading of sections 21 and 28 of the Act, it becomes apparent that the decrees passed by the Matrimonial Courts are appealable, but the proceedings in the Matrimonial causes are to be carried out in accordance with the provisions of the Code. However, these two provisions do not lead to the inference that an *ex-parte* decree passed in a Matrimonial cause under the Act cannot be set aside by the trial court on the application made under rule 13