(1987) 03 GAU CK 0005

In the Gauhati High Court

Babban Tiwari and Another APPELLANT

Vs

Usha Ranjan Chakraborty and Others RESPONDENT

Date of Decision : 24-03-1987

Acts Referred:
Motor Vehicles Act, 1939 — Section 110D, 92A

Citation : (1988) 1 ACC 130 : (1987) ACJ 863

Hon'ble Judges : S.N. Phukan, J

Bench : Single Bench

Judgement

S.N. Phukan, J.—By this judgment and order I propose to dispose of these two appeals filed u/s 110D of the Motor Vehicles Act 1939, for short ''the Act''.

2. Civil Misc. First Appeal No. 27 of 1985 is directed against the order dated 18-3-1985 passed by the learned Motor Accidents Claims Tribunal in case number Civil Misc. (M. Ace) 7 of 1983. An accident took place on the night of 14th/15th April, 1983, at Patichari, Udaipur, while the driver of the vehicle bearing registration No. TRL 2191 died. The legal representatives of the deceased driver filed an application u/s 92A claiming compensation of Rs 15,000/-. Notices were issued both on the owner of the vehicle, i.e., the appellant and the insurance company. Though it was urged that the insurance company is liable to pay the compensation u/s 92-A of the Act, the learned Tribunal rejected the plea and made the owner of the vehicle liable to pay the compensation of Rs. 15,000/-. Hence this appeal.

3. In M.A. (F) 17 of 1986 one Nianang Halam died on 29-5-1985 as a result of an accident. It is alleged that the vehicle bearing registration No. TRL 2784 dashed against the deceased at Jaithanga under Dharmanagar P.S., North Tripura. An application u/s 92-A was filed by the legal representatives claiming compensation of Rs. 15,000/-. Before the Tribunal it was urged on behalf of the owner of the vehicle that the insurance company being a necessary party, notice may also be issued on the company. The learned Tribunal after considering the relevant sections of the Act came to the finding that the insurance company need not be

made a party and directed the owner of the vehicle to pay the entire amount of Rs. 15,000/-. Hence this appeal.

4. In both the appeals, the only question for consideration is whether in a proceeding u/s 92-A of the Act the insurance company is a necessary party and whether the said section imposes any liability on the insurer to pay any compensation.

5. In Oriental Fire and General Insurance Co. Ltd. Vs. Beasa Devi and Others, , in G. Prabhakar and Another Vs. Thummanapalli Brahmaiah and Another, and in Oriental Fire and General Insurance Company Ltd. Vs. Aleixo Fernandes and Others, , the High Courts of Punjab and Haryana, Andhra Pradesh and Bombay respectively, inter alia, held that mere omission of the word ''insurer'' in Section 92-A of the Act cannot exclude insurer from the liability under that section as long as the vehicle involved in the accident is duly covered by certificate of the insurance granted by the insurer and the insurance company can be saddled with the liability under the aforesaid section.

6. Sections 92-A, 92-B, 92-C, 92-D, 92E were introduced in the Act by an amendment which was brought into force on the 1st October 1982. These sections have incorporated by addition of a new Chapter, namely, Chapter VII-A introducing a new concept of liability without fault in motor accident to give immediate relief to the victims of such accident. Alongwith the aforesaid amendment, few more existing sections of the Act have also been amended. It is true that in Section 92-A the word "insurer" does not find place, but to ascertain whether an insurer is liable to identify the owner under the said section, it is necessary to read this Section 92-A alongwith other relevant sections.

Section 92-A(1) runs as follows:

92-A. Liability to pay compensation in certain cases on the principle of no fault- (1) Where the death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicle shall, or, as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this section."

Section 92-B is quoted below:

(1) The right to claim compensation u/s 92-A in respect of death or permanent disablement of any person shall be in addition to any other right (hereafter in this section referred to as the right on the principle of fault) to claim compensation in respect thereof under any other provision of this Act or of any other law for the time being in force.

(2) xxx xxx xxx

(3) Notwithstanding anything contained in Sub-section (1), where in respect of the death or permanent disablement of any person, the person liable to pay

compensation u/s 92-A is also liable to pay compensation in accordance with the right on the principle of fault, the person so liable shall pay the first mentioned compensation....

Clause (ba) of Section 93 is reproduced below:

(ba) ''liability'' wherever used in relation to the death of or bodily injury to any person includes liability in respect thereof u/s 92-A.

Sub-section (5) of Section 95 runs as follows:

(5) Notwithstanding anything elsewhere contained in any law, a person issuing a policy of insurance under this section shall be liable to indemnify the person or classes of person specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of person.

Section 110-B is reproduced below:

110-B. Award of the Claims Tribunal.-On receipt of an application for compensation made u/s 110-A, the Claims Tribunal shall, after giving the parties an opportunity of being heard, hold an inquiry into the claim or, as the case may be, each of the claims and, subject to the provisions of Section 109-B, may make an award determining the amount of compensation which appears to it to be just and specifying the person or persons to whom compensation shall be paid ; and in making the award the Claims Tribunal shall specify the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them, as the case may be.

7. From the relevant provisions of the Act quoted above, it is clear that under Sub-section (5) of Section 95 an insurer is liable to indemnify the owner in respect of any liability which the policy of insurance purports to cover. In Clause (ba) of Section 93, the liability includes liability u/s 92-A. So, the insurance company shall have to indemnify the owner of the vehicle for any liability to pay compensation u/s 92-A. Reading Section 92-B, I find that amount of compensation paid u/s 92-A shall be excluded from the final award made u/s 110-A after due enquiry. Section UO-B cast an obligation on the Tribunal to specify the amount of compensation which shall be paid by the insurer or owner or driver of the vehicle or by all or any of them as the case may be. If it is held that the insurer is not liable to indemnify the owner for any compensation awarded u/s 92-A, the liability of insurance company u/s 110-B shall be reduced to that extent which is contrary to the provision of Sub-section (5) of Section 95. So from the above provisions of the Act, I am of the opinion that though the word ''insurer'' does not find place in Section 92-A, insurer is liable to indemnify the owner for any compensation awarded under the said section and the insurer cannot be excluded from the liability to pay compensation u/s 92-A. It is, therefore, clear that the word insurer in Section 92-A is really not necessary as under the provisions of the Act and by virtue of insurance, the insurer is bound to pay the awarded amount.

8. Another contention has been raised that if insurer is made liable u/s 92-A, it shall be deprived to defend the proceeding by raising whatever defences which are available to them u/s 96 of the Act. I am unable to accept this contention as the order passed by the Tribunal u/s 92-A of the Act is only a preemptory award. The insurance company can raise objections at the time of final hearing of the petition for compensation and Section 110-B empowers the Tribunal to pass an order directing the owner to indemnify the insurer in the event the insurer can establish any of the grounds in Sub-section (2) of Section 96 of the Act.

9. From the above discussions, I hold that though in Section 92-A of the Act, only the word ''owner'' has been used the insurer shall have to indemnify the owner for any amount awarded under the aforesaid section. Any other interpretation will go contrary to the intention of legislature.

10. In the result, both the appeals are allowed and awards are set aside and the petitions are remanded back to the Tribunal to decide the matter in the light of the above decision.

11. In case No. Civil Misc. (M. Ace) 7 of 1983 as the insurance company appeared before the Tribunal, the learned Tribunal will pass the award after bearing the said insurance company. In case number I. T.S. (M. Ace.) 186, the learned Tribunal, Kailasahar, refused to issue notice on the insurance company, the learned Tribunal is hereby directed to issue notice on the insurance company and after hearing the insurer pass necessary orders. Both the petitions shall be disposed of as expeditiously as possible. Parties to bear their own costs.