
(1985) 12 P&H CK 0020

In the Punjab And Haryana At Chandigarh

Case No : Civil Miscellaneous No. 4212-CII of 1985 of F.A.O. No. 662 of 1985

Basant Rani and Others

APPELLANT

Vs

Ram Singh and Others

RESPONDENT

Date of Decision : 11-12-1985

Acts Referred:

Motor Vehicles Act, 1939 — Section 110A, 92A

Citation : (1990) 67 CompCas 12 : (1985) 88 PLR 646

Hon'ble Judges : Sukhdev Singh Kang, J

Bench : Single Bench

Advocate : G.S. Bhatia, for the Appellant; V.P. Gandhi, for the Respondent

Final Decision : Allowed

Judgement

Sukhdev Singh Rang, J.—Shrimati Basant Rani and her minor daughter, Manu, had filed a claim petition u/s 110A of the Motor Vehicles Act, 1939 ("the Act" for short), for an amount of Rs. 3,00,000 as compensation for the death of Shri Suresh Kumar, the husband and father respectively of the petitioners, which occurred in an automobile accident caused due to the rashness and negligence of the driver of bus No. DEP 3737. The vehicle was insured with New India Insurance Co. Ltd., respondent No. 3. The claim petition was dismissed by the Motor Accidents Claims Tribunal, Rohtak. The petitioners have filed an appeal against that award. In the appeal, the petitioners have moved the present petition u/s 92A of the Act for directing the respondents to pay a sum of Rs. 15,000 along with interest at the rate of 12 per cent. per annum.

2. Respondent No. 3 has contested the application and put in reply. Two preliminary objections have been taken.

3. The first preliminary objection is that the application is not maintainable in the High Court, but it should have been filed before the Motor Accidents Claims Tribunal. It is, however, not denied that the applicants are the widow and the daughter of Suresh Kumar Batra, deceased. Secondly, that the application was

barred by limitation, because the accident occurred on December 29, 1982, whereas the application was filed in the High Court in 1985 and no valid reasons have been given for condonation of delay.

4. Shri V.P. Gandhi, learned counsel for the respondent-insurance company has contended that Section 92A of the Act, in express and clear terms, lays down that the application under this section has to be filed before the Motor Accidents Claims Tribunal. In order to buttress his contention, he referred to the provisions of Sub-section (2) and Sub-section (3) of Section 110A. He also contended that Section 110A fixes the period of limitation for claims at six months from the occurrence of the accident. Since the application had been made after the period prescribed for limitation, the same is liable to be dismissed.

5. In order to appreciate the points raised, the relevant statutory provisions may be noticed at the outset:

"92A. 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.

(2) The amount of compensation which shall be payable under Sub-section (1) in respect of the death of any person shall be a fixed sum of fifteen thousand rupees and the amount of compensation payable under that sub-section in respect of permanent disablement of any person shall be a fixed sum of seven thousand five hundred rupees.

(3) In any claim for compensation under Sub-section (1), the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person.

(4) A claim for compensation under Sub-section (1) shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made nor shall the quantum of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement.

* * * * * 110A. Application for compensation. --...

(2) Every application under Sub-section (1) shall be made to the Claims Tribunal having jurisdiction over the area in which the accident occurred, and shall be in such form and shall contain such particulars as may be prescribed :

Provided that where any claim for compensation u/s 92A is made in such

application, the application shall contain a separate statement to that effect immediately before the signature of the applicant.

(3) No application for such compensation shall be entertained unless it is made within six months of the occurrence of the accident :

Provided that the Claims Tribunal may entertain the application after the expiry of the said period of six months if it is satisfied that the applicant was prevented by sufficient cause from making the application in time."

6. Chapter VII-A incorporating the principle of "liability without fault" was enacted by the Parliamentary Act No. 47 of 1982 and was enforced with effect from October 1, 1982 ; it was extant on the date of accident. So, it is applicable to the facts of the present case. Section 92A has created a liability for the owners of the vehicles for payment of compensation in respect of death or disablement in accordance with the provisions of Section 92A. It also confers a corresponding right in the legal heirs of the deceased or the person who has suffered a permanent disablement of fixed compensation of Rs. 15,000 in the former case and Rs. 7,500 in the latter.

7. Chapter VII-A in general and Section 92A in particular do not provide expressly or by necessary intendment that the application u/s 92A has to be filed before the Motor Accidents Claims Tribunal. The provisions of the proviso to Sub-section (2) of Section 110A are of enabling and explanatory nature. They provide that a claim for compensation u/s 92A could be stated in the main application for compensation filed under Sub-section (1) of Section 110A itself. It was to obviate the necessity of filing a separate application for that purpose. Section 92A contains a beneficial provision intended to provide immediate succour to the dependants of the deceased OK the victim of an automobile accident, who had been permanently disabled, without going into the question as to who was actually responsible for the accident which resulted in the death of, or injury to, the disabled person. There is nothing in the two provisions noticed above or for that matter in any other provision of the Act debarring a claimant from filing an application u/s 92A in this court in the proceedings initiated on appeal by such person or persons. In the absence of any specific and positive bar in the statute, the provisions of Section 92A have to be given a very wide interpretation and allowed a free play, so as to help the maximum number of persons entitled to the benefits conferred by it.

8. Mr. Gandhi has not been able to bring to my notice any decided case of this court or of any other High Court, holding that an application u/s 92A was not maintainable in appeal proceedings. On the other hand, Justice Pritpal Singh has awarded interim relief of Rs. 15,000 to the applicants in Krishan Lal v. Phool Singh (F.A.O No. 621 of 1985, decided on September 12, 1985). In that case, the claimants had filed an application u/s 92A of the Act before the Tribunal, but somehow or the other, the Tribunal did not decide it and the main case was decided. The claimants then made an application in this court for compensation u/

s 92A of the Act and the same was allowed and compensation granted.

9. Mr. Gandhi tried to distinguish this case by contending that therein an application u/s 92A had been made before the Motor Accidents Claims Tribunal. It is another matter that the same had not been disposed of. This argument cannot be accepted. Though the application was made before the Tribunal, the same had not been disposed of and compensation was not given in that application. Compensation was awarded on a fresh application moved in this court.

10. It is not denied that the offending bus was insured with the respondent-insurance company.

11. For the foregoing reasons, I allow this application and direct the respondent-insurance company to pay the applicants Rs. 15,000 as compensation u/s 92A of the Act, with interest at the rate of 12 per cent. per annum from the date of the application up to the date of payment. The payment should be made within two months from today. The respondent-insurance company shall pay the applicants the costs of this application. Counsel's fee Rs. 200.