
(1989) 09 MP CK 0032
In the Madhya Pradesh High Court
Case No : Misc Appeal No. 82 of 1988

Dwarika

APPELLANT

Vs

Biso and Others

RESPONDENT

Date of Decision : 15-09-1989

Acts Referred:

Motor Vehicles Act, 1939 — Section 110B, 92A, 96, 96(4)

Citation : (1990) 2 ACC 528 : AIR 1990 MP 258 : (1990) MPJR 663

Hon'ble Judges : R.C. Lahoti, J

Bench : Single Bench

Advocate : N.P. Mittal, for the Appellant; R.S. Sikarwar and B.N. Malhotra, for the Respondent

Final Decision : Allowed

Judgement

R.C. Lahoti, J.

Appeal has been preferred by the owners of tractor trolley involved in a motor accident against whom the Motor Accident Claims Tribunal has made an interim award u/s 92A of the Motor Vehicles Act, 1939 (hereinafter referred to as the Act) for payment of Rs. 15,000/-to the claimants/respondents No. 1 to 7 (the legal representatives of the deceased in the incident), but exonerating the insurance company, the respondent No. 8 from payment on the ground that the deceased was travelling in the tractor at the time of the accident and being not a third party, the insurance company was not liable to compensate for the loss of the life.

It is not disputed that the deceased was travelling in the tractor at the time of the accident and that the tractor was insured with the insurance company, the respondent No. 8. The learned counsel for the appellant and the respondent No. 8 have cited a host of case law on the point as to whether an insurance company would be liable to pay compensation for loss occasioned by the death of a traveller in a goods vehicle. The learned counsel for the appellant relies on Guru

Govekar Vs. Miss Filomena F. Lobo and Others, , Pushpabai Purshottam Udeshi and Others Vs. Ranjit Ginning and Pressing Co. (P) Ltd. and Another, Nirmal Kumar v. Brijlal 1987 CCLJ 35 , Harishankar Tiwari and etc. Vs. Jagru and Others, and New India Assurance Co. Ltd. and Others Vs. Smt. Shakuntalabai and Others, to contend that the insurance company would be liable while the learned counsel for the respondent No. 8 places reliance on a Full Bench pronouncement of this Court in Kallu Maharaj Vs. Meenabai and Others, Shivilal and Others etc. Vs. Smt. Rukmabai and Others, Bhanwarsingh v. Gatubai (1989) 2 ACC 35 (Madh Pra) and Santra Bai v. Prahlad 1985 Acc CJ 762 ; Smt. Santra Bai and Vs. Prahlad and Others, etc. etc., to contend that such a loss is not covered by the insurance company either under the policy or under the statute.

In the opinion of this Court, the core of controversy lies elsewhere and not at the point at which the learned counsel for parties have chosen to concentrate.

Provision has been made by several provisions of the Act for fixing liability on the insurance company for payment of compensation by making the same co-extensive with the liability of the vehicle owner unless the insurer be protected by an exception. Nevertheless, the rule relating to the liability of an owner and consequentially of the insurer, remains the general law of torts whereunder an owner of the vehicle would not be liable to compensate for the loss arising out of accident except on proof of negligence. The Apex Court in N.K.V. Bros. (P) Ltd. Vs. M. Karumai Ammal and Others,), expressed and emphasised the necessity of no fault liability legislation by State. Section 92A of the Act came to be inserted by the amendment of 1982 in response to the call. Now where the death or permanent disablement of any person arises from an accident by a motor vehicle, the owner of the vehicle becomes liable to make compensation inescapably because of no-fault-liability statutorily enacted. The provision has done away with the necessity of recording a finding of negligence as a cause of the accident before awarding the limited compensation.

It will be useful to notice the provisions contained in Sections 92A, 92E and 93(ba) of the Act which read as under :--

"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 the 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 u/s (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.

"92E. Overriding effect. -- The provisions of this Chapter shall have effect notwithstanding anything contained in any other provision of this Act or of any other law for the time being in force".

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

The provisions came up for consideration of this Court in Shastri Brothers v. Parwatibai Jain 1988 A CJ 1091. This Court held that the provisions of Section 92A read along with 93(ba) suggest that the words used in Section 92A have a wide connotation and the insurer of the vehicle is also liable for the consequences arising out of no fault liability in an accident where an insured vehicle is involved. This Court proceeded to observe that where the vehicle involved in an accident is insured, in cases falling u/s 92A of the Act, the insurer's liability is joint and several with that of the owner of the vehicle.

This Court in taking the abovesaid view chose to follow the decisions of Punjab and Haryana, Bombay and Andhra Pradesh High Court in Oriental Fire and General Ins. Co. Ltd. v. Beasa Devi 1985 A CJ 1 : (AIR 1985 P & H 96), Oriental Insurance Co. Ltd. Vs. Sitla Parshad and Others, Oriental Fire and General Insurance Co. Ltd. Goa Vs. Aleixo Fernandes and others, and Gattu Prabhakar and Another Vs. Thummanapalli Brahmaiah and Others,

To find out consensus of judicial opinion, the views of other High Courts may also be noticed.

In National Insurance Co. Ltd. v. Surjit Singh 1988 ACJ 1122 : (AIR 1989 NOC 83), the Chief Justice of J & K High Court observed :--

"Insurance company can be saddled with liability, if either the insurance company admits that the vehicle involved was insured with it or the fact is prima facie established from the material on record; no further enquiry is required to be made by the Tribunal at this stage because if a detailed enquiry is made by the Tribunal even at this stage, it would frustrate the very object for which Section 92A was enacted. The court has a duty to promote the intention of the legislature and not to frustrate it particularly while considering a beneficial legislation."

The report indicates that the J & K High Court noticed the view of Karnataka High Court also, apart from Bombay and P & H High Courts' views.

In *Kailash Kumari v. Bhola* 1988 ACJ 1034 (Punj & Har), the facts were that the deceased was a gratuitous passenger. The Tribunal absolved the insurer from its liability. The claimants preferred an appeal. An application u/s 92A was moved before the appellate Court seeking direction to the insurer to pay an amount of Rs. 15,000/-. The prayer was opposed on the ground that the insurer having been absolved even by the Claims Tribunal, there was no occasion for an award u/s 92A against it. The contention was repelled holding that the application lay even at the stage of appeal and the insurance company was directed to pay the amount under no-fault-liability clause.

In *New India Insurance Company Ltd. Vs. Smt. Sarda Devi and Others*, the Patna High Court held that the insurer was jointly and severally liable to pay the sum of Rs. 15,000/- in terms of Sub-section (2) of Section 92A of the Act though there may not have been any negligence on the part of the driver of the insured vehicle involved in accident.

New India Assurance Co. Ltd. v. Member, Motor Accidents Claims Tribunal 1988 ACJ 612 a judgment of Gauhati High Court is more illuminating because it has taken into consideration the view of several High Courts referred to hereinabove as also the High Courts of Madras, Orissa, Rajasthan and Allahabad. It was held :--

"The underlying idea behind Section 92A being payment of prompt and immediate compensation, the same cannot be allowed to be frustrated to decide various defences to be raised by the insurance company, the disposal of which would naturally take time. This reading of Section 92A would cause no real prejudice to the insurer as its interest can well be protected, in case it is ultimately found that it is not liable under the policy to indemnify the insured, by passing appropriate order u/s 96(4) of the Act as observed earlier. I would, therefore, hold that at the stage of passing of the award u/s 92A of the Act, the Claims Tribunal is not to apply its mind to the defences available to an insurance company u/s 96(2) or for that matter, whether the company is protected by anything stated in the proviso to Section 95(1) of the Act. In taking this view, I have also borne in mind Section 92B of the Act which has stated that the provision of Chapter VII-A shall have effect notwithstanding anything contained in any other provision of the Act or any other law for the time being in force."

In *New India Assurance Co. Ltd. v. N. P. Tyagi* 1989 ACJ 599, Delhi, High Court was faced with a situation where the insurance company contended that documents available on record showed that the vehicle had been transferred by the insured before the date of the incident which resulted in cessation of the liability of the insurer. It was held that the question was to be adjudicated upon by the tribunal on trial and that defence did not help the insurer in wriggling out of the no-fault-liability under an interim award. In *Ravi Kumar and Another Vs.*

Ram Parkash and Others, Delhi High Court did not permit the plea of the driver being a minor and not qualified to hold a licence to come in the way of fixing liability on the insurance company u/s 92A.

In National Insurance Co. Ltd. v. Jamna Bai 1989 A CJ 368 (Raj), a few labourers were involved in the accident. Rajasthan High Court did not permit the plea of the insurance company that the labourers employed for the purpose of loading and unloading were not covered under the policy to be taken up by the insurer for escaping the liability u/s 92A. It was held that no enquiry at that stage could be made with regard to the question whether the labourer was employed for loading or unloading or for other purposes.

Not only I am bound by the view taken and the law as interpreted in Shastry Brothers case (1988 ACJ 1091) (supra) by this Court, but I find a consensus of judicial opinion amongst all the High Courts as available from the decided cases. The relevant aspects of law touching Section 92A may be summed up as under :--

(i) If it is admitted or prima facie proved from the material available on record that the vehicle involved in an accident was insured, the tribunal has jurisdiction to hold the insurance company jointly and severally liable with the owner of the vehicle for no-fault-liability u/s 92A, requiring the insurance company to pay the amount of interim award to the claimants forthwith; and at that stage, the tribunal is not bound to inquire into or record a finding as to sustain-ability or otherwise of the objections raised by the Insurance Co. that it was not liable at all;

(ii) The interim award Under Section 92A does not deprive the insurer of its right to defend itself at the subsequent proceedings by raising whatever defences available to it u/s 96 of the Act;

(iii) Having investigated and inquired into the sustainability of the objections raised by the Insurance Company if ultimately the Tribunal arrives at a finding that the insurer was not liable to indemnify insured, while making the final award u/s 110B the Tribunal may direct the insured by virtue of the provisions contained in Section 96(4) of the Act to reimburse the insurer the amount paid by it to the claimant pursuant to the award made u/s 92A.

(iv) The only exception appears to be where the factum of accident itself is denied and there the tribunal may be inclined and would rather do well to hold a summary enquiry and then form an opinion as to whether the accident did take place and whether the vehicle in question was involved in the accident or not. If from the evidence collected in such summary enquiry and other material available on record, the tribunal is satisfied prima facie that the accident did take place and the vehicle in question was involved therein, it shall have jurisdiction to make an interim award u/s 92A fixing joint and several liability on the insurer along with the insured. Of course, after trying claim on merits while expressing a final opinion and passing an award u/s 110B of the Act, the Tribunal would not be

bound by the opinion recorded earlier at the time of making the interim award u/s 92A.

The result is that the appeal is allowed. In supersession of the impugned order, it is held that the insurance company, the respondent No. 8 shall be jointly and severally liable along with the owner-appellant to satisfy the interim award. No order as to costs of this appeal.