

(2008) 03 BOM CK 0111
In the Bombay High Court
Case No : W. P. No. 4959 of 1993

Ismail Haji Hajimsaheb

APPELLANT

Vs

Oriental Insurance Co. Ltd. and another

RESPONDENT

Date of Decision : 27-03-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 144, 151

Citation : (2008) 03 BOM CK 0111

Hon'ble Judges : Nishita Mhatre, J

Bench : Single Bench

Advocate : T.S. Ingale, for the Appellant;

Final Decision : Allowed

Judgement

Smt. Nishita Mhatre, J.—This petition challenges the order passed by the Member, Motor Accident Claims Tribunal, Sangli on 23-8-1993. By this order, the Tribunal has allowed the application filed u/s 144 r/w section 151 of the CPC by the Insurance Company i.e., the respondent No. 1 herein.

2. The petitioner was the owner of a truck which was involved in the accident. The truck was being driven by respondent No. 2 at that point of time. One person died as a result of the accident. The heirs preferred an application under the Motor Vehicles Act, 1939 claiming compensation for the death of their relative on account of the accident. An application u/s 92A of the Motor Vehicles Act, 1939 was also filed claiming compensation of Rs. 15000/- as "no fault liability".

3. This application was granted by the Tribunal on 23-2-1984. The Insurance company therefore paid the no fault liability to the heirs of the deceased together with the interest as awarded by the Tribunal. The claim application was then heard and on 17-2-1986, the Tribunal held that the claimants were entitled to an amount of Rs. 26,000/- from the driver i.e. respondent No. 2 herein. The Tribunal absolved both the petitioner owner as well as the insurance company

from any liability in respect of the accident as it held that the deceased was travelling in the truck without the owner's knowledge and because the driver had permitted him to do so.

4. An application was filed by the insurance company seeking restitution and recovery of the amount paid under the no fault liability clause. This application has been allowed by the Tribunal on the ground that since the insurance company was exonerated in the claim petition that was filed u/s HOB of the Motor Vehicles Act, 1939, it was entitled to recover the amount from the owner i.e. the petitioner herein, paid to the claimants on account of no fault liability.

The Tribunal while deciding the application under sections 144 and 151 of the CPC has lost sight of the fact that the principles governing the payment of compensation u/s 92A of the Motor Vehicles Act, 1939 are different from those when the Tribunal decides the claim petition filed u/s 110B of the Motor Vehicles Act. No fault liability is to be paid once there is an accident involving a vehicle. The amount is expected to be paid on death or permanent disablement.

5. In the case of Pandurang Narayandas Sarda vs. Subhash Gopal Changale and ors., 1989 Mh. L.J. 488 , the Division Bench of this Court while considering the Motor Vehicles Act, 1939 has observed that the Act being a beneficial legislation must be interpreted in a manner so as to advance the objective of the enactment. This Court has by relying on the judgment of the Supreme Court in the case of Gujarat State Road Transport Corporation, Ahmedabad Vs. Ramanbhai Prabhatbhai and Another, held that the insurance company would be liable to indemnify the owner so far as the compensation payable u/s 92A of the Motor Vehicles Act is concerned. This is irrespective of whether the insurer is liable to pay on account of any negligence or otherwise of the driver when the main application is being decided.

6. In these circumstances, it is obvious that the insurance company would not be entitled to restitution by recovering the amount paid to the claimants on account of no fault liability. The impugned order dated 17-3-1986 is set aside. The petition is allowed. Rule made absolute with no order as to costs.