
(1987) 08 MP CK 0035

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 2 of 1987

Mahila Ramdei

APPELLANT

Vs

Nand Kumar and Others

RESPONDENT

Date of Decision : 14-08-1987

Acts Referred:

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

Citation : (1987) ACJ 764 : AIR 1988 MP 98 : (1990) 67 CompCas 486 : (1988) JLJ 412

Hon'ble Judges : T.N. Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

T.N. Singh, J.—Respondents have been duly served. Except respondent No, 1 the other two have not appeared as yet, though this appeal was admitted on 20-1-1987. This is a matter in which the constitutional compulsion is so heavy and, pressing as to call for instant disposal that hearing cannot be deferred any further on any ground whatsoever. Accordingly, I propose not to consider or make any order on I, A. No. III filed in this matter. That application, made in this Court on 9-7-1987, shall be disposed of by the Tribunal when the matter goes back and steps are taken thereat to implead legal representatives of deceased Respondent No. 2, Shivnarayan. At this stage it will suffice to say that his death took place on 28-6-1987, during pendency of this appeal and indeed after he was duly served.

2. I see no reason to take today a different view in this matter and indeed it is necessary only to reiterate the view taken by me on 20-1-1987 in admitting the appeal, which has to be merely buttressed appropriately. By the impugned order the Motor Accidents Claims Tribunal has dismissed the claim-petition preferred by the instant petitioner refusing the prayer for an adjournment made on that date on the ground of claimant's own illness. The Tribunal took the view that in the proceedings, since 8-10-1985 several dates having been fixed for claimant's

evidence, the claimant should not be given more opportunity or further latitude in the matter of adducing her own evidence or evidence of any other witnesses that she could examine in support of her case. On 20-1-1987 I had noted that the Tribunal had not passed any order in the pending matter giving relief to the applicant u/s 92-A of the Motor Vehicles Act, for short "the Act". Today that position is not disputed and what is also indisputable is that claim for compensation was made for the fracture of her leg in the accident which the claimant met on 6-6-1984.

3. I have consistently taken the view that a statutory duty is cast on the Tribunal to act suo motu u/s 92-A and if that view is correct and not to be departed from, it is difficult not to hold the impugned (order) to be illegal, unconstitutional and void. Indeed, how can the claim petition itself be dismissed without the Tribunal acting u/s 92-A. Because, the final award on the application preferred u/s 110A can be made u/s 110-B of the Act on proof of tortious liability while Section 92-A contemplates explicitly "no fault" liability- Claimant's right to have an award u/s 92-A cannot, therefore, be killed by the Tribunal adopting to leap-frog procedure to dismiss the claim-petition made u/s 110-A and denying itself the jurisdiction to act u/s 92-A. It may be that no prayer had been made in the instant case for grant of relief u/s 92-A but till such time as the lis was pending there was a jurisdiction vested in the Tribunal and a duty cast on it first to act u/s 92-A before proceeding to dispose of in any manner the claim-petition. Indeed, the application made u/s 110-A could not have been dismissed on any ground whatsoever till the Tribunal had exercised its jurisdiction one way or the other u/s 92-A. Sub-section (2) of Section 92-B itself explicitly contemplates this position by requiring that the claim "under Section 92-A shall be disposed of as aforesaid in the first place" and also, "as expeditiously as possible".

4. Now, a few more reasons why I say that the Tribunal has a duty to act suo motu u/s 92-A. Firstly, because, this Court, in the case of New India Assurance Co. Vs. Smt. Phoolwati and Others, : took the view that Section 92-A becomes live and generates sufficient power in Courts to help the helpless and helpless, the moment it is found by a court or Tribunal on material available to it that one or more motor vehicle/motor vehicles is or are involved in the accident. Indeed, in Shahzad Khan (1986) 1 MPWN 28, I had also taken the view that a claimant is not to be seen as a plaintiff in terms of C.P.C. and he is not to be saddled, therefore, with the onerous and explicit obligation imposed on a plaintiff by the Code. He is to be aided by the Tribunal, adopting reasonable and benevolent procedure in trying his cause, as be conformable to the mandate of Article 39A of the Constitution. Times without number, in different matters coming at different times to this Court, it has been repeatedly emphasised that to enforce the legislative intent of Section 92-A is the constitutional duty of the Tribunal and indeed of this Court also, otherwise the salutary provision would become a dead-letter. The legislative intent is very clearly spelt out in contemplating "no fault liability" so that for making an order u/s 92-A a simple finding only has to be recorded by the Tribunal on materials available to enforce the right to claim

compensation for death or for permanent disablement which resulted from an accident arising out of use of a motor vehicle or motor vehicles.

5. It has been held indeed in Phoolwati (supra) that the liability to be discharged u/s 92-A is indefeasible, peremptory, total and also inexorable. Indeed, it is the duty of the Court or the Tribunal to ensure that such liability is not only expeditiously adjudged but to ensure further that it is duly discharged by such person, saddled with the statutory liability under the Act to discharge the same, who can do so at the earliest date. Indeed, if the vehicle involved in the accident is found to have been duly insured the Court or the Tribunal has to make an order against the Insurer to discharge the statutory liability contemplated u/s 92-A. The liability of insurer arises in terms of Section 96 which saddles a "duty" on the insurer to satisfy any judgment-debtor in respect of "liability covered by the terms of the policy" taken out by the insured to place his motor vehicle on road after complying with the provisions of Section 95.

6. What I would further like to add is that Section 92-A in terms does not contemplate filing of an application for claiming relief thereunder and speaks merely of "claim" in Sub-section (3) which, rather relieves the claimant of the burden of establishing anything positive except the simple fact that a motor vehicle is involved in the accident causing death or permanent disablement for which compensation is claimed. To Section 110 is appended an Explanation which makes this position clear contemplating claims for compensations u/s 92-A to be decided by Claims Tribunal constituted thereunder but not separately as the claim u/s 92-A is said to arise by legal fiction in the proceeding commenced or to be commenced u/s 110-A. Therefore, when an application to such a Tribunal is made u/s 110-A that Tribunal is saddled with the statutory duty to act u/s 92-A in accordance with the provisions thereof as also of Section 92-B. The "claim" would be deemed to have arisen on the facts stated in the application made u/s 110-A if a separate application u/s 92-A is not made and there would be a duty on the Tribunal u/s 92-B to dispose of that claim first. Indeed, what the proviso to Sub-section (2) of Section 110-A contemplates is merely directory though it manifests still that no separate application u/s 92-A has to be made and the claim contemplated u/s 92-A would be deemed incorporated in the same application made u/s 110-A. If I have to make anything more clear further I would say that the said proviso cannot crib or cripple the substantive right contemplated u/s 92-A by merely envisaging a "separate statement" to be incorporated in the application made u/s 110-A. It does not envisage a condition precedent for exercise of jurisdiction u/s 92-A and it is meant merely to remind the Tribunal of its duty to act one way or the other u/s 92-A even without separate application for relief contemplated there under.

7. I propose to add another word on the constitutional complexion of the interpretation of Section 92-A because the constitutional position that obtains today in the country following the decision in *Olga Tellis* AIR 1986 SC 180 is that right to livelihood has to be considered a fundamental right embraced by Article

21 of the Constitution. The death or permanent disablement of an earning member of the family is almost likely in alt cases to seriously infringe right to livelihood of claimants who are widows and minors and lack earning capacity. Section 92-A has to be read as conferring a statutory right on them to prevent their destitution and physical extinction. Therefore, according to me, the power to act suomotu u/s 92-A has to be seen as a constitutional necessity because the reasonable procedure to dispose of a claim which arises u/s 92-A would be when the Court acts suo motu to exercise of jurisdiction thereunder to prevent and preempt utter destitution.

8. For all the foregoing reasons the appeal is allowed. The impugned order is quashed. The Tribunal is directed to take back on file the claim petition but it shall hear parties first on the question as to whether on the facts pleaded and materials available or made available to the Tribunal an order for payment of compensation u/s 92--A can be passed Thereafter, the Tribunal shall call upon the parties to adduce evidence on the claim made in the application u/s 110-A; but not before disposal of the matter first u/s 92A. Indeed, I make it clear once again that it is for the very reason that the application u/s 110-A was not ripe for hearing and was yet disposed of that the impugned order is held illegal, unconstitutional and void. The application (1. A. No. III) filed in this Court shall be transmitted to the Tribunal when this order is communicated, which shall be done with due despatch.