
(1994) 07 BOM CK 0085
In the Bombay High Court
Case No : First Appeal No. 142 of 1994

Maqbul Hussain Kitabullah	Vs	APPELLANT
Kulvinder Sriram Kapoor and Others		RESPONDENT

Date of Decision : 15-07-1994

Acts Referred:

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

Citation : (1995) ACJ 989 : (1995) 1 BomCR 317 : (1995) 97 BOMLR 161

Hon'ble Judges : D.R. Dhanuka, J

Bench : Single Bench

Advocate : N. Mhatre, instructed by P.M. Patel, for the Appellant; Kudroli, for the Respondent

Final Decision : Allowed

Judgement

D.R. Dhanuka, J.—This application involves consideration of interpretation and application of section 92-A and 92-C of Motor Vehicles Act, 1939. This appeal is filed by the original applicant against order dated 22nd July, 1993 passed by the learned Member of Additional Motor Accident Claims Tribunal for Greater Bombay in Application No. 3789(A) of 1989. In view of the urgency of the situation, the learned Advocate for the appellant was authorised to communicate the adjourned date of hearing to New India Insurance Co. Ltd., as well as United India Insurance Co. Ltd., by letter as well as by telegram. On 7th July, 1994, the two Insurance Companies were duly served with the letter dated 5th July, 1994, informing these Insurance companies that the abovereferred appeal shall be heard by this Court on 11th July, 1994. In response to the notice served on the concerned parties, Shri Kudroli, learned Counsel for the United India Insurance Co. Ltd., has appeared before the Court and has made his submissions at the bar.

2. On 29th November, 1987, at about 8-15 p.m. the appellant was driving the auto rickshaw No. MMQ-6179 alongwith Juhu Tara Road from north to south direction. The respondent No. 2 was the owner of the said auto rickshaw. The appellant was in employment of respondent No. 2 at the material time. The said

auto rickshaw was halted for a short while and was stationery. The said auto rickshaw was halted behind another auto rickshaw No. NCJ 816 on account of the traffic jam opposite Palm Grove Hotel. It is the case of the applicant that suddenly Motor Car No. NNB-7011 came from behind in a fast speed and dashed against the autorickshaw No. MMQ-6179 as a result whereof the appellant was thrown off the seat and the appellant suffered various injuries. The appellants auto rickshaw bearing No. MMQ-6179 collided with the other auto rickshaw. The appellant took treatment in Cooper Hospital in the first instance. The appellant thereafter was treated at K.E.M. Hospital. Dr. C.P. Manwani issued a very detailed disability certificate being certificate dated 16th December, 1991 certifying that the appellant had suffered permanent partial disability to the extent of 25 per cent. As a result of the said serious injuries, the appellant can no longer drive vehicle and the several faculties of the appellant are impaired as set out in the said certificate of Dr. C.P. Manwani. The correctness of the statement in the said certificate is not in dispute.

3. On 19th April, 1989, the appellant preferred the claim for compensation before the Motor Accident Claims Tribunal for Greater Bombay. In the said proceedings the appellant made a claim for direction to the effect that all the respondents impleaded in the said application be directed to pay a sum of Rs. 7,500/- to the applicant towards no fault liability in terms of section 92-A of the Motor Vehicles Act, 1939. At the relevant time the Motor Vehicles Act, 1939 was applicable and not the Motor Vehicles Act, 1988.

4. Alongwith the abovereferred application the appellant produced various documents like First Information Report, panchnama, Injury Certificate etc. as contemplated under Rule 291-A of the Bombay Motor Vehicles (Second Amendment), Rules, 1984.

5. The respondent No. 1 was the owner of Motor Car No. MMB-7011. The respondent No. 3 is the Insurance Company concerned which had issued insurance certificate so as to cover the risk in respect of the said Motor Car No. MMB-7011 for the period 12th November, 1987 to 10th November, 1988. The respondent No. 3 was the owner of the autorickshaw being auto rickshaw No. MMQ 6179. The respondent No. 4 had issued Insurance Certificate so as to cover the risk pertaining to auto rickshaw No. MMQ 6179 for the period 28th May, 1987 to 27th May, 1988.

6. The learned Member of Additional Motor Accident Claims Tribunal rejected the application of the appellant for interim relief in terms of section 92-A of the Act on various grounds. The learned Member held that the tribunal had no jurisdiction to entertain and try the claim application against the owner of auto rickshaw No. MMQ 6179 and consequently against the United India Insurance Co. Ltd. The learned Member held that only the forum constituted under the Workmen's Compensation Act, 1923 would have jurisdiction to consider the claim made by the appellant in so far as respondent No. 2 and respondent No. 4 to the proceeding were concerned. The learned Member held that the application

made by the appellant u/s 92-A of the Act was not maintainable on the ground that F.I.R. was not evidence. The learned Member held that the abovereferred certificate issued by C.P. Manwani did not show that the appellant had suffered total permanent disability. In other words "permanent partial disability" as certified by Dr. C.P. Manwani did not confer a cause of action on the appellant to claim relief u/s 92-A of the Act, opined the learned Member of the Tribunal.

7. Both the learned Counsel appearing before the Court at today's hearing have fairly invited attention of the Court to the relevant material on record including certificate dated 16th December, 1991 issued by Dr. C.P. Manawani.

8. Mrs. Mhatre, the learned Counsel for the appellant has submitted that the appellant had an option to proceed against his employer i.e. respondent No. 2 under Workmens" Compensation Act, 1923 or under Motor Vehicles Act, 1939. The learned Counsel submits that the tribunal was not justified in taking the view that it had no jurisdiction to entertain the claim against the respondent No. 2 and consequently against respondent No. 4. The learned Counsel for the appellant appears to be right in making this submission. Section 110-AA of Motor Vehicles Act, 1993 clearly provides as under :---

"Notwithstanding anything contained in the Workmen"s Compensation Act, 1923 (8 of 1923), where the death of or bodily injury to any person gives rise to a claim for compensation under this Act and also under the Workmen"s Compensation Act, 1923 (8 of 1923) the person entitled to compensation (may, without prejudice to the provisions of Chapter VII-A, claim such compensation) under either of those Acts but not under both)"

9. Mrs. Mhatre, the learned Counsel for the appellant submitted that the liability to pay compensation u/s 92-A was enforceable against all the respondents jointly and severally as the appellant had suffered "permanent disablement" as defined in section 92-C of the Act, resulting from an accident arising out of the use of a motor vehicle or motor vehicles. The learned Counsel submitted that the expression "use of the motor vehicle" has been interpreted very widely by the Supreme Court in the case of Shivaji Dayanu Patil and another Vs. Smt. Vatschala Uttam More, . In particular the learned Counsel has invited the attention of the Court to the observation made by S.C. Agarwal, J., speaking for the Apex Court in para 6 of the said Judgment. Having regard to the object of section 92-A of the Act and other relevant consideration, the Apex Court held that the expression "arisen out of" had a wider conotation. It is not necessary that there should be direct and proximate action between the use of the motor vehicle and the accident resulting in death or permanent disablement. It is enough if the accident can be connected with the use of the motor vehicle. In para 36 of the said judgment, the Apex Court held that the construction of the expression arisen out of the use of a motor vehicle in section 92-A of the Act enlarged the field of protection made available to the victims of an accident and was in consonance with the beneficial object underlying the enactment. In other words the expression "arisen out of" cannot be equated to the expression "caused

by". Having regard to the ratio of this judgment I have no hesitation in accepting the submission of the learned Counsel for the appellant that the appellant had suffered serious injury as a result of an accident "arisen out of the use of" both the vehicles i.e. auto rickshaw No. MMQ-6179 as well as Motor Car No. MMG-7011.

10. Shri Kudroli, the learned Counsel for the respondent No. 4 had been good enough to invite the attention of the Court to the Bombay Motor Vehicles (Second Amendment) Rules, 1984. The said rules came into force on 2nd August, 1984. Rule 291-A and Rule 306-A of the said rules are of some relevance. It is beyond my comprehension as to how the tribunal could hold that the application filed by the appellant u/s 92-A of the Act was not maintainable at all.

11. The only question which is required to be considered now is as to whether the appellant suffered permanent disablement within meaning of section 92-C of the Act so as to entitle him to claim compensation from all the respondents jointly and severally as contemplated u/s 92-A of the Act. The learned Counsel for the appellant invited attention of the Court to section 92-C of the Act which defines the expression "permanent disablement" in Chapter VII-A of the Act. If a person has suffered any injury or injuries involving permanent impair of the powers of any member or joint it follows that such person has suffered permanent disablement within meaning of section 92-A of the Act. Having regard to the special definition of the expression "permanent disablement" contained in section 92-C of the Act, dictionary meaning of permanent disablement cannot be applied for the purpose of interpretation and apply section 92-A of the Act. The learned Counsel for the appellant has submitted that the expression "impaired" has been defined in several dictionaries as "damaging or weakened". If the certificate of Dr. C.P. Manwani dated 16th December, 1991 is considered in entirety it would follow that the appellant had suffered "permanent disablement" within meaning of later part of section 92-C(b) of the Act. It is not disputed that it is not disputable that the appellant is unable to drive autorickshaw and the movements of bending forward and backward are very much restricted. The relevant facts on this aspect are set out in Dr. Manwani's certificate. The learned Member of Additional Motor Accident Claims Tribunal was in error when he observed that the appellant had not suffered permanent disablement as contemplated u/s 92-A of the Act. It is most unfortunate that the tribunal missed to concentrate on section 92-C of the Act. In this view of the matter, no more discussion is necessary.

12. In the result, the appeal is allowed. Order dated 22nd July, 1993 passed by Additional Motor Accident Claims Tribunal for Greater Bombay in Application No. 3789(A) of 1989 is set aside. The respondents Nos. 3 and 4 are directed to deposit a sum of Rs. 7,500/- with the Motor Accident Claims Tribunal towards their no-fault liability within two weeks from today. The Motor Accident Claims Tribunal shall release the said amount in favour of the appellant forthwith on the

amount being deposited. If respondents Nos. 3 and 4 so desire, the respondent Nos. 3 and 4 may deposit the said sum of Rs. 7,500/- for being paid over to the appellant in equal shares. That is however, left to the two insurance companies. As far as Order of this Court is concerned, the order is passed against both the insurance companies, and the appellants shall be entitled to enforce the said order against the said respondents.

13. The respondents Nos. 3 and 4 are directed to pay a sum of Rs. 150/- to the appellant towards cost of the appeal.

14. The Registrar, High Court, Appellate Side is directed to return record of the trial Court forthwith to the Motor Accident Claims Tribunal expeditiously and latest within 10 days from today. The tribunal is directed to dispose of the claim itself on merits, expeditiously and within six months from today, as far as possible.

15. Issue of certified copy is expedited.