(1992) 03 BOM CK 0012

In the Bombay High Court

Case No : Civil Revision Application No. 49 of 1991

Maruti Krishanji Chavan APPELLANT

Vs

Harish Chandra Satarkar RESPONDENT

Date of Decision : 17-03-1992

Acts Referred:
Motor Vehicles Act, 1988 — Section 140, 141

Citation : (1993) ACJ 1200

Hon'ble Judges : G.D. Kamat, J

Bench : Single Bench

Advocate : S.G. Dessai, for the Appellant; H.R. Bharne, for the Respondent

Judgement

G.D. Kamat, J.—This revision application is directed against the order, dated 28th January, 1991, whereby the prayer made by the petitioner to exclude the compensation of Rs. 7,500/- paid u/s 92-A of the Motor Vehicles Act, 1939, which is now corresponding to Section 140 of the Motor Vehicles Act, 1988, under ''no fault liability'' from the final award made in favour of the petitioner in the sum of Rs. 40,000/- is rejected.

2. The controversy arises in the following manner. Petitioner instituted a claim petition that he was the victim of an accident on 24th April, 1985, when he was travelling in a bus bearing No. GUX 164 owned by the Kadamba Transport Corporation. It is common ground that this bus collided with truck bearing No. GDZ 5140 driven by the first respondent, owned by the second respondent and insured with the third respondent in this petition. The petitioner had made a claim for compensation in the amount of Rs. 50,000/-against not only the present respondents, but also against the Kadamba Transport Corporation, the driver and the insurance company, viz., National Insurance Co. Ltd. By the award dated 1st December, 1988, the learned Motor Accidents Claims Tribunal awarded a sum of Rs. 40,000/- together with interest at 12 per cent per annum but, however, directed that the same shall be paid jointly and severally by the present respondents, exonerating the Kadamba Transport Corporation, the driver and the

National Insurance Co. Ltd. The award was silent insofar as the earlier award which had been made u/s 92-A for ''no fault liability'' was concerned. It is equally common ground that the ''no fault liability'' award when made in favour of the petitioner directed all the six opposite parties jointly and severally to pay the sum of Rs. 7,500/-. It is common ground that the Oriental Insurance Co. Ltd. and National Insurance Co. Ltd. paid a sum of Rs. 3,750/- each and which the petitioner admittedly received during the pendency of the proceedings.

3. After the award, the petitioner took out an execution application and contended therein that since the award is silent and does not make any specific direction with regard to the adjustment of the payment of the award for Rs. 7,500/- for ''no fault liability'', the same is in addition to the final award for Rs. 40,000/- made in the final award. He, therefore, prayed to the Tribunal to direct the third respondent, Oriental Insurance Co. Ltd., not to adjust the aforesaid amount of Rs. 7,500/- while making the payment pursuant to the final award, dated 1st December, 1988.

4. The learned Tribunal rejected this prayer of the petitioner and held that whatever amount paid under ''no fault liability'' is liable to be adjusted against the amount awarded in the final award and, therefore, the petitioner has no escape but to have the sum of Rs. 7,500/- deducted from the final award of Rs. 40,000/-.

5. Mr. S.G. Dessai, learned counsel for the petitioner, urged that the Tribunal has fallen in error in holding so. He contended that as long as the final award is silent no adjustment can be allowed and the third respondent is liable to pay Rs. 40,000/- together with interest at the rate of 12 per cent per annum. In any case Mr. Dessai urged that in view of the fact that the National Insurance Co. Ltd. had paid a sum of Rs. 3,750/- for satisfying the ''no fault liability'' claim, the Oriental Insurance Co. Ltd. cannot be permitted to adjust that sum and at the most the third respondent shall be entitled to deduct the sum of Rs. 3,750/- out of Rs. 40,000/-, which is finally awarded to the petitioner.

6. Mr. Dessai is not right when he contends that merely because there is no specific mention in the final award with regard to the adjustment of Rs. 7,500/- the petitioner could be given the benefit of not deducting whatever he received earlier. The learned Judge is right in invoking Section 141 of the Motor Vehicles Act, 1988, to say that unless the award had otherwise directed, the payment made for ''no fault liability'' is liable to be deducted. But, however, there is great merit and substance in the alternate submission of Mr. Dessai that the Oriental Insurance Co. Ltd. cannot be permitted to adjust the sum of Rs. 3,750/- paid by the National Insurance Co. Ltd. in that it must be seen in the first place that the liability u/s 92-A, now Section 140, is a ''no fault liability'' and once the award is made and even when the claim petition of any applicant is dismissed, there can be no direction for such an applicant to refund the moneys obtained under ''no fault liability'' award. It is, therefore, clear that once the Kadamba Transport Corporation, the driver and the National Insurance Co. Ltd. were exonerated in

the main claim petition, the claim petition stands dismissed insofar as they are concerned. Once this claim petition is dismissed as against them there can be no order to the petitioner to refund the amount of Rs. 3,750/- to them. Now, since the amount had been paid on behalf of the Kadamba Transport Corporation and its driver by the National Insurance Co. Ltd., the law does not permit Oriental Insurance Co. Ltd. to take advantage of that situation and make an adjustment of the money paid by some other insurance company under ''no fault liability'' and I can succinctly point out what helps the case of the petitioner, in that Section 141 reads thus:

Section 141. Provisions as to other right to claim compensation for death or permanent disablement.-(1) The right to claim compensation u/s 140 in respect of death or permanent disablement of any person shall be in addition to any other right (hereinafter in this section referred to as ''the right on the principle of no fault'') to claim compensation in respect thereof under any other provision of this Act or of any other law for the time being in force.

(2) A claim for compensation u/s 140 in respect of death or permanent disablement of any person shall be disposed of as expeditiously as possible and where compensation is claimed in respect of such death or permanent disablement u/s 140 and also in pursuance of any right on the principle of fault, the claim for compensation u/s 140 shall be disposed of as aforesaid in the first place.

(3) Notwithstanding anything contained in Sub-section (1), where in respect of the death or permanent disablement of any person, the person liable to pay compensation u/s 140 is also liable to pay compensation in accordance with the right on the principle of fault, the person so liable shall pay the first-mentioned compensation and-

(a) if the amount of the first-mentioned compensation is less than the amount of the second-mentioned compensation, he shall be liable to pay (in addition to the first-mentioned compensation) only so much of the second-mentioned compensation as is equal to the amount by which it exceeds the first-mentioned compensation;

(b) if the amount of the first-mentioned compensation is equal to or more than the amount of the second-mentioned compensation, he shall not be liable to pay the second-mentioned compensation.

From Clause (a) of Sub-section (3) it is clear if the amount of the first-mentioned compensation (under ''no fault liability'') is less than the amount of the second-mentioned compensation (final award), he shall be liable to pay, in addition to the first-mentioned compensation, only so much of the second-mentioned compensation as is equal to the amount by which it exceeds the first-mentioned compensation. Insofar as Clause (b) is concerned, it says that if the amount of the first-mentioned compensation is equal to or more than the amount of the second-mentioned compensation, he shall not be liable to pay the second-mentioned compensation. Sub-section (3) opens out by saying "Notwithstanding anything contained in Sub-section (1), where in respect of the death or permanent disablement of any person, the person liable to pay compensation u/s 140 is also liable to pay compensation in accordance with the right on the principle of fault, the person so liable shall pay the first-mentioned compensation." Therefore, the expression ''the person liable to pay compensation'' and the subsequent expression ''the person so liable'', is one and the same person and the adjustment then is required to be made under Clause (a) or (b) of Sub-section (3), as the case is. The liability determined for ''no fault liability'' insofar as the Oriental Insurance Co. Ltd. is concerned, was to the extent of Rs. 3,750/-. The final award now directs the same insurance company to pay a sum of Rs. 40,000/-. The same company, therefore, can only adjust the sum of Rs. 3,750/- and cannot by any stretch of imagination claim to adjust the amount of compensation under ''no fault liability'' paid by National Insurance Co. Ltd., which is a different person. To that extent the Tribunal has committed an error which, in my opinion, requires to be corrected.

7. Mr. H.R. Bharne, however, made a grievance that the National Insurance Co. Ltd. has entered into correspondence with Oriental Insurance Co. Ltd. for indemnifying it in the sum of Rs. 3,750/-. I do not think I should detain myself on this aspect of the matter once I have already held that once the ''no fault liability'' compensation is paid even when the claim is dismissed as against them, there is no question of recovery. In the result, this revision application partly succeeds, the impugned order, dated 28th January, 1991, shall stand modified and the application of the petitioner is partly granted. Respondent No. 2, Oriental Insurance Co. Ltd., shall be entitled to adjust only a sum of Rs. 3,750/- against the final award of Rs. 40,000/-. Rule accordingly made partly absolute, leaving parties to bear their own costs.