
(1990) 02 MP CK 0001
In the Madhya Pradesh High Court
Case No : Civil Revision No. 219 of 1987

Mohammad Ilias

APPELLANT

Vs

Bodhani Bai and Others

RESPONDENT

Date of Decision : 21-02-1990

Acts Referred:

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

Citation : (1991) ACJ 371 : AIR 1991 MP 5 : (1991) 36 MPLJ 119 : (1991) MPLJ 119

Hon'ble Judges : B.C. Varma, J

Bench : Single Bench

Advocate : K.S. Wadhwa, for the Appellant; H.B. Agarwal, for the Respondent

Final Decision : Allowed

Judgement

B.C. Varma, J.

This revision arises out of the order dated 29-4-1987, passed by the Motor Accident Claims Tribunal, Raipur, in Claims Case No. 92 of 1986. By that order, the Claims Tribunal awarded a sum of Rs. 15,000/-under Section 92-A of the Motor Vehicles Act, 1939, in favour of the claimants (non-applicants Nos. 1 to 6). However, on observation that the deceased was unauthorisedly travelling in the truck, the Insurance Company has been exonerated from discharging this liability.

The contention of the truck-owner, who has preferred this revision is that the Insurance Company should also have been jointly made liable u/s 92-A.

Having heard counsel for the parties, I am of the opinion that the contention is well-founded and the revision must be allowed. Section 92-A of the Motor Vehicles Act is as follows:--

"92-A. 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 owner 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 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 under Sub-section (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 refused on the basis of the share of such person in the responsibility for such death or permanent disablement."

Section 92-A which falls in Chapter VII-A of the Act, was inserted by Act No. 47 of 82 with effect from 1-10-82. This piece of beneficial and ameliorative legislation provides for immediate help to the victims of a motor accident. The provisions are attracted no sooner it is either admitted or proved that the owner's vehicle was involved in the accident. This right of compensation u/s 92-A in respect of death or permanent disablement is in addition to any right to claim compensation in respect thereof under any provision of the Act or of any other law for the time being in force (see Section 92-B). A reading of Sections 92-A and 92-B together indicates that after determination of no fault liability u/s 92-A, the Tribunal has to proceed to consider the fault liability and make an award u/s 110-B determining the amount of compensation. It is at that stage that the Claims Tribunal "shall specify the amount which shall be paid by the Insurer or the owner of the driver of the vehicle involved in the accident or by all or any of them as the case may be". Section 110-B clearly lays down that where an application for compensation u/s 110-A also makes a claim for compensation u/s 92-A, such claim and any other claim whether made in such application or otherwise for compensation, in respect of such death or permanent disablement, shall be disposed of in accordance with the provisions of Chapter VII-A. No separate procedure is prescribed for disposal of application u/s 92-A. All that is said in Sub-section (2) of Section 92-B is that such application claiming compensation in terms of Section 92-A shall be disposed of as expeditiously as possible and shall be disposed of in the first place. How that amount awarded has to be adjusted is provided in Sub-section (3) of Section 92-B. Chapter VII-A thus is conspicuously silent as to the liability of the insurer for the amount

payable as compensation u/s 92-A on the principle of no fault liability.

The nature of enquiry u/s 92-A is also very limited. The question whether or not the Company is liable to pay compensation for different reasons is to be dealt with and decided in the course of hearing of the main application u/s 110-A of the Act. Thus, up to that stage, if on summary enquiry, the finding is that the vehicle was involved in the accident and was insured, the Award u/s 92-A has to be made in favour of the claimant requiring the Insurance Company to pay the given amount of the claim forthwith. Any objection as to the ultimate liability of the Insurance Company may thereafter be investigated and enquired into while dealing with the main application and making award in terms of Section 110-B including the liability of the Insurance Company." Such has been the view taken by the Punjab and Haryana High Court in *Oriental Fire & General Insurance Company Ltd. v. Beasa Devi* 1985 Acc CJ 1: (AIR 1985 PH 96), and also by the Karnataka High Court in *Mohammad Iqbal Vs. Bhimaiah and Others*,). This view so taken by two High Courts has found favour with this Court as well and adopted and followed by two Single Bench decisions in *M.A. No. 50 of 1965, Komalnand v. Maniklal*, decided on 24-7-86 and in *Civil Revn. No. 625/85, Nandoo alias Nand Kishore v. R. M. Shukla*, decided on 26-4-85. In the latter decision, a reference has also been made to the definition of the term "liability" appearing in Section 93(ba) which says that "liability" whenever used in relation to the death of or bodily injury to any person includes liability in respect thereof u/s 92-A". This definition was also included in the Act by Act No. 47 of 82. According to Sub-section (2) of Section 95, the liability of a policy of insurance shall cover any liability incurred in respect of any one accident up to the limits specified in its different sub-clauses. The no fault liability is also a liability arising out of the accident. There appears therefore no reason why this liability should also not be, fastened on the insurer in view of the provisions contained in Sub-section (2) of Section 95 read with the definition of "liability" u/s 93(ba).

The further question then is: "What happens if ultimately on investigation and enquiry and after participation by the Insurance Company in the proceedings initiated I by an application u/s 110-A of the Act, the Insurance Company is found not liable at all?" This will mean that the Tribunal fastens no "liability" in relation to death of or bodily injury to any person, including the liability in respect thereof u/s 92-A and arising out of the use of a motor vehicle. Certainly in that event, by making an Award u/s 110-B, the Tribunal though holds the owner of the vehicle liable shall have to discharge the insurer from all liability arising out of the accident in respect of death or bodily injury to any person. The Insurance Company in such an event shall be entitled to a direction for reimbursement of liability discharged by it consequent upon an order for payment of compensation u/s 92-A. It was observed in *New India Assurance Co. Ltd. v. Minguel Lourenco Correia* 1986 Acc CJ 646 (Bom), that in the event of Tribunal holding that the Insurance Company has proved such objections and under the law avoided its responsibility to indemnify the owner of the vehicle totally, then, the Tribunal in the final Award, by virtue of the provisions of subsection (4) of

Section 96 of the Act, would direct the owner of the offending vehicle to pay to the Insurance Company the amount which the Insurance Company has paid to the claimants in pursuance to the Award made u/s 92-A of the Act. These conclusions are drawn by the Bombay High Court on the basis of observations made by the Punjab & Haryana High Court in Beasa Devi's case (AIR 1985 PH 96) (supra). I am in complete agreement with the view so taken.

For the aforesaid reasons, I am of the opinion that the Claims Tribunal was not justified at this stage in exonerating the Insurance Company to discharge its liability to pay the compensation u/s 92-A of the Act. I am also of the opinion that the Tribunal was not right in finding at this stage that the deceased was unauthorisedly travelling in the truck. Such a finding can be arrived at only after the main application u/s 110-A was duly investigated and enquired into at subsequent stages in accordance with law.

For the aforesaid reasons, the revision is allowed with costs. The Award is modified and it is held that the Insurance Company viz. respondent No. 8 is jointly liable with the owner of the vehicle to discharge the liability under that Award made u/s 92-A of the Act. The costs of this appeal shall be borne by respondent No. 8. Hearing fee Rs. 100/-.