
(1990) 05 CAL CK 0015
In the Calcutta High Court
Case No : Civil Order No. 710 of 1990

Mohini Mohan Sen

APPELLANT

Vs

Jyotsna Nag and Another

RESPONDENT

Date of Decision : 15-05-1990

Acts Referred:

Constitution of India, 1950 — Article 227
Motor Vehicles Act, 1988 — Section 140, 147, 169

Citation : (1991) 1 ACC 470 : (1991) ACJ 1089

Hon'ble Judges : Shamsuddin Ahmed, J; Abani Mohan Sinha, J

Bench : Division Bench

Advocate : P.B. Sahu, for the Appellant; Sudhakar Biswas, for the Respondent

Judgement

Abani Mohan Sinha, J.—This revisional application under Article 227 of the Constitution is directed against the judgment and order passed by Mr. B.B. Chatterjee, the learned Additional District Judge presiding over Motor Accidents Claims Tribunal, Midnapore, in MAC. Case No. 172 of 1989.

2. On 11.3.1989 one Gopal Chandra Nag, the husband of the claimant, while waiting for boarding the bus was dashed by the offending bus No. 3994 which was coming at the relevant time at a high speed and was severely injured. He was admitted to Midnapore Sadar Hospital and later referred to S.S.K.M. Hospital, Calcutta and on his way to this hospital, he died. The claimant filed an application u/s 92-A along with her main claim for an ad hoc payment of Rs. 15,000/- as compensation allowable u/s 92-A of the Motor Vehicles Act. The learned Judge allowed such application and directed the owner of the vehicle alone to pay the amount to the claimant to the exclusion of the insurance company. The owner of the vehicle before the Claims Tribunal filed an application for review of the order praying for a direction upon the insurance company to pay the amount as the offending vehicle was fully insured. The learned Judge rejected his application. Being aggrieved by such judgment and order, he has come up in revision.

3. The opposite parties have not entered appearance in spite of service of notice upon them which is evident from the affidavit of service filed on behalf of the revisionist.

4. Mr. P.B. Sahu, the learned Advocate appearing for the revisionist, has taken us to the provisions of Section 92-A of Motor Vehicles Act which corresponds to Section 140 of the present Act and also to the provisions of Section 95 (4) of the old Act which corresponds to Section 147(3) of the new Act and has urged that in case of death or disablement occurring in an accident a fixed sum of money is payable as compensation. This is known as "no fault liability". The amount awarded u/s 92-A, it is further urged, is payable by the insurance company which issued a certificate of insurance to the owner of the vehicle who has insured the vehicle with the insurance company. He has also referred to several decisions of different High Courts in support of his contention. The first one is Mohammad Iqbal Vs. Bhimaiah and Others, In the said decision of the Division Bench, it was held that the insurance company can be made liable for compensation in the first place in view of the incorporation of Sections 110-A to 110-F of the Motor Vehicles Act read with Section 110-B of the said Act as amended by the amending Act. In the amended scheme of the Act, the liability to pay compensation u/s 92-A can be settled by the insurance company. Similar is the pronouncement in the decision, Oriental Fire and General Insurance Co. Ltd. Vs. Beasa Devi and Others, In this decision it is also held that the Tribunal can make an award upon the insurance company u/s 92-A pending investigation or enquiry as to the objections that may be raised by the insurance company. This decision was followed in G. Prabhakar v. Thummanapalli Brahmaiah 1986 ACJ 196 (AP), which makes the same pronouncement. The last of such decisions referred to is of the Supreme Court in Guru Govekar Vs. Miss Filomena F. Lobo and Others, This was a decision under the old Act. It held that the insurance company can be liable for the injury sustained on account of the involvement of the offending vehicle if such vehicle has been insured with the insurance company by the owner. In our view, the learned Judge of the Claims Tribunal should have considered the points of law in deciding the case. u/s 110-C, Claims Tribunal may follow the provisions of the CPC in holding an enquiry in connection with a claim case. This corresponds to Section 169 of the new Act. So, the learned Judge of the Claims Tribunal should have exercised his power of review under Order 47, Rule 1 of the CPC for correcting the impugned order making the insurance company liable for the ad hoc award passed u/s 92-A in the facts and circumstances of the case.

Accordingly, we hold that the revision petition should succeed. Accordingly, the order of the Claims Tribunal stands modified making the insurance company liable for the amount awarded u/s 92-A of the Act.