

(1986) 10 RAJ CK 0055

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 226 of 1985

Narendra Singh

APPELLANT

Vs

Oriental Fire and General Insurance Co. Ltd., Delhi and
Others

RESPONDENT

Date of Decision : 01-10-1986

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 9
Motor Vehicles Act, 1939 — Section 92A

Citation : (1987) 2 ACC 165 : (1987) ACJ 790 : AIR 1987 Raj 77

Hon'ble Judges : G.M. Lodha, J

Bench : Single Bench

Advocate : N.P. Gupta, for the Appellant; P.K. Bhansali and D.M. Lodha, for the Respondent

Final Decision : Partly Allowed

Judgement

G.M. Lodha, J.—Narendra Singh is the truck owner in whose truck the claimant injured was travelling at the time of the accident.

2. The Tribunal has passed an order u/s 92-A for the payment of Rs. 7500/- to the claimant. In this appeal Mr. Gupta appearing for the appellant made twofold argument; firstly, he submits that since there was no permanent disablement, Section 92-A has no application. Secondly, it was argued that the Insurance Company should be made liable. Mr. Lodha appearing for the Insurance Company submits that insurance company is not liable for various reasons. According to him, the driver has been left out and, therefore, the claim cannot succeed. It was then argued that unless rashness and negligence of the driver is proved against him and he is made party, the claim cannot succeed apart from the misjoinder of the parties in appeal wherein he has been joined. It was then argued that the injured was not travelling for hire or reward and according to the version in claim, he was going with his father continuously and, therefore, no claim can be entertained. Mr. Lodha also argued that there was no permanent disablement.

3. In rejoinder Mr. Gupta submitted that he and Mr. Lodha both assert that there was no permanent disablement and no compensation in compliance with Section 92-A should have been allowed. On other points Mr. Gupta controverted the submission of Mr. D.M. Lodha.

4. Mr. D.M. Lodha has appeared for the driver and prefers to abide by the judgment which may be given by this Court.

5. Having heard learned counsel for the parties I have given a very thoughtful consideration to their various submissions. It may be submitted at the outset that the provisions of Section 92-A of the Motor Vehicles Act have been introduced by amendment for the purposes of providing immediate relief to the claimants without ascertaining and adjudicating the question of fault and the niceties in respect of the case.

6. In my opinion, the twin requirement of proving the case u/s 92A is that the ownership of the truck and the injured travelling in the truck got permanent disablement on account of the injuries in the accident.

7. In the present case, the Tribunal has found them in favour of the claimant. The claimant has suffered fracture of tibia bone. But according to the Tribunal the injury was of permanent nature. There is no dispute that the appellant is the owner of the truck and the injured was travelling in it. In my opinion the question raised by Mr. Lodha need not be adjudicated at this stage, where immediate relief is to be granted to the claimant. Prima facie, I am of the opinion that the dropping of the name of the driver would not result in misjoinder of parties of such a nature which would require dismissal of the appeal. Nor it would be sufficient to reject the claim as a whole. Similarly for the purpose of Section 92-A the liability of the owner of the goods truck should be respected by the Insurance Company, as there is no dispute that the vehicle was insured. The Tribunal was not justified at this stage in holding that the insurance company is not liable nor it, was competent to give a finding that the passenger has got no right to claim of his injuries sustained by him and he was travelling at his own risk. Firstly these niceties would be gone into after recording of the evidence and as per the Full Bench judgment in Smt. Santra Bai and Vs. Prahlad and Others, etc. etc., Secondly this court in the order passed in Ramchandra v. Sangabai (S.B. Civil Misc. Appeal No. 117 of 86 decided on 19-7-86) held that as per the decision of Radheyshyam v. Gani Mohd. S.B. Civil Misc. Appeal No. 38/86 decided on 12-(?)-86 (sic) and Kanhaiyalal v. Dayaram 1986 Raj LR 72 (2) the Insurance Company is liable.

8. I am of the opinion that the provisions for payment of prompt and immediate compensation in respect of, no fault, by Section 92A is in the spirit of social welfare legislation and should be interpreted beneficially in favour of the claimant and in such a matter the technicalities of law should not be allowed to have any upper hand, to undo and crush the spirit of legislation for social justice. Joinder or non-joinder or misjoinder of parties are too technical pleas to circumvent the

spirit of such beneficial legislation. The very fact that the legislature decided to get the amount paid even without ascertaining any fault prima facie, goes to show that the object is that the claimant should not be allowed to go high and dry for long and they must get immediate relief. In my opinion prima facie the finding of Tribunal of permanent disablement is wholly justified and here also the provisions should be construed and interpreted beneficially and liberally.

9. Mr. Gupta further pointed out that the policy was comprehensive one, but that apart, without adjudicating the nature of the policy, and the liability which the insurance Company has, and finally which is depended upon the various facts either way, I am of the opinion that both the owner and the insurance company should be liable jointly and severally, to pay this amount of Rs. 7500/- allowed by the Tribunal.

10. Consequently, the appeal is partially accepted to this extent that in addition to the truck owner the appellant, the insurance company respondent 1 the Oriental Fire and General Insurance Company would also be liable to pay the above amount awarded by the Tribunal. The parties would bear their own costs so far as this appeal is concerned.