

(1990) 02 MP CK 0032

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 371 of 1989

National Insurance Co., Jabalpur

APPELLANT

Vs

Sadhelal and Another

RESPONDENT

Date of Decision : 15-02-1990

Acts Referred:

Motor Vehicles Act, 1939 — Section 92A

Citation : (1990) 2 ACC 499 : (1991) ACJ 1024 : AIR 1990 MP 383 : (1990) 35 MPLJ 835 : (1990) MPLJ 835

Hon'ble Judges : S.K. Seth, J

Bench : Single Bench

Advocate : P.D. Pathak, for the Appellant; Lalwani, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Seth, J.

The claimant-respondent No. 1's wife and daughter were stated to have died in a motor accident. In the claim for compensation made by the claimant-respondent No. 1, the respondent No. 2 was joined as the owner and the appellant was joined as the insurer of the vehicle. During the pendency of the proceedings, the Tribunal, vide its order dt. 24-4-89, directed the respondent No. 2 and the appellant jointly to pay an amount of Rs. 30,000/- to the claimant-respondent No. 1 as interim compensation for the two deaths u/s 92A of the Motor Vehicles Act. It is being aggrieved by the said order, that the insurer-appellant has filed the present Misc. Appeal in this Court.

Now, it is not in dispute that the claimant-respondent No. 1's wife and daughter died in a motor accident. It is also not in dispute that the respondent No. 2 was the owner of the vehicle which was involved in the accident. In the said circumstances, the liability of an owner to pay interim compensation u/s 92A of the Motor Vehicles Act being a no fault liability, no mistake could be found with the Tribunal having held the respondent No. 2 liable to pay compensation under

the said provision to the claimant-respondent No. 2.

In fact, the real question which arises for consideration in the present appeal is whether in the facts and circumstances of the case the insurer appellant could be held jointly liable along with the owner of the vehicle i.e. respondent No. 2 to pay the above said amount of compensation u/s 92A of the Act to the claimant-respondent No. 1. In the said connection, it is significant to note that it is not in dispute that the Insurance Policy issued by the insurer-appellant in favour of the respondent No. 2 covered the liability to payment of interim compensation u/s 92A of the Act also. What is contended on behalf of the insurer-appellant is that at the relevant time i.e. at the time of the accident the vehicle in question was being used in direct breach of conditions contained in the Insurance Policy and as such the insurer-appellant could not be held jointly liable along with the owner of the vehicle to pay the amount of compensation u/s 92A of the Act to the claimant-respondent No. 1.

In the opinion of this Court, it cannot be disputed that under the provisions of the Motor Vehicles Act there are certain statutory defences open to an insurer on the basis of which in spite there being an Insurance Policy issued by it being in operation at the relevant time it can still avoid not only its final liability but also its liability to pay interim compensation u/s 92A of the Act in a claim case. But, then, needless to say, in all such cases the burden lies on the insurer to plead the relevant statutory defences and to prove the same to the satisfaction of the Tribunal. In fact, it is the said aspect of the matter which creates difficulty in determining the joint liability of the insurer at the stage of payment of interim compensation u/s 92A of the Act.

Now, it does not require much argument to appreciate that if the insurer-appellant has to be offered an opportunity to adduce evidence in support of the statutory defence or defences raised by it at the stage of payment of interim compensation u/s 92A of the Act, the procedure adopted is bound to be a time consuming one and is likely to defeat the very purpose for which the said section has been enacted. Accordingly, bearing in mind the object of enacting Section 92A of the Act, it is but fair not to adopt such a procedure at the stage of the said Section. At the said stage, if the Tribunal is prima facie satisfied from the material on record that the vehicle which was involved in the accident belonged to the party who is joined as the owner of the vehicle and that the said owner has an Insurance Policy in his favour covering his liability to pay interim compensation u/s 92A of the Act, the said facts should be regarded as sufficient by the Tribunal for directing both the owner of the vehicle and the insurer jointly to pay the amount of interim compensation under the said Section to the claimant.

From what has been stated above, it should not be inferred that the insurer has to be denied the right to plead and establish the statutory defences, if any, available to it under the provisions of the Act and contend that in the facts and circumstances of the case it is neither liable to pay the final amount of

compensation nor the interim amount of compensation u/s 92A of the Act. What is really meant is that the trial of such defence/ defences has to be postponed to be held along with the other issues framed in the claim case and that if the insurer is successful in establishing any such defence/defences, the owner of the vehicle is to be held liable to reimburse the said amount to the insurer in the final award to be made by the Tribunal.

In the opinion of this Court, in view of the abovesaid legal position, no fault can be found with the Tribunal having held the insurer-appellant jointly liable along with the owner of the vehicle to pay the amount of interim compensation to the claimant-respondent No. 1 at the stage of Section 92A of the Act in the claim case in question. The impugned order does not deprive the insurer-appellant to plead whatever defences might be available to it under the Motor Vehicles Act and establish that it is not liable to pay the amount of interim compensation u/s 92A of the Act. As mentioned above, if it is successful in establishing the relevant statutory defence/defences, it shall be entitled to obtain a direction against the owner of the vehicle for the reimbursement of the amount of interim compensation, if any, recovered from it.

For the reasons stated above, there is to merit in the appeal. The same is accordingly dismissed with costs. Counsel's fee Rs. 250/-.