

(1993) 03 CAL CK 0035
In the Calcutta High Court
Case No : C.R. No. 422 (M) of 1992

National Insurance Co. Ltd.	Vs	APPELLANT
Anjali Mallick and Others		RESPONDENT

Date of Decision : 22-03-1993

Acts Referred:

Motor Vehicles Act, 1939 — Section 110A, 92A
Motor Vehicles Act, 1988 — Section 140, 166

Citation : (1993) 2 ACC 543 : (1993) ACJ 934 : (1993) 1 CALLT 431 : (1994) 79 CompCas 394

Hon'ble Judges : N.K. Bhattacharyya, J; M.G. Mukherji, J

Bench : Division Bench

Advocate : Ajit Bhusan Majumdar, for the Appellant; P.B. Sahu, for the Respondent

Judgement

1. This rule, being Civil Rule No. 422(M) of 1992 has been issued by a Division Bench of this court asking the respondent-opposite parties who are the claimants before the Motor Accidents Claims Tribunal to show cause as to why the implementation of the award dated September 16, 1991, in MAC Case No. 166 of 1990 of the Motor Accidents Claims Tribunal at Midnapore should not be stayed till the disposal of the appeal and such further order/orders should not be made as the court may deem fit and proper.

2. By an order dated March 13, 1992, the implementation of the award in MAC Case No. 166. of 1990 was stayed. We have heard Mr. Ajit Bhusan Majumdar for the appellant-petitioner and Mr. P.B. Sahu for the respondent and Mr. Biswajit Chowdhury, Senior Advocate, as amicus curiae.

3. There is an application for analogous hearing of the present appeal along with FMAT No. 176 of 1992 filed by the appellant where Parvati Dehari filed a claim on account of the death of her son, Danga Dehari, in the self-same accident. Another claim was filed by Chabi Khamroi claiming compensation for the death of her husband, Badal Khamroi, in the said accident. In each of the three cases the

Tribunal made an award at the rate of Rs. 25,000. National Insurance Co. Ltd. has filed three separate appeals, being FMAT No. 176 of 1992, FMAT No. 177 of 1992 and FMAT No. 178 of 1982, contending, inter alia, that as the victims were gratuitous passengers in the truck and had no insurance coverage, the insurance company had no liability to bear the compensation as awarded by the Tribunal below. We allow the application for analogous hearing of all the three appeals, being FMAT No. 176 of 1992 and FMAT No. 178 of 1992, to be heard along with the present appeal, being FMAT No. 177 of 1992, since common questions of fact and law are involved in all the three appeals, the first information report, charge-sheet and investigation report are also identical covering all the three cases and the insurance policy as also the witnesses are also identical in respect of all the three cases.

4. By an order dated February 18, 1992, a Division Bench of our court directed the appellant-insurance company to put in 50% of the amount of the award, that is, Rs. 12,500, with the Registrar, Appellate Side, by an account payee cheque and we are given to understand that a sum of Rs. 12,500 was deposited on February 19, 1992, by Mr. A. B. Majumdar, advocate by C. D. Challan No. 1344, with the accounts section.

5. Mr. Ajit Majumdar contended that even though Rs. 12,500 was deposited by the appellants in the present case the same amount should not be allowed to be withdrawn by the claimants-respondents. We have heard Mr. P. B. Sahu, the learned advocate for the claimants-respondent, in this context who urged us to disburse the same amount of Rs. 12,500 to the claimant-respondents contending, inter alia, that it was a no-fault liability of the insurance company.

6. Mr. Majumdar placed before us a Division Bench judgment of the Orissa High Court in Jibanananda Mohanty Vs. Artatrana Misra and Others, for the proposition that as regards the third party risk which the insurance company is to bear u/s 95 of the Motor Vehicles Act, 1939, or u/s 147 of the Motor Vehicles Act, 1988, it will not mean and include a gratuitous passenger. A passenger who is not carried for hire or reward in a goods vehicle is not a third party and the insurance company is not liable on that account. Mr. Majumdar in this context also relied upon a Supreme Court judgment in Pushpabai Purshottam Udeshi and Others Vs. Ranjit Ginning and Pressing Co. (P) Ltd. and Another, where it was held that u/s 95 the risk to a passenger in a vehicle who is not carried for hire or reward is not required to be insured and the insurance company is not liable under the requirements of the Motor Vehicles Act.

7. Mr. Chowdhury as amicus curiae also placed before us a three-judge decision of a Full Bench of the Karnataka High Court in National Insurance Co. Ltd. Vs. Dundamma and others, where it was held that in respect of a goods vehicle/the liability of the insurance company is confined to the number of persons permitted to be carried in the goods vehicle under Rule 161 of the Karnataka Motor Vehicles Rules, 1963, and the goods carried are those as defined in Section 2(7) of the Act. It was held in this context that a previous decision in Channappa

Chanavirappa Katti and Another Vs. Laxman Bhimappa Bajantri and Others, was still good law and that the owner of the goods travelling as a passenger in a goods vehicle was a third party in respect of whom the risk was required to be compulsorily covered by Section 95(1)(b)(i) of the Motor Vehicles Act, 1939.

8. Reliance was also placed on a Calcutta High Court Division Bench judgment in Indian Mutual General Insurance Society Ltd. Vs. Manzoor Ashan and Others, where it was held that if a truck met with an accident and the owner of the goods carried died, the insurance company was not liable to satisfy the award in terms of Section 95(1)(b) of the Motor Vehicles Act, 1939, because the deceased was a hirer and was not travelling under any contract of employment with the owner of the vehicle.

9. Mr; Sahu, on the other hand, relied upon a single judge decision of the Delhi High Court in Ravi Kumar and Another Vs. Ram Parkash and Others, , for the proposition that an exception or a defence against no fault liability is not available to the insurer. That was a case where a minor who was himself disqualified to hold a driving licence drove a vehicle. It was urged on behalf of the insurance company that there was no liability u/s 92A of the Motor Vehicles Act, 1939. It was held in this case that when an insurance company is saddled with liability to the extent provided in Section 95 of the Act, that liability would include the liability incurred u/s 92A of the Act as well. Though no doubt various defences as provided u/s 96(2) of the Act are available to the insurance company but these defences would not be available to the insurance company in respect of its liability to pay compensation u/s 92A in view of the overriding effect of this statutory provision by virtue of Section 92E of the Act. Perhaps, the only defence that would be available would be that the offending vehicle was not insured with the insurance company in question. The provisions of Section 92A are peremptory and do not admit of any exception or defence and these provisions provide for immediate relief and that would appear to be the intention of the Legislature as well. It cannot be said that Chapter VII-A is an independent provision separate from Chapter VIII of the Act of 1939. Proceedings u/s 92A of the Act brook no delay. The only thing that is required to be seen is that the policy of insurance complies with the requirements as laid down in the Act and it is immaterial if ultimately the petition fails either on the principle of fault or even on any of the defences permissible to the insurance company as laid down in Section 96(2) of the Act. The liability of the insurance company u/s 92A of the Act to the extent mentioned therein would, therefore, appear to be absolute. This decision, however, took into consideration the Supreme Court decision in Skandia Insurance Co. Ltd. Vs. Kokilaben Chandravadan and Others, . The latter decision was distinguished since in that case the question arose as to whether the insurance company was entitled to claim immunity from a decree obtained by the legal representatives of the victim on the ground that the insurance policy provided a condition excluding driving by a named person or persons or by any person who is not duly licensed or by any person who has been disqualified from holding or obtaining a driving licence and that such exclusion was permissible in

the context of Section 96(2)(b)(ii) of the Act for claiming immunity against the obligation to satisfy judgments against the insured in respect of third party risks.

10. Mr. Sahu also placed reliance on a single Bench judgment of the Madhya Pradesh High Court in *United India Insurance Co. Ltd. v. Sukhiabai* AIR 1992 MP 53 in which it was held that in respect of awarding of compensation if there is a no-fault liability, such liability is to be instantly discharged by the insurance company and the Tribunal need not name the tortfeasor apportioning his liability. However, the insurance company can agitate the question of restitution in the same trial and need not file a separate suit therefore. Mr. Sahu further relied on a Calcutta High Court Division Bench judgment in *The Oriental Insurance Co. Ltd. Vs. Sm. Maheswari Roy and another*, where it was held that a liability u/s 92A of the Motor Vehicles Act could not be put to an end on any ground whatsoever. Parliament made it clear that no-fault liability could not be taken away by any other provisions of any other Act. In the facts of the said case, however, the court had to deal as to whether Section 306 of the Indian Succession Act had any manner of application to a proceeding under Chapter VII-A of the Motor Vehicles Act, where it answered the question that there was no case of abatement.

11. We have given the matter our anxious consideration. We do not think that the cases cited by Mr. Majumdar or Mr. Chowdhury had any manner of application to the facts and circumstances of the present case where the no-fault liability of the insurance company comes into play. We take into consideration the principle of law enunciated in *Shivaji Dayanu Patil and another Vs. Smt. Vatschala Uttam More*, . The no-fault provision, as is propounded in Section 92A of the Motor Vehicles Act, 1939, or Section 140 of the Motor Vehicles Act, 1988, is in the nature of a beneficial legislation enacted with a view to confer the benefit of expeditious payment of a limited amount by way of compensation to the victims of an accident arising out of the use of a motor vehicle on the basis of no-fault liability. In the matter of interpretation of a beneficial legislation the approach of the courts is to adopt a construction which advances the beneficent purpose underlying the enactment in preference to a construction which tends to defeat that purpose. Here the Claims Tribunal is not required to follow the normal procedure prescribed under the Act and the Rules with regard to adjudication of a claim as delineated in the Act (Section 110A of the Motor Vehicles Act, 1939, or Section 166 of the Motor Vehicles Act, 1988). We would, accordingly, direct that the entire amount of Rs. 12,500 which has been ordered to be deposited by the appellant-insurance company should be withdrawn by the claimants-respondent without furnishing any security and without prejudice to the rights and contention of both the parties. Rule stands disposed of accordingly without any order as to costs.