
(1990) 05 KL CK 0004

In the High Court Of Kerala

Case No : M.F.A. No's. 130 and 131 of 1990

National Insurance Co. Ltd.

APPELLANT

Vs

K. Savithri and Others and Lalitha and Others

RESPONDENT

Date of Decision : 31-05-1990

Acts Referred:

Motor Vehicles Act, 1939 — Section 92A

Citation : (1990) 2 ACC 505 : (1990) ACJ 768 : (1990) 3 ILR (Ker) 129

Hon'ble Judges : L. Manoharan, J;K.T. Thomas, J

Bench : Division Bench

Advocate : Prince Chakrampilly and Baby Kuriakose, for the Appellant; S. James Vincent, for the Respondent

Final Decision : Dismissed

Judgement

K.T. Thomas, J.—The simple question in these appeals is whether the insurer can be saddled with liability u/s 92A of the Motor Vehicles Act, 1939 (for short "the Act"), without determining the dispute that the insurance policy became invalid as a consequence of violation of a condition in the policy. The Motor Accidents Claims Tribunal awarded compensation in two cases to the injured u/s 92A and directed the owner and the insurer to pay the amount. The Claims Tribunal observed that, in the light of the decision in Mohammad Iqbal Vs. Bhimaiah and Others, the objection regarding violation of policy condition need not be considered when the award is passed on the principle of "no fault liability". The insurance company has filed these appeals.

2. Section 92A provides that "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 owners 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". No doubt, Section 92A does not mention the word "insurer". Apparently, it is the owner alone who has to bear the liability mentioned in Chapter VIIA of

the Act. However, mere non-mention of the word "insurer" in any of the provisions in the said Chapter is hardly sufficient to absolve the insurance company from liability under no fault theory. The succeeding Chapter which deals with insurance of motor vehicles against third party risks contains definition of the word "liability" as under : --" "Liability" wherever used in relation to the death of, or bodily injury to, any person includes liability in respect thereof u/s 92A". Hence, the only question is whether the Claims Tribunal is debarred from passing the award against the insurer without deciding the dispute that a policy condition was violated entailing the consequence of rendering the policy invalid.

3. Section 96 of the Act casts a duty on the insurer to pay to the person entitled to the benefit of the decree (award) such sum as would not exceed the coverage : "as if he were the judgment debtor". This is the statutory provision which makes the insurer liable to pay the award amount whether the award is the one passed u/s 110B of the Act or under Chapter VIIA of the Act. It is not very necessary that there should be an express provision in Chapter VIIA conferring power on the Claims Tribunal to give a direction to the insurer.

4. Section 92B(2) of the Act enjoins on the Claims Tribunal to dispose of the claim for compensation u/s 92A "as expeditiously as possible" and, at any rate, before disposing of the claim for compensation based on the principle of fault. The intention of Parliament to give reliefs to victims in motor accidents with the utmost expedition and urgency can be discerned from the words used. One such relief is based on the principle of "no fault liability" as envisaged in Chapter VIIA. If an insurance company contests that the vehicle was not insured with them, no doubt, the Claims Tribunal cannot pass an award against the insurance company without deciding that the vehicle was covered by a policy of insurance during the accident period. Urgency is no excuse in such a case to ask the insurance company to pay the award amount if the company disputes even the existence of a policy. There, the burden is on the claimant or the owner, as the case may be, to prove that the vehicle was in fact insured at the time of the accident. However, that is not the situation in a case where the insurance company admits that the vehicle has been insured but the policy of insurance became invalid on the happening of a certain event or non-compliance with a certain term. Here, the burden is on the insurer to prove that the event had happened or the term was not complied with entailing the consequence of rendering the policy invalid. If the Claims Tribunal passed the award u/s 92A only after deciding the contention that the policy became invalid due to violation of the condition in the policy, the urgency and expedition envisaged in Section 92A are negated and the intention of the Legislature superseded. All endeavours should be made to give the relief with as much promptitude and speed as the Legislature manifested its intention in express terms. The Claims Tribunal, if the dispute is limited to that contention, is not obliged to go the whole hog before passing the interim award u/s 92B.

5. By incorporating Chapter VIIA in the Act, Parliament expressed its intent that every victim of a motor accident, if he sustains a permanent disability, and the

legal representatives of a victim who died in the motor accident, must be compensated with money, with as much promptitude as possible. Automobile proliferation became a life hazard and humans run the great risk of being injured in motor accidents. Such injury is mainly attributed to automation of vehicles. That is why the person who owns the vehicle is asked to pay compensation to the sufferer. The sufferer in motor accidents cannot be put to further suffering on account of procedural delay in receiving the compensation money which is based on the principle of no fault liability. For exercising powers u/s 92A, the Claims Tribunal is not obliged to wait until the insurer establishes that one or more of the policy conditions had been violated. Such a dispute need be determined while passing the award u/s 110A. If, at the final stage, the Claims Tribunal finds that the policy was rendered invalid as a consequence of violation of the policy condition, the Claims Tribunal can observe that the insurer can recover the amount, if paid pursuant to the interim award, from the insured concerned. The principle hidden in Section 96(4) of the Act would justify such observation. On the other hand, if passing of the interim award is delayed on account of a mere dispute having been raised that a policy condition was violated, the victim in the motor accident will be practically deprived of the benefit contemplated in Section 92A. In Mohammad Iqbal's case [1986] 60 Comp Cas 109 (Kar) : AIR 1985 Kar 171 which has been referred to by the Claims Tribunal, the hub of discussion was not the point involved here and hence we do not find any support from the said decision. A Division Bench of the Punjab and Haryana High Court has considered this question in Oriental Fire and General Insurance Co. Ltd. Vs. Beasa Devi and Others, . The Division Bench has observed thus (at page 652 of 59 Comp Cas) :

"If objections be treated as preliminary issue and be decided by the Tribunal in the first instance which in the nature of things would result in delay in regard to the payment of amount u/s 92A to the claimants, which may partly defeat the very purpose underlying the enactment of the said provision, i.e., of providing immediate succour to the persons who had suffered disabling injury in an accident or the heirs of the persons who had died as a result of the accident. We are of the view that the provision of Section 92A is a piece of beneficial and ameliorative legislation providing for immediate aid to, the hapless and helpless victims of motor accidents. The moment it is either admitted by the owner of the vehicle that his vehicle was involved in the accident or from the evidence adduced on the record, the Tribunal positively holds that the vehicle of the owner in question was involved in that accident, if he denied that fact and then if the Tribunal comes to a further prima facie conclusion that the vehicle was insured, then the Tribunal, without inquiring into the correctness of other objections that may be raised by the insurance company, would be entitled to make the award u/s 92A and require the insurance company to pay the given amount to the claimants forthwith"

6. The aforesaid observations are in tune with the view which we have expressed in the foregoing paragraphs. The Bombay High Court has followed the said decision in New India Insurance Co. v. Minguel Lourenco Correia [1986] 2 ACJ

645 (Bom). In Oriental Fire and General Insurance Company Ltd. Vs. Aleixo Fernandes and Others, , a single judge of the Bombay High Court has adopted the same view and observed that (at page 138 of 61 Comp Cas) :

"The object underlying this provision is immediate benefit to the relations of the victim in case of his death and the disabled victim of the accident in case of permanent disability".

7. Support to the view can also be found from the decisions in Babban Tiwari v. Usha Ranjan Chakraborty [1987] 2 ACJ 863 (Gauhati) and The New India Assurance Company Ltd. Vs. Member, Motor Accident Claim Tribunal and Others, .

8. We, therefore, hold that the Claims Tribunal would be well within its powers in directing the insurer to pay the award amount u/s 92A notwithstanding the insurer's contention that the policy of insurance became invalid consequent on violation of a policy condition. Hence, we confirm the awards and dismiss the appeals without any order as to costs.