

(1994) 03 MP CK 0019

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 3281 of 1993

National Insurance Company, Jabalpur

APPELLANT

Vs

Thaglu Singh and Others

RESPONDENT

Date of Decision : 03-03-1994

Acts Referred:

Motor Vehicles Act, 1988 — Section 140

Citation : (1995) ACJ 248 : AIR 1994 MP 177 : (1995) ILR (MP) 115 : (1994) 1 MPJR 262 : (1994) 39 MPLJ 663 : (1994) MPLJ 663

Hon'ble Judges : U.L. Bhat, C.J.; P.P. Naolekar, J

Bench : Division Bench

Advocate : R.P. Agarwal, for the Appellant;

Final Decision : Dismissed

Judgement

U.L. Bhat, C.J.

These cases arise out of the interim awards passed by Motor Accident Claims Tribunal u/s 140 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act" short), requiring the owners and insurers to pay compensation for no fault liability.

In the former two cases, the labourers who were waiting by the road side, were invited by the truck drivers who offered them wages. They got into the trucks and while travelling, the trucks were involved in accidents causing deaths of some and injuring others. The heir of the two deceased labourers filed claim petitions against the owners and insurers of the trucks.

The accident leading to M.P. No. 28/ 94 involved a truck in which several persons including the deceased sitting on the rear side died and some others were injured. The heirs of one of the deceased persons filed claim petition against the owners and insurers of the truck.

According to the Insurance Companies, the policy in each of the three cases

clearly stated that it will cover only six employees other than the driver and, therefore, the persons who were gratuitous Passengers, are not covered by the policy, the Insurance Companies can raise the defence u/s 149 of the 1988 Act, corresponding to Section 96(2) of the 1939 Act. It is contended that this defence is available even where an interim award is sought u/s 140 of the 1988 Act corresponding to Section 92 A of the 1939 Act and in any event, if on a mere reading of the claim petition it is prima facie clear that persons involved in the accident are not covered by the policy, the insurer cannot be compelled to pay compensation arising out of no fault liability.

We find that several High Courts, except the Karnataka High Court, hold the view that once the conditions stipulated in Section 140 of the 1988 Act are satisfied, the insurer becomes liable to pay the amount, subject of course to right to raise appropriate contentions in the main claim petition before passing final award and cannot raise such a defence at the earlier stage of adjudicating no-fault liability and if ultimately it is held that the insurer is not liable, the final award can make an appropriate direction in that regard. A difference of opinion existed in the "Karnataka High Court on this point and that has been settled by a decision of Full Bench of that Court in favour of the insurer, holding that "if having regard to the facts, stated in the claim petition itself and the contents of an Insurance Company, a finding could be arrived at that the policy did not cover the risk, in such a case there is no reason as to why the Insurance Company should be compelled ? to pay the amount solely on the ground that the policy of Insurance existed and compel the Insurance Company to collect the money paid from the owner of the vehicle which would throw the Insurance Company to innumerable litigations" *United India Insurance Co. Ltd. v. Immam Nadar*, (1990) II ACJ 757.

The decisions in which the view against the insurer has been taken are the following :-

- (i) *Oriental Fire and General Insurance Co. Ltd. v. Beasa Devi*, 1985 ACJ I ; (AIR 1985 P & H 96), Division Bench of Punjab and Haryana, High Court.
- (ii) *New India Insurance Co. Ltd. v. Minquial Lourence Correia*, 1986 ACJ 646, High Court of Bombay.
- (iii) *Samati Deb Barma v. State of Tri-pura*, 1987 ACJ 1205 (sic) Division Bench of Guwahati, High Court speaking through Dr. Justice T. N. Singh.
- (iv) *Babban Tiwari v. U. B. Chakra-borty*, (1987) II ACJ 863 Guwahati High Court.
- (v) *New India Insurance Co. Ltd. v. M. A. C. T.*, (1988) II ACJ 612, Guwahati High Court, per Hansaria, J.
- (vi) *United India Insurance Co. Ltd. v. Ghisi Devi*, (1989) II ACJ 728, High Court of Rajasthan.
- (vii) *Satyadeo Singh v. Vidyawati Devi*, (1989) II ACJ 1110 Allahabad High Court.
- (viii) *National Insurance Co. Ltd. v. Surjit Singh*, (1988) II ACJ 1122 : (AIR 1989

NOC 83), Jammu & Kashmir High Court.

We may also advert to the following decisions of this Court:

(i) Dwarika v. Bisoi, (1990) IACJ 283.

(ii) National Insurance Co. v. Smt. Savi-tribai, 1991 MPLJ 46.

(iii) Mohammad Ilias Vs. Bodhani Bai and Others,

(iv) National Insurance Co. Ltd. v. Shabir Khan, 1992 MPLJ 11.

The judicial clarion call for no-fault liability was first sounded by V. R. Krishna Iyer, J. from the Bench of the High Court of Kerala in Kesavan Nair v. State Insurance Officer, 1971 ACJ 219 in the following words:

"Out of a sense of humanity and having due regard to the handicap of the innocent victim in establishing the negligence of the operator of the vehicle, a blanket liability must be cast on the insurer instead of he being restricted to cases where vehicle operator has been shown to be negligent. This is more a matter for the Legislature and not for the Court, but this is a lacuna in law which I think it would be just to rectify."

His Lordship from the Bench of the Supreme Court, reiterated this plea in N.K.V. Bros. (P) Ltd. Vs. M. Karumai Ammal and Others, in the following words :

"The heavy economic impact of culpable driving of public transport must bring owner and driver to their responsibility to their "neighbour". Indeed the State must seriously consider no fault liability by legislation."

The call was repeated once again in Motor Owners' Insurance Company Limited Vs. Jadavji Keshavji Modi and Others, referring with approval to the observations in Manju Shri Raha's case.

The Legislature acted by incorporating Chapter VI-A with Sections 92A to 92E in the 1939 Act providing for compensation on no-fault liability by Amendment Act No. 47 of 1982. The provisions apply to cases of motor vehicles accidents leading to death or permanent disablement of any person. The owner or owners of the vehicle or vehicles concerned shall jointly and severally be liable to pay compensation on the principle of no-fault. This is provided in Section 92A which also fixes the "amount of compensation payable notwithstanding any contributory negligence on the part of the deceased or injured. Section 92B stated that the right to claim such compensation is in addition to any other right on the principle of fault to claim compensation under the Act or any other law for the time being in force. It also required the claim to be disposed of as expeditiously as possible. Whether the person liable to pay compensation u/s 92A is also liable on the principle of fault, he shall pay the compensation u/s 92A first and if such amount is less than the amount of compensation on the principle of fault, he shall be liable to pay only the balance amount. If on the other hand the former is equal to or less than the latter, he shall not be liable to pay the

latter. Section 92 A stated that provisions of the Chapter affect notwithstanding anything done in any other provision of the Act or any other law for the time being in force.

Section 94 of the 1939 Act provided for compulsory insurance against third party as provided in Section 95. Section 96 imposed on the insurer's duty to satisfy judgments against persons insured in respect of third party risks, subject of course to the right to raise defences as contemplated in Section 96(2). We may also refer to Section 93(ba) defining "the liability" for the purpose of Chapter VIII as including liability u/s 92A. The proviso to Section 110B stated that where the application for compensation u/s 110A makes a claim for compensation u/s 92A and any other claim for compensation, it shall be disposed of in accordance with the provisions of Chapter VIIA. Sections 140 to 144 in Chapter X of the 1988 Act correspond to Sections 92A to 92E in Chapter VIII of 1939 Act. Sections 146, 147 and 149 of the 1988 Act correspond to Section 94 to 96 of the 1939 Act. "Liability" has been defined in Section 145C as including liability u/s 140.

In order to appreciate the above provisions incorporated in the 1939 Act, it would be useful to refer to the statement of objects and reasons of the Amending Act which incorporated those provisions. The statement reads:

"There has been a rapid development of road transport during the past few years and a large increase in the number of motor vehicles on the road. The incidence of road accidents by motor vehicles has reached serious proportions. During the last three years, the number of road accidents per year on the average has been around 1.45 lakhs and of these, the number of fatal accidents has been around 20,000 per years. The victims of these accidents generally pedestrians belonging in the less affluent sections of society. The provisions of the Act as to compensation in respect of accidents can be availed of only in cases of accidents which can be proved to have taken place as a result of a wrongful act or negligence on the part of the owners or drivers of the vehicles concerned. Having regard to the nature of circumstances in which road accidents take place in a number of cases, it is difficult to secure adequate evidence to prove negligence. Further, in what were known as "hit-and-run" accidents by reasons of the identity of the vehicle involved in the accident not being known, the persons affected cannot prefer any claims for compensation. It is, therefore, considered necessary to amend the Act suitably to secure strict enforcement of road safety measures and also to make, as a measure of social justice, suitable provisions first for compensation without proof of fault or negligence on the part of the owner or driver of the vehicle and, secondly, for Compensation by way of solatium in cases in which the identity of the vehicle causing an accident is unknown." (Empahsis supplied).

Among the decisions mentioned above, it may be instructive to advert to a few. In *New India Assurance Co. Ltd. v. M.A.C.T.* 1988 (II) ACJ 612, Hansaria, J. as he then was, after referring the decisions of High Courts of Punjab and Haryana and

Bombay and earlier decisions of the Guwa-hati High Court observed :--

"The underlying idea behind Section 92A being payment of prompt and minimum compensation, the same cannot be allowed to be frustrated to decide various defences to be raised by the Insurance Company, the disposal of which would naturally take time. This reading of Section 92A would cause no real prejudice to the insurer as its interests can be well protected in cases it is ultimately found that it is not liable under the policy to indemnify the insured by passing appropriate order u/s 96(4) of the Act, as observed earlier. I would, therefore, hold that at the stage of passing of the award u/s 92A, the Claims Tribunal is not to apply its mind to the defences available to an Insurance Company u/s 96(2), or for that matter, whether the Company is protected by anything stated under the provisions to Section 95(1) of the Act. In taking this view, I have also borne in mind Section 92A of the Act which has stated that the Provision of Chapter VII-A shall have effect notwithstanding any thing contained in any other provisions of the Act of any other law for the time being in force."

In Surjitsingh's case (1988) ACJ 1122, Dr. Anand, C.J. as he then was, after adverting to the decisions of the High Courts of Punjab & Haryana and Bombay and earlier decisions of the Karnataka High Court, expressed agreement with those decisions.

The provisions introduced in 1939 as well as 1988 Act in regard to no-fault liability are part of ameliorative scheme of social justice. Even with reference to Chapter VIII of 1939 Act, the Supreme Court in *New Asiatic Insurance Co. Ltd. v. P. D. Aswani* AIR 1964 SC 1786, held that the provisions had to be construed in such a manner as to ensure the object of the enactment, namely, that third parties who suffer on account of user of the motor vehicle, would be able to get damages for the injuries.

The statutory scheme envisages that if there is a motor accident and death or permanent disablement results from such an accident, owner or owners of the vehicle or vehicles involved shall be liable to pay the prescribed compensation without proof of a negligence and irrespective of any contributory negligence of the deceased or injured and the amount so paid has to be adjusted out of the compensation found due under the final award. There is no provision requiring the recipient of compensation of no fault liability to refund any part of the amount received at any stage. The Legislative intent is to ensure that some succour reaches the victim or the dependants without going into the questions which may arise for consideration while passing the final award. If the vehicle is insured, naturally the liability would fall on the insurer; permitting the insurer at that stage to raise any defence other than that there is no insurance policy in force at the relevant time or to raise statutory defences contemplated in the succeeding Chapter would be to frustrate the legislative object in introducing the concept of no fault liability. The insured is duly protected inasmuch as if ultimately in the final award the insurer is exonerated, the Tribunal can issue appropriate direction enabling the insurer to collect the same from the owner of

the vehicle. This could be the only legitimate conclusion to be drawn from the peremptory language of Section 92A of the 1939 Act or Section 140 of the 1988 Act.

The Full Bench decision of the Karnataka High Court in arriving at the contrary conclusion, took into account the provisions of Sections 95(5) and 96(2) of the Act and the fact that there is no provision rendering Section 96(2) of the Act inapplicable in the matter of liability to pay compensation u/s 92 of the Act. With great respect, we are unable to agree with this approach. The Court did not take into consideration the high legislative purpose sought to be served by these provisions. The Court also did not try to draw appropriate inferences from the requirement of deduction of the no fault liability compensation in the final award. The Court was quite conscious of the fact that the Tribunal should not allow the claim to be frustrated by examination of complicated questions and evolved a formula that the Tribunal should prima facie examine if the risk was covered by the policy. We find no support in the statutory language for this conclusion. We also fail to comprehend why the Full Bench restricted the examination to prima facie examination. Either the defence can be raised or it cannot be raised. If it can be raised, it must be considered properly and not merely "prima facie". In our considered opinion, the view taken in the decisions of the other High Courts is the better view. This view is in accordance with earlier Single Bench decisions of this Court.

In these cases, there is no contention that the vehicles involved in the accidents are not covered by policies. There is also no dispute that the vehicles were involved in accidents and death followed as consequence of the accidents. The Tribunal was therefore, justified in directing the Insurance Companies to pay compensation on the basis of non fault liability. If ultimate in passing the final award, it is found that the insurer has no liability with regard to persons who sustained injuries, fatal or otherwise, the Tribunal may issue appropriate directions for re-imbursement of the amount from the owner(s) of the vehicle(s).

The writ petitions are accordingly dismissed.