
(1995) 03 MP CK 0069
In the Madhya Pradesh High Court

National Insurance Company Ltd.

APPELLANT

Vs

Kamarjahan and Others

RESPONDENT

Date of Decision : 16-03-1995

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (1995) 1 ACC 489 : (1995) JLJ 297

Hon'ble Judges : Jai Shankar, J;D.M. Dharmadhikari, J

Bench : Division Bench

Judgement

D.M. Dharmadhikari, J.—This appeal has been preferred by the National Insurance Company, Ltd. (hereinafter referred to as the "Insurer") u/s 173 of the Motor Vehicles Act, 1988, against the Award dated 19.9.1990, passed by the Motor Accidents Claims Tribunal, Guna for short, the "Tribunal".

2. The necessary facts, in brief, are that deceased Ahmad Hussain was driver of the new Fiat Car, temporary No. MRV 530. The Fiat Car was one amongst the convoy of about 50 new Fiat Cars going from Bombay for delivery to Gwalior. The Fiat car mentioned above which was driven by deceased Ahmad Hussain, met with an accident as truck No. MBF 944, coming from the opposite direction between Guna and Shivpuri, dashed against the car. The driver of the Fiat car lost his life instantaneously.

3. In the claim petition, filed by the mother, brothers and sister of the deceased, all other parties, namely, M/s. Premier Automobiles, an Automobile dealer at Gwalior where the cars were to be delivered, the truck driver Pappu, the owner of the truck Daljit Singh and the Insurance Company New India Insurance Company, Ltd. with which the truck was insured, remained ex-parte, hence, did not contest the claim. It is also not in dispute that the appellant National Insurance Co. Ltd., being the insurer of the Fiat car involved in the accident, led evidence and cross-examined the witnesses examined on behalf of the claimants on all defences available to the insured. i.e., owner of the truck. The claimants also raised no objection to the defences raised by the appellant insurer for itself

and on behalf of the insured.

4. The Tribunal, by the impugned Award, held truck driver to be solely responsible for the accident and awarded a total sum of Rs. 1,53,000/- as compensation. The appellant insurer, by this appeal, assails the Award on several grounds. Firstly, it is contended that there was contributory negligence on the part of the deceased who was driver of the Fiat car and the compensation awarded should have been apportioned half and half between the appellant as insurer of the Fiat car as one party and the insurer and insured of the truck as the second party. The appellant insurer also questioned the quantum of Award determined by the Tribunal. It is contended that the deceased driver has no steady and fixed income. The annual dependency arrived at Rs. 960/- per month with the multiplier of 15 taken in arriving at the figure of compensation is too high when the only dependent of the deceased was his mother Kamarjahan who is advance-aged old lady of 72 years and a minor son, Sabir Ali, aged 8 years.

5. The learned Counsel appearing for the respondent claimants raised a preliminary objection that as the appellant insurer was not granted by the Tribunal any permission or direction in its favour for raising all defences on behalf of the insured as contemplated by Section 110-C(2-A) of the Motor Vehicles Act, 1939, for short, the "Old Act", the Insurer cannot be heard in this appeal on the defences which were available only to the insured. It was pointed out in the terms of the policy, the insurer had not reserved expressly any right to itself to defend the claim on all pleas and defences available only to the insured.

6. Before considering the contentions advanced by the Counsel for the parties on the issues of negligence and quantum, we first propose to decide the preliminary objection raised by the respondents on the maintainability of this appeal. The learned Counsel at the Bar brought to our notice three decisions rendered by three different High Courts on the interpretation and the procedural requirement of Section 110-C(2-A) of the Old Act. The Section reads as under:

(2-A) Where in the course of any enquiry, the Claims Tribunal is satisfied that?

(i) there is collusion between the person making the claim and the person against whom the claim is made; or

(ii) the person against whom the claim is made has failed to contest the claim, it may, for reasons to be recorded by it in writing, direct that the insurer who may be liable in respect of such claim shall be impleaded as a party to the proceeding and the insurer so impleaded shall thereupon have the right to contest the claim on all or any of the grounds that are available to the person against whom the claim has been made.

The first decision cited is of Division Bench of this Court at Gwalior Bench in Misc. Appeal No. 260 of 1994 United India Insurance Co. Ltd. v. Smt. Pratibha Rathi and Ors. decided on 17.11.1994. The Division Bench held that the provisions above quoted are attracted in both the situations where the Insurance Company is not

initially made a party and is required to be noticed and impleaded so, as also where the Insurance Company is already before the Tribunal impleaded as a party. The above interpretation is apparently reasonable and sound. Otherwise, the Insurance Company who is party already on record, will be put to a disadvantageous position compared to the case where the Insurance Company is not a party impleaded initially and is required to be noticed and to be impleaded as a party under the provisions of Section 110-C(2A). The reasoning sounds well that the right to contest on all grounds with the direction or permission of the Tribunal should be available both in a case where the Insurance Company is to be impleaded as a party after being noticed and where it is already so impleaded. There can be no reasonable ground to differentiate or discriminate between the two above-mentioned situations in a case where the Insurance Company is initially made a party or made so subsequently during trial of the case.

6. The Second decision cited is of the Division Bench of Bombay High Court in the case of *The Oriental Fire and General Insurance Company Ltd. Vs. Rajrani Surendrakumar Sharma and Others*, . It has taken a view different from the Division Bench of Madhya Pradesh High Court (supra). The Division Bench of Bombay High Court holds that where the Insurance Company is already impleaded as a party, the provisions contained in Section 110-C(2-A) would not at all be attracted. Being already impleaded as a party in case where there is collusion or non-contest as contemplated by Clauses (i) and (ii) of Sub-section (2-A), the Insurance Company as insurer would get all rights to contest the case on all defences including those available to the insured without any direction or permission from the Tribunal.

7. With respect, we find ourselves in disagreement with the view of the Bombay High Court because it ignores a material part of the provision contained in Section 96(2) of the Old Act. That Section makes only limited defences available to the insurer even when it is served with a notice of institution of proceedings and gets a right to contest it. The relevant provision in Section 96(2) reads as under:

(2) No sum shall be payable by an insurer under Sub-section (1) in respect of any judgment unless before or after the commencement of the proceedings in which the judgment is given the insurer had notice through the Court of the bringing of the proceedings, or in respect of any judgment so long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceeding is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely:

*** **

8. The Division Bench of Bombay High Court, in taking the aforesaid view, has overlooked the above provision in Section 96(2) where defences available to the insurer, even if made a party to the case are limited to those mentioned in the above Section. It does not appeal to our reason that the requirement of

recording reasons in writing by the Tribunal before directing the insurer to raise all defences on behalf of the insured would only be applicable to a case where the Insurance Company has not been made a party and there will be no such requirement if it is already a party to the proceedings. It does not appear from the language of Sub-section (2-A) that the Legislature thereby intends that a different treatment in the matter of raising defences be given to a case where the Insurance Company is already a party from beginning then to a case where it is noticed and impleaded subsequently. Agreeing with the Division Bench view of this Court (supra), it has to be held that Sub-section (2-A) of Section 110-C is attracted in both the situations where the insurer is already a party and where on being noticed, it is made a party during the pendency of the proceedings before the Tribunal.

9. The third decision cited is of Allahabad High Court reported in 1989 ACJ 961 *Oriental Fire & General Insurance Co. Ltd. v. Rajendra Kuar*. In the Allahabad case, it has been held that where Tribunal allows the insurer to lead evidence on all defences available to the insured and permits even cross-examination of witnesses on all such grounds, it should be deemed that the Tribunal has issued the necessary direction of permitting the insurer to raise all such defences.

10. With respect, the Allahabad view is unacceptable to us. Such construction of the provisions contained in Section 110-C(2-A) would render the provision therein of requirement of recording reasons in writing otherwise. The requirement of recording reason in writing by the Tribunal presupposes due application of mind by the Tribunal to the circumstances in which contest is not made by the insured and other parties and the defences which the insurer proposes to raise. The Legislature in Section 110-C(2-A) purposely provided for recording of reasons in writing. The object appears to be obvious that except in abnormal situation, the insurer has to satisfy the judgment and awards of the Tribunal passed against the insured and would have no right to contest the claim except on limited pleas available to it u/s 96(2) of the Old Act.

11. The requirement of recording reasons in writing before permitting the insurer to raise all defences shows that the reasons for directions or permission by the Tribunal to the insurer has to be for reasons in relation to those mentioned in Clauses (i) and (ii) of Sub-section (2-A) of Section 110-C. If that were not so, the Legislature could as well have worded that provision to state that in the eventualities of collusion and non-contest, contemplated by Sub-clauses (i) and (ii) of Sub-section (2-A) of Section 110-C, the insurer would get a right to contest the case on all defences available to the insured. The requirement of recording of reasons in writing would not have been laid down as a prerequisite in that event. The existence of a provision requiring of recording of reasons in writing clearly evinces the legislative intent that the Tribunal has to apply its mind to the circumstances of the case before issuing direction or granting permission in favour of the insurer to raise defences for and on behalf of the insured. Where a judicial Tribunal is required by a statute to state reasons for

adopting a particular procedure as envisaged in the case before us in Section 110-C(2-A), such procedural requirement has to be held as mandatory--pre-condition for exercise of the power conferred by the said provision of the statute and non-compliance thereof would invalidate the action. See, "Principles of Administrative Law", by Jain and Jain, Fourth Edition, p. 560, particularly, the following passage:

What is the significance of the phrase used in statutes which enables the Government to take some action after recording reasons for doing so? Is it necessary to record the reasons in the file before an action is taken? Is it also necessary to communicate the reasons so recorded to the person against whom the action has been taken? In *Rajamalliah and Another Vs. Anil Kishore and Others*, , the statute required the auctioning authority to record the reasons in writing if it was regrouping any shop or splitting any group of shops before the auction. It was held that the requirement to record reasons was mandatory, and that the reasons must be recorded "before and not after the auction is taken.

See also the following passage in "Administrative Law" by Prof. H.W.R. Wade:

...the duty to give satisfactory reason is a duty of decisive importance which cannot lawfully be disregarded. They are supported by an earlier decision that where licensing justices were required by statute to specify the grounds of their decision, failure to do so made their proceedings wholly defective, so that they could be required by mandamus to rehear the application de novo....

12. In our considered view, therefore, there could be no deemed permission or direction by the Tribunal in favour of the insurer permitting it to lead evidence or defence on all issues available to the insurer. The above direction or permission contemplated by Sub-section (2-A) has to be granted by the Tribunal after due application of mind and for reasons to be recorded by it in writing. For that purpose, the insurer may invoke the provisions of Sub-section (2-A) on grounds relatable to Clauses (i) and (ii) of the said Sub-section (2-A) of Section 110-C. In the instant case, no permission was sought or granted by the Tribunal by issuing necessary directions in favour of the Insurance Company. The Insurance Company, therefore, could not have contested the claim on defences which were available only to the insured, such as on the ground of negligence and quantum.

13. In our considered opinion, therefore, the insurer in this appeal cannot be heard on the grounds of negligence and quantum. In the course of hearing, we allowed the parties to read all evidence on record on the question of negligence and quantum. We find that the Insurance Company led no evidence in proof of the fact that there was any contributory negligence on the part of the deceased who was driver of the Fiat car. Farid Khan (P.W. 4) who was driving the Fiat car immediately behind the car driven by the deceased in the convoy, said that the truck was coming from the opposite direction in a wavering and unsteady manner. The truck hit the Fiat car of the deceased from the driver's side. There is no evidence on record to hold that there was any contributory negligence on

the part of the Fiat driver. Learned Counsel laid too much emphasis on the fact that in his deposition, the above witness admits that the Fiat cars in the convoy, were going in the speed between 50 to 70 kms. per hour. Whether the car was going in such an excessive speed as to infer negligence depends upon several factors such as the condition of the road, the position of the other moving vehicles and others. There is no evidence to hold that the deceased, as driver of the Fiat car, was in such excessive speed as to infer negligence on his part.

14. On the question of quantum also, we do not find that the Award deserves any interference. The learned Counsel appearing for the appellant, laid much stress on the fact that the deceased used to get chances, being one of the members of the Convoy Drivers' Union of Bombay, of getting of about 3 trips in a month for delivery of new Fiat cars. He had no steady income and some money was spent in the journey to and fro. It is urged that the annual dependency could not have been more than Rs. 500/- per month.

15. We have held above that Insurance Company can raise no ground on quantum. We may, however, say that in determining annual income of the deceased, the future prospects of more income cannot be lost sight of. With the passage of time, he would have got a steady income and would have earned more because of his higher experience and skill as a driver. The Tribunal, therefore, committed no error in arriving at Rs. 950/- per month as his annual dependency. We also do not think that the multiplier of fifteen applied is so high as to deserve interference. Claimants Sabir Ali is his son who was a child of only 8 years of age at the time of accident. His son would have continued to get benefit from his earning till he had attained majority. The Tribunal, therefore, committed no error in applying the multiplier of 15 and the Award in that regard cannot be interfered with at the instance of the Insurance Company as held by us above in deciding the preliminary objection. Consequently, the appeal fails and is hereby dismissed. In the circumstances, however, we leave the parties to bear their own costs.