
(1985) 07 AP CK 0015
In the Andhra Pradesh High Court

New India Assurance Co. Ltd.

APPELLANT

Vs

Chotinabee and Others

RESPONDENT

Date of Decision : 31-07-1985

Acts Referred:

Motor Vehicles Act, 1939 — Section 110A, 92A(1), 92E, 93(ba)

Citation : (1986) 2 ACC 306 : (1985) 2 ALT 505

Hon'ble Judges : K. Ramaswamy, J

Bench : Single Bench

Judgement

K. Ramaswamy, J.—All these appeals can be disposed of by a common order.

2. It is needless to mention the details in all the cases but, suffice it to state that the deceased in each of the appeals were travelling in the lorry APQ 4309, belonging to the first respondent in the court below, the 3rd respondent herein, which was insured with the appellant and when it reached the tank bund near Maddipatlapalle on October 31, 1983 at about 10 p.m. on the Chittoor-Irala road, the lorry was involved in the accident as a result of which the deceased died. Then their legal representatives filed applications initially u/s 110-A of the Motor Vehicles Act, 1939, (for short "the Act"). Subsequently they have been converted into one u/s 92-A of the Act. Statutory liability under this section has been fixed for the death at Rs. 15,000/- and compensation was awarded by the lower court as against which the present appeals have been filed.

3. Mr. I.A. Naidu, the learned Counsel for the appellants has strenuously contended, that the applications having been filed u/s 92-A of the Act, they cannot be converted into one u/s 110-A and thereafter they cannot be re-numbered as one u/s 92-A. It would appear that there was some amount of confusion in the thinking of the counsel for the claimants and he went on dabbling with the matter but ultimately the court below found that the correct procedure to be adopted is one u/s 92-A of the Act. Therefore, the question that arises for consideration is whether the claim u/s 92-A of the Act is maintainable.

4. Chapter VII-A was brought on statute by the Amendment Act 47 of 1982 through Section 11 thereof introducing Sections 92-A to 92-E. It became effective from October 1, 1982. Therefore, as on the date of the death of the deceased in these cases the relevant provision is Chapter VII-A. Section 92-A of the Act postulates thus:

92-A. Liability to pay compensation in certain cases on the principle of no fault.-

(1) 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.

(2) The amount of compensation which shall be payable under Sub-section (1) in respect of the death of any person shall be a fixed sum of fifteen thousand rupees and the amount of compensation payable under that sub-section in respect of the permanent disablement of any person shall be a fixed sum of seven thousand five hundred rupees.

(3) In any claim for compensation under Sub-section (1), the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person.

(4) A claim for compensation under Sub-section (1) shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made nor shall the quantum of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement.

5. Then Section 92-E of the Act gives overriding effect, which reads thus:

92-E. Overriding effect.-The provisions of this Chapter shall have effect notwithstanding anything contained in any other provision of this Act or of any other law for the time being in force.

6. Chapter VIII deals with insurance of motor vehicles against third party risks. Clause (ba) of Section 93 of the Act was introduced simultaneously under the Amendment Act 47 of 1982 through Section 12 thereof inserting thus:

(ba) "Liability" wherever used in relation to the death of or bodily injury to any person includes liability in respect thereof u/s 92-A ;

7. Chapter VII-A begins with the liability without fault in certain cases and Section 92-A(2) fixes the statutory liability in respect of the death of person at Rs. 15,000/-. It is not in dispute that the death of the respective deceased in each of the appeals resulted from an accident arising out of the use of the lorry

APQ 4309. Sub-section (1) of Section 92-A imposes liability on the owner of the vehicle. The same liability has been covered under the insurance in Chapter VIII by virtue of Section 93 (ba). Therefore, the insurance company is also statutorily made liable for the death occurring as a result of the use of the motor vehicle in respect of the no fault liability arising under Chapter VII-A of the Act. Therefore, the insurance company cannot avoid the liability in respect thereof. Section 92-E gives overriding effect to any other provisions contained in the Act in respect of the no fault liability arising under Chapter VII-A. Therefore, though initially applications have been filed u/s 92-A of the Act and then converted into one u/s 110-A and thereafter re-converted into one u/s 92-A, the effect is to be seen u/s 92-E. This provision gives overriding effect over the other provisions of the Act. Therefore, the liability has been rightly fixed on the owner and it became the liability of the insurance company by operation of Section 93 (ba). Therefore, the lower court has rightly fixed the liability on the insurance company. I do not find any illegality in the awards passed by the lower court.

8. The appeals merit no consideration and they are accordingly dismissed but, in the circumstances, without costs.