

(1996) 10 BOM CK 0005

In the Bombay High Court

Case No : F.A. No's. 388 to 391, 393 to 396, 626 to 629, 631 to 635 and 713 of 1993

New India Assurance Co. Ltd.

APPELLANT

Vs

Gajanan Rambhau Mohite and Another

RESPONDENT

Date of Decision : 11-10-1996

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 195
Motor Vehicles Act, 1988 — Section 140, 149, 166, 168, 169

Citation : (1998) 1 ACC 101

Hon'ble Judges : B.U. Wahane, J

Bench : Single Bench

Advocate : D.N. Kukday, for the Appellant; A.S. Jaiswal, V.G. Wankhede and Shyam Dewani, for the Respondent

Judgement

B.U. Wahane, J.—In all the appeals preferred by the appellant New India Assurance Co. Ltd., it challenged the order passed by the Motor Accidents Claims Tribunal and the question involved or raised being the same, the appeals with the consent of the learned Counsel of the parties, are disposed of by the common judgment. However, two different vehicles met with an accident on two different dates and the owners and drivers being different, the appeals have been separated in two groups. In First Appeal Nos. 388 to 391 and 393 to 396 of 1993, the tractor No. MHX 5049 and trolley No. MHV 3503 are involved in the accident occurred on 25.5.1991 and though the claimants are different, the owner-respondent No. 2, Bhimrao Mahaduji Nikam, is the same.

The second group of the First Appeals is of First Appeal Nos. 626 to 629 and 631 to 635 and 713 of 1993. In this set of appeals, truck (Sic. tractor) No. MTR 5888 and trolley No. 9391 are involved. The accident occurred on 5.3.1990 and the recorded owner of the vehicle is Laxmandas Motiram Mulchandani.

2. It is not disputed by the parties that the tractors and trolleys referred to above met with an accident on the dates referred earlier and in both the accidents, all

the occupants/passengers received injuries. Injured persons filed individual claim petition simpliciter u/s 140 of the Motor Vehicles Act, 1988, before the Motor Accidents Claims Tribunal, Bul-dana. Notices were issued to the opposite parties. The appellants in all the claim cases filed the reply and has denied the liability to pay even the interim compensation to the claimants under the provisions of Section 140 of the Motor Vehicles Act, on the ground that the tractors and trolleys were insured for agricultural operations only. According to the appellant insurance company, the occupants/passengers who were in the tractors and trolleys were the fare-paying passengers. Tractor No. MHX 5049 and trolley No. 3503 were carrying a marriage party consisting of about 50 to 55 passengers. Along with the reply, the insurance policy, copy of F.I.R. which was lodged by one of the occupants, with other documents, were filed. Mr. Kukday vehemently submitted that admittedly, the provisions of Section 140 of the Act have been enacted to render minimum relief to the injured persons and the legal heirs of the deceased, by way of interim compensation or relief, pending the final adjudication u/s 166 of the Motor Vehicles Act, 1988. Even to award an interim relief under the provisions of Section 140 of the Act, summary enquiry or preliminary enquiry is contemplated. The learned Motor Accidents Claims Tribunal has not considered the documents prima facie to come to the conclusion as to whether the appellant insurance company is liable to pay interim compensation under the provisions of Section 140 of the Act. Therefore, the only question raised in all the appeals is that "Whether in the proceedings instituted u/s 140 of the Motor Vehicles Act, 1988, the insurance company can raise the defence or pleas as contemplated u/s 149 of the Act which the insurance company is entitled to raise in the proceedings u/s 166 of the Act, i.e., final adjudication of the claim of the claimants and it is incumbent on the Tribunal to hold summary trial or preliminary enquiry on the basis of the material placed?"

3. Before proceeding with the discussion on the submissions made by the learned Counsel of the parties, a judicial notice is to be taken of the fact that none of the claimants in these appeals, has filed claim petition u/s 166 of the Act.

4. Chapter X of the Motor Vehicles Act, 1988 deals with the liability without fault in certain cases. u/s 140 of the Act, where death or permanent disablement of any person has resulted from an accident arising out of the use of the 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.

Sub-section (3) of Section 140 of the Act provides that the claimant shall not be required to plead and establish, in any claim for compensation under Sub-section (1), 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. This provision appears to be social welfare legislation, underlying object is to give

minimum benefits to the victims in case of injuries sustained by them or the relations of the victims in case of death. In the case *Oriental Fire & Genl. Ins. Co. Ltd. v. Aleixo Fernandes* 1986 ACJ 1137 (BoM) in para 11, while considering the provisions of Section 92-A, it has been observed:

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. In construing social welfare legislation, the courts should adopt a beneficent rule of construction and in any event, that construction should be preferred which fulfils the policy of the legislation. Construction to be adopted should be more beneficial to the purposes in favour of and in whose interest the Act has been passed.

The Apex Court in the case of *Shivaji Dayanu Patil and another Vs. Smt. Vatschala Uttam More*, while construing the provisions of Section 92-A of the Motor Vehicles Act, 1939, observed:

It is thus evident that Section 92-A was 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. The same approach has been adopted by this Court, while construing the provisions of the Act.

Besides the application, u/s 140 of the Act on no fault liability, claimants are required to file an application for compensation u/s 166 of the Act, incorporating the claim for compensation on the ground of fault. Both these claims can be made in a single application or separate applications one u/s 140 of the Act and another u/s 166 of the Act. Before the 1994 amendment, six months' limitation was prescribed to file the application under the provisions of Section 166 of the Act and the maximum delay condonable was of six months. Thus, the claimants were permitted to file the claim application u/s 166 of the Act.

Section 140 of the Act (new) is analogous to the provisions u/s 92-A of the Motor Vehicles Act, 1939, (old Act).

Chapter XII deals with the Claims Tribunals. The claimants are required to file an application for compensation u/s 166 of the Act, arising out of the accident. Under the provisions of Section 149, the insurer is entitled to defend the action on the following grounds, namely.

(a) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely:

(i) a condition excluding the use of the vehicle-

- (a) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or
- (b) for organised racing and speed testing, or
- (c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle, or
- (d) without side-car being attached where the vehicle is a motor cycle; or
- (ii) 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 for holding or obtaining a driving licence during the period of disqualification; or
- (iii) a condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion; or
- (b) that the policy is void on the ground that it was obtained by the nondisclosure of a material fact or by a representation of fact which was false in some material particular.

The provisions of Section 168 of the Act provide for an inquiry into the claim giving an opportunity of hearing to the parties including the insurer. The Claims Tribunal while deciding the claims under the Act, in view of the provisions of Section 169(2) of the Act, shall have all the powers of civil court for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and of compelling the discovery and production of documents and material objects and for such other purposes as may be prescribed; and the Claims Tribunal shall be deemed to be a civil court for all purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure 1973. Considering the above provisions, it is clear that the Claims Tribunal is required to hold a regular trial while adjudicating the claim u/s 166, of the Motor Vehicles Act, 1988 (110-A of the Motor Vehicles Act, 1939). In the case of Shivaji Dayanu Patil and another Vs. Smt. Vatschala Uttam More, , their Lordships discussed the provisions of Sections 140 and 166 of the new Act (Sections 92-A, 110-A respectively) and the Rules amended by Maharashtra Government in the year 1984, particularly Rules 291-A, 291-B, 297 (2), 306-A and 306-B and observed that if it is construed that for considering no fault claim u/s 140 (old 92-A), the Claims Tribunal is required to hold a regular trial in the same manner as for adjudicating a claim petition u/s 166 (old 110-A), the object would be defeated. The object underlying the said provisions is to enable expeditious disposal of the claim petition u/s 140 of the Act (under Section 92-A of the old Act). Their Lordships in para 45 of the judgment observed as:

...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 u/s 110-A of the Act for the purpose of making an order on a claim petition u/s 92-A of the Act.

Mr. A.S. Jaiswal, the learned Counsel for the respondents/claimants vehemently submitted that if the enquiry is made or summary trial is held, the purpose of the provisions of Section 140 of the Act would be defeated. However, it is very fairly stated that the Claims Tribunal has to consider the documents placed by the claimants and the non-applicants including the insurer. If material objection raised which goes to the root of the claim petition, have to be considered. Perusal of the order below Exh. 1, i.e., the application u/s 140 of the Motor Vehicles Act dated 15.3.1991 shows that in para 3 it is specified that Mr. Chavan, the counsel for the insurance company, took objection that the vehicle involved in the accident was being used for fare-paying passengers on accepting fare, there was a breach of policy and thereby the insurance company is not liable to pay any compensation. The learned Counsel prayed for dismissal of the application. The learned Member, Motor Accidents Claims Tribunal, Buldana, allowed the application and directed the insurance company (opponent No. 2) to pay Rs. 12,000/- jointly and severally to the applicants. Mr. Kukday, the learned Counsel for the appellant, attracted my attention to the F.I.R. lodged by one of the passengers and submitted that in both the cases, the tractors and trolleys were carrying the passengers by charging the fare. In one of the cases, the tractor and trolley were carrying the marriage party. The tractor and trolley were insured for the purposes of agricultural operations and as per Rules for carrying of own goods only. The specific column in the motor policy speaks:

Carrying on or engaged in the business or occupation of agri forestry and as per rule carriage of own goods only and of no other for the purpose of this insurance.

In the case of Oriental Fire and General Insurance Company Ltd. Vs. Aleixo Fernandes and Others, considering various provisions of the Rules, in para 10 of the judgment, it is observed:

From the aforesaid proviso it is clear that the Tribunal has to proceed to make a compensation award on the basis of registration certificate of the motor vehicle involved in the accident; insurance policy relating to the insurance of the vehicle against third party risks; copy of the first information report; post-mortem certificate or certificates of injury from the Medical Officer; the nature of the treatment given by the Medical Officer who has examined the victim. It is obvious further that the Claims Tribunal shall follow the procedure of summary trial as contained in the Criminal Procedure Code 1973. For the purposes of adjudicating and awarding a compensation under the new Chapter VII-A proviso to Rule 18 has been introduced. At the same time a duty has been cast as mentioned earlier that application u/s 92-A shall be disposed of within a period of 45 days from the date of receipt of such application.

From the above it will have to be seen that a summary trial is contemplated for making an award or order u/s 92-A but however it is limited to item Nos. 1 to 5 mentioned above.

5. Considering the facts and circumstances, provisions of the Motor Vehicles Act

and Rules, the Claims Tribunal shall follow the procedure of summary trial for making award or order u/s 92-A (old) or Section 140 (new) of the Act. Undisputedly, in this case, the Claims Tribunal has not made any enquiry while granting the compensation under no fault liability.

6. Mr. Kukday placed reliance on the following cases while submitting that the insurer is entitled to raise defence u/s 140 of the Act and the court shall have to make summary enquiry or hold summary trial. Reliance has been placed on the case of United India Insurance Co. Ltd. and another Vs. Smt. Lakshmi and another, the learned Judges in para 19 of the judgment, relying on the decision of the Full Bench of Karnataka High Court in the case of M/s. United India Insurance Company, Bangalore Vs. Imman Aminasab Nadaf and others, observed:

As pointed out by the Full Bench in para 20 of the judgment, while passing an award of compensation claimed u/s 92-A, it is the duty of the court to prima facie find out whether the liability is covered by the insurance policy after making a summary enquiry and only thereafter it could make an award subject to making appropriate directions in the final award regarding payment of the said amount by the owner of the vehicle to the insurance company, if a final finding to the effect that the insurance company was not liable to pay were to be recorded.

7. Mr. Kukday further placed reliance on the case of New India Assurance Co. Ltd. Vs. Ajay and Others, . Practically, the facts of the case in hand and the facts in the case before the Madhya Pradesh High Court are identical. In the case before his Lordship of the Madhya Pradesh High Court, several passengers were travelling in the tractor-trolley, trolley turned turtle; some of the passengers sustained injuries and one of them succumbed to his injuries. The passengers were going for giving performance at the marriage. Tractor was insured for agricultural purposes. His Lordship held that the insurance company cannot be directed to make payment of interim award u/s 140 of the Act on the basis of no fault liability as there was a clear breach of conditions of policy which could be inferred from the averments of the parties and other documents.

8. Giving conscious thought to the facts and circumstances of the case and provisions of the enactment and the observations made in the cases cited supra, I am of the opinion that even for granting the benefit of no fault liability u/s 140 of the Act as interim relief, the Claims Tribunal is required to conduct a summary trial considering the documents placed on record by the parties to come to the prima facie conclusion that the insurance company is liable to pay the compensation under the terms and conditions of the policy.

9. In the result and in the interest of justice, as no summary or preliminary enquiry being conducted by the Tribunal, all the matters are remanded to the Motor Accidents Claims Tribunal, Buldana for fresh summary enquiry before passing the order u/s 140 of the Act. The findings of the Motor Accidents Claims Tribunal shall not be affected by the observations made by this Court. The Motor

Accidents Claims Tribunal is directed to decide all the claim petitions u/s 140 of the Act, after holding the summary trial, within a period of 30 days from the date of receipt of the writ of this Court.

Parties are directed and it is conveyed to the learned Counsel appearing for the parties, that they should appear before the Motor Accidents Claims Tribunal at Buldana, on 24.10.1996. No order as to costs.