
(1989) 01 AP CK 0015
In the Andhra Pradesh High Court

New India Assurance Co. Ltd.

APPELLANT

Vs

Namburi Simhachalam and Others

RESPONDENT

Date of Decision : 20-01-1989

Acts Referred:

Motor Vehicles Act, 1939 — Section 110A, 92A, 95

Citation : (1990) 68 CompCas 571

Hon'ble Judges : K.R. Ramaswamy, J

Bench : Single Bench

Advocate : S.V.R.S. Somayajula, for the Appellant; M.S.R. Subrahmanyam and C. Poornaiah, for the Respondent

Judgement

K. Ramaswamy, J.—The appellant-insurance company is resisting the claim of the respondents u/s 92A of the Motor Vehicles Act (Act 4 of 1939), as amended by the Amendment Act 4 of 1982, with effect from October 1, 1982 (hereinafter referred to as "the Act").

2. The admitted facts are that, N. Achaiah, the deceased, died in an accident on January 27, 1983, as a result of the rash and negligent driving by the driver of the vehicle bearing number ADI 3965. The claimants-respondents laid the claim initially u/s 110A of the Act. There was delay in laying the claim and the same was refused to be condoned. Thereafter, an application was made by the claimants for "no-fault liability" u/s 92A of the Act. The Tribunal below awarded a sum of Rs.15,000 with 12 per cent. interest per annum on that count. Assailing the legality thereof, the present appeal has been filed.

3. The contention of Sri S.V.R.S. Somayajulu, learned counsel for the appellant-company is that the order refusing to condone the delay and dismissing the application filed by the claimants u/s 110A of the Act, operates as a bar against the claimants-respondent to lay a claim even for "no-fault liability" u/s 92A of the Act. To appreciate the contention, it is relevant to refer to the relevant provisions of the Act. Section 92A of the Act reads as follows:

"92A. 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 responsibility for such death or permanent disablement."

4. Sub-section (4) of section 92A of the Act postulates that a claim for compensation under sub-section (1) thereof shall not be defeated by reason of any wrongful act, neglect or default on the part of the person in respect of whose death or permanent disability the claim has been made, nor shall the quantum of compensation recoverable in respect of such death or disability be reduced on the basis of the share of such person in the responsibility for such death or disablement. Sub-section (1) of section 92A of the Act provides that a claim is independent of any other provisions including section 110A. The quantum of compensation is contemplated by sub-sections (2) and (3) of section 92A of the Act. Therefore, the Legislature was aware of the general claim to be made u/s 110A of the Act, and "no-fault liability" was introduced by the Amendment Act 47 of 1982, obviously, with a view to relieve the distress of the claimants for whatever reasons, and to fasten the liability at least to the minimum of Rs.15,000 and Rs.7,500 in case of death or disablement, respectively, even if fault is not established. Thus, it is clear that the liability joint and several. The liability of the insurance company is pursuant to the contract u/s 95 of the Act. Therefore, when the liability is fastened disregarding the provisions of section 110A of the Act, the necessary conclusion that could be reached is that, independent of any order that may be passed u/s 110A of the Act, the liability u/s 92A of the Act can be imposed. But, in a case where there is liability both u/s 110A and section 92A of the Act, then, while computing the total compensation

payable owing to death or bodily injury to the victim u/s 110A, the amount of minimum statutory liability fastened u/s 92A has to be excluded and balance has to be paid. But, in other respects, when there is no claim laid or the claim u/s 110A is disallowed, irrespective of the contributory negligence, the claimants are entitled to the statutory minimum amount adumbrated under sub-sections (2) and (3) of section 92 of section 92A of the Act. Considered from this perspective, I hold that the Tribunal has not committed any error of law or illegality in awarding the amount towards "no-fault liability" u/s 92A(2) of the Act. The appeal is accordingly, dismissed. No costs.