
(2001) 09 BOM CK 0001

In the Bombay High Court

Case No : Letters Patent Appeal No. 100 of 1993

New India Assurance Company Ltd.

APPELLANT

Vs

Babasaheb Anna Mali and Others

RESPONDENT

Date of Decision : 06-09-2001

Acts Referred:

Motor Vehicles Act, 1939 — Section 92A, 95, 95(1)

Citation : (2002) 1 ACC 642 : (2002) ACJ 642 : AIR 2002 Bom 27 : (2002) 2 BomCR 682 : (2002) 1 BOMLR 22 : (2001) 4 MhLj 562

Hon'ble Judges : R.M. Lodha, J;Nishita Mhatre, J

Bench : Division Bench

Advocate : S.R. Singh, for the Appellant; Rupesh Nalawade, for A.Y. Sakhare, for the Respondent

Final Decision : Allowed

Judgement

R.M. Lodha, J.—This Letters Patent Appeal is directed against the judgment/order passed by the learned single Judge on 4-9-1992 whereby the learned single Judge upheld the order passed by the Motor Accident Claims Tribunal. Kolhapur on 16-1-1986 directing the present appellant to deposit an amount of Rs. 3750/- towards "no fault liability" u/s 92-A of Motor Vehicles Act, 1939. Though the amount involved is meagre, the learned counsel for the appellant-Insurance Company submitted that as the question of liability of Insurance Company in respect of pillion rider under third party policy of insurance is involved, the appellant is desirous of the decision in the matter and accordingly we heard the learned counsel for the parties.

2. The respondent No. 1 herein Babasaheb Anna Mali (for short "the claimant") filed a claim petition u/s 110-A of Motor Vehicles Act, 1939 against the deceased respondent No. 2 (now represented by his legal heirs) as opponent party No. 1, respondent No. 3 as opponent party No. 2, respondent No. 4 as opponent party No. 3 and the present appellant as opponent party No. 5. The case set up by the claimant in the claim petition is that on 29-4-1984 he was riding on pillion of

Hero Majestic Motor Cycle bearing No. MZG 964 owned by Shiva Appa Wadar (opponent party No. 4) being driven by his relative Yashvant Bapu Mali. The said motor cycle was dashed by the truck as a result of which the petitioner as well as the driver of motor cycle sustained serious injuries. Though the driver died immediately thereafter, the petitioner remained admitted in the hospital from 29-4-1984 to 11-6-1984 and due to fracture to the left thigh bone and he became permanently disabled. The claimant, accordingly, prayed for interim award of Rs. 7500/- towards no fault liability u/s 92-A. The application u/s 92-A was contested by opponents. The present appellant-opponent No. 5 denied its liability inter alia on the ground that under insurance policy pillion rider was not covered. After hearing the parties, Motor Accident Claims Tribunal by its order dated 16-1-1986 ordered the present appellant-insurer to deposit the sum of Rs. 3750/- in Court. It is this order which was challenged by the Insurance Company in First Appeal No. 626/1986. As similar question was involved in other first appeals also the entire group of first appeals were heard by the learned single Judge and by the common Judgment dated 4-9-1992 all first appeals were dismissed. Dismissal of First Appeal No. 626/1986 by the Judgment dated 4-9-1992 has given rise to present Letters Patent Appeal.

3. As to the scope of the enquiry u/s 92-A to the Motor Vehicles Act, 1939 and relevant Rules of Bombay Motor Vehicles Rules, 1989 legal position is no more *res Integra* and it is well settled that before passing an order u/s 92-A the Claims Tribunal is required to satisfy itself in respect of the matters viz. (i) an accident has arisen out of the use of the motor vehicle; (ii) the said accident has resulted in permanent disablement of the person who is making the claim or death of the person whose legal representatives have made the claim and (iii) the claim made against the owner and the insurer of the motor vehicle involved in the accident. In *Shivaji Dayanu Patil and another Vs. Smt. Vatschala Uttam More*, , the Apex Court considered the ambit and scope of Section 92-A elaborately and after taking into consideration the relevant Rules of Bombay Motor Vehicles Rules, 1989 held that holding of the regular trial in the proceeding u/s 92-A in the same manner as for adjudicating claim u/s 110-A is not permissible at all. The Apex Court emphasised that the Claims Tribunal is not required to follow the normal procedure prescribed under the Act and the Rules with regard to the adjudication of a claim u/s 110-A for the purposes of making an order on a claim petition u/s 92-A. In paragraphs 42 and 43 of the report, the Apex Court held thus :

"42. Rule 306-C prescribes the procedure of disbursement of compensation u/s 92-A to the legal heirs in case of death. The submission of Shri sanghi is that in spite of the aforesaid amendments which have been introduced in the Rules after the enactment of Section 92-A, the Claims Tribunal is required to follow the procedure contained in the other rules before awarding compensation u/s 92-A of the Act. In other words, it must proceed to adjudicate the claim after the opposite party is afforded an opportunity to file the written submission under Rule 298, by framing issues under Rule 299 and after recording evidence in accordance with Rules 300 and 301 and that It is not permissible for the Claims

Tribunal to make an order purely on the basis of the documents referred to in Rules 291-A, 306-A and 306-B. In our opinion, the said submission of Shri Sanghi cannot be accepted, the object underlying the enactment of Section 92-A is to make available to the claimant compensation amount to the extent of Rs. 15,000/- in case of death and Rs. 7,500/- in case of permanent disablement as expeditiously as possible and the said award has to be made before adjudication; of the claim u/s 110-A of the Act. This would be apparent from the provisions of Section 92-B of the Act. Section 92-B(2) of the Act provides that a claim for compensation u/s 92-A in respect of death or permanent disablement of any person shall be disposed of as expeditiously as possible and where compensation is claimed in respect of such death or permanent disablement u/s 92-A and also in pursuance of any right on the principle of fault, the claim for compensation; u/s 92-A shall be disposed of as aforesaid in the first place. With a view to give effect to the said directive contained in Section 92-B of the Act, the Maharashtra Government has amended the Rules and has inserted special provisions in respect of claims u/s 92-A in Rules 291-A, 291-B, 297(2), 306-A, 306-B, 306-C and 306-D of the Rules. The object underlying the said provisions is to enable expeditious disposal of a claim petition u/s 92-A of the Act. The said object would be defeated if the Claims Tribunal is required to hold a regular trial in the same manner as for adjudicating a claim petition u/s 110-A of the Act. Moreover, for awarding compensation u/s 92-A of the Act, the Claims Tribunal Is required to satisfy itself in respect of the following matters :

- (i) an accident has arisen out of the use of a motor vehicle;
- (ii) the said accident has resulted in permanent disablement of the person who is making the claim or death of the person whose legal representative is making the claim;
- (iii) the claim is made against the owner and the insurer of the motor vehicle Involved in the accident."

43. The documents referred to in Rules 291-A and 306-B will enable the Claims Tribunal to ascertain the necessary facts in regard to these matters. The panchanama and the First Information Report will show whether the accident had arisen out of the use of the motor vehicle in question. The injury certificate or the post-mortem report will show the nature of injuries and the cause of death. The Registration Certificate and Insurance Certificate of the motor vehicle will indicate who is the owner and Insurer of the vehicle. In the event of the Claims Tribunal feeling doubtful about the correctness or genuineness of any of these documents or if it considers it necessary to obtain supplementary information or documents, Rules 306-A, empowers the Claims Tribunal to obtain such supplementary information or documents from the Police, medical or other authorities. This would show that Rules 291-A, 306-A and 306-B contain adequate provisions which would enable the Claims Tribunal to satisfy itself in respect of the matters necessary for awarding compensation u/s 92-A of the Act and in view of these special provisions which were introduced in the Rules by the

amendments in 1984, 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."

4. In the light of the aforesaid legal position laid down by the Apex Court in respect of enquiry u/s 92-A, we have to see whether Motor Accident Claims Tribunal and the learned single Judge were justified in directing the insurer of motor cycle to deposit the amount u/s 92-A in the claim made by pillion, rider of a motor cycle. There is no dispute that the vehicle concerned is Hero Majestic bearing Registration MZG 964 and Insured as Moped with the appellant-New India Assurance Co. Ltd. The insurance policy is third party policy only. The accident had taken place in the year 1984 and, therefore, we have to consider the legal position as was obtaining then.

5. Section 95 of the Act of 1939 reads thus :

"95(1) In order to comply with the requirements of this chapter, a policy of insurance must be a policy which-

(a) is issued by a person who is an authorised insurer or by a co-operative society allowed u/s 108 to transact the business of an insurer and

(b) insures the person or classes of persons specified in the policy to the extent specified in Sub-section (2)-

(i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;

(ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place :

Provided that a policy shall not be required-

(i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923, in respect of the death of, or bodily injury to, any such employee-

(a) engaged in driving the vehicle, or

(b) if it is a public service vehicle, engaged as a conductor of the vehicle or in examining tickets in the vehicle, or

(c) if it is a goods, vehicle, being carried in the vehicle, or

(ii) except where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment, to cover liability in respect of the death of or bodily injury to persons being carried in or

upon or entering or mounting or alighting from the vehicle at the time of the occurrence of the event out of which a claim arises, or

(iii) to cover any contractual liability.

[Explanation.-- For the removal of doubts, it is hereby declared that the death of or bodily injury to any person or damage to any property of a third party shall be deemed to have been caused by or to have arisen out of, the use of a vehicle in a public place notwithstanding that the person who is dead or injured or the property which is damaged as not in a public place at the time of the accident, if the act or omission which led to the accident occurred in a public place :]

(2) Subject to the proviso to Sub-section (1), a policy of insurance shall cover any liability incurred in respect of any one accident up to the following limits, namely :--

(a) where the vehicle is a goods vehicle, a limit of one lakh and fifty thousand rupees in all, including the liabilities, if any, arising under the Workmen's Compensation Act, 1923, in respect of the death of, or bodily injury to, employees (other than the driver), not exceeding six in number, being carried in the vehicle;

(b) where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of, or in pursuance of a contract of employment,--

(i) in respect of persons other than passengers carried for hire or reward, a limit of fifty thousand rupees in all;

(ii) in respect of passengers, a limit of fifteen thousand rupees for each individual passenger:

(c) save as provided in Clause (d), where the vehicle is a vehicle of any other class, the amount of liability incurred;

(d) irrespective of the class of the vehicle, a limit of rupees six thousand in all in respect of damage to any property of a third party.

(4) A policy shall be of no effect for the purposes of this chapter unless and until there is issued by the insurer in favour of the person by whom the policy is effected a certificate of insurance in the prescribed form and containing the prescribed particulars of any conditions subject to which the policy is issued and of any other prescribed matters; and different forms, particulars and matters may be prescribed in different cases.

((4A). Where a cover note issued by the insurer under the provisions of this chapter of the rules made thereunder is not following by a policy of Insurance within the prescribed time, the insurer shall, within seven days of the expiry of the period of the validity of the cover note, notify the fact to the registering authority in whose records the vehicle to which the cover note relates has been registered or to such other authority as the State Government may prescribe.)

(5) Notwithstanding anything elsewhere contained in any law, a person issuing a policy of insurance under this section shall be liable to indemnify the person or classes of person specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of person."

6. In Pushpabai Purshottam Udeshi and Others Vs. Ranjit Ginning and Pressing Co. (P) Ltd. and Another, while construing Sections 95(a) and 95(b)(i) observed that the Act of 1939 adopted the provisions of the English Road Traffic Act, 1960 and excluded the compulsory liability of the Insurance Company regarding the risk to the passengers. The Apex Court in paragraphs 21 and 22 (of Acc CJ) : (para 20 of AIR) of the report held thus :--

"21. Sections 95(a) and 95(b)(i) of the Motor Vehicles Act adopted the provisions of the English Road Traffic Act, 1960 and excluded the liability of the insurance company regarding the risk to the passengers. Section 95 provides that a policy of Insurance must be a policy which insures the persons against any liability which may be incurred by him in respect of death or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place. The plea that the words "third party" are wide enough to cover all persons except the person and the insurer is negatived as the insurance cover is not available to the passengers is made clear by the proviso to Sub-section which provides that as policy shall not be required :

"(ii) except where the vehicle is a vehicle in which passengers are carried for hire or reward or by a reason of or in pursuance of a contract of employment, to cover liability in respect of the death of or bodily injury to persons being carried in or upon or entering or mounting or alighting from the vehicle at the time of the occurrence of the event out of which a claim arises.

22. Therefore, it is not required that a policy of insurance should cover risk to the passengers who are not carried for hire or reward. As u/s 95 the risk to a passenger in a vehicle who is not carried for hire or reward is not required to be insured the plea of the counsel for the insurance company will have to be accepted and the insurance company held not liable under the requirements of the Motor Vehicles Act."

7. The legal position, thus, appears to be that under law the insurance policy of motor vehicle is not compulsorily required to cover passengers save and except where vehicle is a vehicle in which passengers are carried for hire or reward or by a reason of or in pursuance of contract of employment. The expression "third party" would not cover passenger or the pillion rider of a motor vehicle. The proposition that the expression third party is expression of wide import covering all persons except the insured and insurer is misconceived and cannot stand legality on face of proviso (ii) to Section 95(1) which provides that insurance cover is not available to the passengers except where vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of contract of employment. The Apex Court in Smt. Mallawwa Etc. Vs. The

Oriental Insurance Co. Ltd. and Others, of the said report made the following observations :

"8. Again turning back to proviso (ii), we find that it, in clear terms, restricted the scope of the main provision by confining its application to that vehicle which is "a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment." In the first instance, the vehicle had to be a vehicle of that class in which passengers were carried. If that was not the intention of the legislature. It would not have used the phraseology "the vehicle is a vehicle in which passengers are carried" and would have simply provided that "except where passengers are carried for hire or reward." So also the compulsory coverage was not intended for all passengers and, therefore, it was provided that, "passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment." Thus, the confinement of the operation of the main provision was in respect of vehicles and also passengers. And that was consistent with the English law on which Section 95 was based."

8. We, therefore, have no hesitation in holding that pillion rider of the motor cycle which was insured with the appellant was not covered under the policy of insurance which was admittedly third party policy. When the pillion rider of a motor cycle is not covered under the policy of insurance, obviously the insurer of the motor cycle could not have been saddled with no fault liability u/s 92-A even under the limited and restricted enquiry as laid down by the Apex Court in Shivaji Dayanu Patil and another Vs. Smt. Vatschala Uttam More, . The learned single Judge in the impugned order particularly in paragraph 14 cannot be said to have rightly observed that some evidence shall have to be led by the Insurance Company to make out the case that it is not liable. Though the learned single Judge extensively referred to judgment of the Apex Court in Shivaji D. Paul's case and rightly appreciated the ratio laid down thereunder but erred in applying it on the facts of the case when he observed that some evidence shall have to be led by insurance company to prove that it is not liable under the policy and thereby committed an error which deserves to be corrected by us. On the face of the third party insurance policy when pillion rider is not covered, in claim of compensation made by the claimant for having sustained permanent disability while riding motor cycle as pillion rider which met with an accident, apparently insurance company is not liable and no further material was required to be seen at the stage of consideration of application u/s 92-A to find out whether Insurer was liable or not. From the insurance policy it is not seen that any extra premium was paid for coverage of pillion rider.

9. In view of the discussion aforesaid we are of the view that order passed by the Motor Accident Claims Tribunal directing appellant-insurer to deposit Rs. 8500/- was not legally sustainable and ought to have been set aside by the learned single Judge.

10. Consequently, we allow the appeal and set aside the judgment of the learned single Judge passed on 4-9-1992 and also the order dated 16-1-1986 passed by

Motor Accident Claims Tribunal, Kolhapur. However, we observe that the appellant-insurance company shall not recover the meagre amount of Rs. 3750/- from the claimants.

11. No costs.