

(2004) 06 BOM CK 0022
In the Bombay High Court
Case No : F.A. No. 14 of 1988

New India Assurance Company Ltd.

APPELLANT

Vs

Tulshiram Mohod and Others

RESPONDENT

Date of Decision : 08-06-2004

Acts Referred:

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

Citation : (2005) 3 ACC 806 : (2005) ACJ 764 : (2004) 6 BomCR 741 : (2004) 4 MhLj 362

Hon'ble Judges : Anoop V. Mohta, J

Bench : Single Bench

Advocate : None, for the Appellant; Ramteke and V.M. Deshpande, for the Respondent

Judgement

Anoop V. Mohta, J.—Heard. The small controversy revolving around the issue is whether the pending appeal filed u/s 110D of the Motor Vehicle Act, 1939, (for short Old Act) against the order passed on an application for claims under no fault liability, u/s 92A of the Old Act, is also governed by the Full Bench decision of our High Court, as reported in Divisional Controller, MSRTC Vs. Bapu Onkar Chaudhari, , whereby it has been held that no appeal u/s 113 is maintainable against such order under, (no fault liability) awarded u/s 140 of the Motor Vehicle Act, 1988 (for short New Act, 1988).

2. One Tulshiram Pandurang Mohod, respondent No. 1 herein, had preferred an application u/s 92A of the Old Act and claimed compensation of Rs. 7500/- from the respondents 2, 3, 4, the present appellants herein. By an order dated 24th November, 1987 the learned Member of the Motor Accident Tribunal, Akola, the original non applicant Nos. 1, 3, 4 and 5, were directed to pay, jointly and severally, Rs. 7500/- towards compensation, along with cost of the application.

3. The original non-applicant No. 5, present appellant, New India Assurance Company Ltd. has preferred the present first appeal u/s 110D of the Old Act and challenged the said interim order. The main contesting parties in the present

appeal are respondent No. 1, original claimant and the appellants and respondent Nos. 2. The owner of the vehicle had not preferred any appeal against the impugned order. The matter is pending since 1988. The matter was called out on 7th June, 2004, the appellant's officer or its advocate was not present. The matter fixed again today i.e. 8-6-2004, no. one appeared for the appellant.

4. Shri Ramteke, appearing for the claimant, contesting respondent No. 1, contended that, in view of the Full Bench Judgment, (Divisional Controller, MSRTC, Jalgaon) (supra), the present appeal is not maintainable. He relied on para 46, which is reproduced as under:

"46. The scheme u/s 140 of the Act is very special and extraordinary, by which certain benefits are conferred on the heirs of deceased and the person who has suffered permanent disability. Therefore, the provision of appeal is not made in Chapter X. The appeal would defeat the very purpose of beneficial legislation. Therefore, Section 173 of the Act cannot be resorted to. However, Section 174 of the Act falling under Chapter XII can be resorted to for the purpose of execution of the peremptory award passed u/s 140 of the Act. Because the extraordinary beneficial provision is respected thereby and it is in consonance with the intention of legislation for the purpose of providing immediate relief. The award passed u/s 140 of the Act is not an appealable award under Sections 166, 168 read with Section 173 of the Act. "

5. The provisions of old Section 92A read with Section 110D of the Old Act are repealed by the provisions of Section 140 read with Section 173 of the New Act. Now Section 140 of the New Act has taken into consideration the basic principles of no fault liability.

6. The object and purpose of this scheme, read with other provisions have further endorsed that award of such instant and interim amount is payable to the accident victim or sufferer, pending the trial. The whole object of this provision is to give some compensation to the victim or to the sufferer and therefore, the concept of "no fault liability", rightly interpreted, from time to time in favour of the victim or the sufferer. Once the aim and object of the Act is considered in the interest of public at large and it has foundation to give an interim monetary relief to the sufferer, there is no reason that such order of payment should be interfered with, in such appeal. In my view also, the Full Bench Decision, Divisional Controller, MSRTC, Jalgaon v. Bapu Onkar Chaudhari and its principle can be extended to the appeal, which is pending and or filed under the provisions of Section 92 A read with Section 110D of the Old Act. The Apex Court has already declared the above purpose and the object of the provisions of Section 92A (Old Act) read with the principle of "No fault Liability". Those principles are laid down in Shivaji Dayanu Patil and another Vs. Smt. Vatschala Uttam More, More, Smt. Kaushnuma Begum and Others Vs. The New India Assurance Co. Ltd. and Others, .

7. Our Full Bench, has also considered the whole purpose and object of the concept of the "no fault liability." and declared that appeal is not maintainable u/s 173 of the New Act, in the matter of order or claims under no fault liability. In my view, even other wise, such interlocutory orders, pending the trial, need not be interfered in such appeal. I am of the view that the appeal u/s 110D of Old Act, filed against the order u/s 92A of the Old Act under no fault liability is also not maintainable in view of the Full Bench Judgment (supra), as referred above.

8. None appeared for the appellants, in spite of due and notice circulation. However, in view of the decisions of the Supreme Court, as well as, Full Bench of our High Court based on the scheme of the "no fault liability". There is no need to adjourn this matter and keep pending as the appeal itself is not maintainable.

9. It was pointed out by the Counsel appearing for the original claimant, that the stay of the Judgment is in operation since 1988. Considering the observations made above, in reference to the scheme of no fault liability and in view of the facts and circumstances of the present case, I am of the view, that the claimant is entitled for the amount which as awarded forthwith.

10. With these observations, the appeal is disposed of, with no order as to cost.