
(2004) 06 BOM CK 0019
In the Bombay High Court

New India Assurance Company Ltd.

APPELLANT

Vs

Tulsiram and Others

RESPONDENT

Date of Decision : 08-06-2004

Acts Referred:

Motor Vehicles Act, 1939 — Section 110D

Citation : (2005) 1 ACC 762 : (2004) 4 ALLMR 319

Hon'ble Judges : Anoop V. Mohta, J

Bench : Single Bench

Judgement

Anoop V. Mohta, J.—Heard. The small controversy revolving around the issue is whether the pending appeal filed u/s 110-D of the Motor Vehicles Act, 1939 (for short Old Act) against the order passed on an application for claims under no fault liability, u/s 92-A 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 173 is maintainable against such order under, (no fault liability) awarded u/s 110 of the Motor Vehicles Act, 1988 (for short New Act, 1988).

2. One Tulshiram Pandurang Mohod, respondent No. 2 herein, had preferred an application u/s 92-A of the Old Act and claimed compensation of Rs. 7,500/- from the respondents 2,3,4 the present appellants herein. By an order dated 24th November, 1987, the learned Member of the Motor Accidents Tribunal, Akola, the original non-applicant Nos. 1,3, 4 and 5, were directed to pay, jointly and severally, Rs. 7,500/- 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 110-D 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 No. 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 was fixed again today i.e. 8.6.2004, no one appeared for the appellant.

4. Mr. 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 r/w Section 110-D of the old Act are repealed by the provisions of Section 140 r/w 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 (supra), and its principle can be extended to the appeal, which is pending and/or filed under the provisions of Section 92-A r/w Section 110-D of the old Act. The Apex Court has already declared the above purpose and the object of the provisions of Section 92-A, old Act r/w 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 otherwise, such interlocutory orders, pending the trial, need not be interfered in such appeal. I am of the view that the appeal u/s 110-D of old Act, filed against the order u/s 92-A 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, the 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, the claimant is entitled for the amount which was awarded forthwith.

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