
(1985) 08 MP CK 0027
In the Madhya Pradesh High Court

New Indian Assurance Co. and Another	APPELLANT
Vs	
Phoolwati and Others	RESPONDENT

Date of Decision : 21-08-1985

Acts Referred:

Motor Vehicles Act, 1939 — Section 92A

Citation : (1985) 2 ACC 381 : (1986) ACJ 106

Hon'ble Judges : T.N. Singh, J

Bench : Single Bench

Judgement

T.N. Singh, J.—Narayan lost his life two years ago while commuting in a motor vehicle. This happened in the City of Gwalior, where the easy and convenient mode of public transport is the veritable "Tempo". He was sitting by the side of the driver. The accident occurred when his Tempo (Registration No. M.P.O. 7094) dashed against another Tempo (Registration No. M.P.G. 9848) which, according to the appellants, was stationary.

2. An application u/s 92-A of the Motor Vehicles Act, 1939, for short, the "Act", for instant relief was filed by the dependents of Narayan, his widow, his minor son aged 9 years. In the petition, the persons impleaded as opposite parties were the driver and the owner of the Tempo bearing Registration No. M.P.G. 9848 and also the concerned Insurance Company. Objections were filed by all, contesting their liability, but without success. Learned Member, Motor Accident claimss Tribunal (hereinafter referred to as the Tribunal") allowed the petition, passing an award of Rs. 15,000/-, which amount is statutorily fixed, and directed the same to be paid within one month. This was done on 15-2-1985. though the application was filed on 29-11-1984. However, it was two years after the accident and filing of the main claims u/s 110-A of the Act.

3. In the present appeal, the insurer as well as the owner have come to this Court and have made an unholy effort to contest a holy claims, for which Legislature advisedly Laid a legal basis in the enactment of the very wholesome provision of Section 92-A. Appellants'counsel Shri S.K. Dubey, has made

strenuous effort to support the stand taken in the appeal and has forcefully pleaded appellants' case, relying mainly on a reported decision of Punjab and Haryana High Court *Oriental Fire and General Insurance Co. Ltd. v. Beasa Devi* 1985 ACJ 1). He has also tried to find fault with the impugned order which, according to him, is very cryptic and is not sustainable in law being benefit of the requisite finding, necessary for passing the award. Counsel has prayed for my consideration mainly a three fold submission. Firstly, the Tempo bearing registration No. M P.O. 9848 was not the "offending vehicle" as it was not moving at the time of the accident and therefore, it incurred no liability in terms of Section 92-A. Secondly, the claims petition ought to have been dismissed in limine for non-joinder of owner and insurer of the "offending vehicle", namely, the Tempo bearing registration No. M.P.O. 7094. Thirdly, the scope of Section 92-A ex facie, excludes claims for by persons who are not pedestrians because the new provision was only meant to relieve misery arising out of "hit and run" situation.

4. I propose to deal first with the objection concerning the form and contents of the impugned order, its deficiencies. It is true that order is a cryptic order, but the question is, whether it is deficient in so far as the requisite finding is concerned. There would be a second question which is also to be considered by me should I find the order to be deficient in any respect. If there be material before me from which the requisite finding can be arrived at by this Court in this appeal, then, whether any interference with the impugned order would be justified. The Tribunal referred to the pleadings and also the documentary evidence, though not specified in so many words, to conclude that an accident took place on 30-6-1983 as alleged in the petition and that Narayan met his death as a result thereof. The Tribunal also referred to the F.I.R. lodged in the Police Station. The only deficiency in the order is that in so many words it is not stated that one or more motor vehicles were or were involved in the accident. However, in my opinion, that itself would not kill the order. I say so for two reasons. Firstly, the reference to documentary evidence and the police report manifests application of mind of the Tribunal to the fact that in the accident, motor vehicles were involved which position is projected in the evidence referred. But, the other aspect is rather important. Nowhere in the pleadings, to which the Tribunal has referred, there was any assertion of the fact by the opposite parties that in the accident, motor vehicles were not involved. That being the position, the sole and singular deficiency on which stress could be laid, would not be fatal. Indeed, Shri Dubey does not even dispute before me the fact that motor vehicles were involved in the accident and indeed, he cannot do so, because the fact was admitted in pleadings the main plea taken being that one Tempo was stationary and the other was in motion.

5. The further question, however, is whether it was also necessary for the Tribunal to reach a finding on the question of tortious liability arising out of the accident by naming the "offending vehicle". This is important. Because Shri Dubey's main contention, as alluded, is that Section 92-A is attracted against

only the "offending vehicle" and his was not so. To answer this question I, have to deal with the scope and ambit of Section 92-A, of which Sub-section (1) is extracted below:

(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.

Shri Dubey has Laid emphasis on the word "use" underlined in the extract above, to stress that only a moving vehicle could be "offending vehicle" and the liability in terms of Section 92 would be attached to such vehicle.

6. Because the submission of Shri Dubey has not appealed to me in the least, I would refer immediately to a reported decision of a Division Bench of the Gauhati High Court in Samati Deb Barma v. State of Tripura (1985) IGLR 420. I cannot do better than extracting below a para 6 of the said resport, which has succinctly but forcefully expressed the purport of the provision and its underlying legislative intent:

The language of the provisions extracted above is so transpotant that legislative intent is not left hidden in any manner: the liability u/s 92-A is made indefeasible, peremptory and total. The question of proof is left apart; it is not required even to be pleaded that the claims for compensation u/s 92-A was justifiable on tortious considerations. No wrongful act, neglect or default of the owners or owners of the vehicle or vehicles concerned or any other parson has to be pleaded or proved. The mere fact that death or permanent disablement took place in which one or more motor vehicles is or are involved giving rise to the claims, is sufficient to raise a liability in terms of Sub-section (3) of Section 92-A. This position is rather buttressed by what is to be found in Sub-section (4) which totally negates the concept of contributory negligence. In our opinion, therefore, a claims made u/s 92-A cannot be rejected by the Tribunal if it finds that the claims arises out of an accident in which one or more motor vehicles is or are involved resulting in death or permanent disablement of any person. By creating "no fault" liability the provision subserved a humanitarian object matching social realities.

I find difficult to accept the construction passed by Shri Dubey to limit the scope and ambit of Section 92, which is a wholesome and salutary provision meant to take care of widows and infants and to prevent their destitution by providing instant relief to persons who became victims, paradorigally, of the advent of modern civilization and its scientific and technological advancement. The word "used" has to be read in its context and setting and indeed, it is a part of the phrase "arising out of use of" which would not exclude cases of stationary vehicles. The very fact that the vehicle was on the road would bring it within the mischief of the expression "arising out of use of". Putting a vehicle on the road for

running it would indeed be using the vehicle; a vehicle parked will not be in motion, but it will still be "used", Indeed as held in Samati Deb's case (supra) Section 92-A becomes live and generates sufficient power in Courts to help the hopeless and helpless, the moment it is found by a Court on material available to it, that one or more motor vehicle/ motor vehicles are or were involved in the accident. The whole Sub-section must be read in its entirety. It cannot be dissected, trisected or vivisected. This is a normal Rule of construction and this Rule admits no exception. Indeed, the purport of Sub-section (I) has also to be gathered from other parts of Section 92-A itself as has been done in Samati Deb Barma's case (supra). I do not feel inclined, therefore, and even a bit persuaded, to differ from the view, which I took in the case of Samati Deb. I have no doubt that liability u/s 92-A, as held in Samati Deb, is infeasible, peremptory and total and I would further say, also inexorable.

7. The construction placed in Samati Deb on Section 92-A, which I adopt in its entirety, leaves no room at all to the other points urged on the construction of the provision by Shri Dubey. Because, if it be held, as it was done and rightly done, that the liability u/s 92-A has a different character and it was not based on any tortious consideration, then the question of the liability being attached to a vehicle which ought to have been an "offending vehicle" becomes otiose. The question of a civil offence, giving rise to a tortious liability does not at all arise in the case of Section 92-A for the simple reason that it created "no fault" liability which is manifested on the face of the provision. The other objection about non-joinder of the owner or insurer of the "offending vehicle" automatically, therefore, falls to the ground in the face of the definition of liability u/s 92-A.

8. Reliance on the decision of the Punjab and Haryana High Court is wholly misplaced, in my opinion. I do not read anything in the decision from where I can say that any support can be derived by Shri Dubey. While the Gauhati case was similar, more or less, to the case in hand, the decision in Oriental Fire and General Insurance Company (supra) deals with the case of a pedestrian. The construction of Section 92-A, which Shri Dubey has pressed for acceptance before me, was not at all in issue in that case. It is true, in some places in the Judgment, use of the words "offending vehicle" is found. But, that by itself, would not make the decision an authority for the proposition canvassed. In my opinion, the case in hand is covered by the decision in Samati Deb Barma's case (supra) because the facts were similar. In both cases, the deceased was not a pedestrian but a commuter and two vehicles were involved in the accident.

9. Shri Dubey also placed reliance on the decision in The Siemens Engineering and Manufacturing Co. of India Ltd. Vs. The Union of India (UOI) and Another, but it is not necessary for me to deal therewith as I have taken the view that the impugned order was not materially deficient though "reasons" for the order, according to construction suggested by Shri Dubey, are not to be found there in. Their Lordships held that where an authority makes an order in exercise of quasi-judicial function, it must record its reasons in support of the order it

makes. This proposition is so well-entrenched and universally accepted that there can be no quarrel with it. But, the question is, whether on the true construction of Section 92-A, the required or necessary "reasons" are to be found in the order. I have already demonstrated earlier manifestation of the "reason" in the impugned order, though not according to the construction suggested by Shri Dubey, but according to the construction of the law stated in Samati Deb Barma's case (supra), which I have accepted. I may also say, I am hearing a first appeal and it is open to me to record my own findings on the materials available on record. And I have found that the material and necessary facts are admitted by the appellants and no investigation at all is necessary. What are the facts on finding which relief can be given u/s 92-A ? As held in Samati Deb Burma's case (supra), the only fact to be found is, whether one or more motor vehicles is or are involved in the accident giving rise to the claims in which statutory defaulters are identified and named. Indeed, this fact had not to be proved because it was admitted. Was a "finding" by the Tribunal still to be recorded or has it yet to be recorded by me ?

10. The "hit and run" theory, according to me, is an ingenuous argument, which I find very difficult to swallow if I have to give full effect, life and content to the vigorous provision of Section 92-A. I have no doubt that the Legislature meant to help all destitutes who are affected by the motor accident and not only to those who are pedestrians or their legal representatives. Nothing more need be said on this aspect of the construction pleaded. Indeed, I was not shown how to read Section 92-A to find support for this argument. The language of Section 92-A does not yield at all to the limited construction suggested by the "hit and run" theory.

11. For the foregoing reasons, I have no doubt that this appeal merits a sole and singular order--an order of dismissal outright and forthwith. Unfortunate it is, that it was not dismissed in limine. Regrettably I have to say that this Court has a duty in this matter to promote and farther the intention of the Legislature by ensuring quick and instant payment of claimss made u/s 92-A. More than ten months have passed and the widow and the infant and the aged mother of deceased Narayan must be rueing the day this appeal was filed in this Court. I cannot do more for them than dismissing this appeal. But, because I find myself suffering a strong Constitutional and statutory compulsion to order costs and substantial costs against the appellants for this unholy exercise, I must act. However, I am having second thought while deciding the quantum. Shri Dubey made efforts which cannot be said lacking in bona fide to suggest a new construction of Section 92-A. In that view of the matter, ends of justice will be served if instead of heavy costs, only moderate costs, which I quantify at Rs. 500/-, are awarded to the respondents.

12. In the result, the appeal fails and is dismissed with costs.