
(1984) 09 P&H CK 0066
In the Punjab And Haryana At Chandigarh
Case No : F.A.F.O. No. 452 of 1984

Oriental Fire and General Insurance Co. Ltd.

APPELLANT

Vs

Beasa Devi and Others

RESPONDENT

Date of Decision : 27-09-1984

Acts Referred:

Motor Vehicles Act, 1988 — Section 92

Citation : (1985) 1 ACC 160 : (1985) ACJ 1 : AIR 1985 P&H 96 : (1986) 59
CompCas 643 : (1985) 1 ILR (P&H) 391 : (1985) 82 PLR 59

Hon'ble Judges : Surinder Singh, J;D.S. Tewatia, J

Bench : Division Bench

Judgement

D.S. Tewatia, J.—On 17-6-1983 at about 4.45 P.M. one Bishan Dass while going on the road dividing Sectors 16 and 23 met with an accident with Motor Cycle No. CHU-6771 which struck against him from behind and as a result of the injuries that he sustained, he died in the P. G. 1 on 19-6-1983. Smt. Beasa Devi widow of Bishan Dass and his two daughters Miss Anita and Miss Sunita put in their claim for a sum of Rs. 3 lac with a further prayer that a sum of Rs. 15,000/- be immediately awarded to them under S. 92A read with S. 92-B of the Motor Vehicles Act (hereinafter referred to as the Act) under no fault liability. To the claim petition besides the Oriental Fire & General Insurance Co. Ltd. (hereinafter referred to as the Insurance Company), was also impleaded as one of the respondents. The owner of the offending vehicle admitted the accident whereupon the Claims Tribunal ordered payment of Rs. 15,000/- by the Insurance Company vide its order dated 23-2-1984 and then to 30-4-1984, on which date the Insurance Company filed its written statement, therein taking the objection that the vehicle was being driven by one Ajmer Singh, who did not have valid driving licence valid only in Punjab and not in Chandigarh and, therefore, the Company was not liable to pay any compensation. The Insurance Company has impugned the interim award dated 23-2-1984 in this Court.

2. Mr. Vijay Gandhi, counsel for the appellant Insurance Company, has canvassed

before us that under S. 92-A, only the owner is liable to pay the sum envisaged under that provision and not the Insurer Company. In the alternative, the learned counsel urged that, in any case, the Insurance Company as insurer was liable to pay only in the event if the defence available to it under S. 96 of the Act is not raised or if raised not established by the Insurance Company.

3. The question of law raised in the appeal appears to be of considerable merit and therefore, appeal was admitted to the Division Bench and that is how, it is before us.

4. Before advertng to the rival contentions advanced on behalf of the appellant and the respondent, the relevant provisions of statute deserve noticing at the threshold. S. 92-A, which provides for no fault liability is in the following terms :--

"92-A. Liability of 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-sec(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-s.(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 the responsibility for such death or permanent disablement".

S. 92-B, which provides that claim under S. 92-A would be in addition to the other claim of compensation on the principle of fault, is in the following terms :

"92-B. Provisions as to other right to claim compensation for death or permanent disablement. (1) The right to claim compensation under S. 92-A in respect of death or permanent disablement of any person shall be in addition to any other right (hereinafter in this section referred to as the right on the principle of fault) to claim compensation in respect thereof under any other provision of this Act or of any other law for the time being in force.

(2) A claim for compensation under 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 under S. 92-A and also in pursuance of any right on the principle of fault, the claim for compensation under S. 92-A shall be disposed of as aforesaid in the first place.

(3) Notwithstanding anything contained in sub-section (1), where in respect of the death or permanent disablement of any person, the person liable to pay compensation under S. 92A is also liable to pay compensation in accordance with the right on the principle of fault, the person so liable shall pay the first mentioned compensation and--

(a) if the amount of the first-mentioned compensation is less than the amount of the second-mentioned compensation, he shall be liable to pay (in addition to the first mentioned compensation) only so much of the second-mentioned compensation as is equal to the amount by which it exceeds the first-mentioned compensation.

(b) if the amount of the first-mentioned compensation is equal to or less than the amount of the second-mentioned compensation, he shall not be liable to pay the second mentioned compensation".

S. 92-E providing for overriding effect is in the following terms :--

"92-E. Overriding effect. The provisions of this Chapter shall have effect notwithstanding anything contained in any other provision of this Act or of any other law for the time being in force".

Relevant provision of S. 93(ba) defining liability is in the following terms :--

"(ba) Liability" wherever used in relation to the death of or bodily injury to any person includes liability in respect thereof under S. 92A".

5. Relevant provisions of S. 94 which envisage necessity for insurance agent third-party risk read as under :--

"94. Necessity for insurance against third-party risk. (1) No persons shall use except as a passenger or cause or allow any other person to use a motor vehicle in a public place, unless there is in force in relation to the use of the vehicle by that person or that other person, as the case may be, a policy of insurance complying with the requirements of this Chapter".

Relevant provisions of S. 95 which deals with the requirements of policies and limits of liability reads :--

95. Requirements of policies and limits of liability (1) In order to comply with the requirement of this Chapter, a policy of insurance must be a policy which--

(a) xx xx xx

(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 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 injured 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 (8 of 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 on 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 was 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.

xx xx xx xx

(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 persons.

Relevant portion of S. 96 which provides for duty of insurers to satisfy judgments against persons insured in respect of third party risks is in the following terms :--

"96. Duty of insurers to satisfy judgments against persons insured in respect of third party risks (1) If, after a certificate of insurance has been issued under sub-section (4) of S. 95 in favour of the person by whom a policy has been effected, judgment in respect of any such liability as is required to be covered by a policy under Clause (b) of sub-section (1) of s. 95 (being a liability covered by the terms of the policy) is obtained against any person insured by the policy, then notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy, the insurer shall, subject to the provision of this section, pay to the person entitled to the benefit of the decree any sum not exceeding the sum assured payable thereunder, as if he were the judgment-debtor, in respect of the liability, together with any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments.

(2) No sum shall be payable by an insurer under sub-section (1) in respect of any judgment unless before or after the commencement of the proceedings in which the judgment is given the insurer had notice through the Court of the bringing of the proceedings, or in respect of any judgment so long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceeding is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely :-

(a) that the policy was cancelled by mutual consent or by virtue of any provision contained therein before the accident giving rise to the liability, and that either the certificate of insurance was surrendered to the insurer or that the person to whom the certificate was issued has made an affidavit stating that the certificate has been lost or destroyed, or that either before or not later than fourteen days after the happening of the accident the insurer has commenced proceedings for cancellation of the certificate after compliance with the provisions of S. 105; or

(b) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely :--

i) a condition excluding the use of the vehicle--

a) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or

b) for organised racing and speed-testing; or

c) for purpose not allowed by the permit under which the vehicle is used, where the vehicle is a motor cycle; or

d) without side-car being attached, where the vehicle is a motor-cycle; or

ii) a condition excluding driving by a named person or persons by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification ; or

iii) a condition excluding liability for injury caused or contributed to by conditions

of war, civil war, riot or civil commotion; or

c) that the policy is void on the ground that it was obtained by the non-disclosure of a material fact or by a representation of fact which was false in some material particular.

xx xx xx xx

(4) If the amount which an insurer becomes liable under this section to pay in respect of a liability incurred by a person insured by a policy exceeds the amount for which the insure would apart from the provisions of this section be liable under the policy in respect of that liability, the insurer shall be entitled to recover the excess from that person ".

S.110-B of the Act provides for the Award of the Claims Tribunal, which reads as under :--

"110B-Award of the Claims Tribunal. On receipt of an application for compensation made under S. 110A, the Claims Tribunal shall, after giving the parties an opportunity or being heard, hold an inquiry into the claim or, as the case may be, each of the claims and, subject to the provisions of S. 109-B, may make an award, determining the amount of compensation which appears to it to be just and specifying the person or persons to whom compensation shall be paid, and in making the award the Claims Tribunal shall specify the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them, as the case may be.

Provided that where such application makes a claim for compensation under S. 92-A in respect of the death or permanent disablement of any person, such claim and any other claim (whether made in such application or otherwise) for compensation in respect of such death or permanent disablement shall be disposed of in accordance with the provisions of Chapter VII-A".

6. Mr. Gandhi basing himself primarily on the wording of S. 92-A canvassed that liability under S-92A is envisaged only that of the owner and not of the insurer. If the framers of the statute had in view the liability of the insurer, then they would instead of using the expression "owner" have used the expression "owner" or "insurer" as the case may be.

7. We do not think there is any merit in the contention advanced on behalf of the appellant. If his interpretation of S. 92-A is to be accepted then the compensation to be granted on the principle of fault liability too shall have to be paid by the owner alone by virtue of the provisions of sub-section (3) of S. 92-B which provisions read that the person liable to pay compensation under S. 92-A is also liable to pay compensation in accordance with the right on the principle of fault.

8. Person primarily responsible to pay compensation or damages for the accident to the injured or the claimants of the deceased is the owner of the offending

vehicle. The liability of the insurer is spelled out qua the person or classes of persons specified in the policy that is qua the insured by sub-section (5) of S. 95 and qua the claimants of compensation from the insured under sub-section (1) of S. 96. The name of the insurer figures in S. 110-B also in view of the provisions of S. 96 authorising the Tribunal to specify in the award the person to whom the compensation is to be paid and the party who has to pay in whole or part i.e. the owner or driver of the offending vehicle or the insurer.

9. Neither sub-section (5) of S. 95 nor S. 96 makes any distinction in regard to the liability of the insurer in one case to indemnify the insured and in the other case to pay to the claimants the amount mentioned in the order or award as compensation without further inquiring as to whether the insured who was found liable to pay the said compensation amount to the claimants was so found on the principles of no fault liability or fault liability. That means, if an award is given against the insured holding him liable to pay certain amount as compensation or damages in regard to the claim arising out of an accident with his motor vehicle, then the liability of the insurer is absolute and the insurer cannot question whether the amount awarded was as a result of fault liability or otherwise.

10. In view of the above, we hold that the insurer is liable to satisfy the compensation claim arising from the accident with the insured vehicle to the extent of the amount that the policy of the insurance in terms of S. 95 happens to cover and therefore, to the extent of the policy cover the insurer without inquiring as to whether the amount awarded is under S. 92-A or otherwise shall be liable to pay the amount awarded to the person named in the award or awards.

11. Mr. Gandhi, however, argued that the liability of the insurer is to indemnify the insured and if for instance the owner of the offending vehicle had not taken out any policy at all and if someone was to incorrectly and falsely make the insurance company a party to the claim application, would the insurance company even though it denied that it had issued any policy cover be liable to pay compensation awarded under S. 92-A? This query can be answered by a counter-query would the owner of a vehicle be made to pay compensation under S. 92-A if he were to deny that the accident in question had not taken place with his vehicle. In neither of the situations, the Tribunal could make the award under S. 92-A unless either the owner of the vehicle admits the accident with his vehicle or it is proved that, in fact, the accident had taken place with his vehicle. The position in regard to the liability of the insurance company can be no different in regard to the award under S. 92-A. The insurance company can be saddled with the liability under S. 92A as insurer keeping in view the provisions of S. 96, only if either the insurance company admits the fact that the offending vehicle had been insured or such a fact is prima facie established from the material on the record.

12. Now the question that falls for consideration is as to what stage the Tribunal is to inquire into the objection available to the insurance company, under S.

96(2) of the Act. Should such objections be treated as preliminary issue and be decided by the Tribunal in the first instance which in the nature of things would result in delay in regard to the payment of amount under S. 92-A to the claimants, which may partly defeat the very purpose underlying the enactment of the said provisions i.e. of providing immediate succour to the persons who had suffered disabling injury in an accident or the heirs of the persons who had died as a result of the accident. We are of the view that provision of S. 92-A is a piece of beneficial and ameliorative legislation providing for an immediate aid to the hapless and helpless victims of the motor accidents. The moment it is either admitted by the owner of the vehicle that his vehicle was involved in the accident or from the evidence adduced on the record, the Tribunal positively holds that vehicle of the owner in question was involved in that accident, if he denied that fact and then if the Tribunal comes to a further prima facie conclusion that the vehicle was insured, then the Tribunal without inquiring into correctness of other objections that may be raised by the insurance company would be entitled to make the award under S. 92-A and require the insurance company to pay the given amount to the claimants forthwith and thereafter investigate and inquire into the correctness or otherwise of the other objections that are raised either by the insurance company or by the owner of the offending vehicle.

In the event of the Tribunal coming to the conclusion for valid reasons that the owner of the vehicle was not liable to pay any compensation on the principle of the fault liability, then obviously no compensation is to be awarded on that score to the claimants under S. 110-B. Similarly, in the event of the Tribunal holding that the insurance company had proved such objections as under law avoided its responsibility to indemnify the owner of the offending vehicle totally, then the Tribunal in the final award by virtue of provisions of sub-sec(4) of S. 96 would direct the owner of the offending vehicle to pay to the insurance company the amount which the insurance company had paid to the claimants in pursuance of the award made under S. 92A of the Act.

13. Now while examining the facts of the present case in the light of the above discussion, it may be observed that the appellant insurance company had not taken the stand in its written statement that the offending vehicle had not been insured. The award given by the Tribunal in this case in the light of what we have held above is perfectly a legal award and the appellant insurance company has been rightly made liable to pay the amount awarded under S. 92-A by the Tribunal. The Tribunal, however, shall investigate and inquire into the objections raised by the insurance company and if it comes to a conclusion that it was not liable to indemnify the insured, then it would direct the owner of the offending vehicle to pay to the insurance company the amount which it had paid to the claimants in pursuance of award given under S. 92-A.

14. In the result, the impugned award is sustained to the extent indicated and the appeal stands disposed of accordingly with no order as to costs.

Surinder Singh, J.

15. I agree.

16. Order accordingly.