
(1991) 04 BOM CK 0024
In the Bombay High Court
Case No : First Appeal No. 714 of 1990

Prakash Chandumal Khatri and another	APPELLANT
Vs	
Suresh Pahilajrai Makhija and another	RESPONDENT

Date of Decision : 15-04-1991

Acts Referred:

General Clauses Act, 1897 — Section 6(6)
Motor Vehicles Act, 1939 — Section 110A, 92A
Motor Vehicles Act, 1988 — Section 140(2), 144

Citation : (1992) 2 ACC 471 : (1992) ACJ 369 : AIR 1991 Bom 365 : (1991) 93 BLJR 397 : (1991) 1 MhLj 34

Hon'ble Judges : Pendse, J; Patankar, J

Bench : Division Bench

Advocate : R.M. Agrawal, R.M. Kadam, Asstt. Govt Pleader, for the Appellant;
Y.T. John and A.K. Chphekar, for the Respondent

Judgement

Pendse, J.—The short question which falls for determination in this appeal is whether the liability to pay compensation on the principle of no fault as prescribed u/s 140 of the Motor Vehicles Act, 1988 and the amount of compensation prescribed under sub-section (2) of Section 140 is payable in respect of death or permanent disablement which has resulted from an accident which occurred prior to the enactment of Motor Vehicles Act, 1988. The facts giving rise to the filing of the appeal are not in dispute and are required to be briefly stated to appreciate the claim made by the appellants.

2. The respondent No. 1 is the owner of goods truck bearing registration No. MHO 7994 and while driving the same on July 1, 1988 knocked down Sanjay -- the minor son of the appellants. As a result of the injuries suffered due to the knock, Sanjay expired on the spot. The appellants filed Motor Accident Claim No. 669 of. 1988 before the Motor Accidents Claims Tribunal, Thane on December 17, 1988 in accordance with the provisions of Section 110A of the Motor Vehicles Act, 1939. The Act of 1939 was amended by introduction of Section 92A on August 1, 1982. Section 92A, inter alia, provided that where permanent

disablement has resulted from an accident arising out of the use of the motor vehicle, then the owner of the vehicle shall be liable to pay compensation. Sub-section (2) of Section 92A provided that the amount of compensation which shall be payable under sub-section (1) shall be a fixed sum of Rs. 15,000/- in respect of a death of a person and the fixed sum of Rs. 7,500/- in respect of permanent disablement. Sub-section (3) of Section 92A provided that the claimant shall not be required to plead and establish that the death or permanent disablement was due to any wrongful act, neglect or default of the owner for demanding compensation under sub-section (1). This compensation payable u/s 92A of the Act is known as compensation payable on the principle of no fault. Sub-section (4) of Section 92A makes it clear that the compensation paid under sub-section (1) shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose permanent disablement the claim has been made. Section 92B provides that the right to claim compensation u/s 92A shall be in addition to any other right to claim compensation. In accordance with the provisions of Section 92A of 1939 Act, the appellants made claim for Rs. 15,000/- on December 17, 1988.

3. The Parliament enacted the Motor Vehicles Act, 1988 to consolidate and amend the law relating to motor vehicles and the amended Act came into force from July 1, 1989. The provision for granting compensation on no fault basis was inserted in Chapter X of the Act under the heading "liability without fault in certain cases" and the sections covered by the Chapter are Section 140 to Section 144. These sections are identical to the provisions of Section 92A to Section 92E of the 1939 Act, save and except one important departure contained in sub-section (2) of Section 140. The amount of compensation payable on the principle of no fault in respect of death of a person was increased to Rs. 25,000/-, while in Case of permanent disablement to a sum of Rs. 12,000/-. Section 217 of 1988 Act provides for repeal and savings" and sub-section (1) sets out that the Motor Vehicles Act, 1939 and any law corresponding in that Act in force in any State immediately before the commencement of 1988 Act stands repealed.

On enactment of Motor Vehicles Act, 1988, the appellants whose claim for compensation on no fault basis was pending before the Motor Accidents Claims Tribunal filed a fresh application on August 25, 1989 at Ex. 9 claiming compensation of Rs.25,000/- as prescribed under sub-section (2) of Section 140 of 1988 Act. The application was resisted by respondent No. 2 -- the Insurance Company by pointing out that the liability to pay compensation under the principle of no fault liability accrued on the date when the accident took place, i.e. on July 1, 1988 and the statutory liability was only Rs. 15,000/- on that date. The Insurance Company claimed that the appellants would not be entitled to higher compensation on enactment of subsection (2) of Section 140 of 1988 Act. The contention raised by the Insurance Company found favour with the Tribunal and by order dated July 26, 1990, the respondents were directed to pay jointly and severally only Rs. 15,000/- as compensation on the principle of no fault

liability within two weeks and failing which to pay the sum with interest at the rate of 12% per annum from the date of the order till realisation.

4. The appellants, feeling aggrieved by payment of compensation of only Rupees 15,000/- on the principle of no fault liability preferred the present appeal claiming that the Tribunal ought to have awarded Rs. 25,000/- as compensation under sub-section (2) of Section 140 of the 1988 Act. The learned single Judge while admitting the appeal felt that the issue raised by the appellate would arise in several cases and, therefore, the appeal should be heard by Division Bench. The learned Chief Justice then directed the appeal to be placed before us.

Shri Agrawal, learned counsel appearing on behalf of the appellants, submitted that though the accident had taken place at the time when the provisions of 1939 Act were in operation and the compensation was to be determined in accordance with sub-section (2) of Section 92 of the Act, still on enactment of 1988 Act, the appellants are entitled to secure higher compensation. Shri Chaphekar, learned counsel appearing on behalf of respondent No. 2, and Shri John, learned counsel who appeared as amicus curial at our request, on the other hand, submitted that the right to receive compensation under sub-section (2) of Section 92A and the corresponding liability to pay compensation accrued on the date when the accident took place, i.e. on July 1, 1988 and the liability cannot be enhanced merely because before passing of the order by the Motor Accidents Claims Tribunal, the provisions of sub-section (2) of Section 140 are enacted.

5. Initially, the right of a victim or his legal representatives for seeking compensation in respect of motor accident depended upon the fault or the negligence of the driver and the right to institute action was part of the branch of Law of Torts. This common law right was recognised in England through precedence followed over several years. This common law right was given statutory recognition in India with the enactment of Fatal Accidents Act, 1855 and subsequently the Motor Vehicles Act of 1939. The Supreme Court in the case of Gujarat State Road Transport Corporation, Ahmedabad Vs. Ramanbhai Prabhatbhai and Another, suggested that where a person without proof of negligence on the part of the owner is injured or killed, then he or his legal representative should be entitled to damages if the principle of social justice should have any meaning, at all. The Supreme Court noted that there has been continuous agitation throughout the world to make the liability for damages arising out of the Motor Vehicles Act as a liability without fault. The Supreme Court then referred to provisions of Section 92A of 1939 Act and observed that payment of compensation on principle of no fault liability is clearly departure from the common law principle that the claimant should establish negligence before claiming any compensation.

In the decision Padma Srinivasan Vs. Premier Insurance Company Limited, , the Supreme Court observed that the liability to pay compensation must be determined with regard to the state of law obtained at the time of the accident.

In the case before the Supreme Court, the claim u/s 110A of 1939 Act was filed and the Insurance Company pleaded that the liability of the insurer was only to the extent of Rs. 20,000/- as prescribed in the policy. The Tribunal relying upon the provisions of Amending Act 56 of 1961 held that the liability of the Insurance Company in respect of goods vehicle is of Rs. 50,000/- as prescribed under sub-section (2) of Section 95. The Supreme Court noted that the Insurance Policy came into force on June 30, 1969 and covered the period from June 30, 1969 to June 29, 1970. At the time of securing the policy, the liability of the Insurance Company was limited by statute to a sum of Rs. 20,000/-. The amendment which came into force on March 2, 1970 i.e. during the subsistence of the policy, the liability was increased to Rs. 50,000/- and thereafter the accident occurred on April 5, 1970. The Supreme Court was required to examine the question as to which is the relevant date for determining the liability and observed (at page 838) :

"That must mean liability as determinable under Chap. VIII at the relevant time, that is to say, at the time when the liability arises. Since the liability of the insurer to pay a claim under a motor accident policy arises on the occurrence of the accident and not until then, one must necessarily have regard to the fact of the law obtaining at the time of the accident for determining the extent of the insurer's liability under a statutory policy. In this behalf, the governing factor for determining the application of the appropriate law is not the date on which the policy of insurance came into force but the date on which the cause of action accrued for enforcing liability arising under the terms of the policy. That we consider to be a reasonable manner in which to understand and interpret the contract of insurance entered into by the insured and the insurer in this case. The contracting parties did not incorporate the provisions of Chapter VIII of the Act in their contract. That is to say, they did not identify the liability of the promisor on the basis of the provisions of Chapter VIII as they stood on the date when the contract was made. They merely referred to the provisions of Chapter VIII, which means "the provisions of Chap. VIII in force at any given time", the given time being the date on which the right to sue accrues or, correspondingly, the liability arises. If the parties to a contract agree that one shall pay to the other damages for breach of contract in accordance with the law contained in any particular statute, without identifying the law as the provision which is in force on the date of the contract, the law which will apply for determining the quantum of damages is the one which is in force on the date on which the breach of contract is committed, that being the date on which the cause of action arises, and not the law which was in force on the date on which the contract was made."

6. The question which falls for our determination is when the liability of the respondents to pay compensation on principle of no fault liability arises the right to claim compensation and the corresponding liability to pay the compensation accrued on the date of the accident. The liability on that day was limited to Rs. 15,000. Indeed, the appellant demanded Rs. 15,000/- and in case, the respondents had paid that amount, then the liability would have stand

discharged. Merely because, the application filed for seeking compensation u/s 92A of 1939 Act was not disposed of before the enactment of sub-section (2) of Section 140 of 1988 Act, that cannot create a fresh right in the appellants or the fresh liability against the respondents to pay additional amount of compensation. In cases, where the compensation of Rs. 15,000/- has already been paid before the enactment of 1988 Act, then surely the claimants could not have demanded additional compensation of Rs. 10,000/- in respect of death of a person because making such claim presupposes that fresh right to demand Rs. 10,000/- more and the fresh liability to pay Rs. 10,000/- mere had accrued without reference to the date of the death. It is not possible to put such a construction on the provisions of sub-section (2) of Section 140 of the 1988 Act. The right to receive compensation on the principle of "no fault liability" and the corresponding liability accrues on the date of the accident and is not made dependent on the legislative changes that may take place during the pendency of the application seeking compensation. In our judgment, on the first principle, it is not possible to accede to the submission of Shri Agrawal that the provisions of sub-section (2) of Section 140 of the Act are retrospective in operation and would cover all the cases which are pending before the Tribunal on the date of coming into operation of 1988 Act.

7. Shri Aggrawal invited our attention to the decision of single Judge Oriental Fire and General Insurance Co. Ltd. Goa Vs. Aleixo Fernandes and others, , where it was held that the provisions of Section 92A of 1939 Act arc retrospective in operation. The correctness of the decision of the single Judge was doubted by Division Bench of this Court in a judgment Indarjeet Singh and Co. Vs. Kamal Prakash Pawar and Others, . In our judgment, the conclusion of the single Judge that the provisions of Section 92A of 1939 Act were retrospective in nature is clearly erroneous. The liability to pay compensation on the doctrine of no fault liability can accrue only on the date of accident and in case the statutory provisions for payment of such compensation were not available on the date of the accident, then the claimant cannot seek relief on that count. The issue is no longer res integra in view of the decision of the Supreme Court, R.L. Gupta and Others Vs. Jupiter General Insurance Company and Others, , where Mr. Justice Ranganath Misra, as he then was, speaking for the Bench observed that the compensation under the principle of "no fault liability" provided by the statute is prospective in operation. In our judgment, the reliance by Shri Agrawal on the decision of the single Judge is not correct and the decision relied upon is no longer a good law.

Shri Agrawal placed strong reliance upon the decision of the Division Bench of Kerala High Court reported in 1990 Accidents Claims Journal 751 (United India Insurance Co. Ltd. Padmavathy) where Kerala High Court held that provisions of Section 140 of 1988 Act have retrospective application and the claimant is entitled to demand additional compensation than one prescribed u/s 92A of 1939 Act. The Kerala High Court was impressed by the fact that though Section 140 did not create a fresh right, it provided for enhancement of compensation due to

erosion of value of currency and inflation in prices and costs. The Kerala High Court felt that the Parliament had retained the same right which has been confirmed on the victim u/s 92A of 1939 Act but enhanced the compensation amount to make the right realistic. With respect, the Kerala High Court was right in observing that the Parliament increased the amount of compensation under the principle of "no fault liability" because of erosion of value of currency but we are unable to share the view that the said fact is enough to warrant the conclusion that the liability to pay enhanced compensation is retrospective in operation. With respect, such a view overlooks that the right and the corresponding liability accrues on the date of accident and that cause of action cannot be made dependent upon the legislative changes which may be effected during the pendency of the proceedings for seeking compensation. The liability is crystallised the moment the accident takes place and the person discharging the liability knows the quantum of compensation payable. The mere fact that such a compensation is not paid on the date of the accident or the application seeking compensation remains pending till the date of amendment of legislative provision prescribing enhanced compensation, cannot alter or impose additional liability or create any new right to demand additional compensation. We are, therefore, unable to agree with the view taken by the Kerala High Court.

8. Shri Agrawal referred to the provisions* of Section 144 of 1988 Act and urged that the Section prescribes that the provisions of Chapter X shall have effect notwithstanding contained in any of the provisions of the Act or of any other Act for the time being in force. The learned counsel urged that Section 144 indicates that the liability to pay compensation at the rate prescribed under sub-section (2) of Section 140 must prevail over any of the provisions of any other law and that includes provisions of Section 92A of 1939 Act. It is not possible to accede to the submission because Section 144 does not take in its sweep the provisions of 1939 Act. An identical provision as Section 144 was enacted u/s 92E of 1939 Act and, in our judgment, both Section 92E and Section 144 referred to the right to claim compensation under any of the provisions of the Act or any other law for the time being in force and this right is independent of right to claim compensation on the principle of "no fault liability". It would be appropriate to make reference to the provisions of Section 6(6) of the General Clauses Act, 1897 which, inter alia, provides that where any Central Act is repealed, then unless a different intention appears, the repeal shall not affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed. It is, therefore, obvious that the liability accrued during the operation of the Act of 1939 cannot be increased by reference to the provisions of sub-section (2) of Section 140 of 1988 Act as the said Act does not specifically or even by implication provides that the enhanced compensation is available even in respect of liability accrued under the repealed Act. In our judgment, the Tribunal was right in concluding that the appellants are entitled to compensation of only Rs. 15,000/- under "no fault liability". Shri Agrawal submitted that the tribunal provided that in case the amount is not paid, within

two weeks from the date of the order, then the respondents shall pay interest at the rate of 12% per annum from the date of order till realisation. The learned counsel urged and, in our judgment, rightly that the interest should be made payable on the amount of Rs. 15,000/- right from the date of filing application for compensation, i.e. December 17, 1988 and that modification is required in the order appealed against.

9. Accordingly, appeal is partly allowed and the respondents are directed jointly and severally to deposit with the Tribunal Rs. 15,000/- towards compensation for "no fault liability" along with interest at the rate of 12% per annum from December 17, 1988 till the date of deposit. In the circumstances of the case, there will be no order as to costs.

Appeal partly allowed.