

(1988) 10 DEL CK 0015

In the Delhi High Court

Case No : Civil Miscellaneous Appeal No. 238 of 1980

Ravi Kumar and Another

APPELLANT

Vs

Ram Parkash and Others

RESPONDENT

Date of Decision : 11-10-1988

Acts Referred:

Citation : (1989) 1 ACC 133 : (1989) ACJ 550 : AIR 1989 Delhi 261 : (1988) ILR Delhi 420

Hon'ble Judges : D.P Wadhwa, J

Bench : Single Bench

Advocate : Bharti Patney, P.P. Malhotra and S.C. Rana, for the Appellant;

Judgement

D.P. Wadhwa, J.

(1) The principal question that arises for decision in this petition is if the insurance company is liable to pay compensation in the cases mentioned under S. 92-A of the Motor Vehicles Act, 1939 (for short "the Act") on the principle of no fault. A motor vehicle accident on 16-2-1986 resulted in the death of Smt. Karma Wali. The vehicle involved in the accident was a two-wheeler scooter bearing registration No. Deo 5103. It was insured against third party risk with the National Insurance Company Limited, who is respondent No. 8 before me.

(2) The legal heirs of deceased Karma Wali numbering six, being. her husband and children, filed an application under Ss. 92A and 110A of the Act before the Motor Accident Claims Tribunal, Delhi. There we're four respondents. First respondent was Ravi Kumar Dhooper, who was driving the vehicle at the time of the accident, the second respondent was Smt. Santosh Kumari, owner of the vehicle, the third respondent was the insurance company in question, and the fourth respondent was again an heir of the deceased Karma Wali.

(3) By the impugned order, the learned Tribunal awarded a sum of .Rs. 15,000 as compensation under S. 92A of the Act and directed the same to be payable by the driver and owner of the vehicle. Both the driver and the owner have filed this

petition challenging the order mainly on the ground that insurance company should have been made liable to pay the amount of the award. The learned Tribunal held that the driver was a minor at the time of the accident and could not hold a valid license to drive the vehicle. There appears to be a dispute on this proposition. The learned Tribunal was, however, of the view that since a minor was not competent to hold a license, the insurance company was not liable to pay interim compensation as in any case there was breach of the terms of the insurance policy which was a contract between a owner and the insurance company. In coming to this conclusion, the learned Tribunal relied on a decision of the Allahabad High Court in Baldeo Raj alias Kaka v. Deowati and Others

(4) Chapter VII-A of the Act containing Ss. 92A to 92E was introduced in the Act by the Amending Act 47 of 1982 with effect from 1-10-1982. This Amending Act also made vital changes in Chapter VIII of the Act as well. Under S. 92A, in so far as it is relevant, where a person dies as a result of accident arising out of the use of a motor vehicle, the owner of the vehicle shall be liable to pay compensation in respect of such death [sub-s. (1)]. The amount of compensation as provided by sub-s. (2) is Rs. 15,000. To claim the compensation it is not required to plead and establish that the death in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner of the vehicle or of any other person [sub-s. (3)]. Then, under sub-s. (4), a claim for compensation under sub-s. (1) shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death the claim has been made; nor shall the quantum of compensation recoverable in respect of such death be reduced on the basis of the share of such person in the responsibility of such death. I may note that S. 92A applies equally in case of permanent disablement resulting from an accident except that the amount of compensation would be Rs. 7,500. Under sub-s. (1) of S. 92B, again in so far as it is relevant to present controversy, the right to claim compensation under S. 92A shall be in addition to any other right (referred to as the right on the principle of fault) to claim compensation in respect of death under any other provision of the Act or of any other law for the time being in force. Sub-s. (2) of this section requires that a claim for compensation has to be disposed of expeditiously.. Then, sub-s. (3) is as under:-

"(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 u/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. 92E provides that the provisions of Chapter VII-A shall have effect notwithstanding anything contained in any other provision Of this Act or of any other law for the time being in force. Thus, Chapter VII-A has overriding effect. Now comes Chapter VIII consisting of Ss.93 to 111A, making provisions for insurance of motor vehicles against third party risk, establishment of claims tribunal and prescribing procedure for making claims etc. Under clause (ba) of S. 93, which was also introduced by the Amending Act 47 at 1982, "liability" wherever used in relation to the death of or bodily injury to any person would include liability in respect thereof under S. 92A of the Act. S. 95 prescribes the requirements of a policy of insurance and the limits of liability. One of the conditions of such a policy of insurance is that it must insure the person to the extent as provided under sub-s(2) against any liability which may be incurred by that person 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. Under S. 96 it is the duty of the insurance company to satisfy judgments against persons insured in respect of third party risks. However, a notice of the proceedings has to be given to the insurance company which is entitled to be made a party in the proceedings and to defend the action on the grounds mentioned in sub-s(2) of S. 96. A State Government under S. 110 of the Act is to constitute one or more motor accidents claims tribunals for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of, or bodily injury to, persons arising out of use of motor vehicles, or damages to any property of a third party so arising, or both. There is a Explanation to the section which reads as under :-

"EXPLANATION,--for the removal of doubts, it is hereby declared that the expression "claims for compensation in respect of accidents involving the death of, or bodily injury to, persons arising out of the use of motor vehicles" includes claims for compensation u/s 92-A."

Under S. 110A, legal representatives of the deceased whose death resulted from the motor accident, can file an application for compensation. Sub-s.(2) of this section prescribes the form in which the application has to be made. There is a proviso to this sub-section which is as under :-

"PROVIDED that where any claim for compensation u/s 92-A is made in such application, the application shall contain a separate statement to that effect immediately before the signature of the applicant."

Then, S. 110B deals with award of compensation by the claims tribunal and may be set out in full :-

"110-B.Award of the Claims Tribunal.-On receipt of an application for compensation made u/s 110-A, the Claims Tribunal shall, after giving the parties an opportunity of being heard, hold an inquiry into the claim or, as the case may be, each of the claims and, subject to the provisions of Section 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 u/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 VVI-A

(Underlined portion inserted by the Amending Act 47 of 1982).

(5) Ms. Patney, who appeared for the petitioners, submitted that the claims tribunal erred in holding that the driver of the offending vehicle was a minor. She said that at the relevant time the vehicle was being driven by Subhash Chander, husband of Smt. Santosh Kumari, the owner of the vehicle. Ms. Patney S also referred to a decision of the Supreme Court in Skandia Insurance Co. Ltd. Vs. Kokilaben Chandravadan and Others, to submit that it was for the insurance company to satisfy the liability in question. But, I am afraid this judgment is of no help to the petitioners in their submission. The question before the Supreme Court was whether the insurance company was entitled to claim immunity from a decree obtained by the legal representatives of the victim of a fatal accident on the ground that the insurance policy provided "a condition ex eluding driving by a named person or persons or by any person who is not duly licensed or by any person who has been disqualified for holding or obtaining a driving license during the period of disqualification" and that such exclusion was permissible in the context of S. 96(2)(b)(ii) of the Act for claiming immunity against the obligation to satisfy the judgments against the insured in respect of third party risks. This is not the case before me. Mr. Malhotra, appearing for the insurance company, supported the impugned judgment and submitted that the insurance company was not liable for any liability under Chap. VII-A of the Act. He said in any case since the offending vehicle was being driven by a minor, who was disqualified to hold a driving license, no liability could be fastened on the insurance company in view of S. 96(2) (b) (ii) of the Act, as the policy of insurance clearly stipulated that such a case would be treated as breach of a specific condition of the policy. He said since the insurance company could not be made liable under S. 96 of the Act, there could be no question of its being foisted with the liability under S. 92A falling in Chapter VII-A of the Act. It was also his submission that Chapter VII-A was independent of Chapter Viii of the Act. In support of his submission Mr. Malhotra referred to a decision of the Supreme Court in British India General Insurance Co. Ltd. Vs. Captain Itbar Singh and Others, . In this case the Supreme Court observed that apart from the Act, an insurer had no right to be made a party to the action by the injured person against the instead causing the injury. Sub-s(2) of S. 96, however, gave the insurance company the right to be made a party to the suit and to defend it. The right, Therefore, was created by statute and its content necessarily depended on the provisions of the statute.

This sub-section clearly provided that as insurer made a defendant to the action was not entitled to take any defense which was not specified in it. Thus, according to Mr. Malhotra, the insurance company could avoid liability even under S. 96 of the Act, on the ground that the driver of the vehicle was disqualified to hold a driving license. I do not think that the insurance company can escape its liability on any of the grounds mentioned by Mr. Malhotra. It cannot be said that Chapter VII-A is an independent provision separate from Chapter VIII of the Act. I have already set out the relevant provisions. An insurer under the policy of insurance has to insure the owner against any liability which may be incurred by him in respect of the death of or bodily injury to any person, and liability, as noted above, includes liability that arises under S. 92-A of the Act. Claim for compensation includes claim for compensation under S. 92-A. Further, claim for compensation under S. 92-A can be made in the application for claim for compensation in respect of accidents involving the death of or bodily injury to persons arising out of use of motor vehicles or damages to any property of a third party so arising or both. When an insurance company is saddled with liability to the extent provided in S. 95 of the Act, that liability would include the liability incurred under S. 92-A of the Act as well. The liability under S. 92-A of the Act can later on be adjusted as provided under sub-s. (3) of S. 92-B of the Act. Though no doubt various defenses as provided under sub-s(2) of S. 96 of the Act are available to the insurance company, but these defenses and, in fact, none at all, would be available to the insurance company in respect of its liability to pay compensation under S. 92-A in view of its overriding effect by virtue of S. 92-E of the Act. Perhaps the only defense that would be available would be that the offending vehicle was not insured with the insurance company in question. Provisions of S. 92-A of the Act, to my mind, are peremptory and do not admit of any exception or defense. These provisions provide for immediate relief and that would appear to be the intention of the legislature as well. Reference to the decision of the Supreme Court in *British India General Insurance Co. Ltd.* (supra), would not, Therefore, be quite relevant. I also do not think that the decision of the Allahabad High Court in *Baldeo Raj* (supra) could be of any help to the insurance company, because that case also deals with the provisions of S. 96(2) of the Act where a conductor of the vehicle not holding a driving license caused an accident. It was held that the insurance company could avoid its liability. But then this decision may also need a second look in view of the decision of the Supreme Court in *Skandia Insurance Co. Ltd.*'s case (supra). Mr. Malhotra, in all fairness, brought to my notice decisions of the Bombay High Court and Karnataka High Court which do not support the view canvassed by him before me. In *Oriental Fire and General Insurance Co. Ltd. v. Aleixo Fernandes & Ors* (1986 Acj 11.37) (Bombay), (4) the court rejected the contention that under S. 92-A of the Act there was no liability cast on the insurer to pay any compensation. The court held that the word "liability" wherever used in relation to the death or bodily injury to any person included liability under S. 92-A and that mere omission of the word "insurer" in S. 92 A could not exclude insurer from the liability as long as the vehicle involved in the accident was duly covered

by a certificate of insurance granted by the insurer. In *Mohamad Iqbal v. Bhmaiah & Ors. (II)* (1985) Acc 289 the Karnataka High Court held that under S. 92-A the insurance company could be saddled with liability of the amount as provided therein. Mr. Malhotra, however, did contend, with reference to this decision, that the court observed that S. 110-B, after amendment, included the award made under S. 92-A also, when it stated, "that liability should be saddled on the owner, or insurer or driver or by all of them as the case may be". Mr. Malhotra said there were no such words to be found in S. 110-B, and, Therefore, the judgment proceeded on certain wrong assumptions. That may appear to be so but the court is quite explicit in its judgment, after taking into account the various amendments incorporated by the Amending Act of 1982, that the insurance company was liable to pay compensation provided in S. 92-A of the Act.

(6) Ms. Patney later sent in two reported decisions, one of the Punjab and Haryana High Court and the other of the Allahabad High Court, wherein also the view had been taken that insurer was liable under S. 92-A of the Act. These decisions are *Oriental Fire and General Ins. Co. Ltd. v. Beasa Devi & Ors* (1985 Acj 1) (DB) (Punjab & Haryana), (6) and *Sant Ram & another v. Surya Pal & Ors.* (1986 Acj 202) (Allahabad) (7). These decisions were, however, not cited at the bar at the time of arguments.

(7) Proceedings under S. 92-A of the Act brook no delay. The only thing that is required to be seen is that the policy of insurance complies with the requirements as laid down in the Act. It is immaterial if ultimately the petition fails either on the "principle of fault" or even on any of the defenses permissible to the insurance company as laid in sub-s(2) of S. 96 of the Act. Liability of the insurance company under S. 92-A of the Act to the extent mentioned therein would, Therefore, appear to be absolute.

(8) This petition, Therefore, must succeed. It is held that the insurance company is liable to pay compensation in respect of liability arising under S. 92-A of the Act. The impugned judgment to this extent is, Therefore, modified. The petitioners will be entitled to costs. Counsel's fee Rs. 500.