
(1985) 07 AHC CK 0028
In the Allahabad High Court
Case No : FAFO No. 944 of 1984

Sant Ram and Another

APPELLANT

Vs

Surya Pal and Others

RESPONDENT

Date of Decision : 22-07-1985

Acts Referred:

Motor Vehicles Act, 1939 — Section 110A, 110B, 110D, 110E, 92A

Citation : (1986) ACJ 202 : (1985) AWC 751 : (1987) 62 CompCas 87

Hon'ble Judges : B.D. Agarwal, J

Bench : Single Bench

Advocate : S.C. Tandon, for the Appellant; Srikant, C.B. Misra and M.P. Singh, for the Respondent

Final Decision : Allowed

Judgement

Agarwal, J.—This appeal u/s 110D, directed against an order of the Motor Accidents Claims Tribunal, Fatehpur, dated September 29, 1984, passed u/s 92A of the Motor Vehicles Act, 1939, gives rise to an interesting, though short, question of importance. The question is whether an appeal lies u/s 110D against such an order. Facts of the case are not very much relevant at this stage except that an accident occurred after October, 1, 1982, when the Central (Amendment) Act 47 of 1982 came into force. Respondent No. 1 has lodged a claim alleging permanent disablement. On his application, the Tribunal directed that a sum of Rs. 7,500 be paid to him and also that initially it is to be borne by the owners of the vehicle though later there may be reimbursement made by the insurer. Aggrieved, the owners of the vehicle have preferred this appeal.

2. Preliminary objection has been raised for the respondents to the effect that the order impugned does not constitute an award within the meaning of Section 110D and hence an appeal does not lie. It is trite law that the right of appeal is statutory ; an appeal can be had only if the law provides for the same expressly or by necessary implication. Section 110D(1) lays down that any person aggrieved by an award of a Claims Tribunal may, within the period specified,

prefer an appeal to the High Court except, where the amount in dispute is less than Rs. 2,000. The argument put forth for the respondents is that the impugned order is not to be construed as an award of the Tribunal. A quick look at the scheme of the newly added provisions is necessary.

3. Chapter VII-A comprising of Sections 92A to 92E was introduced into the Motor Vehicles Act by the Central (Amendment) Act 47 of 1982 with effect from October 1, 1982. The caption given to the Chapter is " Liability without fault in certain cases". Section 92A enacts this principle of no fault liability where the accident results in death or permanent disablement. The amount of compensation payable in respect of permanent disablement of any person is a fixed sum of Rs. 7,500, it being Rs. 15,000 in case of death. For this compensation, the claimant does not have to plead or establish wrongful act or omission on the part of the owner of the vehicle, and, there is no defence available on the ground of contributory negligence or proportionate sharing of liability. Sub-sections (3) and (4) of Section 92A are material. They read as under :

"(3) In any claim for compensation under Sub-section (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."

4. The compensation referred to in Section 92A is in addition to other right to compensation claimed under the law ; it is to be disposed of expeditiously in the first place before the claim, if any, on the principle of fault, is taken up for consideration, vide Section 92B(1)(2). Sub-section (3) of Section 92B provides for adjustment upon subsequent adjudication of the compensation claimed on the basis of fault. Permanent disablement is defined in Section 92C as meaning injury suffered by reason of the accident involving :

" (a) permanent privation of the sight of either eye or the hearing of either ear, or privation of any member or joint; or

(b) destruction or permanent impairing of the powers of any member or joint; or

(c) permanent disfigurement of the head or face."

5. Section 92E gives overriding effect to Chapter VII-A providing that 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.

6. Certain changes were made at the same time in the provisions of Chapter VIII comprising of Sections 93 to 111A in order to effectuate the principle of liability without fault. "Liability" is now defined in Section 93(ba) as including liability in respect of death of, or bodily injury to, any person u/s 92A. The Explanation to Section 110-O inserted provides :

"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 92A."

7. Section 110A relates to application for compensation made on the principle of fault liability. A proviso was inserted to Sub-section (2) of this section which in terms says :

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

8. Section 110B under the heading "Award of the Claims Tribunal" along with the proviso, which was introduced by the (Amendment) Act, 1982, reads as follows :

" On receipt of an application for compensation made u/s 110A, 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 109B, 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 92A 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".

9. Provision for recovery of money due from any person under an award as arrear of land revenue is contained in Section 110E which is to the effect :

"Where any money is due from any person under an award, the Claims Tribunal may, on an application made to it by the person entitled to the money, issue a certificate for the amount to the Collector and the Collector shall proceed to recover the same in the same manner as an arrear of land revenue."

10. This in brief is the scheme under the relevant provisions. The submission made for the respondents is that compensation provided for u/s 92A is kept distinct from that which is awarded on determination of fault and that the

determination made adjudging the fault liability alone constitutes the award. In support of this argument it is urged that there would have been no other purpose behind inserting the proviso to Section 110B quoted above. After giving careful consideration, I find little force in this contention.

11. The amount provided for payment as a fixed sum u/s 92A is in essence and also literally described as compensation. The object is to reimburse the victim for the death or permanent disablement at the quickest possible moment. The controversy which the determination of fault or otherwise gives rise to is time-consuming ; that entails a detailed probe into the evidence on both sides. Questions of contributory negligence, etc., might also arise at that stage. In order that the sufferer does not have necessarily to await such protracted adjudication, the ultimate end whereof remains unpredictable, the Legislature has in its wisdom made an innovation by introducing Chapter VII-A which is bereft of requirement of fault determination. The procedure is distinct undoubtedly as appearing from Sections 92A and 92B on the one side and Sections 110A and 110B on the other. There is difference as to the scope of the enquiry in these two sets of provisions. Section 92E, no doubt, has the effect of making the provisions of Chapter VII-A self-contained. For purposes of appeal and for execution, however, there is no conflicting provision in Chapter VII-A. The order made u/s 92A is as well classed as an award. The proviso to Section 110B (Award of the Claims Tribunal) is a pointer in this direction. The proviso contemplates, it would appear, that the direction to pay the compensation u/s 92A constitutes an award none the less, though the mode to arrive at the same is different. This, in my view, is implicit in the text of this proviso. If the intention were otherwise, the proviso will have made it explicit that the determination of compensation u/s 92A is not to be construed as an award of the Claims Tribunal.

12. An important clue in this behalf is furnished by Section 110E which contains the exclusive provision for recovery of money from any persons under an award as arrear of land revenue. There is no other mode of recovery provided in the Act including in respect of the sum provided for u/s 92A. The Legislature cannot be assumed to have left unspecified a provision for recovery of the amount directed to be paid u/s 92A. As the appellant's learned counsel rightly urged, it is not difficult to conceive of a case where despite the order of the Tribunal, the owner of the vehicle or the insurer declines to pay the amount u/s 92A. Shall the claimant in such a case be left to be satisfied with mere paper transaction ? In Section 110E, the expression used is "award", and in the context, there being nothing to the contrary, there is no basis for not construing this expression "award" appearing likewise in Section 110D. The award within Section 110E covers also an order u/s 92A and upon the same footing, such an order is to be considered as included within the purview of Section 110D. The rule of harmonious construction warrants this and no other construction. The order u/s 92A rests upon objective consideration, it is not a matter of subjective satisfaction ; there could be no intention to leave a claimant who has lost in a proceeding u/s 92A without the right to appeal or without remedy to recover the

amount in the event of compensation u/s 92A being allowed. Chapter VII-A enacts social welfare legislation ; it must receive beneficial construction.

13. Assuming that there is ambiguity or that the meaning of the enactment is obscure, the question arises, "What is to be done ? We must try and get at the meaning of what was intended by considering the consequences of either construction." Answering this question, the learned author in Craies on Statute Law, 7th edition (1971), at page 94, observes :

"And if it appears that one of these constructions will do injustice, and the other will avoid that injustice, " it is the bounden duty of the court to adopt the second, and not to adopt the first, of those constructions". However "difficult, not to say impossible," it may be to put a perfectly logical construction upon a statute, a court of justice " is bound to construe it, and, as far as it can, to make it available for carrying out the objects of the Legislature, and for doing justice between parties." "

14. In regard to social welfare enactment, particularly, the rule of beneficial, construction ordains that if a statute is capable of two constructions, that construction should be preferred which fulfils the policy of the Act and is more beneficial to the interest of the persons in whose interest the Act has been passed Jeewanlal (1929) Ltd. Vs. Appellate Authority under the Payment of Gratuity Act and Others, .

15. Consideration being had to the above, I find that an appeal lies u/s 110D against the impugned order passed u/s 92A of the Act.

16. Upon merits, counsel for the appellant contended not without force that liability to pay compensation u/s 92A arises where an accident has resulted in death or permanent disablement and not otherwise. This being not a case of death, the question is whether the respondent suffered permanent disablement as defined in Section 92C. A finding on this would constitute the foundational rest upon which payment of compensation u/s 92A rests. The Tribunal in the instant case has not gone into this aspect. There is no finding recorded in regard to permanent disablement on the basis either of the evidence on record or on the admission of parties.

17. The other infirmity in the order rightly pointed out is the direction that the amount shall in the first place be borne by the owner of the vehicle though subsequently he might be reimbursed by the insurer. There is no warrant for such reservation. As I mentioned above, "liability" as now defined in Section 93(ba) includes liability arising u/s 92A. Neither Section 95(5) nor Section 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 principle of no fault liability or fault liability. I am supported in this view by the decision of a Division Bench in Oriental Fire

and General Insurance Co. Ltd. v. Smt. Beasa Devi AIR 1985 P&H 968 ; [1986] 59 Comp Cas 644 (P &H). In para 10 (at page 651 of 59 Comp Cas) it is observed:

"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 Section 95 happens to cover and, therefore, to the extent of the policy cover, the insurer without inquiring as to whether the amount awarded is u/s 92A or otherwise shall be liable to pay the amount awarded to the person named in the award or awards."

18. The governing factor for application of the appropriate law, it has been held, moreover, is not the date on which the policy of insurance came into force but the date on which the cause of action accrued, i.e., the accident occurred, for enforcing liability arising under the terms of the policy, vide Padma Srinivasan Vs. Premier Insurance Company Limited, . The liability of the insurer and the owner of the vehicle being joint and several including in respect of compensation u/s 92A, there is no question of apportionment between them Mehta Madan Lal Vs. National Insurance Company Limited and Others, .

19. For the reasons stated above, the appeal succeeds and is allowed. The order impugned is set aside. The Motor Accidents Claims Tribunal (District Judge, Fatehpur) shall decide afresh the claim raised by the respondent u/s 92A of the Motor Vehicles Act in accordance with law and in the light of the observations contained herein. Costs on parties.

20. The interim order dated December 5, 1984, is vacated.