(1987) 12 MP CK 0012

In the Madhya Pradesh High Court

Shastri Brothers Balaghat — APPELLANT

Vs

Smt. Parwatibai Jain and Others — RESPONDENT

Date of Decision : 03-12-1987

Acts Referred:
Motor Vehicles Act, 1939 — Section 110D, 92A

Citation : (1990) 2 ACC 161 : (1989) MPJR 872

Hon'ble Judges : B.M. Lal, J

Bench : Single Bench

Judgement

B.M. Lal, J.

This appeal u/s 110-D of the Motor Vehicles Act, 1939 thereinafter referred to as the Act), is filed by the non-applicant bus-owner against an interim award dated 9.3.84 whereby the Motor Accident Claims Tribunal, Balaghat in exercise of its jurisdiction u/s 92-A of the Act passed an interim award of Rs. 15,000/- against the appellant.

The short point involved in this appeal is whether the liability to pay interim compensation u/s 92-A of the Act includes the owner of the vehicle alone or it also includes the insurer of the vehicle jointly and severally

The facts leading to this appeal are that respondent?s No. 1 to 5 brought an action u/s 110-A of the Act claiming compensation against the appellant and respondents No. 6 to 9 on the ground interalia that Chandra Kumar Jain, husband of respondent No. 1 Smt. Parwatibai, while sitting on the pillion of Rajdoot Motor cycle which was being driven by his friend towards Nagpur side from Hatta, met with an accident on 18.4.83. The bus bearing registration No. MPJ 8628 belonging to the appellant and at the relevant time was insured with the respondent No. 8, United India Insurance Company was being driven rashly and negligently by the respondent No. Kishori lal, dashed against the said motor-cycle, as a result of which Chandra Kumar Jain sustained multiple injuries on his person, resulting in his death.

The Motor Accident Claims Tribunal, Balaghat thereinafter referred to as the ''Tribunal'') by the impugned order granted an interim award u/s 92-A of the Act for a sum of Rs. 15000/- directing the appellant to pay the said amount to the claimants who are the legal heirs of late Chandra Kumar, against which the present appeal has been filed by the appellant, the owner of the bus.

The learned Counsel appearing for the appellant vehemently contended that since the bus is insured, in such circumstances, primarily the owner of the bus is liable to pay compensation, but the liability is to be reimbursed by the insurer by virtue of the vehicle being insured and therefore, even the payment of ''no fault'' liability (ex-gratia award) is also jointly and severally payable by the owner of the vehicle and the insurer, both.

Chapter VIII of the Act provides for insurance of motor vehicle against third party risk. It was amended by Motor vehicles (Amendment) Act, 1956 (Central Act No. 100 of 1956).

It is now well settled that Chapter VIII provides for compulsory insurance of a motor vehicle before it could be used for public use and thus, it is Laid down that it is the liability of an insurer to pay to the claimant to pay the amount of compensation when an award is passed by the tribunal arising out of the accident, where the insured bus is involved.

Chapter VIII of the Act also fixes pecuniary liability of an insurer in certain cases and further in proceeding for compensation for death or bodily injury in a motor accident, the owner of the vehicle, the driver and the insurer of the vehicle are jointly and severally liable to pay such compensation.

In N.K. Brothers (Pvt). Ltd. v. M. Karumai Ammal and Ors. etc. (1). The Apex Court of the land expressed its opinion that the payment of no fault liability be considered and by suitable legislation that may be incorporated in the Act. Section 92-A of the Act is the result of the opinion expressed by the Supreme Court in N.K.V. Brother''s case (Supra). It has been in-corporate in Chapter VII - A of the Act by adding the same by Amendment Act of 1982.

Section 92-A of the Act begins with words "Liability to pay compensation in certain cases on the principle of no fault'''' and Sub-section (1) of this Section postulates that the owner of the vehicle shall, or as the case may be, jointly and severally be liable to pay compensation in respect of such death or disablement.

Thus, in accordance with the provisions of Section 92-A of the Act, where the death or permanent disablement of any person arises from an accident by an insured motor vehicle, the owner of the vehicle cannot escape '' no fault liability''. As such, before passing an interim award u/s 92 A of the Act, where compensation is claimed for death or bodily injuries, it is not necessary that there must be a finding of negligence resulting in the accident, for fixing liability.

However, the word ''liability'' has been defined in Section 93 (ba) under Chapter VIII of the ACT, whereas Section 92 A has been incorporated in Chapter VII-A.

The definition of ''liability'' reads as under:

93. Definition- In this Chapter --

(a) ...

(b) ...

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

As such, the definition of ''liability'' implies that liability to pay compensation in such cases also includes the insurer and therefore, the words used in Sub-section (1) of Section 92 A of the Act--

The owner of the vehicle or as the case may be%

Are to be read in consonasee with the definition of ''liability'' given in Section 93 (ba) of the Act. Similarly the above words used in Section 92A of the Act have got a wide connotation and the words" as the case may be" do include liability of insurance company as well, if the vehicle is insured. As such the insurer of the vehicle is also liable for the consequences of ''no fault liability'' arising out of the accident where the insured vehicle is involved.

In Oriental Fire and General Insurance Co. Ltd. Vs. Beasa Devi and Others, .

Held that the insurance company can be saddled with the liability u/s 92 A of the Act as soon as the Tribunal comes to the conclusion that the insured vehicle was involved in the accident and the correctness of other objections by the owner or the insurance company should be decided later on. The same view has been reiterated in Gattu Prabhakar and Anr. v. Thummanapalli Bralmaiah and Ors. (3), Oriental Fire and General insurance Co. Ltd. Goa v. Aleino Fernandes and Ors. (4) and Oriental Insurance Co. Ltd. Chandigarh. v. Sitla Par shad and Ors. (5).

This being the legal position, the cases falling u/s 92-A of the Act where the vehicle involved in the accident is insured the insurer is also jointly and severally liable to pay the amount of ex-gratia award along with the owner of the vehicle.

From the discussion aforesaid, the appeal is allowed to the extent that the interim award dated - 9.3.84 is modified to the effect that respondent No. 8, United India Insurance Company is also jointly and severally liable to pay the amount of ex-gratia award made u/s 92 A of the Act. There shall be no order as to costs.

