

(1988) 03 BOM CK 0033
In the Bombay High Court
Case No : First Appeal No. 143 of 1985

Sulochana Joshi

APPELLANT

Vs

Gurubachansing

RESPONDENT

Date of Decision : 02-03-1988

Acts Referred:

Bombay Motor Vehicles Taxation Rules, 1959 — Rule 306B
Motor Vehicles Act, 1939 — Section 110A, 110B, 110D, 110E, 92A

Citation : (1988) 4 BomCR 485

Hon'ble Judges : B.N. Deshmukh, J

Bench : Single Bench

Advocate : S.R. Barlinge, for N.P. Chapalgaonkar, for the Appellant; A.H. Kapadia, for the Respondent

Final Decision : Partly Allowed

Judgement

B.N. Deshmukh, J.—This first appeal is filed by the claimant who has filed and application for claiming compensation u/s 92-A of the Motor Vehicles Act on the ground that her husband Madhukar met with the accident which resulted in his death in Gevrai town on 10-1-1984 at about 7.30 p.m. According to her, the accident was caused because of the dash given by the Driver of vehicle MWA 5389 which is a tanker. She maintained that Driver of Tanker was driving the Tanker in a very high speed and was also driving negligently and rashly.

2. The learned trial Judge of the Motor Accident Claims Tribunal dismissed the petition of the claimant on the ground that the said accident to deceased Madhukar is not caused by the Tanker bearing No. 5389.

3. The award passed refusing the claim of the claimant is challenged in this appeal. In this appeal, one Civil Application No. 88 of 1987 was filed on behalf of the appellant-claimant for adding Oriental Fire & General Insurance Company Ltd. as respondent No. 2 to this appeal. This application is rejected by me by a separate order.

4. The learned Counsel for the appellants contended that the finding recorded by the learned Trial Judge holding that the accident is not caused by the Tanker bearing No. MWA 5389 belonging to respondent is not correct. The evidence of claimant is not properly appreciated in coming to the conclusion that the accident is not caused by the said Tanker.

5. The learned Counsel Shri Kapadia, appearing for the respondent, contended that the First Appeal filed by the claimant is not maintainable. According to him, the provisions of section 110-D of the Motor Vehicles Act provide for filing of appeals after award is passed u/s 110-B of the said Act. The claim arising out of this appeal is a claim made under the provisions of section 92-A and no appeal can be filed in this Court against non grant of claim u/s 92-A because section 92-A does not speak of any award but it provides for liability to pay compensation in certain cases on the principle of no fault. He also contends that the Tanker No. 5389 was not involved in the accident.

6. The following points arise for determination in this appeal.

- 1) Whether the appeal filed by the appellant is maintainable ?
- 2) Whether the accident is caused by Tanker No. MWA 5389 ?
- 3) What order ?

7. Shri Kapadia contended that the provisions of section 110-D regarding filing of appeals will have to be read in the light of sections 110-A and 110-B of the Act. According to him, the provisions of section 110-A to section 110-F are code in itself. Section 110-A provides for making an application for compensation. Section 110-B provides for award of the Claims Tribunal on application made u/s 110. Section 110-C provides for the procedure and powers of the Claims Tribunal. Section 110-D provides for appeals. According to the learned Counsel, if we consider the provisions of section 110-A to 110-F the provisions are interconnected and form an integral scheme. Therefore, when the provision for filing appeal is made in section 110-D, appeal must be arising out of award based on application u/s 110-A. The award which is available for challenge in appeal u/s 110-D is the one which is made u/s 110-B and not any award passed under the provisions of other sanctions for the compensation.

8. It would be useful to refer to the provisions of section 110-D at this stage :

"(1) subject to the provisions of sub-section (2), any person aggrieved by an award of a Claims Tribunal may within ninety days from the date of the award, prefer an appeal to the High Court.

Provided that High Court may entertain the appeal after expiry of the said period of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.

(2) No appeal shall lie against any award of Claims Tribunal if the amount in dispute in the appeal is less than two thousand rupees."

9. If we consider the wording of section 110-D, it provides for filing an appeal by any aggrieved person by an award of Claims Tribunal. The only restriction provided for entertaining an appeal is that as provided under sub-clause (2) of section 110-D; except the restriction mentioned therein, there is no other restriction mentioned in that section for preferring an appeal. Merely because the section for preferring an appeal is numbered as 110-D, it can never be given a restricted meaning to include award u/s 110-B only.

10. Shri Kapadia further argued that the word "award" is mentioned for the determination of claims u/s 110-A while the word "award" is not mentioned in section 92-A. Section 92-A is liability to pay compensation on the principle of no fault. The claim, according to the learned Counsel, is u/s 92-A is to be determined in a summary manner, practically without any enquiry. Therefore, the claim determined under provisions of section 92-A cannot be termed as an award. While the claim u/s 110-A is properly enquired into and such claims alone are included in the term award. He also contends that even assuming that there is a determination of claim u/s 92-A but that is by way of an interim grant of compensation and such interim awards cannot form basis for filling an appeal u/s 110-D. He also argues that no finality is attached to the determination of claim u/s 92-A. If we read section 110-D, the filing of appeal is subject only to the provisions of sub-section (2) of that section and is not subject to any other provision. What is mentioned in section 110-D that any person aggrieved by award of Claims Tribunal may prefer an appeal to the High Court. Therefore, an appeal is provided for against an award. The word "award" is not subject to any qualifications and giving meaning to award as final award will be introducing words in the statute which are not there. The word "award" is not defined in the Motor Vehicles Act but then it cannot be forgotten that claim for compensation is considered and determined both u/s 92-A and also u/s 92-E. No distinction can be made in the determination of compensation by the Claims Tribunal between section 92-A and section 110-A. The authority competent to decide claims under both the sections is the same. We will be introducing artificial distinction between the claims determined in two sections under the same Act by considering the claim determined u/s 110-B as an award and not considering claim determined u/s 92-A as not an award.

11. A useful reference can be made to the decision of Jammu & Kashmir High Court in this connection. The provisions of sections 110-D and 110-B came for consideration of the Full Bench of that High Court in Mohd. Yousuf v. A. Rehman, AIR 1982 Jammu & Kashmir, 146. The word "award" has been considered and interpreted. While considering the term award, Kotwal, J, has considered that the term award contemplates four ingredients :---

(i) whether any compensation is at all payable to them claimant;

(ii) if so, what amount is payable which in the opinion of the Tribunal could be just :

(iii) to whom it is payable; and

(iv) who, out of the owner, driver and the insurer of the vehicle is liable to pay the amount and to what extent.

If these four ingredients are borne in mind, it is not possible to draw any distinction between the determination of the claim u/s 110-B and claim determined u/s 92-A of the Act.

12. In *Oriental Fire and General Insurance Co. Ltd. Goa Vs. Aleixo Fernandes and others*, , it is observed that a summary trial contemplated for making an award or order u/s 92-A. It is further observed that section 92-A speaks of peremptory award of Rs. 15,000/- in case of death and Rs. 7500/- in case of permanent disability. So determination of the claim u/s 92-A amounts to making of an award is clear from the observation of this Court in this judgment.

13. A reference to Rules 306-B of Bombay Motor Vehicles Rules, 1959, throws light on the nature of compensation granted u/s 92-A. Sub-rule (1) of Rule 306-B provides that the Claims Tribunal shall proceed to award the claim of compensation u/s 92-A on the basis of several factors. Thus, the nature of compensation granted u/s 92-A is an award. It is clear from the Rule 306-B that the compensation granted u/s 92-A amounts to an award.

14. The contention of Shri Kapadia cannot be accepted for other reason also. Section 110-E of the Motor Vehicles Act, 1939, provides for recovery of money from insurer as arrears of land revenue. It provides that 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 manner as an arrear of land revenue. If the contention that the whole procedure right from making an application onwards as provided u/s 110-A to 110-F are interconnected and formed one integral scheme is accepted, then no money even though due from any person under an award u/s 92-A will not be able to recovered under the provisions of section 110-E. Therefore, such a contingency is not contemplated at all. The provisions of the statute will have to be harmoniously construed and in view of that also, it cannot be said that preferring of an appeal u/s 110-D is restricted merely to awards passed u/s 110-B and exclude the awards passed u/s 92-A of the Act. I am, therefore, of the opinion that determination of claim u/s 92-A amounts to an award available for appeal u/s 110-D of the Act.

15. I have gone through the evidence led by the claimant and by the respondent. I think that the decision of the Claims Tribunal requires to be reversed on fact also.

16. The witnesses of the claimant are disbelieved by the Claims Tribunal and the defence evidence is accepted. After going through the evidence of P.W. 2 Sulochanabai, P.W. 3 Bhagwan Deshpande, P.W. 4 Azamkhan and P.W. 5 Bajirao

Bomble, I do not think that the basis on which the evidence of these witnesses is rejected is correct especially the evidence of P.W. 4 Azamkhan Pathan, who is independent witness, inspires confidence. He is Press Reporter working in Champavati daily published from Beed. He has deposed that he has personally witnessed the accident on 10-1-1984 in the evening between 7 to 8 p.m. He has seen that the Tanker came from Gevrai side in a very high speed. Tanker gave a dash to the bicycle on which the deceased Madhukar was riding. At once the speed slowed down and he has marked the number of the vehicle in the tail lamp light as MWA 5389. Immediately, thereafter the speed of the vehicle was increased and the Tanker proceeded with high speed. He noted the number with a ball pen on the palm. This news item was sent by him to the newspaper Champavati daily and the news was published on 13-1-1984. The news item is produced at Exhibit 26. His evidence is disbelieved on the main ground that inspite of attending the Police Station, the number of Tanker was not disclosed. Secondly, he must not have seen the incident but on the basis of wireless message he came to know of the incident and also the number of the Tanker. I am not impressed by this fact at all. It is true that he has not disclosed the number of the Tanker but the fact cannot be lost sight of that the news item published immediately on 13-1-1984 in the newspaper Exhibit 26 indicates that the witness must have seen the incident and must have also noted the number of the Tanker. There is also no reason as to why the witness should depose against the respondent and involve the Tanker which caused incident.

17. The evidence of other witnesses is not material but to the evidence of Azamkhan, we find support in the evidence of P.S.I. (wireless section) Exhibit 17. From the record of the entries, it is clear that there is a traffic shed which mentions the arrival of the Tanker No. MWA 5389 at Majalgaon at 5.30 a.m. in the morning. Not only that but the colour of the Tanker is also noted which had passed away. This information is passed on to Gevrai Police Station. The fact that the Tanker was noted at Majalgaon and the fact that the message was sent to Gevrai Police Station has relevance only to the case of present incident because unless the number was noted at the time of the accident at Gevrai, there was no question of sending any message to Gevrai Police Station from Majalgaon. There is also no reason why there should be communication between Majalgaon and Gevrai regarding the Tanker. Otherwise the message from Majalgaon would have been in same other Police Station also. But the sending wireless message from Majalgaon to Gevrai for arriving the Tanker from Majalgaon to Gevrai lends support and corroboration to the evidence of witness Azamkhan. This record was produced by witness Ratiram Dhurga who was PSI examined on 9-7-1984 and the record relates to 10th and 11th January, 1984. The record is maintained in a routine manner and therefore, the fact that the record speaks of arrival of Tanker MWA 5389 at Majalgaon, the same is reported back to Gevrai Police Station by a message leaves no doubt about the incident which has happened as deposed by the P.W. 4 Azamkhan Pathan.

18. In this background, we have to consider the evidence of defence. The

defence has produced some bills to show that the Tanker was stationed at Shrirampur on 10-1-1984 from morning till 8.30 to 9 p.m. The Tanker required some repairs and, therefore, spare-parts were purchased on that day. So also evidence is produced to show that diesel was purchased for the Tanker after 8.30 p.m. The owner himself is examined as D.W. 1. In cross-examination, he has admitted that the Tanker is driven by Driver named Raosaheb Devram Dighe. He has also admitted that some days before his deposition in the Court, Police men of Gevrai had come to Govrai and arrested Driver of the above Tanker. From his evidence and from the evidence of other witnesses of defence, it is tried to be established that spare parts were purchased by the Driver and the diesel was also purchased by the Driver. The fact that the said Driver was arrested by the Police men of Gevrai is also admitted by the owner. But the Driver was not produced and examined as a defence witness. The evidence of Driver would have been the best evidence in this connection. More so, in view of the fact that he was arrested in this connection by the Police men of Gevrai. He was the best person to prove that the vehicle was not in running condition on that date till 8.30 p.m. He was also best witness to establish the purchase of spare parts and purchase of diesel. The time of arrival of the vehicle in the garage and its departure from the garage, such an important witness is not examined by the respondent though other witnesses are examined in defence indicates that the evidence of defence is not worthy of acceptance.

19. Some bills were issued in the name of the Driver. Surprisingly the bills should have been issued in the name of the owner. But if we consider the evidence of the Motor Mechanic and also of salesman of the motor spare parts D.W. 3 and D.W. 2, the evidence of both of them does not inspire any confidence because they have admitted that though the other bills were not signed by the purchasers or the drivers but the bills which are produced in the evidence are signed by the driver. There was no reason as to why in these particular bills signature of the driver was obtained. It was very likely that by mistake someone may obtain signature but in the present case it must be noted that the signature of the driver is present in all the three bills regarding purchase of the spare parts, purchase of diesel and payment made to the motor mechanic. While in other cases, the bills were not signed by the drivers. By mistake, one may obtain a signature but surprisingly in the present case they have not failed to obtain the signature of the driver on the respective bills. None of them has committed a mistake in obtaining signature of any other driver on the bills speaks volumes against the evidence of the witnesses. I am of opinion that the evidence of defence does not all inspire confidence. The fact that the Tanker was from Shrirampur and the witnesses are also from Shrirampur can also be not lost sight of.

20. I, therefore, answer the issue as to whether the accident is caused by the Tanker bearing No. MWA 5389 in the affirmative that the claimant has succeeded in establishing that the accident was caused by Tanker No.MWA 5389.

21. The learned Counsel Shri Kapadia then argued that a claim cannot be considered u/s 92-A in the absence of Insurance Company when the vehicle is insured. It seems that the vehicle was insured with the Insurance Company. In the interest of justice, I, therefore, remand the matter back to the Tribunal for deciding the matter in accordance with law and in the light of the observations made above. The claimant is at liberty to make an application to add Oriental Fire and General Insurance Company Ltd., Shrirampur Dist. Ahmadnagar as party to the proceedings. On such application being made by the claimant, the proceedings shall be disposed of within two months from the date of such application.

22. The learned Counsel Shri Kapadia also argued that the observations and findings recorded in this judgment regarding the accident being caused by Tanker No. MWA 5389 should not affect merits in proceedings u/s 110-A. It is not possible to accept the contention of the learned Counsel because even though the present proceedings arise out of claim u/s 92-A but the parties have led evidence and the findings are recorded on the basis of evidence led by parties. The evidence was led, witnesses were cross-examined at length and the documentary evidence possible was produced before the Court. Therefore, it would be unnecessary to keep that issue open in further proceedings.

23. In the result appeal partly allowed. There shall be no order as to costs.