

(2004) 12 BOM CK 0100
In the Bombay High Court
Case No : Writ Petition No. 7314 of 2004

Surendra Singh Lal Singh

APPELLANT

Vs

Bombay Municipal Corporation and Another

RESPONDENT

Date of Decision : 01-12-2004

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 166

Citation : (2005) 1 BomCR 1

Hon'ble Judges : Shah A.P., J; Dharmadhikari S.C., J

Bench : Division Bench

Advocate : M.B. Kotkar, for the Appellant; G.S. Roychowdhary, instructed by Mulla and Mulla and C.B.C. for respondent No. 1 and V.P. Malvankar, A.G.P., for the Respondent

Judgement

Shah A.P., J.—Rule. Respondents waive service. By consent rule is made returnable forthwith. Heard Advocates.

2. By this petition, the petitioner is seeking to challenge the order of the Motor Accidents Claims Tribunal, Mumbai dated 5th February, 2001 dismissing the petitioner's application u/s 140 of the Motor Vehicles Act, 1988. The case of the petitioner is that he was a passenger in BEST bus on Route No. 341 on 7th April, 1999 and he fell down from the bus and suffered a fracture to lower 1/3 tibia fibula left due to the accident. The petitioner was admitted in Sion Hospital and he was discharged on 21st April, 2004. Thereafter the petitioner was treated in Somaiya Hospital. The petitioner has produced on record the original case papers of Sion and Somaiya Hospitals. In order to establish that the BEST bus was involved in the accident the petitioner has produced the station diary of Antop Hill Police Station wherein it is specifically stated that the BEST bus was involved in the accident. The record of Sion and Somaiya Hospitals also disclose the involvement of BEST bus. The petitioner has also produce bus tickets for Route No. 341 on 7th April, 1999. The petitioner is also seeking to rely on disability certificate which was issued by Dr. Adjgaonkar who is a orthopaedic surgeon. Dr.

Adjgaonkar in his certificate has stated that the petitioner has sustained a fracture to left tibia fibula lower and assessed the disability to the extent of 35%. Before the Tribunal the learned Counsel appearing for BEST fairly conceded that the petitioner has established that the accident has taken place on 7th April, 1999 due to which he has sustained injuries for which he was treated in Sion Hospital and thereafter in Somaiya Hospital. But the learned Counsel argued that the application was not tenable as the petitioner has not given the registration number of the offending vehicle involved in the accident. It was argued that in the absence of registration number of the vehicle bus has been involved and which driver ought to have been held guilty for rash and negligent driving. A mere mentioning of the route number is, therefore, not sufficient as it is essential to prove the positive involvement of the BEST bus in the accident. The Tribunal has rejected the application u/s 140 solely on the ground that the petitioner failed to furnish registration number of the offending vehicle.

3. Mr. Kotak, learned Counsel appearing for the petitioner submitted that there is sufficient evidence on record to show that BEST bus was involved in the accident. He took us through the entire documentary evidence produced and relied upon the petitioner. According to him the evidence in the form of station diary, hospital record and ticket is sufficient for an interim award in terms of Section 140 on the other hand Ms. Roychoudhary, learned Counsel appearing for the Corporation submitted that there are discrepancies in the evidence adduced by the petitioner and it is not conclusive to establish that the BEST bus was involved in the accident.

6. Before we proceed to deal with the submissions of the learned Counsel, it would be useful to refer to the legislative history of Section 140 ie. old Section 92-A in Motor Vehicles Act, 1939. It may be pointed out that before insertion of Section 92-A which was introduced in the Act by Motor Vehicles (Amendment) Act, 1982 (Act 47 of 1982) there was no provision for liability without fault. This amendment was introduced in the wake of the judgment of the Supreme Court highlighting the need for legislation providing for no fault liability in motor accident claims in a number of decisions. See *Manjushri Raha v. B.L. Gupta* 1977 A.C.J. 134, *State of Haryana v. Darshana Devi* 1979 A.C.J. 205, *Bishan Devi v. Sirbaksh Singh* 1979 A.C.J. 496 The purpose underlying the enactment of Section 92-A as indicated in the Statement of Objects and Reasons appended to the Bill was as follows:

"There has been a rapid development of road transport during the past few years and large increase in the number of motor vehicles on the road. The incidence of road serious proportions. During the last three years, the number of road accidents per year on the average has been around 1.45 lakhs and of these the number of fatal accidents has been around 20,000 per year. The victims of these accidents are generally pedestrians belonging to the less affluent Sections of the society. The provisions of the Act as to compensation in respect of accidents can be availed of only in cases of accidents which can be proved to have taken place

as a result of a wrongful act or negligence on the part of the owners or drivers of the vehicles concerned. Having regard to the nature of circumstances in which road accidents take place, in a number of cases it is difficult to secure adequate evidence to prove negligence. Further, in what are known as "hit and run accidents, by reason of the identity of the vehicle involved in the accident not being known, the persons affected cannot prefer any claims for compensation. It is, therefore, considered necessary to amend the Act suitable to secure strict enforcement of road safety measures and also to make, a provisions first for compensation without proof of fault or negligence on the part of the owner or driver of the vehicle and, secondly, for compensation by way of solatium in cases in which the identity of the vehicle causing an accident is unknown"

5. The scope of Section 92-A and the procedure to be followed by the Tribunal in application under the said Section was explained by the Supreme Court in Shivaji Dayanu Patil and another Vs. Smt. Vatschala Uttam More, . In that case the Supreme Court categorically rejected the contention that such claims have to be agitated like other claims u/s 110-A of the Act (1939 Act) and that the claimant must first adduce evidence to establish his/her case and that the owner as well as the insurer of the vehicle in question must have a right to adduce evidence to rebut the same. The Court observed in paras 44 and 45 of the judgment as under :

"44. Rule 306-C prescribes the procedure of disbursement of compensation u/s 92-A to the legal heirs in case of death. The submission of Mr. Sanghi is that in spite of the aforesaid amendments which have been introduced in the Rules after the enactment of Section 92-A, the Claims Tribunal is required to follow the procedure contained in the other rules before awarding compensation u/s 92-A of the Act. In other words, it must proceed to adjudicate the claim after the opposite party is afforded an opportunity to file the written statement under Rule 298, by framing issues under Rule 299 and after recording evidence in accordance with Rules 300 and 301 and that it is not permissible for the Claims Tribunal to make an order purely on the basis of the documents referred to in Rules 291-A, 306-A and 306-B. In our opinion, the said submission of Mr. Sanghi cannot be accepted. The object underlying the enactment of Section 92-A is to make available to the claimant compensation amount to the extent of Rs. 15,000/- in case of death and Rs. 7,500/- in case of permanent disablement as expeditiously as possible and the said award has to be made before adjudication of the claim u/s 112-A of Act. This would be apparent from the provisions of Section 92-B of the Act. Section 92-B(2) of the Act provides that a claim for compensation u/s 92-A in respect of death or permanent disablement of any persons shall be disposed of as expeditiously as possible and where compensation is claimed in respect of such death or permanent disablement u/s 92-A and also in pursuance of any right on the principle of fault, the claim for compensation u/s 92-A shall be disposed of as aforesaid in the first phase. With a view to give effect to the said directions contained in Section 92-B of the Act, the Maharashtra Government has amended the Rules and has inserted special

provision in respect of claims u/s 92-A in Rules 291-A, 291-B, 297(2), 306-A, 306-B, 306-C and 306-D of the Rules. The object underlying the said provisions is to enable expeditious disposal of a claim petition u/s 92-A of the Act. The said object would be defeated if the Claims Tribunal is required to hold a regular trial in the same manner as for adjudicating a claim petition u/s 110-A of the Act. Moreover for awarding compensation u/s 92-A of the Act, the Claims Tribunal is required to satisfy itself in respect of the following matters.

- (i) an accident has arisen out of the use of a motor vehicle;
- (ii) the said accident has resulted in permanent disablement of the person who is making the claim or death of the person whose legal representative is making the claim;
- (iii) the claim is made against the owner and the insurer of the motor vehicle involved in the accident.

45. The documents referred to in Rules 291-A and 306-B will enable the Claims Tribunal to ascertain the necessary facts in regard to these matters. The panchanama and the first information report will show whether the accident had arisen out of the use of the motor vehicle in question. The injury certificate or the post-mortem report will show the nature of injuries and the cause of death. The registration certificate and insurance certificate of the motor vehicle will indicate who is the owner and insurer of the vehicle. In the event of the Claims Tribunal feeling doubtful about the correctness of genuineness of any of these documents or if it considers it necessary to obtain supplementary information or documents, Rule 306-A empowers the Claims Tribunal to obtain such supplementary information or documents from the police, medical or other authorities. This would show that Rules 291-A, 306-A and 306-B contain adequate provisions which would enable the Claims Tribunal to satisfy itself in respect of the matters necessary for awarding compensation u/s 92-A of the Act and in view of these special provisions which were introduced in the Rules by the amendments in 1984, the Claims Tribunal is not required to follow the normal procedure prescribed under the Act and the Rules with regard to adjudication of a claim u/s 110-A of the Act for the purpose of making an order on a claim petition u/s 92-A of the Act."

6. The Tribunal is thus not required to hold an elaborate trial for adjudicating the claim u/s 140 and the panchanama and first information report or station diary are sufficient to show whether the accident had arisen out of the use of the vehicle in question. In the instant case the station diary as well as the hospital record unequivocally show that the BEST bus was involved in the accident. The claimant has also produced bus tickets for route in question on the date of the accident. Mere fact that the claimant has failed to give registration number of the bus is not sufficient to deny him interim compensation u/s 140. In the facts and circumstances of the present case, we are satisfied that the petitioner has established that BEST vehicle was involved in the accident. We are, therefore, of

the view that the impugned order of the Tribunal cannot be sustained. Accordingly, the impugned order is set aside. The Corporation is directed to pay interim compensation of Rs. 25,000/- with simple interest at the rate of 8% p.a. from the date of application till payment within a period of 8 weeks from today. We make it clear that the above observations are only for the limited purpose of claim u/s 140 and shall not be relied upon by either of the parties in the main application u/s 166 of the Motor Vehicles Act. Petition is accordingly disposed of.