
(1995) 10 KL CK 0019
In the High Court Of Kerala
Case No : M.F.A. No. 164 of 1995

The New India Assurance Co. Ltd.

APPELLANT

Vs

P. Leela and Others

RESPONDENT

Date of Decision : 13-10-1995

Acts Referred:

Kerala Motor Vehicles Rules, 1989 — Rule 393
Motor Vehicles Act, 1988 — Section 140

Citation : (1996) ACJ 1246 : AIR 1996 Ker 144 : (1996) 1 ILR (Ker) 347

Hon'ble Judges : K.K. Usha, J;B.N. Patnaik, J

Bench : Division Bench

Advocate : George Cherian, for the Appellant; T.R. Ramachandran Nair and A.G. Arun, Arikatt Vijayan Menon and R. Krishna Rao, for the Respondent

Final Decision : Dismissed

Judgement

Usha, J.—Challenge in this appeal at the instance of New India Assurance Co. Ltd. is against the interim award passed by the Motor Accidents Claims Tribunal, Pathanamthitta in O.P. (MV) No. 235/94 granting an amount of Rs. 25,000/- to respondents 1 to 5 u/s 140 of the Motor Vehicles Act as compensation for the death of the husband of 1st respondent, father of respondents 2 to 4 and son of 5th respondent.

2. Certain facts are admitted in this case. An accident happened on 9-1-1994 out of the use of a motor vehicle which resulted in the death of one Ramchandran Pillai, husband of 1st respondent, father of respondents 2 to 4 and son of 5th respondent. It is also admitted that a claim has been put forward by respondents 1 to 5 against the owner of the vehicle impleaded as 1st respondent and insurance company impleaded as 2nd respondent. It is contended by the appellant that no interim award u/s 140 can be granted in this case as, according to the appellant, the accident happened due to the negligence on the part of the Ramchandran Pillai who was driving the vehicle at the time of the accident. It was also contended that late Ramachandran Pillai was real owner of the vehicle

and therefore the claim petition itself is not maintainable.

3. We will first consider the second objection to the interim award viz., late Ramachandran Pillai himself was the owner of the vehicle. Admittedly in the registration certificate 1st respondent before the Tribunal is shown as owner of the vehicle. It is also the case of the insurance company that the insurance policy is in the name of the 1st respondent. Except a reference made by the brother-in-law of late Ramachandran Pillai in the first information statement given before the police that two days before the accident Ramachandran Pillai had required owner ship over the vehicle, there is no material on the basis of which the appellant could contend that the 1st respondent before the Tribunal was not the owner of the vehicle at the time of the accident. The 1st respondent had not put forward such a contention before the Tribunal. Therefore, we are inclined to take the view that the Tribunal has correctly concluded on the basis of the materials available before it at the time of passing an interim award u/s 140 that the 1st respondent before the Tribunal was the owner of the vehicle.

4. Elaborating the first objection the learned counsel appearing on behalf of the appellant submitted that if late Ramachandran Pillai was the wrongdoer in the sense that the accident happened due to his negligence, there is no principle of law which would support a claim put forward by his legal heirs for compensation on his death as a result of the accident. He contended that even the liability cast u/s 140 of the Motor Vehicles Act, 1988 will not enure to the benefit of the wrongdoers or legal heirs of the wrongdoer. According to the learned counsel, provisions under the Section are to be understood in the light of the statement of objects and reasons of the Amending Act 47 of 1982, which introduced Section 92A under the old Act, which reads as follows: -

"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 suitably to secure strict enforcement of road safety measures and also to make, as a measure of social justice, suitable 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."

In support of the above contention the learned counsel relied on a Division Bench decision of Madras High Court in K. Nandakumar Vs. Managing Director, Thanthai Periyar Transport Corporation Ltd., In the above case there was a collision between a bus and motorcycle due to the negligence on the part of the motorcyclist and he sustained injuries, The Court took the view that a person can make a claim for compensation against another only when the other person is at fault and not when he alone is at fault. May be in view of certain circumstances,

he is unable to prove the fault on the part of the another person, from whom he claims compensation. Only in such a case Section 92A of the Act steps in and says that despite the abovesaid fact of inability to prove the negligence of the other party, he will be entitled to a particular minimum compensation. While arriving at the above conclusion the learned Judges of the Madras High Court dissented from a judgment of this Court in K.P. Ali and Another Vs. V. M. Madhavan and Others, awarding compensation u/s 92A to legal heirs of the deceased victim who was found solely responsible for the accident and there was no negligence on the part of the other party.

5. Reliance was also placed by the appellant on another decision of the Madras High Court in New India Assurance Co. Ltd. Vs. Meenal and Others, The view taken in the above decision is that when the death of driver of a car which met with an accident due to his own negligence and when no wrong or tort committed by the owner of the car has been pleaded or proved by the claimants the insurance company cannot be made liable. But going through the above judgment we do not find that it was a case coming u/s 92A of the old Act or Section 140 of the present Act. Kunjuraman Nair Vs. Managing Director, Nesamony Transport Corporation Ltd. and Another, is another decision of the Madras High Court relied on "by the appellant. In the above case when the claimant attempted to board a moving bus he fell down and hit an electric post. It was found that he sustained injuries due to his own negligence. His claim for compensation under the principle of no fault liability was rejected following the decision 1991 ACJ 1095 (supra).

6. Lastly, the learned counsel referred to a decision of this Court in Thomas v. Mathew, (1995) 2 KLT 260 in order to substantiate his contention, relying on the following sentence "Hence in our view when the law declared that owners of both vehicles shall "jointly and severally" be liable, what is envisaged is the liability to third persons and not been themselves" the learned counsel contended that no fault claim can be put forward u/s 140 only by a third party and not by the legal heirs of the driver of the vehicle who died in an accident happened due to his negligence. In the above case there is a collision between two vehicles. After trial it was found on evidence that the collision happened due to the negligence on the part of the person who was riding the scooter, one of the vehicles involved in the collision, and it was the very same person who put forward the claim u/s 140. A Division Bench of this Court held that u/s 140(1) when more than one vehicle is involved in the accident owners of both vehicles are "jointly and severally" liable to pay compensation in respect of the accident under the "no fault" principle. Joint and several liability is understood in law as an equal liability which does not telescope into each other and that such liability is by and large to third parties and not against each, other. The Division Bench observed that "the legislature has never contemplated the contingency where claimant himself is one of the persons liable to meet the claim."

7. It was contended on behalf of respondents 1 to 5, claimants that when an

application is considered u/s 140 an enquiry into the question whether the claimant was negligent or not is not contemplated. In support of the above contention the learned counsel appearing on behalf of respondent 1 to 5 relied on a decision of the Supreme Court in Shivaji Dayanu Patil and another Vs. Smt. Vatschala Uttam More, . Reliance was also placed on a decision of the Madhya Pradesh High Court in Dwarika Vs. Biso and Others, He contended that the decision in (1995) 2 KLT 260 has no application to the facts of the present case, where the liability was to be shared jointly and severally between two owners and one owner had put forward a claim. It was also a case where after evidence adduced the court came to the conclusion that the claimant was guilty of negligence.

8. Section 140 of the Motor Vehicles Act, 1988 reads as follows :

"140. Liability to pay compensation in certain cases on the principle of no fault --
(1) Where death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicle shall, or, as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this section.

(2) The amount of compensation which shall be payable under Sub-section (1) in respect of the death of any person shall be a fixed sum of twenty-five thousand rupees and the amount of compensation payable under that sub-section in respect of the permanent disablement of any person shall be fixed sum of twelve thousand rupees.

(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."

By a mere reading of the section it can be seen that an enquiry into the question as who was responsible for the accident or on whose negligence the accident happened is not contemplated at all. The Supreme Court had occasion to consider in detail the scope of the inquiry contemplated u/s 92A of the Motor Vehicles Act (4 of 1939) which contained provisions similar to Section 140 of 1988 Act. After referring to the provisions contained u/s 92 A and the relevant rules issued by the Maharashtra Government as amended the Supreme Court observed as follows Shivaji Dayanu Patil and another Vs. Smt. Vatschala Uttam

More, at pp. 1783-84):

"..... The object underlying the enactment of Section 92A 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 110A of the Act. This would be apparent from the provisions of Section 92B of the Act. Section 92B(2) of the Act provides that a claim for compensation u/s 92A in respect of death or permanent disablement of any person shall be disposed of as expeditiously as possible and where compensation is claimed in respect of such death or permanent disablement u/s 92A and also in pursuance of any right on the principle of fault, the claim for compensation u/s 92A shall be disposed of as aforesaid in the first place. With a view to give effect to the said directive contained in Section 92B of the Act, the Maharashtra Government has amended the Rules and has inserted special provisions in respect of claims u/s 92A in Rules 291A, 291B, 297(2), 306A, 306B, 306C and 306D of the Rules. The object underlying the said provisions is to enable expeditious disposal of a claim petition u/s 92A 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 110A of the Act. Moreover, for awarding compensation u/s 92A 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 claims.;

(iii) the claim is made against the owner and the insurer of the motor vehicle involved in the accident."

9. Under Rule 291A which was inserted in the Maharashtra Rules after the enactment of Section 92A, it was provided as follows:

"Notwithstanding anything contained in Rule 291, every application, for a claim u/s 92A shall be filed before the Claims Tribunal in triplicate and shall be signed by the appellant and the following documents be appended to every such application, namely,

(i) Panchanama of the accident; (ii) First information report;

(iii) Injury Certificate or in case of death post mortem report or death certificate and;

(iv) a certificate regarding ownership and insurance particulars of vehicle involved in the accident from the Regional Transport Officer or the Police."

Old Rule 297 was substituted by adding necessary provisions as follows: -

"(2) Where the applicant makes a claim for compensation u/s 92A, the Claims Tribunal shall give notice to the owner and insurer, if any, of the vehicle involved in the accident directing them to appear on a date not later than ten days from the date of issue of such notice. The date so fixed for such appearance shall also be not later than fifteen days from the receipt of the claims application filed by the claimant. The Claims Tribunal shall state in such notice that in case they fail to appear on such appointed date the Tribunal will, proceed ex parte on the presumption that they have no contention to make against the award of compensation."

Rule 306A empowers Claims Tribunal to obtain whatever supplementary information and documents which may be found necessary from the police, medical and other authorities and proceed to award the claim. The Supreme Court took the view that documents referred to in Rules 291A and 306B would enable the Claims Tribunal to ascertain the necessary facts for granting award u/s 92A. Panchanama and first information report will show whether accident had arisen out of the use of the motor vehicle in question. The injury certificate or post mortem report will show the nature of injuries and cause of death. Registration certificate and insurance certificate of the motor vehicle will indicate who was the owner and insurer of the vehicle. In the event of the Claims Tribunal doubts about the genuineness of these documents or if it considers necessary to obtain supplementary information and document, Rule 306A empowers the Claims Tribunal to obtain supplementary information or document from the police, medical or other authorities. Therefore, the Supreme Court held that in view of the special provisions the claims Tribunal is not required follow the normal procedure prescribed under the Act and Rules with regard to the adjudication of a claim u/s 110A of the Act for the purpose of making an order of a claim petition u/s 92A.

10. Rule 393 of the Kerala Motor Vehicles Rules, 1989 contains more or less identical provisions as the Maharashtra Rules. It reads as follows:--

"393. Award of claims u/s 140: The Claims Tribunal shall proceed to award the claims u/s 140 of the Act on the basis of the following: -

- (1) Registration Certificate of the motor vehicles involved in the accident;
 - (2) Insurance Certificate or policy relating to the insurance of the vehicle against Third party risks;
 - (3) Copy of the First Information Report;
 - (4) Post-mortem Certificate or certificate of injury from the Medical Officer
- and
- (5) The nature of treatment given by the Medical Officer, who has examined the victim,"

The above would show that neither the section nor the rules contemplate fixation

of negligence on any person while granting no fault claim in a motor vehicle accident. With great respect to the learned Judges of the Madras High Court it has to be said that their Lordships have not considered the scope of enquiry in a no fault claim u/s 92A as explained by the Supreme Court in Shivaji Dayanu Patil and another Vs. Smt. Vatschala Uttam More,

11. In Neeli v. Padmanabha Pillai, (1992) 2 KLT 807 a Full Bench of this Court had occasion to consider the nature of the liability u/s 92A of the Motor Vehicles Act, 1939. This Court observed as follows:

"The authors emphasise that "no fault" liability is "outside" the tort system. Therefore, it has nothing to do with causing or not causing harm, nor with fault or no fault and is not akin to a theory of absolute liability such as the one in Rylands v. Fletcher (1868) LR 3 HL 330 within the tort-system. It is a new liability created by statute and upon such creation, gives rise to a corresponding right to the victim or his legal representatives to claim the amounts covered by Section 92A(2)."

"Section 92A(3) does not refer to dispensing with pleading and proof of negligence in a claim within the tort-system. It refers to a claim u/s 92-A(1) which is a creature of statute and outside the tort-system and it is therein the new system that one need not plead or prove negligence etc."

21. Again, Section 92A(3) does not deal with mode of proof of a fact within the preexisting tort-system. It does not say that negligence which requires to be proved in that system shall be presumed if certain other facts are proved. As stated above, Section 92A(3) explains how the claim in regard to the new liability created u/s 92-A(1), could be imposed. Hence Section 92A(3) does not deal with any matter relating to mode of proof of negligence within the tort system."

12. In coming to the above conclusion this Court relied on the decision of the Supreme Court in Gujarat State Road Transport Corporation, Ahmedabad Vs. Ramanbhai Prabhatbhai and Another, . The above decision also would clearly show that no fault liability u/s 140 being one created by the statute outside the law of tort, there is no necessity to enter into an enquiry as to who was the wrong doer. In Dwarika Vs. Biso and Others, Madhya Pradesh High Court has also taken the view that the scope of enquiry u/s 92A is very much limited. It was held that at that stage the Tribunal was not bound to enquire into or record a finding as to sustainability or otherwise of the objections raised by the insurance company that it was not liable at all. If the factum of the accident itself was denied then it may be open to the Tribunal to hold a summary enquiry to form an opinion whether the accident did take place and whether the vehicle in question was involved in the accident or not. If from the evidence collected in such summary enquiry and other material available on record, the Tribunal is prima facie satisfied that the accident did take place and the vehicle in question was involved therein it was held that the Tribunal have jurisdiction to make an interim award u/s 92A fixing joint and several liability on the insurer along with the

insured. After trying claim on merits while expressing a final opinion and passing an award u/s 110B of the Act, the Tribunal would not be bound by the opinion recorded earlier at the time of making the interim award u/s 92A. Even though the above decision of the Madhya Pradesh High Court was rendered earlier, the dictum laid down therein is the same which we get from Shivaji Dayanu Patil and another Vs. Smt. Vatschala Uttam More, .

13. Now we will examine the decision of this Court in (1995) 2 KLT 260 on which substantial reliance was placed by the appellant. From the narration of the facts in the above case it is seen that interim award u/s 140 was granted in the above case after a full trial on the basis of which the Tribunal entered a finding that the accident happened due to the negligence of the owner/ driver of one of the vehicle involved in the accident and who himself is a claimant. The Division Bench therefore considered the question of joint and several liability between the claimant who was the owner/driver of one of the vehicle along with the driver and owner of the second vehicle involved in the accident. The Division Bench had no occasion to consider the question of the scope of enquiry to be made by the Tribunal at the stage of granting an award u/s 140 as was considered by the Supreme Court. Therefore we have to understand the decision of the Division Bench in the facts of that case cannot be taken that the Division Bench has laid down a dictum that even at the time of granting an award u/s 140 an enquiry into the question as to whether there was negligence on the part of the claimant was to be made in view of the clear exposition of law by the Apex Court in Shivaji Dayanu Patil and another Vs. Smt. Vatschala Uttam More, .

14. In the light of the above discussion, we are inclined to take the view that there is no merit in the contentions raised by the appellant/insurance company against the interim award passed by the Tribunal u/s 140. Appeal therefore fails and it stands dismissed.