
(1993) 09 AP CK 0001
In the Andhra Pradesh High Court
Case No : L.P.A. No. 192 of 1993

United India Insurance Co. Ltd.

APPELLANT

Vs

C.D. Munirathanam Reddi and Another

RESPONDENT

Date of Decision : 15-09-1993

Acts Referred:

Motor Vehicles Act, 1988 — Section 110A, 92A, 95(1)(b), 95(5), 96

Citation : (1994) 1 ACC 314 : (1994) ACJ 1074

Hon'ble Judges : P. Ramakrishnam Raju, J;G. Radhakrishna Rao, J

Bench : Division Bench

Advocate : E. Dharma Rao, for the Appellant; C. Sadasiva Reddy and R.V. Chalapathy, for the Respondent

Final Decision : Dismissed

Judgement

G. Radhakrishna Rao, J.—This Letters Patent Appeal has been preferred by the appellant insurance company having been aggrieved by the judgment dated 17.6.1993 passed by a learned single Judge of this court (S. Dasaratharama Reddy, J.) in C.M.A. No. 1644 of 1991.

2. In an accident which took place on 17.9.1984, the claimant received injuries which ultimately resulted in amputation of her leg. She filed two applications, one u/s 92-A of the Motor Vehicles Act and the other u/s 110-A claiming compensation. The Motor Accidents Claims Tribunal, Chittoor, after considering the entire material on record and the evidence adduced by both the parties, found that the claimant is entitled to compensation for a total sum of Rs. 24,950/- to be recovered from the owner and dismissed the claim as against the insurance company, the appellant herein. Having been aggrieved by the said judgment of the Tribunal, the owner of the vehicle preferred an appeal. The appeal was allowed in part confirming the compensation granted by the Tribunal, but a change was effected as regards the liability. The learned single Judge, on appeal, found that the appellant and the 2nd respondent, (i.e., the owner and the insurance company) are jointly and severally liable to pay an amount of Rs.

7,500/- u/s 92-A of the Motor Vehicles Act to the injured. As against the said order of the learned single Judge, this L.P.A. is preferred by the insurance company.

3. The amendment to Section 92-A of the Motor Vehicles Act came into force with effect from October, 1982 and the accident in question took place on 17.9.1984, i.e., subsequent to the coming into force of the amendment. As per the amendment, as the claimant is an injured person, he is entitled to Rs. 7,500/- u/s 92-A of the Act. The contention that has been advanced by the learned counsel for the insurance company is that as the claimant is only a gratuitous passenger, he is not entitled to recover any compensation from the insurance company since the policy does not cover risk in the case of death of or injury to a gratuitous passenger. A learned single Judge while construing Sections 92-A, 92-B (3), 92-E, 93(ba), 95(1)(b), 96, 110-A and 110-B of the Motor Vehicles Act, in the case of K. Ramulu and Others Vs. Shaik Khaja and Others,), found that a person who travelled on hire or reward is entitled to recover the amount from the insurance company also. In this connection it is useful to extract Section 92-A of the Act, which reads as follows:

Liability to pay compensation in certain cases on the principle of no fault.-

(1) Where the 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 fifteen thousand rupees and the amount of compensation payable under that Sub-section in respect of the permanent disablement of any person shall be a fixed sum of seven thousand five hundred 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.

Thus, on a reading of the above section, it is seen that the liability has been fixed on the owner/owners and nowhere the liability has been fixed on the insurance

company. Section 93(ba) shows that the word "liability", wherever used in relation to the death of or bodily injury to any person, includes liability in respect thereof u/s 92-A also. The legislature, having incorporated Section 92-A and Section 93(ba), ought to have included "no fault liability" u/s 95 of the Act. Because of the non-inclusion of "no fault liability" in Section 95 of the Motor Vehicles Act, the insurance company claims that it is not liable to pay any amount in the case of a claim which arose u/s 92-A, i.e., for no fault liability.

4. The scheme of the Act and the intention of the legislature is to provide instantaneous payment of compensation to the injured person or to the legal representatives of the deceased, as the case may be, the moment when it has been found that injury or death has occurred on account of the use of the motor vehicle even without going into the question whether the accident was due to the wrongful act of the driver or not. The enquiry as contemplated u/s 92-A of the Act is summary in nature. When the claims are made on the basis of both under "fault" and "no fault" liability", the claim in respect of "no fault liability" has to be first disposed of as per Section 92-B (2) of the Act. The fault on the part of the owner or the driver of the vehicle or any other person need not be established to claim compensation u/s 92-A of the Act. Even if there is fault on the part of the victim, it is not a ground to defeat the claim u/s 92-A of the Act. When the legislature has gone to the extent of giving the benefit even to a person who is at fault, it cannot be contended by the insurance company that it is not liable to pay the compensation payable by the owner under "no fault liability". The non-inclusion of "no fault liability" in Section 95 of the Act does not mean that the insurance company can raise the plea that it is not liable for the compensation payable u/s 92-A especially when there is a composite policy or comprehensive policy. Since the intention of the legislature is immediate payment of compensation to the victim without any enquiry and in case where there is a comprehensive or composite policy available, both the owner as well as the insurance company are liable to pay the compensation awarded u/s 92-A.

5. Since no fault liability has not been included in Section 95 of the Act, in case where the fault has not been proved by the claimant or where the policy does not cover a situation which has been brought out in an enquiry u/s 110-A of the Act, the insurance company can claim reimbursement from the owner to the extent of the amount that has been paid under "no fault liability" as the amount paid by the insurance company to the victim under "no fault liability" cannot be taken back from the person or persons to whom that amount has been paid. This view has been taken duly taking into account the object of providing compensation under "no fault liability". The third parties are not expected to know the terms of the policy, or whether there is a valid policy existing as on the date of the accident. When instantaneous payment is required u/s 92-A and when a policy is a comprehensive policy and valid and subsisting as on the date of the accident and when the owner is liable to pay the compensation, the insurance company is also liable for no fault as Section 93(ba) of the Act defines that "liability" includes "no fault liability" u/s 92-A of the Act. The third party should not suffer in such a

situation and the compensation that is payable must be paid by both the parties. The amount that has been paid u/s 92-A of the Act has to be deducted from the amount of compensation granted u/s 110-A in event of a claim having been made by the victim u/s 110-A also. If it has been found during enquiry u/s 110-A that the policy does not cover the particular situation and that the insurance company is not liable for the amount that has been paid u/s 92-A of the Act, the same can be recovered from the owner or owners as the owner/ owners and the insurance company are the contracting parties. But the third party should not suffer while getting the statutory relief of instantaneous payment on account of the tussle between the owner and the insurance company about the interpretation of the terms of the policy. When the Act contemplates that an insurance policy has to be taken and when that policy is either comprehensive or composite one and when the legislature has fastened liability u/s 92-A of the Act, the liability of the insurance company so far as the amount payable under "no fault liability" also should have been included in Section 95 of the Act. If it has been included so in Section 95, it will be binding on the insurance company irrespective of the inclusion in the policy. In these circumstances, we suggest that an amendment is required to Section 95 of the Act by including the liability of the insurance company so far as the amount under "no fault liability" is concerned also.

6. A Full Bench of the Karnataka High Court in M/s. United India Insurance Company, Bangalore Vs. Imman Aminasab Nadaf and others, , took the view that whether the compensation is claimed under "no fault liability" of the owner of the vehicle u/s 92-A of the Act or on the ground of "fault" u/s 110-A, as far as the insurer is concerned, its liability, in view of Section 95(5), is to indemnify the insured only to the extent such liability is undertaken or covered by the policy and not beyond that. We are in entire agreement with that proposition. However, we have expressed our view that the insurer is not entitled to raise pleas available u/s 95(1)(b) or Section 96. When a third party is entitled to get relief even without proof, the person, who is not covered by the policy, must be treated on the same par in so far as "no fault liability" is concerned if the death or injury was resulted by the fault or no fault of the driver of the vehicle since the intention of the legislature is to provide a minimum amount of compensation immediately.

7. In the result, the L.P.A. is dismissed. No costs.