
(1990) 01 KAR CK 0056
In the Karnataka High Court

United India Insurance Co. Ltd.

APPELLANT

Vs

Lakshmi

RESPONDENT

Date of Decision : 17-01-1990

Acts Referred:

Motor Vehicles Act, 1939 — Section 110 A, 92 A

Citation : (1990) 2 ACC 470

Hon'ble Judges : Rama Jois, J;Rajasekhara Murthy, J

Bench : Division Bench

Judgement

Rama Jois, J.—These two appeals are presented by the United India Insurance Company Limited against the same interim award made by the Motor Accidents claims Tribunal, Bangalore Rural District.

2. They have come up for orders. By consent of both the Counsel. they are taken up for final hearing and are being disposed of by this order.

3. In these two appeals, the following important question of law arises for consideration, namely,

Whether the period of limitation of six months prescribed under Sub-section (3) of Section 110-A of the Motor Vehicles Act, 1939 ("the Act" for short) applies to an application claiming compensation based on "no fault liability" u/s 92-A of the Act also?

4. Brief facts of the case are these:-The accident which gave rise to the claim petitions, occurred on 10th May, 1988. Two claim petitions u/s 110-A of the Motor Vehicles Act, 1939 ("the Act" for short) claiming compensation for the death of the deceased person, who was the husband of the respondent in M.F.A.No.1504 of 1989 and son of the respondent in M.F.A. No.1506 of 1989, were presented claiming compensation for the death of the deceased on the basis of fault. They were presented on 15-11-1988. Along with those claim petitions, respondents also filed two applications claiming compensation of Rs. 15.000/- on the basis of "no fault liability" as provided u/s 92-A of the Act. The

Tribunal took up for consideration the claim based on "no fault liability" u/s 92-A of the Act. Two objections were raised on behalf of the appellants to the said claim. They were: (1) According to Sub-section (3) of Section 110-A of the Act, the application should have been presented within 6 months from the date of accident. There was a delay of 5 days in filing the objections petitions and therefore unless the delay in filing the petitions was condoned, no compensation could be awarded on the said applications; (2) At the time of the accident, the vehicle bearing Registration No. ADC 437 was standing on the left side of the road and the deceased person, who was driving the vehicle bearing Registration No. MEL 7004 in a rash and negligent manner dashed against the stationary vehicle and therefore the Insurance Company was not liable to pay compensation, either on the ground of "fault" or on the basis of no fault", as the vehicle bearing No. ADC 437 which was insured with the appellant Insurance Company was not in use at the time of the accident, in that it was not a moving vehicle.

5. As far as the first question is concerned the Tribunal proceeded on the basis that there was no period of limitation fixed under the Act for making an application claiming compensation u/s 92-A of the Act and therefore the objection of the appellants that the claim application was barred by time was untenable.

6. As far as the second question is concerned, the plea of the claimants had been that the vehicle bearing No. ADC 437 was also being driven rashly and negligently at the time of the accident. The Tribunal considered the plea of both the parties and held that the accident was admitted, the existence of insurance was not disputed and the deceased, who was driving the vehicle bearing No. ADC 437 was a third party and therefore the Insurance Company was liable to pay compensation u/s 92-A of the Act Questioning the correctness of the findings recorded by the Tribunal on both the issues, the Insurance Company has presented these appeals.

7. With reference to the first question, the learned Counsel for the appellants submitted as follows:

Under the provisions of the Act as originally stood i.e., prior to introduction of Chapter VII-A, the jurisdiction of the claims Tribunal for awarding compensation in respect of death or bodily injury or to property arising out of motor accident was conferred u/s 110 of the ACT. The procedure for filing an application before the claims Tribunal constituted u/s 110 of the Act was incorporated in Section 110-A of the Act and under Sub-section (3) of Section 110-A, a period of limitation of 6 months from the date of the accident, for filing the applications was prescribed. By the Amending Act of 1982, Chapter VII-A consisting of Sections 92-A to 92-E were introduced. These provisions were introduced into the Act for creating a "no fault liability" to the extent of Rs. 15, 000/- in the case of death and Rs.7, 500/- in respect of injuries resulting in permanent disablement. The provision relating to procedure for filing application in respect

of compensation which could be claimed u/s 92-A of the Act was introduced in the said Chapter. However, consequential changes necessary after introduction of Sections 92-A to 92-E were made in Chapter VII. Certain amendments were made to Section 110-A, by which it was provided that the compensation which could be claimed u/s 92-A of the Act could be claimed by means of an application made u/s 110-A of the Act. Sub-section (3) of Section 110-A of the Act which prescribed the period of the months was amended so as to cover applications claiming compensation on ground of fault as also application for compensation on ground of "no fault". These provisions have been totally lost sight of by the Tribunal.

8. The learned Counsel for the respondents, however, strenuously contended that the limitation of six months prescribed under Sub-section (3) of Section 110-A of the Act was applicable only to an application made on ground of "fault" u/s 110-A and was inapplicable to an application claiming compensation u/s 92-A of the Act. In support of the above submission, the learned Counsel relied on a judgment of the High Court of Bombay (Aurangabad Bench) in *Nazir Ahmed v. Shri Kishan Nand Lal Bhardia*. The relevant portion of the judgment which contained in para-3, reads:

3. Now, nowhere in the relevant provisions of the Act does one find any period of limitation for filing an application u/s 92-A of the Act. There is undisputedly a period of six months prescribed for an application u/s 110-A of the Act. The present was, however not an application u/s 110-A but an application only u/s 92-A of the Act. The Tribunal, therefore, remained under an erroneous impression that the six months" period prescribed for an application u/s 110-A of the Act would be or is a period of limitation also for an application u/s 92-A. Of course, the object of enacting Section 92-A by the Amending Act of 1982 was to speed up relief measures in respect of certain class of accidents and irrespective of whether the accident was the result of a fault on the part of one or the other party. Section 92-A speaks of liability to pay compensation on the principle of no fault. Learned Counsel appearing for the respondents was also unable to invite this Court's attention to any specific provision in the Act prescribing a period of limitation for an application u/s 92-A. There thus being no period of limitation involved, there cannot be any question of delay in the filing of the application beyond any statutory period of limitation, much less would a question of condoning or not condoning delay in that behalf arise or survive. The petitioner's application u/s 92-A was, therefore, required to be heard and decided on its own merits and in accordance with law.

The above decision does support the contention urged by the learned Counsel for the respondents.

9. The learned Counsel for the appellants, however, submitted that in the aforesaid decision, the wordings of Sub-section (3) of Section 110-A of the Act as it existed prior to Amending Act of 1982 and the wordings of Sub-section (3) of Section 110-A of the Act after its amendment, by Amending Act of 1982 has not

been noticed. The learned Counsel submitted that a comparison of the said Section before amendment and after amendment would unmistakably indicate that the amendment to Sub-section (3) was made only with the object of applying the period of limitation, not only to claim petitions made u/s 110-A claiming compensation on the ground of "fault" but also to applications which can be made only u/s 110-A claiming compensation u/s 92-A on the ground of "no fault". The learned Counsel submitted that if the intention of the Legislature was not to prescribe any period of limitation for claims u/s 92-A of the Act, the amendment was unnecessary. In view of the rival contentions, it is necessary to make a brief survey of the relevant provisions of the Act before and after the amendment.

10. The provisions relating to compulsory insurance of motor vehicles prior to the Amendment, which were based upon the liability of the owner of the vehicle arising out of fault of the owner or his employee, which remain intact after the amendments are that the Act makes it mandatory for every person using a motor vehicle in a public place except as a passenger to take a policy of insurance complying with the requirements of the various provisions in Chapter VIII of the Act. Section 95 of the Act prescribes the requirements of policies and limits of liability. Inter alia, it provides that the insurer issuing the policy must insure the person or classes of persons specified in the policy to the extent specified in Clauses (a) to (d) of Sub-section (2) of the said provision. Sub-section (5) of Section 95 limits the liability of insurer to the extent it is covered by the policy. Section 96 of the Act imposes a duty on insurers to satisfy the judgments against persons insured in respect of third party risks, and Sub-section (2) thereof specifies the defences available to an insurer for avoiding the liability. Section 103 of the Act prescribes the effect of Certificate of Insurance. Section 110 of the Act provides for the Constitution of the claims Tribunal and Section 110-A of the Act prescribes the procedure for making an application for compensation before the Tribunal. Section 110-B of the Act provides for the making of the award by the claims Tribunal. According to the above provision, if an application u/s 110-A of the Act is made before the claims Tribunal constituted u/s 110 of the Act, enquiry has to be held by the Tribunal and an award has to be made in favour of the claimant, if he were to make out a case for the award of compensation. Section 110-C of the Act prescribes the procedure and powers of claims Tribunal.

Under the Scheme of the above provisions compensation could be claimed by an insured person or by the legal representatives in the case of a person dying as a result of the accident, on the ground that the accident was as a result of rash and negligent driving of the vehicle by its driver. On proving that it was so only, the claimant would become entitled to the compensation. As regards the Insurance Company, the liability to pay compensation would arise only if the Insurance Company had issued a policy which was in force on the date of accident and if under the policy the particular risk was covered. These were the salient aspects of the provisions of the Act prior to its amendment by Act 47 of

1982. It may be seen from the provisions of the Act that a claim for awarding compensation u/s 110-A of the Act, was the fault of the owner of the vehicle or his employee -driver of the vehicle and if on evidence the Tribunal in a given case were to come to the conclusion that the accident did not occur as a result of rash and negligent driving of the vehicle by the driver, neither the owner - the insured person - was liable to pay compensation nor the Insurance Company.

11. By the Amending Act of 1982, Chapter VII-A consisting of Sections 92A, 92B, 92C, 92D and 92E of the Act were introduced into the Act. These provisions came into force with effect from 1-10-1982. It is well known that traditionally action in tort is founded upon wrong by the opposite party. The provisions of the Act providing for compensation as they stood prior to amendment were also based upon that principle. But in the provisions introduced into the Act by Amending Act of 1982, a new doctrine called "No Fault Liability" was introduced. Such a step was taken by the Parliament, having due regard to the enormous amount of increase in movement of motor vehicles on roads and the attendant risk to the passengers as also to the pedestrians and those moving in other vehicles, as a result of accidents. The Parliament considered that a separate and independent liability to pay compensation to the victims of the accident in two categories of cases, namely, death and permanent disablement should be fixed and it was with this object, Sections 92-A to 92-E were introduced and certain consequential amendments were also made to the preexisting Sections. The relevant provisions of Act as also the new Sections introduced in 1982 together with consequential amendments effected to the pre-existing provisions, to the extent necessary for considering the question arising for consideration in this case are these:

92-A. 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 disability 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.

92-B. Provisions as to other right to claim compensation for death or permanent disablement:-- (1) The right to claim compensation u/s 92-A in respect of death or permanent disablement of any person shall be in addition to any other right (here after in this Section referred to as the right on the principle of fault) to claim compensation in respect thereof under any other provision of this Act or of any other law for the time being in force.

(2) A claim for compensation u/s 92-A 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 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 place.

(3) Notwithstanding anything contained in Sub-section (1), where in respect of the death or permanent disablement of any person, the person liable to pay compensation u/s 92-A is also liable to pay compensation in accordance with the right on the principle of fault, the person so liable shall pay the first mentioned compensation and--

(a) if the amount of the first mentioned compensation is less than the amount of the second mentioned compensation, shall be liable to pay (in addition to the first-mentioned compensation) only so much of the second mentioned compensation as is equal to the amount by which it exceeds the first-mentioned compensation;

(b) if the amount of the first mentioned compensation is equal to or less than the amount of the second mentioned compensation, he shall not be liable to pay the second mentioned compensation.

xxx xxx xxx 92-D. Applicability of Chapter to certain claims under Act 8 of 1923:-- The provisions of this Chapter shall also apply in relation to any claim for compensation in respect of death or permanent disablement of any person under the Workmen's Compensation Act, 1923 (8 of 1923) resulting from an accident of the nature referred to in Sub-section (1) of Section 92-A and for this purpose, the said provisions shall, with necessary modifications, be deemed to form part of that Act.

92-E. Overriding effect; The provisions of this Chapter shall have effect notwithstanding anything contained in any other provision of this Act or of any other law for the time being in force.

12. Relevant provisions of Chapter VIII as amended by Act No. 47 of 1982, in

order to give effect to Sections 92-A to 92-E, inserted by the same amendment are:

I. Section 93. Definitions:-In this Chapter-

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

The above definition was added to make it clear that liability to pay compensation as existed prior to the amendment of 1982 under the provisions of Chapter VIII would include the no fault liability created u/s 92-A.

II. Section 110 as amended reads:

110. claims Tribunals:-(1) A State Government may, by notification in the Official Gazette, constitute one or more Motor Accidents claims Tribunals (hereinafter referred to as claims Tribunals) for such area as may be specified in the notification for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of, or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising or both:

Provided that where such claim includes a claim for compensation in respect of damage to property exceeding rupees two thousand, the claimant may, at his option, refer the claim to a Civil Court for adjudication, and where a reference is so made, the claims Tribunal shall have no jurisdiction to entertain any question relating to such claim.

Explanation:- For the removal of doubts, it is hereby declared that the expression "claims for compensation in respect of accidents involving the death of. or bodily injury to. persons arising out of the use of motor vehicles "includes claims for compensation u/s 92-A.

The Explanation (underlined) was inserted into the Section, to make it clear that the functions of the claims Tribunal required to be constituted u/s 110, empowered to adjudicate upon claims under Chapter VIII, based on fault liability, would include the power to adjudicate upon claims based on no fault liability.

III. Section 110-A and Section 110-B are the crucial provisions. Section 110-A as amended (the amended portions are underlined) and in particular Sub-section (3) thereof as it existed earlier to the amendment and after amendment reads:

110-A. Application for compensation:

(1) An application for compensation arising out of an accident of the nature specified in Sub-section (1) of Section 110 may be made-

(a) by the person who has sustained the injury; or

(aa) by the owner of the property; or

(b) where the death has resulted from the accident (by all or any of the legal representatives) of the deceased; or

(c) by any agent duly authorised by the person injured (or all or any of the legal representatives) of the deceased, as the case may be:

Provided that where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined, shall be impleaded as respondents to the application.

(2) Every application under Sub-section (1) shall be made to the claims Tribunal having jurisdiction over the area in which the accident occurred, and shall be in such form and shall contain such particulars as may be prescribed.

Provided that where any claim for compensation u/s 92A is made in such application, the application shall contain a separate statement to the effect immediately before the signature of the applicant.

Prior to Amendment

(3) No application for compensation under this Section shall be entertained unless it is made within six months of the occurrence of the accident:

Provided that the claims Tribunal may entertain the application after the expiry of the said period of six months if it is satisfied that the applicant was prevented by sufficient cause from making the application in time.

After Amendment

(3) No application for such compensation shall be entertained unless it is made within six months of the occurrence of the accident.

Provided that the claims Tribunal may entertain the application after the expiry of the said period of six months if it is satisfied that the applicant was prevented by sufficient cause from making the application in time.

Section 110-B as amended (amended portion is underlined) reads:

110-B. Award of the claims Tribunal:- On receipt of an application for compensation made u/s 110-A, the claims Tribunal shall, after giving the parties an opportunity of being heard hold an inquiry into the claim or as the case may be, each of the claims an, subject to the provisions of Section 109-B, may make an award determining the amount of compensation which appears to it to be just and specifying the person or persons to whom compensation shall be paid; and in making the award the claims Tribunal shall specify the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them, as the case may be:

Provided that where such application makes a claim for compensation u/s 92-A in

respect of the death or permanent disablement of any person, such claim and any other claim (whether made in such application or otherwise) for compensation in respect of such death or permanent disablement shall be disposed of in accordance with the provisions of Chapter VII -A.

13. A careful analysis of the above provisions would show that prior to the Amending Act of 1982 an application claiming compensation could be made only on the basis of Fault Liability u/s 110-A of the Act. Sub-section (3) thereof, prescribed a period of limitation of six months. After the introduction of Section 92- A to 92-E in Chapter VII -A of the Act, no separate provision has been made for making an application for claiming compensation exclusively falling u/s 92-A of the Act. The changes made in Section 110-A of the Act by Act 47 of 1982, which are the underlined portions of the Section; would show that an application claiming compensation in respect of the death or bodily injury arising out of a motor accident on the ground of "fault", as well as an application claiming compensation in respect of the death or permanent disablement arising as a result of a motor accident based on the basis of "no fault" could be and has to be made u/s 110-A of the Act only. This position is made abundantly clear from the proviso to Sub-section (2) of Section 110-A, which expressly provides that, where any claim for compensation u/s 92-A is made in an application, shall contain a separate statement to that effect immediately before the signature of the applicant. Opening words of Section 110-A would indicate that an application for compensation arising out of an accident of the nature specified in Sub-section (1) of Section 110 could be made under that Section. Section 110 provides for the Constitution of claims Tribunal for the purpose of adjudicating the claims for compensation for death or bodily injury to persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both. There has been no change in the sub-section. But the Explanation added by the 1982 amendment below Section 110 is very significant. This provides, that for the removal of doubts, it is thereby declared that the expression claims for compensation in respect of accidents involving the death of, or bodily injury to, persons arising out of the use of motor vehicles includes claims or compensation u/s 92-A." This Explanation which was introduced simultaneous with the introduction of Sections 92-A to 92-E in Chapter VII-A clearly indicates that an application for compensation which could be made u/s 110-A could be made not only on the basis of " fault" but also on the basis of "no fault liability" created u/s 92-A. The language of Section 110-B added by Amending ActNo.47 of 1982 makes it further clear that a claim based upon no fault liability created u/s 92-A also has to be made by making an application u/s 110-A. And when so made such a claim has to be disposed of by applying the provisions incorporated in Chapter VII-A, namely, Section 92-A which creates no fault liability and other Sections of the Chapter intended to give effect to that liability.

14. Having regard to the language of Section 110-A, there can be one single application in which compensation both on ground of fault as well as on the ground of no fault could be incorporated. There is also no bar to make two

independent applications, one claiming compensation on the ground of fault and another claiming compensation on the ground of no fault, if a party so chooses. However, what is evident from the provisions of the Act is that the only Section which prescribes the procedure for making the application is Section 110-A. Therefore in respect of the same motor accident, a claim to the extent of Rs. 15,000/- based on No Fault Liability u/s 92-A as also the compensation based on the basis of Fault could be made in a single or two applications, made u/s 110-A of the Act. Learned Counsel pointed out that after insertion of Section 92-A into the Act, Rule 364-A was introduced into the Rules prescribing a form for claiming compensation u/s 92-A. There can be no doubt that the application, having regard to the only provision in the Act for making an application, which is Section 110-A, has to be made u/s 110-A only.

15. Whether two applications are made, one incorporating compensation on the ground of fault and another incorporating the claim for compensation on the ground of no fault falling u/s 92-A, or a single application is made making both the claims it makes no difference as far as the limitation is concerned. Sub-section (3) of Section 110-A, as it originally stood prior to the amendment, provided that no application for compensation under "this Section" shall be entertained, unless it is made within 6 months of the occurrence of the accident and the proviso conferred power on the Tribunal to condone the delay in presenting the application for sufficient cause. If the intention of the Legislature was that the limitation prescribed under Sub-section (3) of Section 110-A would apply only to an application filed under that Section claiming compensation on the ground of fault and not to an application claiming compensation on the ground of no fault liability u/s 92-A, the legislature would have said so. On the other hand, the amendment made to the first part of the Sub-section would show that the intention of the Legislature was to apply the period of limitation prescribed there under to compensation which could be claimed before the Tribunal constituted u/s 110, by making application u/s 110-A, both on ground of fault liability and also on ground of no fault liability. The amendment made to Sub-section (3) is by way of altering the words "for compensation under this Section" to "for such compensation". In our opinion, the change was intended to make the Sub-section applicable to both types of compensation, for, the words "such compensation" takes in compensation based on "fault liability" as also compensation based on "no fault liability. This position stands reiterated by the proviso inserted below Section 110-A (2) and the proviso inserted below Section 110-B, as discussed earlier. Before the learned Judge of the Bombay High Court, the amendment made to Sub-section (3) as also the explanation introduced to Section 110 and the insertion of the proviso below Section 110(2) and the proviso below Section 110-B, have not been brought to his notice and there is no consideration of the effect of these changes. Therefore, in our opinion, the period of limitation prescribed under Sub-section (3) of Section 110-A, as amended by Amending Act 1982 applies to an application claiming compensation either on the ground of fault or on the ground of no fault or both and we respectfully disagree

with the view taken by the learned Judge of the Bombay High Court.

16. For the aforesaid reasons, we answer the first question as follows:

The period of limitation of six months prescribed under Sub-section (3) of Section 110-A of the Motor Vehicles Act, 1939 applies to an application claiming compensation based on "no fault liability" u/s 92-A of the Act also.

17. As seen from the facts stated earlier, there has been 5 days delay in presenting the petitions. Having answered the question regarding the limitation in favour of the appellants on the facts and circumstances of the case, we are of the view that the reason furnished by the claimants in the application for condonation of delay was quite sufficient to condone the small delay of 5 days in presenting the application. Therefore, we proceed to condone the said delay in presenting the applications.

18. Now coming to the second, question, the learned Counsel for the appellants strenuously contended that in view of the Full Bench Judgment in M/s. United India Insurance Company, Bangalore Vs. Imman Aminasab Nadaf and others, the Tribunal could not have directed the appellants to pay compensation payable u/s 92-A of the Act without a prima facie finding that the risk was covered by the appellant. The learned Counsel relying on the said judgment, submitted that in view of the pleadings of the appellants that the vehicle as standing on the left side of the road and according to the appellants it was not in use and therefore even the provisions of Section 92-A was not attracted, it was obligatory on the part of the Tribunal to have recorded a finding that the risk was covered, as a condition precedent for making an award of compensation u/s 92-A. It is also the pica of the learned Counsel for the appellants that actually the accident occurred on account of the rash and negligent driving of the vehicle by the deceased, which was a moving vehicle and not on account of the rash and negligent driving of the vehicle No. ADC 437 as it was stationary.

19. Sri B.M. Patil, learned Counsel for the respondent-claimants, however, submitted that in the claim petition the specific plea of the claimants was that the accident occurred on account of the rash and negligent driving of the vehicle No. ADC 437. He further submitted that the Tribunal had, prima facie, come to the conclusion that the risk was covered by the Insurance Policy. He invited our attention to the relevant position of the order of the Tribunal. It reads:-

Accident is admitted. Death is proved. P.M. report is produced. Use of motor vehicles causing the accident is also admitted. Copy of the F.I.R. shows that the deceased himself was responsible for the accident. But here there is collusion. This driver also dies in the accident could not have gone to complaint to the Police, the driver of the other lorry also survived when files the complaint would not plead himself guilty of the accident. So that copy of the F.I.R. would not come in the way of the interim claim of the petitioners. Insurance is admitted. The other lorry becomes the third party to the deceased driver.

As pointed out by the Full Bench in paragraph-20 of the Judgment, while passing an award of compensation claiming u/s 92-A, it is the duty of the Court to prima facie find out whether the liability is covered by the insurance policy after making a summary enquiry and only thereafter it could make an award subject to making appropriate directions in the final award regarding payment of the said amount by the owner of the vehicle to the Insurance Company, a final finding to the effect that the Insurance Company was not liable to pay were to be recorded.

20. In the present case, we are satisfied that the Tribunal has applied its mind and has prima facie and after summary enquiry come to the conclusion that the risk is covered by the insurance policy and therefore there is no ground to interfere with the award of compensation u/s 92-A of the Act. We further make it clear that it would be open for the Insurance Company at the trial of the main petitions to prove that the risk is not covered by the policy.

21. The learned Counsel for the appellants submitted that the appellants have raised another objection in the objection statement filed before the Tribunal to the effect that the petitions were bad for non-joinder of necessary parties, namely, the owner and the insurer of the vehicle bearing Registration No. MEL 7004. We make it clear that if such an objection has been raised, the Tribunal shall consider the said objection and if it comes to the conclusion that the owner of the said vehicle and the insurer were necessary parties, it shall cause service of notice on the said persons before proceeding further with the case.

22. In the result, we make the following order: