

Indra Bahadur Verma Vs Purshottam Das Nishad and Another

Court: Allahabad High Court

Date of Decision: July 24, 1991

Acts Referred: Constitution of India, 1950 " Article 278, 298, 372
Motor Vehicles Act, 1988 " Section 173

Citation: (1992) ACJ 758 : (1991) 2 AWC 97

Hon'ble Judges: B.L. Yadav, J

Bench: Single Bench

Advocate: V.N. Agarwal, for the Appellant;

Final Decision: Dismissed

Judgement

B.L. Yadav, J.

Indra Bahadur Verma, the owner of scooter No. UMV 4454, who is alleged to have caused the death of Sanichari Devi on 11.6.1988 and against whom the Motor Accidents Claims Tribunal by its award dated 14.2.1991 has awarded a sum of Rs. 15,000/- has

preferred this appeal u/s 173 of the Motor Vehicles Act, 1988 (for short "the Act").

2. The factual matrix of the case is that under Sections 92-A, 110 and 110-A of the Motor Vehicles Act, 1939, a claim petition was filed by

Purshottam Das Nishad, the husband and Rambhawati, the daughter of the deceased Sanichari Devi. An F.I.R. was lodged in that connection by

one Srikant, the grandson of the deceased, alleging that on 11.6.1988 at about 7.35 p.m. the deceased was going to market to make some

purchases and at a distance of 100 metres from the house the appellant was going on scooter and by that scooter the deceased met with an

accident. In other words, the deceased being crushed down with the scooter became unconscious. Later on she was taken to hospital, where she

died. In support of the claim petition three witnesses, namely, PW 1 Purshottam, husband of the deceased, Srikant, the informant, PW 2 and

Rajesh Prasad, PW 3, were examined, who supported the case set up in the claim petition. Relying upon the statements of PWs 1 to 3, award has

been given under the provisions of Section 92-A of the Motor Vehicles Act, 1939 (old Act) where the liability is without proof of negligence or

without fault.

3. Learned counsel for the appellant urged that the appellant has denied the case set up in the claim petition to the effect that neither any

occurrence has taken place nor the appellant had been on scooter on that date, rather his scooter was parked in the house and the deceased did

not meet with any accident, rather on account of some enmity the claim petition has been filed against the appellant. However, the defence version

set up by the appellant has been disbelieved under the award. Learned counsel for the appellant vehemently urged that the finding recorded by the

Claims Tribunal was not based on appraisal of evidence on record in as much as the discrepancies in the statement of PW 1 Purshottam have been

ignored. Learned counsel emphasised that PW 1 Purshottam could not say correctly as to on which part of the body Sanichari Devi received

injury. Similarly, other irregularities were also pointed out in the statements of PWs 2 and 3. I have considered the irregularities pointed out in the

statements of PWs (the true copies of statements have been filed as Annexures 2, 3 and 4 to the stay application) but as a whole the same leads to

conclusion that the deceased met with accident with the scooter of the appellant and she died as a result of the accident in the hospital. Learned

counsel for the appellant emphasised that before one could be punished, it must be proved that there was negligence and fault. In that connection

he placed reliance on Minu B. Mehta v. Balkrishna Ramchandra Nayan 1977 ACJ 118

4. Heard learned counsel for the appellant. The case of Minu B. Mehta v. Balkrishna Ramchandra Nayan 1977 ACJ 118 was a case u/s 110-A of

the Act. Compensation was claimed u/s 110-A and the claim was not allowed u/s 92-A where it was obligatory to prove negligence. Whereas for

a claim to be allowed u/s 92-A (3) of the Act the fault or negligence is not required to be proved and as a result thereof a sum of Rs. 15,000/- has

been awarded. Consequently, the case relied upon by the learned counsel for the appellant is not relevant.

5. Reliance was also placed on Oriental Insurance Company Ltd., Haldwani Vs. Dhanram Singh and others, That was also a case for

compensation u/s 110-A where the plea was negligence without proof. In that connection the initial burden was on the claimant and that was not

discharged. In the instant case the award has been made and compensation has been awarded u/s 92-A of the Act. Hence, that case is also of no

assistance to the appellant.

6. It was also urged by the learned counsel for the appellant that Rambhawati was the married daughter and she was not entitled to claim

compensation u/s 92-A of the Act. Suffice it to say that when the compensation is awarded it is not necessary that it must be paid to minor

daughters only.

7. What is to be noticed is that Chapter VII-A (new Chapter) of the Motor Vehicles Act provides liability without fault in certain cases. This

Chapter was added by the Indian Parliament Act No. 47 of 1982. Under this Chapter Sections 92-A to 92-E have been added. Section 92-A

provides provision where the liability on the owner of the vehicle is fixed for payment of compensation to the dependant of the deceased

irrespective of the fault of the owner. This is deviation from the earlier provision contained under the Act. Section 92-A (3) provides that 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 claim has been made, was due to any wrongful act, neglect or fault of the owner of the vehicle. The aforesaid provisions u/s 92-A are

relevant to determine the liability of the owner of the vehicle, the appellant. Learned counsel for the appellant made submission that in case no fault

of the owner was proved no compensation shall be payable to the claimant, whereas the provisions of Section 92-A are quite emphatic and self-

explanatory. They require no interpretation in as much as in so many cases even though the claimant is not able to prove the fault of the owner in

the accident, but nevertheless the consequences remain that the deceased died of the accident occurred by the vehicle of the owner. In such a

situation the legislature considered it proper to add Section 92-A.

8. What is significant is that the provision of Section 92-A was contradictory to other provisions where liability can be fixed on the owner only

when the fault was proved. To avoid doubt the legislature was conscious in adding the provisions of Section 92-E which have got the overriding

effect. The provisions of Section 92-E are set out below:

92-E. Overriding effect.-The provisions of the Chapter shall have effect notwithstanding anything contained in any other provision of the Act or any

other law for the time being in force.

The aforesaid Section 92-E has been designedly worded in such a language which is of very wide sweep. It is the cardinal principle of

interpretation that while providing non obstinate clause the draftsman has always primarily kept in his mind those provisions which have been in the

way. For such matters the maxim non obstinate aliquot statuto in contra rum, which means that the provision shall have effect even though there

may be some other directory provision to the contrary which is applicable.

9. The non obstinate clause used under Chapter VII-A was added and this leads to the conclusion that the provisions of Section 92-A would

prevail in spite of anything to the contrary. Even though there may not be positive inconsistency, but nevertheless the provisions contained in the

non obstinate clause shall prevail.

10. Apart from Sections 92-A and 92-E of the Act the non obstinate clause is to be found in other provisions, i.e., Article 298 of the Constitution

which opens with the non obstinate clause, which Article 372 of the Constitution is subject to the Article 278 and Article 278 opens with the non

obstinate clause. The result is that Article 278 overrides Article 372. [See The South India Corporation (P) Ltd. Vs. The Secretary, Board of

Revenue Trivandrum and Another, .

11. What is to be noticed is that the legislature has added Chapter VII-A containing Section 92-A providing compensation to the claimants even

though no fault has been proved on findings recorded by the Claims Tribunal. In other words, even though no fault of the owner was proved, he

was bound to pay compensation.

12. In view of the discussions made above and applying the Aristotalian and Baconian reasoning, the present appeal lacks merit and the same is

dismissed.