

(1991) 10 MP CK 0012

Madhya Pradesh High Court (Gwalior Bench)

Case No: M.A. No. 137 of 1991

National Insurance Co. Ltd.

APPELLANT

Vs

Ashish and Others

RESPONDENT

Date of Decision: Oct. 26, 1991

Acts Referred:

- Motor Vehicles Act, 1939 - Section 92A

Citation: (1992) 2 ACC 528 : (1992) ACJ 532

Hon'ble Judges: T.N. Singh, J

Bench: Single Bench

Advocate: B.N. Malhotra, for the Appellant;

Final Decision: Allowed

Judgement

T.N. Singh, J.

Perused office note that respondent Nos. 4 and 5 could not be served. This appeal is against an order of interim compensation and it is conceded fairly by Mr. Malhotra that the order has been passed without hearing the owner and the driver while u/s 92-A of the Motor Vehicles Act, 1939, itself the order is to be passed against the "owner" and the insurer is only required to meet the liability of the owner. Evidently, therefore, without hearing in this appeal the owner, Chunnilal Namdeo, impleaded as respondent No. 4, no order could be passed.

2. On the other hand, I am fully satisfied that the impugned order cannot be maintained because without awaiting service on the owner and driver that order has been passed and that fact is mentioned in the order itself.

3. For the short reason aforesaid the impugned order is set aside, but I direct, however, that the amount of Rs. 7,500/-deposited under this Court's order dated 30.7.1991 shall not be disbursed to any party and not even returned to the appellant insurer until a fresh order is passed disposing of properly in accordance with law the prayer for interim compensation of the claimants. In that regard the only legal

position to be made clear is that the trial court is to be satisfied about service on the owner because that is a mandatory requirement contemplated under Sub-section (1) of Section 92-A. He is to be heard if service on him effected. In any case he is to be served and an order may be passed even if he does not appear after service. The claimants have been duly served, but have not appeared to oppose the appeal. In any case when fresh order is passed they shall also be heard.