Shankarbhai and Others Vs Abdul Aziz and Another

M.A. No. 264 of 1990

Court: Madhya Pradesh High Court (Indore Bench)

Date of Decision: Oct. 26, 1990

Acts Referred:
Motor Vehicles Act, 1939 â€" Section 92A

Citation: (1990) MPJR 781 : (1991) 36 MPLJ 736 : (1991) MPLJ 736

Hon'ble Judges: A.G. Qureshi, J

Bench: Single Bench

Advocate: Upadhyaya, for the Appellant; S.K. Vyas, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

A.G. Qureshi, J.

This order shall govern the decision of M. A. No. 264 of 1990 (Shankar Bhai and 6 others v. Abdul Ajiz and Anr.) and M. A. No. 265 of 1990

(Shantilal and two others v. Abdul Ajiz and Anr.) filed by the appellants aggrieved by the order of the Additional Motor Accidents Claims

Tribunal, Indore dated 21-124989 in claim case No. 21 of 1988 and 28 of 1988. In both the cases the claimants have filed their claim petition

before the lower Tribunal for claiming compensation against the respondents on the basis of an accident occurred on 25-11-1987, alleging that the

truck belonging to respondent No. 2 and insured by respondent No. 3, dashed against the matador in which the claimants were travelling. The

claim petitions are still pending for decision.

During the pendency of the petitions the appellants filed applications u/s 92-A of the Motor Vehicles Act for interim award. The learned lower

Tribunal was, however, of the view that the allegations of the claimants have been denied by the respondents and there is a counter allegation that

he driver of the matador in which the claimants were travelling actually dashed against the truck belonging to the respondent No. 1 and insured with

respondent No. 2. The learned Tribunal was of the opinion that it has yet to be decided as to which vehicle dashed against the other vehicle and

the owner and the Insurance Co. of the vehicle in which the claimants were travelling has not been made a party. Therefore, no interim award u/s

92-A of the Motor Vehicles Act, 1939 can be given. The appellants are aggrieved by the aforesaid orders.

According to Shri Upadhyaya, learned counsel for the appellants in both the appeals, when a claimant has been held entitled to get compensation

on the ground of no fault liability as envisaged in Section 92-A of the Motor Vehicles Act, then the question of deciding the responsibility of the

accident would not arise. It is also not necessary for the claimants to implead the owner and driver of the other vehicle as party because the

appellants have a choice to make a claim against any of the parties.

On the other hand Shri Vyas, learned counsel for the Insurance Company has argued that a person has a choice to file a claim against any of the

vehicle involved in the accident provided they are joint tort feasors. Here, in the instant case, the respondent No. 2 denies the claim of being in any

way a joint tort feasor. Therefore, the principle of filing a claim against any of the joint tort feasors is not applicable in the instant case.

In the instant case we are concerned only with the order of interim relief and for that purpose we have to take into consideration the language of

Section 92-A of the Motor Vehicles Act, 1939 (which was applicable at the time of the impugned order). Section 92-A reads as under : -

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 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.

From the language of the aforesaid section it is clear that when an accident takes place out of the use of one vehicle or more than one vehicle, then

the owner of the vehicle if it is one vehicle and if more than one vehicle is involved then the owners of the vehicles so involved are jointly and

severally liable to pay compensation in respect of death or permanent disablement as a result of the accident. As such what is important is the

involvement of the vehicle in the accident and if the vehicles involved in the accident are more than one, then the onwers of such vehicles have been

held jointly and severally liable to pay compensation to the claimant in respect of death or permanent disablement.

As regards the involvement of the vehicle, a Division Bench of this Court had an opportunity to consider that question in respect of no fault liability

in the case of Mangilal v. M.P.S.R.T.C 1988 (I) MPWN 204 wherein it was held that when death or disablement arises out of the use of a motor

vehicle even though the negligence is not proved, then also the claimant shall be entitled to the no fault liability in view of the provisions contained in

Section 92-A. In that case the owner of the bus was held liable to pay compensation although at the time of the accident the bus was stationary

and the deceased fell down while climbing up the ladder attached to the bus. The court negativing the argument advanced by the learned counsel

for the owner that the bus being not in motion even no fault liability cannot be fastened on the owner of the vehicle, held that the word "used" in

respect of a no fault liability shall be construed to mean that if in any way the vehicle is involved in the accident causing the death or disablement of

a person the owner of such vehicle shall be liable for compensation on the basis of no fault liability. Therefore, as regards the no fault liability the

owners of the matador in which the appellants were travelling and the vehicle owned by the respondent No. 1 shall both be jointly and severally

liable to pay the amount of compensation on account of the no fault liability to the claimants on account of either death or disability.

This leads to a question whether the non-impleading of the owner and driver or the Insurance Company of the other vehicle will reduce the extent

of the leglal liability of the owner and Insurance Co. of the vehicle against whom the claim has been filed. According to the settled position, the

provisions of the Motor Vehicles Act in respect of claiming compensation have been designed to provide a cheap and speedy remedy to the

victims of the accident and their dependants. Therefore, a sufferer is not expected to analyse the extent of tort committed on him and claim

compensation proportionately from each of the vehicle owners. Therefore, as far as the claimant is concerned he can claim compensation from any

one of them.

A Division Bench of this Court had an occasion to consider this question and has held in Nandlal alias Asadamal v. M.P.S.R. T. Corporation 1980

(2) MPWN 99, that where the drivers of two buses are responsible for the accident they were both joint tort feasors and the claimant can claim

compensation from one of them alone. Therefore, the learned Tribunal was clearly in error in holding that unless the owner of the vehicle in which

the claimants were travelling is not made a party the application u/s 92-A cannot be decided. The claimants have chosen to file a claim against the

respondents only and prima facie it is not disputed that the vehicle of the respondent No. 1 was involved in the accident. As discussed above the

mere involvement in the accident is sufficient. There is no question of negligence on the part of the driver of the vehicle involved in the accident.

Therefore, the learned Tribunal has clearly viewed this provision of law of no fault liability from a wrong angle when it says that it has yet to

determine as to who was at fault. In the case of no fault liability it is sufficient to show that the vehicle, against the owners of which a claim has been

filed, was involved in the accident.

In the result both the appeals are allowed. The impugned orders are set aside. The learned Tribunal is directed to consider the applications filed by

the claimants u/s 92-A on merits and dispose it off in accordance with the provisions contained in Section 92-A of the Motor Vehicles Act

expeditiously. In the circumstances of the case there shall be no order as to costs.