

Almora Magnesite Limited Vs. Smt. Deoki Devi and ors.

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Court : Allahabad

Decided On : Oct-16-1995

Reported in : 1996ACJ978; [1996]85CompCas621(All)

Judge : N.L. Ganguly, J.

Acts : [Motor Vehicles Act, 1939](#) - Sections 92A

Appeal No. : First Appeal from Order Nos. 199, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 218, 641 an

Appellant : Almora Magnesite Limited

Respondent : Smt. Deoki Devi and ors.

Advocate for Pet/Ap. : R. Dobhal, Adv.

Disposition : Appeal dismissed

Judgement :

N.L. Ganguly, J.

1. These first appeals from orders are directed against the interim award of the Motor Accidents Claims Tribunal awarding an amount of Rs. 25,000 as interim compensation to the heirs and le'gal representatives of the victims in the accident. Learned counsel for the appellant submitted that the order awarding the interim

compensation is not warranted according to law. He submitted that the vehicle in which the victims were travelling was insured and the court below has wrongly awarded the amounts to be paid by the appellant-company to the owner of the vehicle. Learned counsel for the appellant submits that it is the sole liability of the insurance company to pay the compensation. He also submitted that the court below without considering this aspect in a proper perspective repelled the submission of the appellant.

2. In support of the submissions, learned counsel for the appellant placed reliance on the judgments in *Oriental Fire and General Insurance Co. Ltd. v. Beasa Devi* [1985] ACJ 1 ; AIR 1985 P & H 96 ; [1986] 59 Comp Cas 643. The arguments of the appellants in the said case is that the liability for payment of compensation under Section 92A of the Motor Vehicles Act, 1959, was solely on the insurance company provided it is proved that the vehicle in question by which the accident took place was insured. The Division Bench of the Punjab and Haryana High Court repelled this submission and held that the insurance company is also liable as the owner of the vehicle. This does not cast exclusive liability on the insurance company. The Division Bench was of the view that the provisions of Section 92A of the Act were beneficial legislation and the interpretation of the law should be made keeping in view the intention of the legislation while interpreting the said provision. The other case relied on by learned counsel for the appellant is [1986] ACJ 120 ; [1987] 62 Comp Cas 298 (AP) (*New India Assurance Co. Ltd. v. Chotinabee*) whose proposition of law has been stated by the Andhra Pradesh High Court which does not render any assistance in this case. The decision in *G. Prabhakar v. Thummanapalli Brahmaiah* [1986] ACJ 196 ; [1987] 62 Comp Cas 710 by the Andhra Pradesh High Court and the number of case law considered in the said judgment is not of any assistance to the submissions of learned counsel for the appellant. In none of the rulings has it been said that the liability is exclusively on the insurance company.

3. The learned appellant cited two decisions of a single judge of our court in *Sant Ram v. Surya Pal* [1986] ACJ 202 ; [1987] 62 Comp Cas 87 which is a case under Section 92A of the 1939 Act. The court has considered the no-fault liability in a case of injury and interim award was awarded in that case. This court, by a single

judge decision, held that, while awarding interim compensation, it was necessary for the court to have recorded some finding in respect of the nature of injury, whether it was a permanent disability requiring minimum payment of interim compensation. Thus, this case is also of no assistance to the decision of the present appeal as all these are cases of death in the accident.

4. The other decision of our High Court is Satyadeo Singh v. Vidyawati Dem [1989] ACJ. 1110. The learned single judge was considering the law of payment of interim compensation under Section 92A of the [Motor Vehicles Act, 1939](#). The court held in the said decision that before passing an order for payment of interim compensation, it was necessary for the court/Tribunal to prima facie enquire and record the finding about the liability of the insurance company for payment of compensation..Learned counsel for the appellant referred to the finding recorded by the Tribunal in the present case that the number of persons carried in the vehicle at the time of accident was about 36-57 persons. If the vehicle which met with the accident carried so many persons at the time of accident prima facie, the Tribunal below enquired and was satisfied about the liability of the owner of the vehicle. It cannot be said that the Tribunal was not considering the liability of the insurance company in respect of payment of the compensation. Thus, the submission of learned counsel for the appellant relying on the decision aforementioned is also of no assistance in the present case. Learned counsel for the appellant also relied on a decision in Oriental Fire and General Insurance Co. Ltd. v. Beasa Devi [1985] ACJ 1 ; AIR 1985.P & H 96 ; [1986] 59 Comp Cas 643. This decision under the old Act also says that the Tribunal is entitled to make an award under Section 92A as soon as it comes to the conclusion that the vehicle of the owner which was involved in the accident was insured, the correctness of the other objections by the owner or the insurance company should be decided thereafter. It was not required to decide the liability of either at this stage. This decision of the Division Bench of the Punjab and Haryana High Court does not lay down the law that while passing an order for payment of interim compensation, detailed enquiry and findings are required to be made by the Tribunal. Prima facie the Tribunal was satisfied in the present case that the vehicle was insured but the conditions of the insurance policy were not complied with. 36-37 persons were travelling in the vehicle at the time of accident which is beyond the prescribed limit

of persons to be carried in such vehicle. Thus, this decision is also of no assistance to the appellant, but may help the case of the respondents in certain aspects.

5. Another decision in Mohammad Iqbal v. Bhimaiah, AIR 1985 Kar 171 ; [1986] 60 Comp Cas 1095, where the Karnataka High Court was of the view that, according to the provisions of Sections 92A, 110CC of the [Motor Vehicles Act, 1939](#), the liability of the owner alone is not to be enquired into and the insurance company can be made liable for compensation under Section 92A.

6. After considering the arguments of counsel for the appellant, ShriDobhal, I am not impressed with the submissions advanced by him. Theinterim compensation has been granted after finding that the vehicle atthe time of accident although insured, but the number of persons carriedat the time of accident was 36-37, much beyond the permissible limits.Thus, the Tribunal was justified in awarding the interim compensationpayable by the appellant, owner of the vehicle. I do not consider thatthese appeals are worth admitting. The appeals are dismissed summarily.The amount of Rs. 12,500 deposited by the appellant in each appeal asper the requirements under Section 173 of the Act be remitted withinthree weeks from today with the Tribunal, which may be adjusted towardsthe balance amount payable as interim compensation payable to the claimants.

7. The findings recorded above will not prejudice the case of the appellant in the final disposal of the claim petition.

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