

Lata Jain Vs. Sham Lal

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Court : Rajasthan

Decided On : Apr-02-1986

Reported in : I(1987)ACC210

Judge : Dwarka Prasad, C.J.

Appellant : Lata Jain

Respondent : Sham Lal

Judgement :

Dwarka Prasad, C.J.

1. The contention of the learned Counsel for the appellant is that the liability for payment of the amount of Award passed by the Motor Accident Claims Tribunal under Section 92-A of the Motor Vehicles Act rested upon the Insurance Company and not upon the owner of the vehicle. In the present case the Tribunal has passed an interim Award under Section 92-A of the Motor Vehicles Act against the owner, driver of the vehicle and the Insurance Company, and they have been held to be jointly and severally liable for payment of the aforesaid amount. The contention of the learned Counsel for the appellant is that under Sub-section (1) of Section 96 the Insurance Company has to make payment of the amount of Award to the person entitled to the benefit under the said Award. Reliance has been placed upon a decision of a learned Single Judge of this Court in Kanhaiya Lai v. Daya Ram and Ors. 1986 RLR P. 72 following the decision of the Punjab and

Haryana High Court in Oriental Fire & General Insurance Co. Ltd Chandigarh v. Smt. Beena Devi and Ors. . The decision in Kanhaiya Lai's case (1) has simply followed the decision of the Punjab and Haryana High Court in Oriental Fire and General Insurance Company's case and as no reasons have been given the decision in Kanhaiya Lai's case cannot be considered as a binding precedent. In the Oriental Fire and General Insurance Company's case the Punjab and Haryana High Court held that if an award is against the insured holding him liable to pay certain amount as compensation with regard to the claim arising out of an accident, with his motor vehicle, then the liability of the insurer is absolute and the insurer cannot question whether the amount of Award was as a result of fault liability or otherwise. On the above premise it was further held that the insurer was liable to satisfy the compensation claim arising out of the accident with the insured vehicle to the extent of the amount assured under the policy.

2. Section 92-A, which has been newly added provide for liability for payment of compensation on the principle of no fault and runs 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 owner of the vehicle shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provision 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. Thus, reading provisions of Section 92-A together with the provisions of Sections 85 and 96 of the Motor Vehicles Act there can be no doubt that the owner of the vehicle is liable for payment of compensation even under Section 92-A and as such the Award shall have to be passed, both against the owner and if the Insurance Company is party to the proceedings, then against the owner and the

Insurance Company jointly. However, liability to satisfy the compensation claim to the extent of the sum assured by the insurance policy is fastened upon the insurer in view of the provisions of Sections 95 and 96 of the Motor Vehicles Act. Thus, if it is admitted by the owner of the vehicle that his vehicle was involved in the accident or from the material adduced on the record the Tribunal positively holds that the vehicle in question was involved in the accident and if the Tribunal prima facie comes to the conclusion that the vehicle was insured then without enquiring into the correctness of other objections that may be raised by the Insurance Company the Tribunal would be justified to pass an Award under Section 92-A against the insured and the insurer and requires Insurance Company to make payment of the amount to the claimants to the extent of the amount assured of the insurance policy. The objections that may be raised either by the Insurance Company or by the owner of the vehicle would be enquired into after the interim Award under Section 92-A is passed. It may be pointed out that Section 92-B provides that the interim Award passed under Section 92-A would be in addition to the other claim of compensation in respect of the death or permanent disablement of any person as a result of the accident. In view of the provisions contained in Section 92-A, 92-B, 95 and 96 of the Motor Vehicles Act and upon correct reading of the decision of Punjab and Haryana High Court in Oriental Fire and General Insurance Company's case the interim Award passed under Section 92-A by the Tribunal against the owner of the vehicle and the insurer is perfectly a legal Award. However, it would be open to the appellant to draw the attention of the Motor Accident Claims Tribunal to the fact that the Insurance Company was liable to satisfy the interim Award passed by it under Section 92-A to the extent of the amount assured under the policy of insurance.

4. In the result, the appeal is dismissed subject to the observations made above.