

## **National Insurance Co. Ltd. vs Jethu Ram And Ors. on 22 July, 1998**

**Equivalent citations: II(1998)ACC612, 1998ACJ921, (1998)3GLR2261, (1999)9SCC62, AIRONLINE 1998 SC 105, 1999 (9) SCC 62, (1998) 3 GUJ LR 2261, (1998) 2 GUJ LH 916, (2000) 2 BLJ 944, (1999) 1 MAH LR 252, (1998) 2 CUR LJ (CIV&CRI) 699, (1998) 2 ACC 612, (1998) 2 TAC 805, (1998) 2 ACJ 921, 1999 SCC (CRI) 141, (1998) 2 CURLJ(CCR) 699, (1995) 2 CURCC 458, (1995) 2 SCJ 681, (1995) 3 SCR 126 (SC), 1995 SCC (SUPP) 2 294, (1996) 3 LANDLR 384, (1997) 10 JT 445 (SC), (1998) 33 ALL LR 120**

**Author: A.P. Misra**

**Bench: A.P. Misra**

JUDGMENT

A.P. Misra, J.

1. These appeals by the insurer are directed against the judgment of the Himachal Pradesh High Court in an appeal under the Motor Vehicles Act, 1939. The Motor Accidents Claims Tribunal after perusing the materials produced before it came to the conclusion that under the policy of insurance the insurer is not liable to pay the compensation in question and finally had awarded compensation to the claimants to be recovered from the owner of the vehicle. But during the pendency of the proceeding by virtue of the statutory liability accruing under Section 92-A of the Motor Vehicles Act, 1939 payments have been made by the insurer to the extent of Rs. 15,000/- in case of death and to the extent of Rs. 7,500/- in case of permanent disablement. Considering the question that whether for this amount insurer would be at all liable in view of the finding of the Tribunal that the insurer has no liability under the policy of insurance to pay the compensation in question the Tribunal came to hold that the said amount as provided under Chapter VII-A more particularly under Section 92-A of the Motor Vehicles Act has to be borne by the insurer and the owner will not be liable to pay the said amount. In coming to the aforesaid conclusion the Tribunal relied upon the provisions of clauses 3(a) and (b) of Section 92-B of the Act. Against the decision of the Tribunal when the matter was carried in appeal to the High Court, the High Court by the impugned judgment came to hold that the liability arising under Section 92-A of the Motor Vehicles Act, 1939 is independent of liability to pay compensation under Section 110-A and, therefore, such liability arising out of Section 92-A has to be borne by the insurer. Mr. Sharma, the learned Counsel appearing for the appellant, contended that the provisions of Sections 92-A and 92-B have been thoroughly misread by the Tribunal as well as by the High Court and under those provisions there is no liability on the insurer

to pay the compensation accruing under the aforesaid provisions, once it is ultimately held that under the policy of insurance the insurer has no liability to pay the compensation in question. To appreciate the contention of the learned Counsel it will be appropriate to extract the provisions of Sections 92-A and 92-B of the Act:

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.

92-B. Provisions as to other right to claim compensation for death or permanent disablement.-(1) The right to claim compensation under Section 92-A in respect of death or permanent disablement of any person shall be in addition to any other right (hereafter in this section referred to as the right on the principle of fault) to claim compensation in respect thereof under any other provision of this Act or of any other law for the time being in force.

(2) A claim for compensation under Section 92-A in respect of death or permanent disablement of any person shall be disposed of as expeditiously as possible and where compensation is claimed in respect of such death or permanent disablement under Section 92-A and also in pursuance of any right on the principle of fault, the claim for compensation under Section 92-A shall be disposed of as aforesaid in the first place.

(3) Notwithstanding anything contained in Sub-section (1), where in respect of the death or permanent disablement of any person, the person liable to pay compensation under Section 92-A is

also liable to pay compensation in accordance with the right on the principle of fault, the person so liable shall pay the first-mentioned compensation, and-

(a) if the amount of the first-mentioned compensation is less than the amount of the second-mentioned compensation, he shall be liable to pay (in addition to the first-mentioned compensation) only so much of the second-mentioned compensation as is equal to the amount by which it exceeds the first-mentioned compensation;

(b) if the amount of the first-mentioned compensation is equal to or less (Sic. more) than the amount of the second-mentioned compensation, he shall not be liable to pay the second-mentioned compensation.

2. On a close scrutiny of the aforesaid provisions, we do not find anything contained therein which would suggest that the liability which accrues under the provisions of Section 92-A has to be borne by the insurer even if it is ultimately held that under the policy of insurance the insurer is not liable to pay the compensation in question. In our considered opinion the Tribunal and the High Court have misread the aforesaid provisions of the Motor Vehicles Act, In the aforesaid premises the impugned judgment of the Tribunal and High Court cannot be sustained so far as it relates to the liability of the insurer arising under Sections 92-A and 92-B of the Act. These appeals are allowed. The insurer having paid the amount under the aforesaid provisions is entitled to get it reimbursed from the owner.