Madhya Pradesh High Court
United India Insurance Co. Ltd. vs Smt. Rajadevi And Ors. on 8 April, 1991
Equivalent citations: 1993 76 CompCas 63 MP
Author: R Varma
Bench: R Varma
JUDGMENT R.K. Varma, J.

1. This is an appeal filed by the insurance company against the interim award dated March 8, 1990, passed by the Second Motor Accidents Claims Tribunal, Indore, in Claim Case No. 312 of 1987 on the principle of no-fault liability under the Motor Vehicles Act, 1939 (hereinafter referred to as " the Act"), directing payment of compensation of Rs. 15,000 to the claimant in respect of the death of the deceased, Gajraj, who died as a result of a motor accident which occurred on May 5. 1986, due to the running of the offending jeep, bearing registration No. MBI 7705 carrying the deceased into a ditch, while it was being driven on Udhyognagar--Nemawar Road over a culvert near Indore.

2. The claimants filed the claim petition under Section 110A of the Act and also filed an application under Section 92A of the Act for interim award based on no-fault principle. The appellant-insurance company which was joined as non-applicant No. 2 in the claim-petition filed a reply to the application resisting the claim for interim award on the ground that the insurance company was neither liable to cover the risk in respect of the passengers travelling in a private car, nor had it covered that risk in the insurance policy. It was also submitted in reply that the vehicle was at the time of the accident not being used for the purposes of the owner insured and, as such, the insurance company was not liable.

3. The appellant-insurance company, however, did not file the insurance policy before the Tribunal nor has it been filed it in this court. The learned Tribunal has, after considering the application for interim award and its reply, made an interim award for compensation of Rs. 15,000 to be paid to the claimants.

4. In this appeal against the said interim award, the only contention raised by the appellant-insurance company is that the learned Tribunal was not justified in making the interim award without deciding whether the insurance company was required to cover the risk of a passenger travelling in a private car as in the instant case. Learned counsel for the appellant has cited a decision of the Supreme Court in Pushpabai Parshottam Udeshi v. Ranjit Ginning and Pressing Co. P. Ltd. [1977] ACJ 343,; AIR 1977 SC 1735 to submit that, as per Section 95 of the Act, the risk of a passenger in, vehicle who is not carried for hire or reward is not required to be insured.

5. Learned counsel has further cited a Full Bench decisi9n of the Karnataka High Court in United India Insurance Co. Ltd. v. Immam Aminasab Nadaf [1990] 67 Comp Cas 287 ; [1990] ACJ 757, in support of his submission that the award directing payment of compensation under Section 92A of the Act could not be made against the insurance company without a summary enquiry and a finding that prima facie the risk giving rise to the claim is covered by the policy.

6. Learned counsel appearing for the respondent-claimants has, on the other hand, submitted that the appellant insurance company has not denied that the vehicle involved in the accident was insured and that, therefore, the Tribunal had jurisdiction to hold the insurance company jointly and severally liable with the owner of the vehicle for no fault liability under Section 92A of the Act, requiring the insurance company to pay the amount of interim award to the claimants forthwith, as has been held by this court in Dwarika v. Biso [1990] ACJ 283, on which learned counsel placed reliance. The said decision also further lays down that, at the stage of making the interim award, the Tribunal is not bound to enquire into or record a finding as to the sustainability or otherwise of the objection raised by the insurance company that it was not liable at all.

7. Thus, the view of the law taken by this court in the case of Dwarika's case [1990] ACJ 283, squarely meets the contentions of learned counsel for the appellant which must, therefore, be negatived.

8. Learned counsel for the appellant has also submitted that the compensation on the principle of no fault liability is awardable against the owner and not against the insurance company.

9. In reply to the above contention of learned counsel for the appellant that liability to pay compensation under Section 92A of the Act is of the insured-owner and not the insurer, learned counsel for the respondent has submitted that this contention of the appellant has no merit in view of the decision of this court in Shastri Brothers v. Parwatibai Jain (1988] ACJ 1091, which lays down by reference to the definition of the word 'liability' under Section 93(ba) and the words used in Sub-section (1) of Section 92A of the Act that the liability under Section 92A is that of the insurance company also. Another decision cited in this regard to the same effect is that of the High Court of Punjab and Haryana in Oriental Fire and General Insurance Co. Ltd. v. Beasa Devi [1985] ACJ 1 ; [1986] 59 Comp Cas 643.

10. In view of the discussion aforesaid, it seems that the interim award of compensation on the principle of no fault liability being in the nature of urgent partial relief to the claimant, the only material fact to be ascertained at the stage of making the interim award against the insur ance company by the Tribunal is whether or not the vehicle involved in the accident stood insured with the said insurance company. Once it is not disputed that the vehicle was so insured with the non-applicant insurance company, the Tribunal has the jurisdiction to make an interim award jointly against the insured and the insurer. Any legal objection or legal contention of the insurer based on facts to be gnquired into during the trial of the claim petition, cannot be allowed to hamper the making of an interim award by the Tribunal against the insurer. The legal questions raised in the objection of the insurance company which require proper material to be brought in evidence or sorting out the true legal position after in-depth consideration of the legal controversy raised by the parties, should properly be left to be decided at the conclusion of the case resulting in the final award and at that final stage equities can be worked out between the insured and the insurer and, in case the insurer is not found liable, it can be directed to be reimbursed by the insured, even in respect of the liability imposed on the insurer under the interim order. .

11. Having heard learned counsel for the parties, I am of the opinion that the impugned interim award cannot be said to be illegal or unreasonable so as to call for interference in this appeal. This appeal is, therefore, dismissed, being without merit.

12. There shall, however, be no order as to costs.