Madras High Court
K. Nandakumar vs Managing Director, Thanthai ... on 20 September, 1991
Equivalent citations: 1992 ACJ 1095
Author: A A Hadi
Bench: K Venkataswami, A A Hadi
JUDGMENT A. Abdul Hadi, J.

1. This civil miscellaneous appeal by the claimant is against the dismissal of his M.A.C.T.O.P. No. 773 of 1988 of the file of the Motor Accidents Claims Tribunal (Chief Judge of Court of Small Causes), Madras.

2. In the said claim petition the appellant-petitioner has claimed a compensation of Rs. 2,00,000/- on the ground that he was injured in the motor accident that took place on 15.11.1987 at 9.45 p.m. According to him, he was going on a motor cycle, east to west on the road in question and the respondent's bus TML 8774 came from the opposite direction and hit against his motor cycle and caused severe injuries to him and despite the fact that he had to take treatment as in-patient till 2.12.1987, he remained handicapped and disabled etc., the respondent Corporation denied that its driver was negligent and contended that only the appellant was negligent. Though the Tribunal observed that if compensation could be awarded to the claimant, it could be fixed at Rs. 50,900/-. It found that the accident took place only because of the negligence of the appellant himself and that the driver of the respondent Corporation was not at all negligent. It also found that there was criminal prosecution only against the appellant for his rash and negligent driving of his motor cycle and that in that criminal proceedings, the appellant admitted his guilt and paid penalty on being convicted. While so, the Tribunal has also observed that the appellant has abused the process of court by filing the present claim petition in the Tribunal, claiming compensation as if the respondent's vehicle's driver was negligent. That is why the Tribunal, while dismissing the petition, directed the petitioner to pay a sum of Rs. 1,000/- as costs.

3. Before us, the learned counsel for the appellant initially argued that the Tribunal erred in holding that the driver of the respondent's bus was not negligent. He also argued that the Tribunal should have at least granted compensation on the ground of no fault liability prescribed under Section 92-A of the Motor Vehicles Act (hereinafter referred to as 'the Act').

4. Regarding the negligence aspect, it is clear that the appellant is alone negligent in view of the fact that criminal prosecution was launched only against him and not against the driver of the respondent bus and the fact that he admitted his negligent and rash driving and accordingly he was convicted. Further, Exh. R-2 sketch that was filed in the above said criminal prosecution shows that the appellant's motor cycle hit the left rear side of the bus as (Sic.) was deposed by PW 1, the claimant. Further, we find from the evidence of PW 1 that even though he deposed that he had driving licence, he did not produce the same. Further, even though he deposed that his motor cycle was checked by the Motor Vehicles Inspector and there was documentary proof to that effect, he did not produce the same. Further, the appellant was coming from Taluk Office Road, which meets the main road, viz., Mount Road at Chinnamalai junction near Maraimalai Adigal Bridge (Saidapet) and the respondent's bus was coming from Parrys' Corner and as already stated the respondent's bus's

rear left side alone had been hit by the appellant's motor cycle. So, it is quite clear that the appellant alone was negligent.

5. However, the learned counsel for the appellant contended that the appellant should have been at least granted the abovesaid no fault liability compensation under Section 92-A of the Act. In this connection, he drew our attention to Section 92-A of the Act, particularly to Clause (4) therein. Section 92-A of the Act runs as follows:

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 subsection (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.

6. According to the learned counsel for the appellant, even where the injured-claimant alone is negligent, he should be at least given the above referred to minimum compensation fixed under Section 92-A of the Act. No doubt, on a reading of Clause (4) of Section 92-A of the Act, at the first blush it appears that even though the petitioner-claimant alone was negligent he could be awarded compensation under the said clause. On a deeper consideration, it is clear that in such a case, no compensation could be awarded to the claimant even under Section 92-A of the Act. Section 92-A of the Act was introduced only because there may be difficulty on the part of the claimants to prove the negligence of the driver of the offending vehicle. That is why, even though they are unable to prove the said negligence, Section 92-A of the Act was introduced to say that in the case of accident resulting in death or permanent disablement, the minimum compensation prescribed therein must be given despite the fact that the claimant was unable to prove the negligence of the driver of the offending vehicle. That is why the statement of Objects and Reasons of the Amending Act 47 of 1982, which introduced the above-said Section 92-A, states as follows:

Having regard to the nature of circumstances in which road accidents take place, in a number of cases it is difficult to secure adequate evidence to prove negligence. Further, in what are known as 'hit-and-run' accidents, by reason of the identity of the vehicle involved in the accident not being known, the persons affected cannot prefer any claims for compensation. It is, therefore, considered necessary to amend the Act suitably to secure strict enforcement of road safety measures and also to make, as a measure of social justice, suitable provisions, first, for compensation without proof of fault or negligence on the part of the owner or driver of the vehicle and, secondly, for compensation by way of solatium in cases in which the identity of the vehicle causing an accident is unknown.

(Emphasis supplied) Further, the Supreme Court has also observed in Gujarat State Road Transport Corpn. v. Ramanbhai Prabhatbhai, 1987 ACJ 561 (SC), while dealing with this no fault liability under Section 92-A of the Act, as follows:

Where a pedestrian without negligence on his part is injured or killed by a motorist, whether negligent or not, he or his legal representatives, as the case may be, should be entitled to recover the damages if the principle of social justice should have any meaning at all.

So, the Supreme Court has also made it clear that Section 92-A of the Act will apply only when there is no negligence on the part of the deceased or injured person, as the case may be. Further, it cannot be 'social justice' if a person is asked to pay compensation for another, when there is no fault on his part at all, but there is fault only on the part of the other person. That apart, the expression used even in Clause (4) of Section 92-A of the Act is "claim for compensation". A person can make a claim for compensation against another only when the other person is at fault and not when he alone is at fault. May be in view of certain circumstances, he is unable to prove the fault on the part of another person, from whom he claims compensation. Only in such a case Section 92-A of the Act steps in and says that despite the abovesaid fact of inability to prove the negligence of the other party, he will be entitled to a particular minimum compensation. Social justice is thereby sought to be rendered to him since in view of certain justifiable circumstances, he is only unable to prove the negligence on the part of the other person.

7. The Supreme Court in Minu B. Mehta v. Balkrishna Ramchandra Nayan 1977 ACJ 118 (SC), also observed as follows:

The right to receive compensation can only be against a person who is found to compensate due to the failure to perform a legal obligation. If a person is not liable legally he is under no duty to compensate anyone else. The Claims Tribunal is a Tribunal constituted by the State Government for expeditious disposal of the motor claims. The general law applicable is only common law and the law of Torts....

It may be that a person bent upon committing suicide may jump before a car in motion and thus get himself killed. We cannot perceive by what reasoning the owner of the car could be made liable.

Therefore, the only interpretation that could be put on Clause (4) of Section 92-A of the Act is that even where there is some negligence or default on the part of the person in respect of whose death or

permanent disablement the claim has been made, his claim for compensation from the other party, whose negligence he is unable to prove, shall not be defeated. In other words, the said Clause (4) only negates totally the concept of contributory negligence. We also find from Seth's Law relating to Traffic Offences and Accident Claims, 2nd Edn., at page 761 that a Division Bench of the Gauhati High Court in Samati Deb Barma v. State of Tripura 1987 ACJ 205 (Gauhati), has also observed likewise.

8. The Supreme Court in the above referred to Gujarat State Road Transport Corpn. v. Ramanbhai Prabhatbhai 1987 ACJ 561 (SC), further observed in relation to Section 92-A of the Act as follows:

That part of the Act is clearly a departure from the usual common law principle that a claimant should establish negligence on the part of the owner or driver of the motor vehicle before claiming any compensation for the death or permanent disablement caused on account of a motor vehicle accident. To that extent the substantive law of the country stands modified.

(Emphasis supplied) It must be noted here that only to the above extent the substantive law has been modified in this regard and not to the extent that even where the deceased or the injured, as the case may be, is negligent and not the other party, the former can claim compensation. Where the former is negligent, there is no scope at all for himself claiming any compensation from any other party for his own fault. That is the substantive law. That part of the substantive law has not at all been modified by Section 92-A of the Act. Such a modification cannot be the intention of the legislature since it is totally contrary to the general law of Torts and basic principle of law. An interpretation leading to absurdity has also to be avoided [Express Mills v. Municipal Committee, AIR 1958 SC 341].

9. No doubt, in the above referred to Gujarat State Road Transport Corpn. v. Ramanbhai Prabhatbhai 1987 ACJ 561 (SC), the Supreme Court has observed that the above referred to statement of law made in Minu B. Mehta v. Balkrishna Ramchandra Nayan 1977 ACJ 118 (SC), that procedural law alone has been prescribed under the Motor Vehicles Act for claiming compensation arising out of motor accidents and that the substantive law applicable is only common law and the law of Torts, is only obiter dicta. In other words, according to the above referred to Gujarat State Road Trans. Corpn. v. Ramanbhai Prabhatbhai 1987 ACJ 561 (SC), in some respects the substantive law also has been modified by the Motor Vehicles Act in claiming compensation arising out of motor accidents (vide paras 6 to 8 of the said judgment). But, the Supreme Court also pointed out in the above referred to Gujarat State Road Transport Corpn. v. Ramanbhai Prabhatbhai 1987 ACJ 561 (SC), that only to the extent the modification has been made, it can be given effect to. That is why in the passage already quoted from the said decision, it is stated that "to that extent the substantive law of the country stands modified."

10. However, the learned counsel for the appellant sought to cite several decisions of different High Courts, wherein, according to him, even where there is negligence on the part of the deceased victim in the case of fatal accidents or on the part of the injured claimant in other accidents compensation has been awarded under Section 92-A of the Act. The decisions cited by him are: Inja Venkatrao v. Sundara Barik 1991 ACJ 581 (Orissa); Vatschala Uttam More v. Shivaji Dnyanu Patil 1990 ACJ 1001

(Bombay); Krishna Pillai v. Jalal Ahamed 1989 ACJ 991 (Kerala); Manne Bala Saraswathi v. Pilchale Subbarao 1990 ACJ 518 (AP) and K.P. All v. M. Madhavan 1990 ACJ 373 (Kerala). Of these cases, we find that only in K.P. Ali v. M. Madhavan 1990 ACJ 373 (Kerala), compensation has been awarded under Section 92-A even though the deceased victim was himself solely negligent and there was no negligence on the part of the other party. We think, in the view we have taken and in the light of what the Supreme Court has observed in Gujarat State Road Trans. Corpn. v. Ramanbhai Prabhatbhai 1987 ACJ 561 (SC), referred to above, this Kerala decision, with due respect to the learned Judges who decided the said case, is not correct. In the other four decisions, when we went into the facts, we found that it could be said that the deceased or the injured, as the case may be, was only contributorily negligent and not solely negligent. In other words, those are cases where it could be said that both the parties were negligent. In such cases, Section 92-A of the Act could no doubt be invoked, as we have stated already.

11. In the result, the appeal is dismissed with costs.

K. Venkataswami, J.

Soon after the judgment was delivered, the learned counsel appearing for the appellant sought leave to appeal to Supreme Court. We are of the view that no substantial question of law arises out of the judgment to be decided by the Supreme Court. Hence, we decline the leave sought.