

K. NANDAKUMAR

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v.

MANAGING DIRECTOR, THANTHAI PERIYAR
TRANSPORT CORPN.

FEBRUARY 14, 1996

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[S.P. BHARUCHA AND S.B. MAJMUDAR, JJ.]

Motor Vehicles Act, 1939 :

S.92-A—Accident—Claim—On a plain reading of the provision there is no basis to hold that a claim could be made only if the person who had died or suffered permanent disablement had not been negligent.

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Gujarat State Road Transport Corporation, Ahmedabad v. Ramanbhai Prabhatibhai & Anr., [1987] 3 SCC 234 and Minu B. Mehta and Another v. Balkrishan Ramachandra Nayar and Another, [1977] 2 SCC 441, distinguished.

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3356 of 1992.

From the Judgment and Order dated 20.9.92 of the Madras High Court in C.M.A. No. 694 of 1991.

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V. Balachandran and V. Ramasubramaniam for the Appellants.

Mrs. Aruna Mathur and A. Mariarputham for the Respondents.

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The following Order of the Court was delivered :

The appellant was injured in a motor accident on 15th January, 1987. The accident took place by reason of a collision between the motor cycle which the appellant was riding and a bus belonging to the respondent. The appellant filed a claim petition before the Motor Accidents Claims Tribunal, Madras, seeking compensation from the respondent in the sum of Rs. 2,00,000. The respondent contested the claim and alleged that it was the appellant who had been negligent. The case of the respondent in this behalf was upheld by the Tribunal and by the High Court in appeal. This finding is not now contested.

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A That the appellant suffered permanent disability as a result of the accident was found and is not in issue. What is in issue in the finding of the High Court in the order under appeal that, even so, that appellant was not entitled to "no fault compensation" under Section 92-A of the Motor Vehicles Act, 1989. According to the High Court, the appellant was not entitled to this compensation because he was found to have been negligent.

B It relied upon the Statement of Objects and Reason of the Amending Act by reason of which Section 92-A in Chapter VII-A had been introduced, and the judgments of this Court in *Gujarat State Road Transport Corporation, Ahmedabad v. Ramanbhai Prabhatbhai & Anr.*, [1987] 3 SCC 234, and *Minu B. Mehta and Another v. Balkrishna Ramachandra Nayar and Another*,

C [1977] 2 SCC 441, to hold the provisions of that section 92-A apply only when there is not negligence on the part of the deceased or the injured person, as the case may be.

Section 92-A reads thus :

D "S. 92-A. Liability to pay compensation in certain cases on the principles of no fault. - (1) where the death or permanent disablement of any person has resulted from an accident arising out of the use of 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.

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(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.

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(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.

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(4) A claim for compensation under sub section (1) shall not be

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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".

By reason of sub-section (1) of Section 92-A, an absolute liability is cast upon the owner of a vehicle to pay compensation in respect of death or permanent disablement resulting from an accident arising out of its use. By reason of sub-section (3), the claimant is not required to plead or establish that the death or disablement was due to a wrongful act or neglect or default of the owner or any other person. Sub-section (4) is in two parts. The first part states that a claim for compensation under the Section is not defeated by reason of any wrongful act, neglect or default of the person who had died or suffered permanent disablement. The second part states that the quantum of compensation is not to be diminished even if the person who had died or suffered permanent disablement bore some responsibility for his death or disablement.

There was, therefore, on a plain reading of Section 92-A, particularly, the first part of sub-section (4) thereof, no basis for holding that a claim thereunder could be made only if the person who had died or suffered permanent disablement had not been negligent. The provision being clear, no external aid to its construction, such as the Statement of Objects and Reasons, was called for.

The Judgment in the case of *Ramanbhai Prabhatbhai* (supra) dealt principally with the question whether the brother of a person who had died in a motor accident could claim compensation under Section 110-D of the Motor Vehicles Act, 1939. In paragraph 10 of the judgment it was observed"

".....From the point of view of the pedestrian the roads of this country have been rendered by the use of the motor vehicles highly dangerous. 'Hit and run' cases where the drivers of the motor vehicles who have caused the accidents are not known are increasing in number. Where a pedestrian *without negligence on his part* is injured or killed by a motorist *whether negligently or not*, he or his legal representatives as the case may be should be entitled to

- A recover damages if the principle of *social justice* should have any meaning at all. In order to meet to some extent the responsibility of the society to the deaths and injuries caused in road accidents there has been a continuous agitation throughout the world to make the liability for damages arising out of motor vehicles accidents as a liability without fault. In order to meet the above social
- B demand on the recommendation of the Indian Law Commission Chapter VII-A was introduced in the Act. Section 92-A to 92-E of the Act are to be found in Chapter VII-A. Section 92-E of the Act provides that the provisions of Chapter VII-A shall have effect notwithstanding anything contained in any other provision of the
- C Act or of any other law for the time being in force. Section 22-A of the Act provides that 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
- D severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of the said section....."

The words emphasised by the High Court are underlined. This passage does not interpret Section 92-A; the sentence in which the underlined

E words occur is a statement of a principle of social justice.

The decision in the Case of *Minu B. Mehta & Anr. v. Balkrishna Ramchandra Nayar & Anr.*, (ibid) was rendered before Section 92-A was introduced into the statute and is of no assistance in its interpretation.

F The appellant is entitled to the benefit of the provisions of Section 92-A and to compensation in the sum of Rs. 7,500 as quantified therein for permanent disability.

G The appeal is allowed. The Judgment and order under appeal is set aside. The respondent shall pay to the appellant compensation in the sum of Rs. 7,500 with interest thereon at the rate of 12 per cent per annum from the date of the appellant's claim petition till payment or realisation.

There shall be no order as to costs.