

NATIONAL INSURANCE CO. LTD.

v.

MAM CHAND AND ANR.

FEBRUARY 1, 2007

[DR. ARIJIT PASAYAT AND S.H. KAPADIA, JJ.]

Motor Vehicles Act, 1988:

S. 166—Motor accident claim—Appeal—Parties for adjudication of liability—Claim petition by injured against insurer and owner of vehicle—Allowed by Tribunal and insurer held liable to pay claim—amount—Appeal by insurer challenging fixation of liability and arraying claimant and owner of vehicle as respondents—High Court holding that claimant need not be issued notice—Held, since the controversy in the matter is linked with entitlement of claimant to receive the amount from insurer, the claimant is required to be heard.

Respondent no. 1 filed a claim petition under s.166 of the Motor Vehicles Act, 1988 claiming compensation for the injuries said to have been caused to him by the motor cycle which was being driven by respondent no. 2. The Motor Accident Claims Tribunal held the appellant-insurer liable to pay the compensation. The appellant challenged fixation of the liability on it before the High Court, which held that even if the vehicle was not insured at the relevant time that was a dispute between the appellant and respondent no. 2 and there was no need to issue notice to the claimant. Aggrieved, the insurer filed the appeal.

Allowing the appeal, the Court

HELD: In the appeal before the High Court the appellant was questioning the fixation of liability so far as it is concerned. A specific stand has been taken that since vehicle was not the subject matter of insurance, the appellant cannot be saddled with any liability. This question is intimately linked with the entitlement of respondent no. 1 to receive the amount from the appellant. In that sense it cannot be said that respondent No. 1 was not required to be heard and the appeal was to be dismissed so far as he is concerned. Since respondent No. 1 is represented in this Court, without further notice let him

A appear before the High Court. [Paras 7-8] [113-D-F]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 412 of 2007.

From the interim Judgment and Order dated 25.10.2004 of the High Court of Punjab and Haryana at Chandigarh in F.A.O No. 1556/2004.

B Ravinder Singh, Sudhir Kumar Gupta, Anurag Pandey Mihir Kumar and Saumya Sharma for the Appellant.

Dr. Kailash Chand for the Respondents.

C The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Leave granted.

2. Challenge in this appeal is to the order passed by a Division Bench of the Punjab and Haryana High Court at Chandigarh. By the impugned order the High Court dismissed the appeal, so far as related to the respondent No.

D 1-Mam Chand and issued notice only to the driver cum owner i.e. respondent No. 2.

3. Background facts in a nutshell are as follows:

E Respondent No.1 (hereinafter referred to as the 'claimant') filed a claim petition in terms of Section 166 of the Motor Vehicles Act, 1988 (in short the 'Act') claiming compensation for alleged injuries caused to him by the offending vehicle on 31.10.2001. The allegation was that the respondent No. 2- Mohinder Pal i.e. the driver and owner of the offending vehicle, a motor cycle No. HR01C-1531 was driving the same in rash and negligent manner.

F The same dashed against the scooter which the claimant was riding causing multiple injuries. Adjudicating the claim petition the Motor Accident Claims Tribunal, Jagadhari (hereinafter referred to as the 'Tribunal') held that claimant respondent No. 1 was entitled to compensation of Rs.60,000/- with interest at the rate of 9% from the date of filing of the claim petition till realization and cost of the petition. The appellant was held to be liable to pay the compensation amount. Tribunal rejected the plea of the appellant that the

G offending vehicle was not the subject matter of insurance on the date of accident. The fixation of liability on the appellant was challenged by it by filing the appeal before the High Court. By the impugned order, the High Court held that even if a vehicle was not insured at the relevant time that was a dispute between the appellant and the respondent no. 2 and there was no need for issuing notice to respondent No. 1.

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4. In support of the appeal, learned counsel for the appellant submitted that challenge was to the fixation of liability so far as the appellant is concerned. In the absence of the claimant, dispute cannot be effectively adjudicated if the appeal is dismissed in the manner done. The result would be that the appellant would be required to pay to the respondent No. 1 even though it has no liability.

5. In response, learned counsel for the respondent No. 1 submitted that the appellant in any event has to pay the claimant and if really the vehicle was not the subject matter of insurance, it would be open to the appellant to recover the amount from the respondent no. 2 i.e. the driver cum owner of the offending vehicle. But it cannot avoid its liability to pay so far as the respondent no. 1 is concerned.

6. We find that the High Court has held that the only question related to the dispute between the appellant and the driver cum owner of the offending vehicle i.e. respondent No.2 and the respondent no. 1 was not concerned with the said dispute.

7. In the appeal before the High Court the appellant was questioning the fixation of liability so far as it is concerned. A specific stand has been taken that since vehicle was not the subject matter of insurance, it cannot be saddled with any liability. This question is intimately linked with the entitlement of the respondent no. 1 to receive the amount from the appellant. In that sense it cannot be said that the respondent No. 1 was not required to be heard and the appeal was to be dismissed so far as he is concerned.

8. Therefore, we set aside the order of the High Court. Since the respondent No. 1 is represented in this Court, without further notice let him appear before the High Court. The matter shall be taken in the High Court after a period of four weeks from today for disposal in accordance with law. The appeal has been admitted qua respondent No.2. Now respondent No.1 is to be also heard. It is to be further noted that the matter was directed to be placed before the Lok Adalat after completion of service. It shall be open to the parties to bring to the notice of the Court as to whether they want the matter to be settled by the Lok Adalat or not. About that aspect we expressed no opinion. Appeal is allowed to the aforesaid extent but without any orders as to costs.

R.P.

Appeal allowed.