
(2006) 04 CAL CK 0003
In the Calcutta High Court
Case No : F.M.A. No. 894 of 2004

Aloka Pusti (Bera) and Others

APPELLANT

Vs

National Insurance Co. Ltd. and Another

RESPONDENT

Date of Decision : 20-04-2006

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 163A

Citation : (2007) ACJ 494

Hon'ble Judges : Kalyan Jyoti Sengupta, J; Aniruddha Bose, J

Bench : Division Bench

Advocate : ;K.K. Das, for the Respondent

Judgement

Kalyan Jyoti Sengupta and Aniruddha Bose, JJ.—In spite of the second call, none appeared to press this appeal. We have heard the learned counsel for the respondent insurance company. This appeal is directed against a judgment and award dated 28.7.2004, passed by the learned Additional District Judge, First Court, Motor Accidents Claims Tribunal, Midnapore. By the judgment and award impugned, the learned Judge has allowed a claim u/s 140 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the said Act"), against the owner of the vehicle and not against the insurance company.

2. The grievance of the appellant in this case is that the award should have been directed against the insurance company as it appears from the memorandum of appeal. It is also the case of appellant that at the stage of hearing u/s 140 of the said Act, learned Judge should have confined his consideration to the quantum of interim compensation and ought not to have fixed up liability of making payment. The extent of liability of the insurance company should not have been gone into and this award should have been directed against the insurance company.

3. The learned Tribunal has on finding of fact come to the conclusion that the offending vehicle was used for hire and the insurance policy does not cover injury

caused to passengers if the vehicle is used for hire and reward and, as such, the insurance company has no liability whatsoever. This finding of fact is supported by evidence led before the learned Tribunal. It has been argued on behalf of the insurance company that at this stage, there is no scope for reappraisal of evidence. On an analysis of evidence, it has been submitted that the finding of fact cannot be held to be patently absurd or based on no evidence.

4. But we are of the view that the learned Tribunal at that stage should not have gone into the details and undertaken this exercise of finding of fact. The language of Section 140 of the said Act is very clear and it stipulates that it is the owner at that stage, who is to pay the interim award. For convenience sake, we set out the provisions of Section 140 of the said Act.

140. Liability to pay compensation in certain cases on the principle of no fault.-

(1) Where 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 fifty 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 twenty-five thousand 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.

(5) Notwithstanding anything contained in Sub-section (2) regarding death or bodily injury to any person, for which the owner of the vehicle is liable to give compensation for relief, he is also liable to pay compensation under any other law for the time being in force:

Provided that the amount of such compensation to be given under any other law shall be reduced from the amount of compensation payable under this section or u/s 163A.

5. Therefore, we uphold the awarding portion of the learned Tribunal. However,

we do not accept or appreciate the findings of learned Claims Tribunal while granting interim relief u/s 140 of the said Act regarding risk factor in terms of the insurance policy. We make it clear that the observations made by the learned Tribunal regarding the liability of the insurance company will not be binding at the time of final hearing of the matter.

6. With the aforesaid observations, this appeal is disposed of. The appellant would be entitled to enforce the interim award in accordance with law. We desire that the parent proceeding should be disposed of as early as possible, preferably within a period of four months from the date of communication of this order.

7. Let the lower court records be sent down to the learned court below, without any delay.

8. Learned Counsel for the respondent No. 1 is permitted to take down the gist of this judgment and order.

9. Urgent xerox certified copy of this order, if applied for, be supplied to the applicants expeditiously.