
(1994) 11 P&H CK 0049
In the Punjab And Haryana At Chandigarh
Case No : F.A.F.O. No. 971 of 1994

Amita Baghi and others

APPELLANT

Vs

Tejwinder Singh alias Teji and another

RESPONDENT

Date of Decision : 07-11-1994

Acts Referred:

Constitution of India, 1950 — Article 227
Motor Vehicles Act, 1988 — Section 140, 140(1)

Citation : (1995) 2 ACC 481 : (1995) ACJ 477

Hon'ble Judges : H.K. Sandhu, J;A.P. Chowdhri, J

Bench : Division Bench

Advocate : Mr. Ravinder Chopra, for the Appellant; Mr. R.S. Aulakh, for the Respondent

Judgement

1. One Sunil Baghi, owner of Maruti Car NLV 103 died as a result of accident, which involved Maruti Van No. PB--05-2227 on July 3, 1992. The widow of two minor sons of the deceased filed a claim petition in the Motor Accident Claims Tribunal, Ferozepur. Inter alia, a prayer was made in the claim petition for the grant of Rs. 25,000/- on account of "no fault liability" u/s 140 of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act) The aforesaid prayer having been opposed by counsel appearing for the owner of the Maruti Van, the learned Tribunal directed the owner of the Maruti Van to deposit Rs. 12,500/- under Section 140 of the Act. Aggrieved by the order, the claimants have preferred this appeal.

2. A preliminary objection has been taken by learned counsel appearing for the owner of the Maruti Van, namely, that the appeal is not competent. His further stand is that the impugned order is justified in view of the decision by a Division Bench of this Court in Shamsheer Singh v. Gurnam Singh, FAO No. 682 of 1989 decided on September 4, 1989.

3. We have heard Mr. Ravinder Chopra for the appellants and Mr. R.S. Aulakh for respondent No. 1 Two questions arise:

(i) Whether the present appeal is competent?

(ii) Whether the tribunal was justified in allowing 50 per cent amount on account of "no fault liability" u/s 140 of the Act.

4. In *Oriental Insurance Co. Ltd. Vs. Mohiuddin Kureshi alias Md. Moya and Others* a Division Bench of Patna High Court dealt with the question of maintainability of appeal against an order passed u/s 140 of the Act. The Bench noted conflict of judicial opinion between *United India Insurance Co. Ltd. Vs. Padmavathy and Others*, on the one hand and *Gaya Prasad and Another Vs. Suresh Kumar*, . Agreeing with the conclusion reached in the decision of the Kerala High Court, it was held that the appeal was maintainable.

5. The contention of Mr. Chopra, learned counsel for the appellants, is that apart from the aforesaid decision of the Patna High Court, which approves the view taken by the Kerala High Court *supra* the same view has been accepted by this court. He places reliance on :

(1) *Mano Devi v. Chander Singh* 1994 (1) PLR 666;

(2) *Smt. Bimla Devi v. National Insurance Company*, 1988 (2) CLJ 518 (Full Bench).

6. Mr. Aulakh, learned counsel for respondent No. 1, on the other hand, has contended that the order u/s 140 of the Act does not tantamount to an award or an interim award and, therefore, no appeal is competent u/s 173 of the Act. He relied on *Deepak Dewan v. Shanti Dewan* (Delhi).

7. After careful consideration, we are of the view that an order u/s 140 does not amount to an award or an interim award and, therefore, appeal u/s 173 of; the Act does not lie. The reasons in support of the above conclusion are as follows:

(1) Sub-section (1) of Section 140 of the Act expressly deals with a situation where death or permanent disablement of any person has resulted from an accident arising out of the use of more than one motor vehicles. It has further been expressly laid down that no fault liability of the owners of such vehicles shall be joint and several. Sub-section (1) of Section 140 of the Act reads as under:-

"140 (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."

In our view, the words "jointly and severally" occurring in the above provision furnishes the key to understand that where more than one vehicle is involved in the accident, which results in death or permanent disablement of any person, the owners of such vehicles are jointly and severally liable to pay compensation on the principle of "no fault liability".

(2) Where there is a dispute between the parties as to who was responsible for causing the accident, the inter se dispute is not required to be adjudicated before passing an order u/s 140(1). In fact, subsection (3) of Section 140 expressly lays down that 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. If there is to be no inter se adjudication, the order to pay compensation on the ground of no fault liability cannot amount to an award so as to become appeal able u/s 173. In fact, subsection (2) of Section 141 of the Act mandates that a claim u/s 140 shall be disposed of as expeditiously as possible and further that such claim shall be disposed of before disposing of the claim in pursuance of any right on the principle of fault.

8. The question of maintainability of appeal against an order u/s 140 was not raised and was not, therefore, examined in the authorities relied on by Mr. Chopra. In *Mano Devi's* case (supra) this question was not even remotely raised. In the Full Bench decision in *Smt. Bimla Devi* (supra) also this question on was nowhere raised. The unreported decision in *Shamsher Singh v. Gurnam Singh etc.* (FAO No. 682 of 1989) which has been relied on by the learned tribunal is a short order. The question of maintainability of appeal was neither raised nor dealt with. It was in the facts and circumstances of that case that the learned judges apportioned the interim liability on the basis of 50:50 between the owners of the truck and the tempo. For these reasons the aforesaid decision cannot possibly operate as a precedent.

9. Before concluding, we may refer to another contention of Mr. Chopra, namely, that it became necessary for the claimants to challenge the impugned order lest the claimants should be taken to have accepted that the owners of the two vehicles were equally liable for the accident, which resulted in death of Sunil Baghi and injuries to some others. We hasten to add that a direction u/s 140 is based "on no fault" principle and there is absolutely no reason to say that an order u/s 140 decides the extent of the liability of the owners of the two vehicles involved in the accident. That question has to be decided at the final stage when the award is rendered on the basis of evidence of the parties.

10. Even though we have come to the conclusion that appeal does not lie u/s 173 of the Act against an order u/s 140, we are equally clear that in all appropriate cases the supervisory powers of this Court under Article 227 of the Constitution can be pressed into service where the facts and circumstances of a case justify doing so. We accordingly treat this appeal as a petition u/s 227 of the Constitution and in view of the provisions of law and without prejudice to the ultimate decision of the question, we quash the impugned order and direct the owner of the Maruti Van to pay Rs. 25,000/- u/s 140 of the Act to the claimants. The matter is disposed of accordingly.

11. Order accordingly.