
(2008) 09 P&H CK 0105
In the Punjab And Haryana At Chandigarh
Case No : Criminal No. 1411 of 2008

Ashok Kumar

APPELLANT

Vs

Salochana Devi

RESPONDENT

Date of Decision : 22-09-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 166

Citation : (2010) 1 AICJ 551 : (2010) 5 RCR(Civil) 701

Hon'ble Judges : Vinod K.Sharma, J

Judgement

Vinod K.Sharma, J.

1 This order shall dispose of CR Nos. 1411 and 1418 of 2008 both titled Ashok Kumar v. Salochana Devi & Ors., as common questions of law and facts are involved in both these petitions.

2 For brevity facts are being taken from CR No. 1411 of 2008. Respondent claimants filed a claim petition under section 166 of the Motor Vehicles Act (for short the Act) as amended up to date. In the said petition respondent No. 2 appeared in the court and denied the factum of accident.

3 Before any evidence could be led the claimants moved an application under section 140 of the Act and also an application under Order 38 Rule 5 read with section 151 of the Code of Civil Procedure for attachment of the properties of the respondent Ashok Kumar petitioner both immovable as well as moveable.

4 Learned Tribunal has been pleased to order to pay a sum of Rs. 25,000/ under section 140 of the Act as interim compensation. Interest at the rate of 6 per cent per annum from the date of filing of the petition under section 140 of the Act till realization of amount has also been granted.

5 Application under Order 38 Rule 5 of the Code also stands allowed and property i.e. movable and immovable of petitioner has been attached. The petitioner has not challenged the order with regard to the attachment. Thus, the order passed on the application under Order 38 Rule 5 of the Act is affirmed.

6 However, learned counsel for the petitioner has. challenged the interim award passed in favour of the claimants passed under section 140 of the Act on the plea that there was no material, whatsoever, on record to connect the petitioner with the accident. It is further the case of the petitioner that a positive stand was taken that no accident has taken place with the vehicle as alleged by the claimants. The learned senior counsel contends that in the absence of evidence qua accident no interim award could be passed.

7 In support of this contention learned counsel for the petitioner has placed reliance on judgment of Hon"ble Madhya Pradesh High Court in the case of Dwarika v. Biso, AIR 1990 Madhya Pradesh 258, wherein the Hon"ble High Court has been pleased to lay down as under :

"15. Not only I am bound by the view taken and the law as interpreted in Shastry Brothers case (1988 Acc CJ 1091) (supra) by this Court, but I find a consensus of judicial opinion amongst all the High Courts as available from the decided cases. The relevant aspects of law touching S.92 A may be summed up as under :

(i) If it is admitted or prima facie proved from the material available on record that the vehicle involved in an accident was insured, the tribunal has jurisdiction to hold the insurance company jointly and severally liable with the owner of the vehicle for no fault liability under Section 92A requiring the insurance company to pay the amount of interim award to the claimants forthwith; and at that stage, the tribunal is not bound to inquire into or record a finding as to sustainability or otherwise of the objections raised by the Insurance Co. that it was not liable at all;

(ii) The interim award u/s 92A does not deprive the insurer of its right to defend itself at the subsequent proceedings by raising whatever defences available to it u/s 96 of the Act:

(iii) Having investigated and inquired into the sustainability of the objections raised by the Insurance Company if ultimately the Tribunal arrives at a finding that the insurer was not liable to indemnify insured, while making the final award u/s 110B the Tribunal may direct the insured by virtue of the provisions contained in section 96(4) of the Act to reimburse the insurer the amount paid by it to the claimant pursuant to the award made u/s 92A.

(iv) The only exception appears to be where the factum of accident itself is denied and there the tribunal may be inclined and would rather do well to hold a summary enquiry and then form an opinion as to whether the accident did take place and whether the vehicle in question was involved in the accident or not. If from the evidence collected in such summary enquiry and other material available on record, the tribunal is satisfied prima facie that the accident did take place and the vehicle in question was involved therein, it shall have jurisdiction to make an interim award u/s 92A fixing joint and several liability on the insurer along with the insured. Of course, after trying claim on merits while expressing a

final opinion and passing an award u/s 110B of the Act, the Tribunal would not be bound by the opinion recorded earlier at the time of making the interim award u/s 92A."

8 Learned counsel appearing on behalf of the respondents, however, states that statement has been recorded in the criminal case connecting the truck belonging to the petitioners with the accident and therefore, it cannot be said that it is case of no evidence.

9 However, on consideration of the matter, I find force in the contention raised by the learned senior counsel for the petitioner. Even by way of summary adjudication it was minimum requirement for the learned the Tribunal to have at least summoned the file of criminal court. Thus, at present there is no evidence, whatsoever, to connect the accident with the truck owned by the petitioners.

10 Consequently, this revision is allowed. Impugned order is set aside and the case is remanded back to the learned Tribunal to adjudicate the application moved under section 140 of the Act after holding summary inquiry as held by Hon"ble Madhya Pradesh High Court in the case of Dwarika v. Biso, AIR 190 Madhya Pradesh 258 and pass interim award if so warranted. Revision allowed.