
(2011) 02 J&K CK 0001
In the Jammu And Kashmir High Court
Case No : CIMA No. 198 of 2009

Bajaj Allianz

APPELLANT

Vs

Mst. Fareeda and Others

RESPONDENT

Date of Decision : 04-02-2011

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 141, 166

Citation : (2011) 2 JKJ 13 : (2011) 3 TAC 431

Hon'ble Judges : Mohd. Yaqoob Mir, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Mohd. Yaqoob Mir, J.—This appeal is directed against the order dated 18.8.2009, where-under application for interim relief u/s 140 of

Motor Vehicless Act (hereinafter referred to as ""MV Act"") has been allowed and an amount of Rs. 50,000/has been ordered to be paid by the

insurer (Appellant) to the claimants (Respondents No. 1 to 4).

2. Death of one Mohammad Abdullah Dagga in the road accident gave rise to the filing of claim petition for compensation u/s 166 of the MV Act.

Along side an application for grant of interim relief u/s 140 of MV Act has also been filed. The application has been allowed without considering

the objections (defence) as projected by the insurer (Appellant).

3. Dissatisfied with the said order, the insurer has filed the instant appeal.

4. At the very outset it is to be made clear that compensation on the principle of ""fault basis"" as well as principle of ""no fault basis"" can be claimed.

On the principle of ""fault basis"" procedure as envisaged u/s 166 is to be followed whereas the claim on ""no fault basis"" is governed by Section 140

of MV Act, in two situations i.e. when due to the accident death or permanent disablement of the persons out of the use of Motor Vehicles is

caused. The claim on ""no fault basis"" i.e. u/s 140 has to be disposed of in the first instance as is ordained by Section 141 of the MV Act. The

underlying object is to provide immediate relief to the victims. The claim for compensation on the principle of ""no fault basis"" is in addition to the

claim as is to be determined u/s 166 of MV Act but, however, at the time of finalization of award u/s 168 of MV Act, the amount granted u/s 140

has to be adjusted with the total award.

5. The first question which arose for consideration is as to 'whether compensation granted u/s 140 is an award so as to attract applicability of

Section 173 of MV Act which provides for right of appeal against an award?

6. This question has already been set at rest by the Hon'ble Apex Court in the judgment captioned Smt. Yallwwa and Ors. v. National Insurance

Company Ltd. and Anr. Civil Appeal No. 2674 of 2007 arising out of SLP (Civil) No. 17016 of 2006. It shall be quite apt to quote the relevant

portion governing the issue from para 30 of the judgment:

In our opinion, an order of the Tribunal awarding compensation u/s 140 of the Act is appealable u/s 173 as it amounts to an award u/s 173.

7. The next important question is as to 'whether grant of award u/s 140 of MV Act can be resisted by the insurer on the defences available u/s

149(2) of MV Act?

8. The answer has to be in affirmative. u/s 140 of MV Act, claimant is not required to establish that the death or permanent disablement, in respect

of which the claim is made, was due to any wrongful act, neglect or default of the owner or any other person. Furthermore, it terms of Sub-Section

4, such claim cannot 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, whereas in terms of Section 149(2) of the MV Act, the insurer is entitled to defend on any of the grounds as

enumerated therein which include the defence on the basis of vehicle being driven by a person having no valid and effective license. It being so, the

insurer is entitled to resist such claim even at the stage of proceedings u/s 140 of the Act and it is in that context the insurer (Appellant) had filed the

objections specifically pleading therein that the driving license of the driver of the

offending vehicle was fake, therefore, owner of the vehicle had committed breach of conditions specified in the policy (insurance policy). In the objections specific reference had been made to the law laid down in the case Smt. Yallwwa and Ors. v. National Insurance Company Ltd. and Anr. and also to the judgment rendered by the Division Bench of this Court in Oriental Insurance Co. Ltd. Vs. Som Raj and Others, .

9. The certified copy of the objections as placed on record clearly indicate that the insurer (Appellant) had projected such defence but the learned Tribunal under the fit of emotions has ignored the objections of the insurer altogether which should not have been done. At least these objections should have been considered and for ignoring the same, some reasons should have been recorded. The law laid down by the Hon'ble Apex Court as well as Division Bench of this Court appears to have been overlooked in an unwarranted manner. It has to be reminded that the law laid down by the Hon'ble Apex Court as well as by the Division Bench of this Court has to be strictly followed. It is true that Section 140 of the MV Act is benevolent in its operation as the victims require quick and speedy succor but while implementing the same, law has to be respected and while respecting the law, benevolent operation of the provision has to be advanced in a very effective manner. All that was required to be done, is that some reason was to be recorded about the defence projected by the insurer. In Smt. Yallwwa's case as referred above, it has been clearly ruled that the provisions of Section 140 of MV Act makes the owners of the vehicles liable but not the insurer per se irrespective of the fact whether a claim petition is required to be adjudicated under Chapter X of Chapter XII of the Act and it is also ruled that the insurer can raise the defence in terms of Sub-section (2) of Section 149 of the Act even while resisting the application u/s 140 of the Act. It shall be quite relevant to quote para

10 and 11 of the said judgment:

10. The said provision, therefore, makes the owners of the vehicles liable but not the insurer per se. Irrespective of the fact whether a claim petition is required to be adjudicated under Chapter X or Chapter XII of the Act, it is permissible to raise a defence in terms of Sub-section (2) of Section 149 of the Act. Even it is possible for the owner of the vehicle to raise a contention that his vehicle being not involved in the accident, he is not

liable to pay any amount in terms of Section 140 of the Act.

11. One of the defences available to the insurer is breach of conditions specified in the policy. When such a defence is raised, the Tribunal is

required to go into the said question. Section 140 of the Act does not contemplate that an insurance company shall also be liable to deposit the

amount while it has no fault whatsoever in terms of Sub-section (2) of Section 147 of the Act.

10. The Division Bench of this Court in the judgment *Oriental Insurance Co. Ltd. Vs. Som Raj and Others*, has dealt with similar situation in

extenso and it has been ruled that "unless the liability of the insurer is adjudged with regard to a claim, be that on the basis of no fault or on the

principle of fault, the insurer cannot be made liable to pay any claim, so the insurer has been empowered to defend any such claim on the grounds

mentioned in Sub-section (2) of Section 149 of the Act". Finally it has been concluded as under:

Therefore, the conclusion would be that while disposing of a claim founded on no fault, there must be a pronouncement that the defence put

forward by the insurer under Sub-section (2) of Section 149 of the Act is available or is not available. For that purpose, if all facts have to be gone

in and evidence therefor is required to be taken, the same would be a necessity.

11. In the said judgment again it has been enjoined as to how such claim u/s 140 of the Act can be dealt with. Same is reproduced here-under:

However, while adjudicating a claim based on no fault liability as can be preferred u/s 140 of the Act, it may not be necessary in all cases to follow

the elaborate procedure prescribed therefor, which is evident from Rules 324, 325 and 326 of the J&K Motor Vehicles Rules, 1991.

12. Applying the law as has been laid down, there has to be an inescapable conclusion to the effect that the award passed u/s 140 of the MV Act

styled as "interim relief" or "interim award" has been passed while ignoring the defence vis-a-vis fake license of the driver of the offending vehicle as

projected by the insurer. Therefore, said order (award) dated 18.8.2009 has to be set aside, so is set aside. The learned Tribunal shall afresh

consider the application u/s 140 of the Motor Vehicleless Act while keeping in view the observations made hereinabove and the law as has been laid

down by the Hon'ble Apex Court as well as Division Bench of this Court referred

above.

13. Learned Counsel for the parties shall ensure appearance of the parties in person or through counsel before the Tribunal i.e. MACT, Srinagar

on 14.2.2011.

14. The amount of Rs. 25,000/(twenty-five thousand) as have been deposited in accordance with proviso to Section 173 of the Motor Vehicleless

Act shall be paid back to the Appellant-insurer.