

(2020) 01 JH CK 0220

In the Jharkhand High Court

Case No : Miscellaneous Appeal No. 6 Of 2017

Divisional Manager, The New India Assurance Co. Ltd

APPELLANT

Vs

Soma Tirkey And Ors

RESPONDENT

Date of Decision : 16-01-2020

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 166, 171

Citation : (2020) 01 JH CK 0220

Hon'ble Judges : Kailash Prasad Deo, J

Bench : Single Bench

Advocate : Manish Kumar, Nikhil Ranjan, Samavesh Bhanj Deo

Final Decision : Allowed

Judgement

Heard, learned counsel for the appellant and learned counsel for the respondents-claimants.

Appellant- The New India Assurance Co. Ltd. has preferred this appeal against the award dated 24.09.2016 passed by the learned Presiding Officer,

Motor Vehicles Accident Claims Tribunal, Ranchi in Compensation Case No.140/08, whereby the claimants have been awarded compensation to the

tune of Rs.23,96,440/- along with interest @ 12% per annum from the date of filing of the case i.e. 29.11.2009 till its realization.

Learned counsel for the appellant has assailed the impugned award on two counts:- (i) The learned Tribunal has wrongly granted interest @ 12%

upon the amount from the date of filing of the case i.e. 29.11.2009 which ought to have been from the year, 2008 in view of the motor Accident Claim

Case No.140 of 2008 and the interest has been awarded contrary to the judgment passed by the Hon'ble Apex Court in the case of Dharmpal and

Sons Vs. UP State Road Transport Corporation, 2008 (4) JCR 79 S.C Learned

counsel for the appellant has further submitted that the Hon'ble Apex Court has decided the rate of interest as the prevalent bank rate of interest on the date of award or simply interest @ 7.5% per annum from the date of filing of the claim application, as such, in the present case the rate of interest should be reduced to 7.5% from the date of filing of the application which ought to have been from the year 2008 and not from 29.11.2009, as mentioned in the impugned award.

Learned counsel for the appellant has further submitted that there is a clerical/arithmetical mistake in the impugned award as the amount of Rs.50,000/- has been paid by the Insurance Company under Section 140 of the MV Act but the same has not been deducted in the operative part of the impugned award at page no.12, as such, amount of Rs.50,000/- may be deducted from the award of Rs.23,96,440/-. The compensation amount should be Rs.23,46,440/- instead of Rs.23,96,440/-, as such, the order may be passed accordingly.

Learned counsel for the appellant has further submitted that the learned Tribunal has given right to recovery against the owner of the offending vehicle (insured) in impugned award at page 13, that may remain intact so that the appellant- Insurance Company may recover the same from the owner of the offending vehicle as no appeal has been preferred by the owner of the offending vehicle as on today.

Learned counsel for the appellant has further submitted that the learned Tribunal has not considered the issue of contributory negligence in its right perspective, as such, City Ride Bus bearing Registration no.JH-13A-1449 insured before the appellant has dashed the truck standing on the road though the charge-sheet has been submitted by the Police against both the vehicles i.e. Bus as well as truck. The learned Tribunal has only fastened the liability against the bus of which the appellant is the insurer.

Learned counsel for the claimants-respondents has justified the impugned award on the ground that interest @ 12% has been given by the learned Tribunal explaining the situation in impugned order/award at page nos. 11 and 12 of the impugned award. Learned counsel for the claimants-respondents has submitted that the application under Sections 140 and 166 of the MV Act were filed on 29.11.2008 by the applicants. The application under Section 140 of the MV Act was admitted on 08.04.2009 and after filing

show-cause by Opposite party, the application under Section 140 of the MV Act was allowed vide order dated 24.09.2010 directing the Insurance Company to make payment of interim compensation to the tune of Rs.50,000/- within 30 days from the date of order but the same was not paid within stipulated period and the payment was made vide cheque dated 18.05.2012, meaning thereby approximately after one year eight months. Learned counsel for the claimants-respondents has thus, submitted that considering such delaying tactics of the Insurance Company, the learned Tribunal while considering the application under Section 166 of the MV Act has also held that the Insurance Company continued to file time petition to file written statement and ultimately the Insurance Company filed written statement on 02.03.2015 after elapse of a period of two years and six months from the date of admission of claim application under Section 166 MV Act which shows that O.P. No.2 caused too much delay in disposal of the claim application filed by the claimants, as such, the claim Tribunal has awarded interest @ 12% against the O.P. No.2.

Learned counsel for the claimants-respondents has further submitted that the learned Tribunal has awarded less amount under the conventional head by only awarding Rs.45,000/- in different heads instead of Rs.70,000/- contrary to the judgment passed by the Hon'ble Apex Court in the case of National Insurance Company Ltd. vs. Pranay Sethi, reported in (2017) 16 SCC 680.

Learned counsel for the claimants-respondents has further submitted that in case rate of interest is reduced, the amount under conventional head may be enhanced by adding the same though he has fairly submitted that no appeal has been preferred by the claimants for enhancement of the award.

Learned counsel for the respondent no.4 owner of Tata 407 City Ride Bus bearing registration no.JH-13A-1449 has submitted that the learned Tribunal has rightly passed the award against the Insurance Company to pay the same to the claimants-respondent nos.1 to 4 as the vehicle was duly insured.

Learned counsel for the respondent no.4 has further submitted that though the right of recovery has been given in favour of the Insurance Company by the learned Tribunal but till date no appeal has been preferred by the owner of the offending City Ride Bus bearing registration no.JH-13A-1449

i.e. insured against the said impugned award.

Heard, learned counsel for the parties and perused the materials available on record. It appears that the contention raised by the learned counsel for

the appellant regarding arithmetical calculation of Rs.50,000/-, it is correct that Rs.50,000/- has been paid under Section 140 MV Act and that ought to

have been deducted from total compensation amount Rs.23,96,440/- but that has not been deducted, as such, compensation ought to have been

Rs.23,46,440/- after deduction.

It is needless to say, that even though the learned Tribunal has awarded compensation under Section 140 MV Act vide order dated 24.09.2010, but the

same was paid on 18.05.2012, as such, the Insurance Company is liable to pay interest @ 7.5% per annum upon the amount of Rs.50,000/- from the

date of award under Section 140 of the MV Act i.e. 24.09.2010 till the date of actual payment i.e. 18.05.2012 as the learned Tribunal has considered

two factors while awarding interest @ 12% :-(i) that Rs.50,000/- was paid after one year and eight months and (ii) that there was delay of two years

and six months in filing written statement while contesting the application under Section 166 of the MV Act and thus granted interest @ 12% from the

date of filing of the claim application which ought to have been 29.11.2008.

This Court finds that the principle of interest has cropped up because of delay in disposal of the claim application. If the claim application is decided on

the date of application itself no interest shall be paid but if the claim application is delayed by one or another reason, the Hon'ble Apex Court has

considered the same aspect while deciding the issue in the case of Dharmpal and Sons Vs. UP State Road Transport Corporation, 2008 (4) JCR 79

SC, by holding that the simple interest ought to have been in view of under Section 171 of the MV Act as the simple interest prevalent at date of

award which has been quantified as simple interest @ 7.5% per annum, as such, in my view the excess amount which has been ordered by the

learned Tribunal is not justified, which is contrary to the judgment passed by the Hon'ble Apex Court in the case of Dharmpal and Sons (Supra).

Accordingly, the rate of interest on the awarded amount shall be @ 7.5% instead of 12% from the date of claim application i.e. 29.11.2008 till the date

of actual payment apart from that the Insurance Company shall pay interest @ 7.5% on Rs.50,000/- from 24.09.2010 till 18.05.2012.

So far the contributory negligence is concerned, in my view the learned Tribunal has rightly held that truck bearing registration no.BR-14G-1625 was

standing which was dashed from behind by the City Ride Bus bearing registration no.JH-13A-1449, insured before the appellant, as such, the issue

raised by the learned counsel for the appellant with regard to the contributory negligence is of no help to the appellant.

So far the right of recovery is concerned, the learned Tribunal has rightly considered that driver of City Ride Bus bearing registration no.JH-13A-1449

namely, Ambika Mahto was holding driving licence of driving MV and PSV and was allowed to drive HGV vide DL No. 4547/92 which was renewed

and valid up to 31.05.2007 and at the time of accident i.e. 07.03.2008, driver of the offending vehicle City Ride Bus bearing registration no.JH-13A-

1449 was not holding valid and effective driving licence and violated the terms and conditions of the Insurance Policy, as such, the learned Tribunal

has granted right of recovery in favour of the appellant- Insurance Company. This Court is not interfering with the right to recovery against the owner

of the City Ride Bus bearing registration no.JH-13A-1449 given to the appellant- Insurance Company.

So far the claimants-respondents case with regard to the enhancement of the amount under conventional head to the tune of Rs.25,000/- is concerned

in absence of any appeal preferred by the claimants-respondents, this Court cannot enhance the same as the appeal has been preferred by the

Insurance Company.

In the result, the appeal is modified to the extent as stated above that quantum is to be considered as Rs.23,46,440/- and the rate of interest shall be

@7.5 from 29.11.2008 to the actual date of payment, apart from this the Insurance Company is liable to pay interest @ 7.5% on Rs.50,000/- for the

period from 24.09.2010 till 18.05.2012.

Accordingly, the instant appeal is allowed with the aforesaid terms.

The Registrar General of this Court is directed to refund the statutory amount deposited by the appellant at the time of filing of Miscellaneous Appeal,

within a period of four weeks from the date of the filling of the requisition/ application for the same by the counsel for the appellant.

It is expected that the balance amount of the award shall be paid by the Insurance Company within a period of 90 days as the Insurance Company has

deposited Rs.15,00,000/- before the learned Tribunal in compliance of order passed by a co-ordinate Bench of this Court on 07.07.2017.