

(1995) 01 MP CK 0017
In the Madhya Pradesh High Court

Jagannath Singh	Vs	APPELLANT
Salim Khan and Others		RESPONDENT

Date of Decision : 02-01-1995

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 166

Citation : (1996) 1 ACC 362

Hon'ble Judges : Sachin Dwivedi, J

Bench : Single Bench

Judgement

Sachin Dwivedi, J.—The petitioner's father was run over by a vehicle on A-B Road. The petitioner is the son of deceased Bhagwanlal. A report of the accident was lodged by one Narender Singh, the nephew of deceased Bhagwanlal on 20.7.1992 and the Police investigated the accident.

2. The petitioner preferred a claim petition u/s 166 of the Motor Vehicles Act, 1988 (here in after called the "Act"), and also filed an application u/s 140 of the Act for the payment of the interim compensation. Alongwith the application, u/s 140 of the Act, the petitioner is stated to have filed the copy of F.I.R., the spot map, the post-mortem report and the japti panchnama of tanker No. M.P. 08/3736, which is stated to be involved in the accident. A copy of the application filed by respondent No. 2 in the Court of J.M.F.C. for the Superego of the seized truck also filed. The copies of the abovestated documents have also been filed with this petition.

3. The Claims Tribunal while considering the application of the petitioner filed u/s 140 of the Act, found that till that stage, the petitioner did not succeed in prima-facie establishing that it was the seized tanker, which was involved in the accident, and therefore, no interim compensation could be awarded. The learned Tribunal found that the inquiry and the recording of the evidence in that regard would be required and the question would be determined with the final decision. As such, the Tribunal dismissed the application of the petitioner for interim compensation.

4. It is contended by the petitioner's that in view of the decisions of this Court and the clear provisions of Section 140 of the Act, no inquiry was required for awarding interim compensation. I am not convinced of the impact of arguments advanced by the petitioner's Counsel, though there is no dispute about the stated principle.

5. For seeking the interim compensation, the claimant is primarily required to prima facie show that the stated vehicle was involved in the accident resulting in the injury or the death of the deceased. The claimant cannot succeed in seeking interim compensation, unless the identity of the vehicle is prima facie established.

6. The authorities relied upon by the petitioner deal with the different point. In *Gaya Prasad v. Suresh Kumar* 1992 JL 143, this Court, relying upon the observations in *Mahila Ramdei* 1988 JLT 412) found that "Tribunal is to act suo motu u/s 92-A and until the claim envisaged thereunder is decided, it shall have no jurisdiction to proceed further and try the claim petition and adjudicate liability under principle of fault. As held in *Shivaji's* case, the Tribunal is only required to "satisfy itself" "with respect to the tribune requirement: an accident has arisen out of use of one or more motor vehicles; it has resulted in permanent disablement of the claimant or of death of the person whose legal representatives" claim is to be decided; the owner or owners and the insurer or insurers of the motor vehicle or vehicles involved in accident are held liable."

(Emphasis supplied)

7. In *Durga Prasad v. Mahila Ramsakhi* 1994(1) WN 74, it was held that the position at the stage of interim award is to be seen only in terms of statutory provisions. In that case the vehicle remained to be a tractor but only the wrong registration number was given in the FIR. In *New India Assurance Co. Ltd. v. Smt. Asha Devi*, the correct registration number of the vehicle involved in the accident was given and identity of vehicle was established prima facie. The factum of accident and ownership of vehicle only was denied and this Court, therefore, found that in such situation no enquiry was required and the Tribunal had not committed any irregularity or illegality in passing the interim award.

8. In *National Insurance Company, Jabalpur Vs. Thaglu Singh and Others*, , there no dispute about the identity of the vehicle/vehicles involved in the accident, and therefore, it was held that the owner or the owners of the vehicle were liable to pay prescribed compensation, without proof of negligence and irrespective of any contributory negligence of the deceased or the injured and the amount so paid could be adjusted in the amount of compensation on being found due under the final award. It was further found that there is no provision requiring the recipient of compensation of no fault liability to refund any part of the amount received at any stage. With this legal position, no interim award can be passed unless the identity of the vehicle stated to be involved in the accident was prima facie established.

9. When an accident by the stated vehicle is prima facie established, no inquiry

into the negligence or for finding the fault of any party is to be made by the Tribunal. In that situation the normal procedure prescribed under the Act and the Rules with regard to the adjudication of a claim is not required to be followed. The provisions of Section 140 of the Act have been enacted with the view to provide interim compensation to the aggrieved or the bereaved family most expeditiously (See, Shivaji Dayanu Patil v. Smt. Vatschala Uttam More AIR 1991 SC 1976, by way of immediate help. The fault of the injured or of the deceased on one side and of the driver, of owner or of the Insurance Company on the other, is not to be seen at that stage. Notwithstanding the fault of either party, the interim award is to be granted without any inquiry, when the accident by the stated vehicle is either admitted or is *prima facie* shown. But the provision cannot be stretched to the situation where even if the identity of the vehicle is not established, yet the owners may be required to pay the interim compensation because their vehicle is stated by the claimant to be involved in the accident. When the accident be by an unidentified vehicle, the claim for interim compensation, cannot be entertained and the claimant will only succeed for the final award when he establishes that the injury or the death was the result of the accident from the particular vehicle.

10. The contention of the petitioner's Counsel is also that the Police after the investigation has challaned the driver after seizing the vehicle, and that by itself has to be taken as sufficient material for establishing the identity of the stated vehicle, as involved in the accident.

11. Each case is to be judged on its own facts and circumstances. Mere filing of a challan in some cases, as in the instant case, may not be sufficient by itself for awarding the interim compensation when there may be other circumstances, which may *prima facie* negative the allegation of involvement of the stated vehicle in the accident. On the appreciation of the facts and circumstances and the material on record, the learned Tribunal has not allowed the interim award.

12. While perusing the FIR, I have found that there is overwriting on the word dumper as it has been made to appear as "tanker". But when the dead body was sent for the post-mortem, the requisition letter sent by the Police concerned to the doctor still contains that the cause of death was due to the accident from an "unidentified dumper".

13. In the FIR, the colour of the vehicle is mentioned as yellow, but in the japti panchnama of the said tanker, the colour of the vehicle has not been shown by the Police. As such, presently there appears a contradiction even in the "class of vehicle".

14. Since at this stage, the identity of the vehicle is not *prima facie* established, the order of not allowing interim compensation passed by the learned Tribunal, cannot be said to be illegal or unreasonable nor there is lack of jurisdiction in passing the order. The writ petition has no merit and is summarily dismissed.