
(2012) 10 JH CK 0068
In the Jharkhand High Court
Case No : M.A. No. 378 of 2006

Most. Sundari and Another	Vs	APPELLANT
Narendra Kumar @ Narendra Kumar Sondi and Others		RESPONDENT

Date of Decision : 05-10-2012

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 140(2), 163A, 166
Penal Code, 1860 (IPC) — Section 279, 304A, 337, 338

Citation : (2013) 2 JLJR 47

Hon'ble Judges : Narendra Nath Tiwari, J

Bench : Single Bench

Advocate : Hemant Kr. Sikarwar, for the Appellant; S.J. Roy, Advocate for the Respondent No. 2, for the Respondent

Final Decision : Allowed

Judgement

Narendra Nath Tiwari, J.—In this appeal, the claimants-appellants have assailed a part of the award made u/s 140 of the Motor Vehicle Act, whereby in stead of interim award of Rs. 50,000/-, learned Tribunal has awarded only Rs. 25,000/- to the claimants. The appellants had filed claim petition before the Motor Vehicle Accident Claim Tribunal, Hazaribag on the death of Manki Sao, caused by motor vehicle accident.

2. The brief fact of this case is that the deceased Manki Sao-was traveling as a pillion rider on a TVS Victor motorcycle bearing No. JH02C 8205 along with his son Birendra Kumar Snehi-claimant No. 2. As soon as they reached at Singhani More near the bridge on Hazaribag-Bishnugarh Road, the offending Holland tractor coming from opposite direction dashed them and caused severe injuries. Manki Sao succumbed to the injury and died on the spot. It was claimed that the accident took place due to rash and negligent driving of the offending Holland tractor.

3. A case was registered with the local Police under Sections 279 /337 /338 /304A of the Indian Penal Code.

4. According to the claimants, the deceased was a retired veterinary compounder aged about 64 years and the entire family members were dependent upon his income. The claimants are entitled to get compensation under Sections 140 and 166 of the Motor Vehicle Act (hereinafter to be referred as the M.V. Act) on account of the death of Manki Sao.

5. The defendant No. 1- owner of the offending vehicle appeared and challenged the maintainability of the claim case against him on the ground that the offending tractor was duly insured with the opposite party no. 2 on the relevant date of accident and any liability arising out of the said death is on the said insurer.

6. The insurer-opposite party no. 2 had appeared and challenged the maintainability of the claim petition on the ground of non-joinder of the driver and owner of TVS motorcycle which was also involved in the accident. The insurer further claimed that when the offending tractor insured with them and the said TVS motorcycle involved in the accident, it is a case of contributory negligence arising out of collision of two vehicles. The claim case is not maintainable in absence of the driver and owner of the TVS motorcycle.

7. After hearing the parties, learned Tribunal has passed the impugned order and award u/s 140 of the M.V. Act. By the impugned award, learned Tribunal has awarded only Rs. 25,000/- to the claimants as interim compensation u/s 140 of the M.V. Act.

8. The impugned award has been challenged mainly on the ground that the same is not in accordance with the amended provision of Section 140(2) of, the M.V. Act. Now, the amended provision provides for payment of compensation of a fixed sum of Rs. 50,000/- in the case of death of any person, but in the instant case learned Tribunal has awarded only Rs. 25,000/-, though there is admitted death of the husband of claimant-appellant no. 1 and father of claimant-appellant no. 2. It has been submitted that the impugned award, being contrary to the mandatory provision of law, is unsustainable and is liable to be set aside.

9. The appeal has been contested by the insurer-respondent No. 2. Learned counsel appearing on behalf of the said respondent submitted that the accident admittedly took place due to collision of two vehicles-the offending Holland tractor as well as the TVS motorcycle. But the owner and driver of TVS motorcycle have not been made party to the claim case. The petition was not maintainable in absence of the said necessary party and was liable to be dismissed. Taking a sympathetic view learned Claim Tribunal, even in absence of the owner and driver of TVS motorcycle has awarded Rs. 25,000/- compensation as share of the insurer-respondent no. 2. The appellants have absolutely no ground for assailing the impugned award and the appeal is liable to be dismissed.

10. Having heard learned counsel for the parties and on perusal of the impugned award, I find that learned Tribunal has awarded only Rs. 25,000/- as interim compensation to the claimants against the owner of the offending tractor. Since

the tractor was duly insured with he respondent no. 2, the insurer has also been directed to pay the said amount.

11. In order to appreciate the ground taken by the appellants for assailing the impugned award, the provisions of Section 140 of the M.V. Act is required to be seen in its totality.

12. Section 140 of the M.V. Act, 1988 is a part of Chapter-X, which deals with liability without fault in certain cases and runs as follows:-

140. Liability to pay compensation in certain cases on the principle of no fault.-

(1) Where death or permanent disablement of any person has resulted from any 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.

(2) The amount of compensation which shall be payable under sub section (1) in respect of the death of any person shall be a fixed sum of fifty thousand rupees and the amount of compensation payable under that sub-section in respect of the permanent disablement of any person shall be a fixed sum of twenty five thousand rupees.

(3) In any claim for compensation under sub-section (1), 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.

(4) A claim for compensation under sub-section (1) shall not 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 nor shall the quantum of compensation recoverable in respect of such death or permanent disablement be reduced oh the basis of the share of such person in the responsibility for such death or permanent disablement.

(5) Notwithstanding anything contained in sup-section (2) regarding death or bodily injury to any person, for which the owner of the vehicle is liable to give compensation for relief, he is also liable to pay compensation under any other law for the time being in force:

Provided that the amount of such compensation to be given under any other law shall be reduced from the amount of compensation payable under this section or u/s 163-A.

13. It is clear from sub-section (2) of Section 140 that in case of death of any person, the amount of compensation payable to the claimants shall be Rs. 50,000/- (as amended w.e.f. 14.11.1994 by Act 54 of 1994).

14. Sub-section(1) provides, inter-alia, that if the death is resulted from an

accident arising out of use of motor vehicle, the owner of the vehicle shall jointly and severally be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this section.

15. Evidently, the legislature intended to prescribe for payment of Rs. 50,000/- in case of death of any person and Rs. 25,000/- in case of permanent disablement of any person and not less than that.

16. Even in the case of death resulted from an accident arising out of use of two motor vehicles the same amount is payable as the words "jointly and severally" have been specifically inserted in the provision.

17. Though sub-section (1) contemplates for sharing of liability in case two vehicles contributed the negligence resulting into death of a person in the accident, if one owner is a party, he can be held liable for payment of compensation, as the same is payable jointly and severally.

18. In view of the said clear provision and intention of the Legislature, the beneficent provision of Section 140 cannot be defeated on the ground that the owner of the other vehicle has not been made party in the claim case.

19. Sub-section (4) clarifies the intention of the provision. It clearly provides that the claim under sub-section(1) shall not 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 nor shall the quantum of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement. The said fixed amount of compensation is also payable notwithstanding the "owner of the vehicle is liable to give compensation under any other law for the time being in force, which, of course, is subject to reduction from the amount of compensation payable.

20. In view of the above discussion, I find that the impugned award offends the intent and object of Section 140 of the M.V. Act, If the driver and owner of TVS motorcycle has not been made party, the claim of compensation u/s 140 only on that ground cannot be defeated and reduced in view of the clear term that the owner of the vehicle shall, jointly or severally, be liable to pay compensation.

21. The impugned award is, thus, (sic) improper and erroneous so far as it denies the payment of Rs. 50,000/- Learned Tribunal should have awarded interim compensation of Rs. 50,000/- u/s 140 in stead of Rs. 25,000/-.

22. Accordingly, the part of the award by which learned Claim Tribunal has awarded only Rs. 25,000/- is modified. The respondent-Insurance Company is directed to pay Rs. 50,000/- instead of Rs. 25,000/- to the claimants-appellants as an interim compensation. This appeal is, accordingly, allowed.