
(1992) 09 RAJ CK 0005

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 215 of 1990

National Insurance Co.

APPELLANT

Vs

Manju and Others

RESPONDENT

Date of Decision : 07-09-1992

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 144, 217

Citation : (1992) WLN 192

Hon'ble Judges : B.R. Arora, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

B.R. Arora, J.—This miscellaneous appeal Is directed against the order dated July 15, 1989, passed by the Judge, Motor Accident Claims Tribunal, Churu, by which the learned Judge of the Tribunal awarded the compensation under "no fault liability" amounting to Rs. 25,000/-.

2. Claimants Manju Devi and others filed a claim petition u/s 110-D of the Motor Vehicles Act In the Court of the Judge, Motor Accident Claims Tribunal, Churu, with respect to the accident which took-place on August 8, 1986. Alongwith the claim petition, an application u/s 92-A of the Motor Vehicles Act (for short, the Act") was moved. This application u/s 92-A of the Act was pending when the old Motor Vehicles Act of 1939 stood repealed by the Motor Vehicles Act of 1988. The learned Judge of the Tribunal, by his award dated September 15, 1989, awarded the compensation amounting to Rs. 25,00/- under "no fault liability".

3. The short question, which requires consideration in the present case is : whether the claimants are entitled to get compensation under the "no fault liability" to the tune of Rs. 15,000/- as provided u/s 92-A of the Act of 1939, or Rs. 25,000/- as provided u/s 140 of the Act of 1988? According to the learned Counsel for the appellant, the claimants are entitled only for the compensation amounting to Rs. 15,000/- as the accident took place prior to the coming into

force of the Act of 1988 and the application for the grant of compensation was also, filed under the old Act. In support of its case, the learned Counsel for the appellant has placed reliance over the Full Bench judgment of the Madhya Pradesh High Court in *New India Assurance Co. Ltd., Gwalior Vs. Nafis Begam and Others*, . The learned Counsel for the respondents, on the other hand has supported the order passed by the learned lower Court (Tribunal) and has placed reliance over the judgment of this Court in *Kanhaiya Lal and Another Vs. Kailashi Devi and Others*, and *Rajasthan State Road Transport Corporation v. Ogam and Ors.* I (1991) A.C.C. 736 (D.B.).

4. This case is squarely covered by the Division Bench judgment of this Court in *Rajasthan State Road Transport Corporation v. Onam and Ors.* (supra), wherein it has been held that the crucial date to determine the quantum of compensation under "no fault liability" is the date on which the Tribunal or the Court is required to award compensation under "no fault liability", though the accident, for which the compensation is to be measured, has taken place on an antecedent date. In the present case the application was decided by the learned Tribunal after coming into force of the Act of 1988 and not prior to that, though the application was filed under the old Act. If the application would have been decided under the old Act then in that circumstance the learned Judge of the Tribunal could not have awarded the compensation beyond Rs. 15,000/-, but the matter was decided after coming into force of the new Act of 1988 and, therefore, in view of the Division Bench judgment of this Court, the learned Member of the Tribunal was justified in awarding the compensation to the claimants to the tune of Rs. 25,000/-. Hon"ble the Chief Justice in *Kanhaiya Lal and Another Vs. Kailashi Devi and Others*, has, also, taken the same view and held that payment of no fault compensation is a procedural matter and law dealing with the procedure of the Court can be retrospective unless such a construction is textually inadmissible. Thus, it is not necessary to consider the Full Bench judgment of the Madhya Pradesh High Court as the point is decided by the Division Bench judgment of this Court in the case of *Rajasthan State Road Transport Corporation v. Ogam and Ors.* (supra).

5. Section 140 of the Act of 1988 was enacted with a view to provide social justice by giving compensation without proving the fault of negligence of the driver or the owner of the vehicle. The compensation for "no fault liability" can be awarded even in the case of the accidents which have resulted due to the fault of the victim himself. The Act of 1989 stood repealed after coming into force of the Act of 1988. Section 217 of the Act of 1988, which is a saving clause, saves only the Notification, Rules, Regulations etc. issued under the old Act, which may not be inconsistent with the provisions of the new Act, but it has not saved Section 92-A of the Act of 1939. Section 144 of the Act of 1988 has an over-riding effect over any other provision contained under the Act. When the provisions of the old Act have not been saved and stood repealed, therefore, the application pending on the date of the repealing of the old Act and after coming into force of the new Act, has to be decided under the provisions of the new Act. Though no provision

has been made to make the provisions of Section 140 of the Act of 1988 retrospective in operation, but a close reading of the provisions of Sections 140, 144 and 217 of the Act of 1988 makes it clear that the retrospective operation of Section 140 appears to be clearly implicit.

6. In this view of the matter, I do not find any merit in this appeal and the same is hereby dismissed.