
(1996) 12 MP CK 0025

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 255 of 1995

National Insurance Company Ltd.

APPELLANT

Vs

Raju and Others

RESPONDENT

Date of Decision : 06-12-1996

Acts Referred:

Motor Vehicles Act, 1988 — Section 140

Citation : (1997) 1 MPLJ 256

Hon'ble Judges : A.S. Tripathi, J

Bench : Single Bench

Advocate : R.V. Sharma, for the Appellant; Meena Singhal, for the Respondent

Final Decision : Dismissed

Judgement

A.S. Tripathi, J.

The Motor Accidents Claims Tribunal of Gwalior by its order dated 2-5-1995 directed that Rs. 50,000/- be deposited by the appellant-insurance company as interim compensation u/s 140 of the Motor Vehicles Act. Out of the said amount of Rs. 50,000/- an amount of Rs. 20,000/- was directed to be paid to the respondent No. 1 and Rs. 15,000/- each to the respondents 2 and 3.

The present appeal has been preferred by the Insurance Company on the ground that in spite of the fact that the vehicle was insured which was involved in the accident, the person died therein was not a bona fide passenger, rather he was a free lifter, and for his death, the insurance company could not be held liable.

This point cannot be raised at this stage at the time of considering grant of interim compensation u/s 140 of the Motor Vehicles Act. The only point for determination before the Tribunal was as to whether the vehicle involved in the accident was insured or not. No other point could be raised by the insurance company at that stage. The other point which could be raised on behalf of the insurance company in respect of its liability can be done at the stage of final award, and considered by the Tribunal.

In the case of National Insurance Company, Jabalpur Vs. Thaglu Singh and Others, ; a Division Bench of this Court laid down the law that it is not open to the insurance company to question the grant of interim award on any other ground, except the plea that the vehicle was not at all insured. The ruling was laid down in the following terms :-

"The statutory scheme envisages that if there is a motor accident and death or permanent disablement results from such an accident, owner or owners of the vehicle or vehicles involved shall be liable to pay the prescribed compensation without proof of negligence and irrespective of any contributory negligence of the deceased or the injured and the amount so paid has to be adjusted out of the compensation found due under the final award. There is no provision requiring the recipient of compensation of no fault liability to refund any part of the amount received at any stage. The legislative intent is to ensure that some succour reaches the victim or the dependants without going into the questions which may arise for consideration while passing the final award. If the vehicle is insured, naturally the liability would fall on the insurer, permitting the insurer at that stage to raise any defence other than that there is no insurance policy in force at the relevant time or to raise the statutory defences contemplated in the succeeding Chapter would be to frustrate the legislative object in introducing the concept of no fault liability. The insured is duly protected inasmuch as if ultimately in the final award the insurer is exonerated, the Tribunal can issue appropriate direction enabling the insurer to collect the same from the owner of the vehicle. This could be the only legitimate conclusion to be drawn from the peremptory language of Section 92-A of the 1939 Act or Section 140 of the 1988 Act."

In view of the above Division Bench decision, it is not open to the insurance company to question the facts as alleged by the claimant that the deceased was a passenger on payment or a free passenger.

Similar view was expressed in the case of Bhagwandas and Another Vs. New India Assurance Co. Ltd. and Others, .

Earlier the quantum of interim compensation was under cloud in view of the amendment made in the Motor Vehicles Act and a Bench at Indore had held that since no notification by the State of Madhya Pradesh has been issued, the amendment could not be made applicable in this stage. This view has been reversed by a Division Bench of this Court in the case of United India Insurance Co. v. Mahila Ramshree, 1996(2) TAC 515 (MP). Now the amendment in the Act in respect of the interim compensation u/s 140 is made applicable from the date of its amendment in the State of Madhya Pradesh as well. Therefore, it is not open to the appellant insurance company to raise any other question at the time of consideration of interim compensation u/s 140 of the Motor Vehicles Act. The Tribunal was fully justified in directing the appellant to deposit Rs. 50,000/- the statutory amount of compensation as mentioned in the amended provision of Section 140 of the Act.

This appeal, therefore, has no force and is dismissed.