
(1993) 09 MP CK 0011

In the Madhya Pradesh High Court

Case No : Civil Revision No"s. 248, 249, 257 to 260 of 1992

New India Assurance Co. Ltd.

APPELLANT

Vs

Ajay and Others

RESPONDENT

Date of Decision : 20-09-1993

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Motor Vehicles Act, 1988 — Section 140, 165, 167, 173

Citation : (1994) ACJ 987 : (1994) JLJ 515

Hon'ble Judges : R.D. Shukla, J

Bench : Single Bench

Advocate : Surjeet Singh and V.R. Purohit, for the Appellant; M.L. Agarwal and G.H. Agarwal, for the Respondent

Final Decision : Allowed

Judgement

R.D. Shukla, J.—This order shall also govern the disposal of Civil Revision Nos. 249, 257, 258, 259 and 260 of 1992.

(i) C.R. No. 248 of 1992 arises out of order dated 16.3.1992 passed in Claim Case No. 19 of 1991;

(ii) C.R. No. 249 of 1992 arises out of order dated 16.3.1992 passed in Claim Case No. 22 of 1991;

(iii) C.R. No. 257 of 1992 arises out of order dated 12.3.1992 passed in Claim Case No. 21 of 1991;

(iv) C.R. No. 258 of 1992 arises out of order dated 16.3.1992 passed in Claim Case No. 1 of 1992;

(v) C.R. No. 259 of 1992 arises out of order dated 16.3.1992 passed in Claim Case No. 24 of 1991; and

(vi) C.R. No. 260 of 1992 arises out of order dated 19.3.1992 passed in Claim Case No. 20 of 1991.

All these revisions arise out of the orders referred above passed by XVIth Motor Accidents Claims Tribunal, Indore.

2. The brief history of the case is that non-applicant Umraosingh owns a tractor attached with trolley M.P. 09.D.693. It is insured with petitioner who is arrayed as respondent No. 3, i.e., New India Assurance Co. Ltd. Non-applicant-respondent Kailash was the driver of the tractor.

3. On the date of incident, i.e., 16.2.1991 at about 11.25 p.m. the tractor driven by driver Kailash was being taken to village Sigdod. Ajay, claimant in Claim Case No. 19 of 1991, Babulal, claimant in Claim Case No. 22 of 1991, Bahadur, claimant in Claim Case No. 21 of 1991, Sattar, claimant in Claim Case No. 1 of 1992, Mohad Hussain, claimant in Claim Case No. 24 of 1991 and Bhagirath (deceased) who was related as son of claimant Nos. 1 and 2 and brother to claimant Nos. 3, 4 and 5 and husband of claimant No. 6 in Claim Case No. 20 of 1991, were sitting on the trolley attached to the tractor. They were members of a band company named as "New Bharat Band Company".

4. Due to rash and negligent driving of the tractor it turned turtle and the trolley went upside-down. All the claimants sustained injuries. Bhagirath died in consequence thereof.

All the injured persons and the legal representatives of deceased Bhagirath filed claims as above. Thereafter they filed an application u/s 140 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act") for awarding interim compensation on the principle of "no fault liability".

5. Respondent No. 3, insurance company (applicant here), filed an objection along with the reply to the application of the claimants that the tractor was insured for agricultural work. The claimants and the deceased Bhagirath as per their own averments were not labourers of the tractor and were members of a band party who were probably hired for giving performance in a marriage party and as the tractor was being driven and the passengers were being taken for purpose other than it was insured for, the insurance company is not liable to make any payment.

6. However, learned Claims Tribunal without giving any decision passed an order for payment of Rs. 12,000/- to almost all the injured claimants and Rs. 25,000/- to the legal representatives of deceased Bhagirath. Hence, these revisions by the company.

7. The contention of the learned counsel for the applicants in all these cases is that from the averments of the claimants it is evident that the tractor was being used for the purpose other than it was insured for; as the injured and deceased were being taken as passengers in the tractor-trolley, it was in breach of the conditions of the insurance policy. They were the third party also and, therefore, there is no prima facie case in favour of claimants and the legal representatives of Bhagirath. As such, the company is not liable to make payment.

8. As against it learned counsel for the non-applicants in all the cases have vehemently submitted that the revision does not lie against such order and that elaborate enquiry about the liability cannot be done at this stage. If after the trial it is found that owner of the tractor alone is liable the company may be compensated by directing recovery from the owner of the vehicle.

9. Thus, the following questions arise for determination in the case: (i) as to whether revision against the order of the Claims Tribunal is maintainable? and (ii) whether the insurance company can be asked to make payments on the basis of no fault liability and thereafter can be compensated, if required, by a direction of recovery from the owner of the vehicle?

10. The learned counsel for the non-applicants has referred a Full Bench decision in *Gaya Prasad and Another Vs. Suresh Kumar*, and submitted that no appeal or revision lies against an order passed u/s 140 of the Act. That was a case where appeal was filed against an interim award u/s 140 of the Act. It was held therein that the right of appeal is a creature of statute. It is a substantive right, but its scope and ambit depends on the legislative intent expressed in the provision enacted and as no appeal has been provided against the said interim award, as such, no appeal lies u/s 173 of the Act under an order passed u/s 140 of the Act against the insurer and/or owner/ driver of the offending motor vehicle or vehicles.

11. The right of revision was not in controversy in that case though it has been held by brother R.C. Lahoti, J. that the M.A.C.T. is a civil court, subordinate to High Court and the order passed by it in proceeding is open to revision u/s 115 of the Code of Civil Procedure, if not appealable.

12. Though in a different case *Dimple Vs. Lajjaram and Others*, Dr. T.N. Singh, J., as he then was, has held that the revision is also a creature of statute; the revision being not contemplated under the new Act that jurisdiction the High Court cannot assume unauthorisedly.

In another case *Renuka Bai and Others Vs. Jai Prakash Sethy and Others*, K.L. Issrani, J. has held that the order directing payment of interim compensation u/s 140 of the Act of 1988 is not revisable u/s 115, Civil Procedure Code.

13. Both the two Single Bench decisions referred to above are based on the Full Bench decision.

14. The learned counsel for the non-applicants has referred a case *Oriental Insurance Co. Ltd. v. Bandhan* 1988-11 MPWN SN 104, decided by Gulab C. Gupta, J. But in that case also it was held that no appeal lies against the interim award. There is no reference of maintainability of revision in that case.

15. This controversy about the maintainability of revision has already been resolved by a Full Bench decision of this court in *Krishan Gopal v. Dattatrya* 1971 ACJ 372 (MP). The following observation in para 5 of the said judgment is important and relevant to the case:

Any Tribunal constituted under any statute, by whatever name it is described, would be treated as a "Court of Judicature" if it is called upon to discharge the judicial functions of the sovereign State, untrammelled by executive considerations and if in reaching its conclusion it is required to follow the well recognised judicial principles. The Claims Tribunal is such a Tribunal.

16. It was finally held in para 12 of the judgment that the Claims Tribunal constituted u/s 110 of the old Act and Section 165 of Act No. 59 of 1988 is a civil court and the revision petition would lie u/s 115, Civil Procedure Code, against an order passed by it in the course of proceeding before it.

A similar view about the maintainability of a revision against the order of M.A.C.T. has been taken by the Division Bench of Rajasthan High Court in Darshan Singh Vs. Ghewarchand and Others, (Rajasthan).

17. Thus, in the opinion of this court in view of the Full Bench decision of this court, Claims Tribunal being the civil court a revision against the order of Tribunal would be maintainable and, therefore, the objection as to the maintainability of revision raised by learned counsel for the non-applicants in the case is overruled.

18. Thereafter learned counsel for the non-applicants has raised an objection that elaborate enquiry for passing interim award is not contemplated and, therefore, the insurance company has rightly been directed to make payments.

19. Learned counsel has referred to a case reported in National Insurance Co. Ltd. Vs. Shabirkhan and Others, decision of a Single Bench of R.K. Verma, J. as he then was, and a case reported in National Insurance Co. Ltd. Vs. Savitri Bai alias Vaishakhia Bai and Others, decision of a Single Bench of S.K. Seth, J., as he then was. In both the cases it has been held that the time-consuming enquiry cannot be held in such cases and interim award may be passed jointly and against owner and insurer of vehicle and if in final award insurer is found entitled to defence u/s 96 owner may be directed to reimburse the amount of interim award paid by insurer.

20. The primary liability of making payments of compensation, interim or final, lies on the driver of the vehicle and the owner is made liable on the principle of vicarious liability, the insurer is further made liable on the basis of a contract of indemnity. Such contracts of indemnity contain certain stipulations and conditions.

If the insurer is asked to indemnify the owner of the vehicle which is clearly on the plain reading against the terms and conditions of contract of indemnity (insurance) the insurer will be put to hardship and great difficulty. The insurance company is holding the money of insured as a trustee of the same. This is a public money. The insurance company cannot be compelled to make payments in cases where the breach of conditions of policy is evident from the bare reading of the averments of the parties or the terms of policy.

21. In case reported in Shivaji Dayanu Patil and another Vs. Smt. Vatschala

Uttam More, it has been held by their Lordships of the Supreme Court that for awarding compensation on the principle of no fault holding of regular trial in same manner as for adjudicating claim petition u/s 110-A is not permissible. That was a case from Maharashtra. The Maharashtra State has framed Rules for enquiry under Sections 92-A and 110-A of the Act, i.e., Sections 140 and 167 of the new Act.

22. Rule 306-B reads as follows:

(1) The Claims Tribunal shall proceed to award the claim of compensation u/s 92-A on the basis of?

(i) registration certificate of the motor vehicle involved in the accident.

(ii) insurance certificate or policy relating to the insurance of the vehicle against third party risks;

(iii) panchnama and first information report;

(iv) post-mortem certificate or death certificate; or certificate of injury from the medical officer; and

(v) the nature of the treatment given by the medical officer who has examined the victim.

(2) The Claims Tribunal in passing orders shall make an award of compensation of fifteen thousand rupees in respect of the death and of seven thousand five hundred rupees in respect of the permanent disablement to be paid by insurer or owner of the vehicle involved in the accident.

(3) Where compensation is awarded to two or more persons, the Claims Tribunal shall also specify the amount payable to each of them.

(4) The Claims Tribunal in passing order under Sub-rule (2) shall direct the insurer or owner of the vehicle involved in the accident to pay the amount of compensation to the claimant within two weeks from the date of the said order.

(5) The Claims Tribunal shall as far as possible dispose of the application for compensation within forty-five days from the date of receipt of such application.

Though the State of Madhya Pradesh has not framed Rules as referred above, but the principle of Rule 306-B referred above can always be adhered to, for making a summary enquiry into the matter before passing an order of interim award.

23. This is a case where from the averments of the claimants themselves, it is evident that they were going as a band party probably to attend a marriage ceremony which was clearly against the conditions of the insurance policy. There is no dispute that tractor and trolley involved in the accident were insured only for agricultural purposes. There is no insurance for carrying the passengers on the trolley and, therefore, on the plain reading of claim petition and the reply of

insurance company the inference about the liability can be drawn.

24. This matter was considered by a Full Bench of High Court of Karnataka reported in M/s. United India Insurance Company, Bangalore Vs. Imman Aminasab Nadaf and others, wherein it was held as follows:

Therefore, in cases, on looking into the facts alleged in the petition and going through the policy, a finding at once can be recorded to the effect that the risk was not covered by the policy and the Tribunal cannot refuse to look into contents of the insurance policy which patently establishes no liability on the insurance company and blindly make an award directing the insurance company to pay the amount of compensation awarded u/s 92-A of the Act stating that a direction would be made in the final award directing the insurance company to file a suit against the owner and recover the same from him. Just as a person impleaded as a respondent to a claim petition as owner cannot be made liable to pay compensation u/s 92-A of the Act, if he were to show that he was not the owner of the vehicle the insurance company also cannot be asked to pay the compensation if it were to make out that patently the policy did not cover the risk. There is no justification to foist the liability on the insurance company if it is in a position to show that patently the risk was not covered by the policy.

25. In the presence of the Full Bench decision of Karnataka High Court I am not inclined to agree with two different judgments of Single Bench referred above.

26. As a result it is held that a revision lies against the order of interim award passed u/s 140 of the new Act, where on the plain reading of the averments of the parties, the insurance policy and such other documents as referred in para 22 of this judgment, if it can be inferred that the clear breach of the conditions of the policy has been committed, the insurance company cannot be directed to make payments of such interim compensation. However, the case of driver and owner of the vehicle stands on a different footing, they can be directed to make payments of interim award despite the breach of conditions of insurance policy.

27. In view of the discussions above the revisions succeed and are allowed. The order of the learned Tribunal is modified to the extent that the interim award granted in favour of the injured claimant and the legal representatives of deceased Bhagirath shall be paid by driver and the owner of the vehicle.

Counsel's fee Rs. 300/- in each of the cases.