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(2000) 02 RAJ CK 0065

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 210 of 1998

New India Assurance Co. Ltd. APPELLANT

Vs

Movani and Others RESPONDENT

Date of Decision : 15-02-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Motor Vehicles Act, 1988 — Section 140, 144, 166, 168, 173

Citation : (2001) 1 ACC 81 : (2002) ACJ 863 : (2000) 2 RLW 793 : (2000) 2 WLC 471

Hon'ble Judges : Amaresh K. Singh, J

Bench : Single Bench

Advocate : R.K. Mehta, for the Appellant; Usman Ghani, for the Respondent

Final Decision : Allowed

Judgement

Amaresh K. Singh, J.—Heard the learned Counsel for the appellant and the respondent No. 2.

2. Learned counsel for the respondent No. 2 has raised the preliminary objection that this appeal is not maintainable because no appeal u/s 173 of the Motor Vehicles Act is maintainable against the order of compensation passed u/s 140 of the Motor Vehicles Act. In support of his contention, learned Counsel for the respondent No. 2 has placed reliance on Section 144 of the Motor Vehicles Act which reads as under:

Overriding effect.-The provisions of this Chapter shall have effect notwithstanding anything contained in any other provision of this Act or of any other law for the time being in force.

The submission of the learned Counsel for the respondent No. 2 is that since Section 144 expressly provides that the provisions of Chapter 10 shall have effect notwithstanding anything contained in any other provision of this Act or of any law for the time being in force, it should be inferred that the legislature has not provided any appeal against an order passed u/s 140 of the Motor Vehicles Act.

3. In my opinion, the argument advanced by the learned Counsel for the respondent No. 2 ignores the fact that Section 144 refers to ''provisions of this Chapter'' and not to the ''orders passed under any provisions of the Chapter''. There is a basic distinction between the law enacted by which the legislature confers a right on a Tribunal and an order passed by the Tribunal in exercise of the power conferred by the law. If an order passed by the Tribunal is in excess of the powers conferred by the law, such order cannot be justified by any provision of the law and, therefore, it will have to be regarded as ultra vires.

4. In my considered view, the object of Section 144 of the Motor Vehicles Act, 1988 is to make it clear that provisions contained in Chapter 10, will be effective notwithstanding any other provisions of the Act or of any other law in force. Object of Section 144 is not to protect the orders passed by the Motor Accidents Claims Tribunal under any provision of Chapter 10, from judicial scrutiny in appeal. I, therefore, do not find any force in this submission that the object behind Section 144 of the Motor Vehicles Act, 1988 is to prohibit appeals against the orders passed by the Motor Accidents Claims Tribunal u/s 140 or any other provision of Chapter 10. It may be pointed out that a learned single Judge of this Court in National Insurance Co. Ltd. Vs. Heera and Others, considered the maintainability of the appeal against the order of compensation u/s 140 of the Motor Vehicles Act and observed:

I would like to add few lines of my own in support of the proposition of law that an order passed u/s 140 of the Act of 1988 is appealable u/s 173 of the said Act and a revision u/s 115, CPC is not tenable. It is to be noticed that neither under the old Act of 1939 nor under the new Act of 1988 the expression ''award'' is defined. Since the expression ''award'' is not defined either under the old Act or under the new Act, therefore, in my considered opinion, the expression ''award'' includes order for compensation passed u/s 140 of the Act of 1988, ''within the fold of award'' used u/s 173 of the said Act, subject to mandatory prohibition envisaged under Sub-section (2) of the said section which clearly provides that no appeal shall lie against an award of Claims Tribunal if the amount in dispute under appeal is less than ten thousand rupees.

A conjoint reading of Section 140, proviso to Sub-section (2) of Section 166 and proviso to Sub-section (1) of Section 168 reveal that these sections envisaged two kinds of awards. One is the award which is to be passed by Claims Tribunals based on the principle of no fault liability u/s 140 of the Act of 1988 and the other is based on the principle of fault of the owner of the vehicle u/s 168 of the said Act. Both these awards are to be passed by Claims Tribunal independently in the same claim petition at two different stages of the same proceedings after giving opportunity of hearing to the claimants, owner(s) of the vehicle as also to the insurer.

5. I respectfully concur with the view taken by the learned single Judge. The preliminary objections raised by the learned Counsel for the respondent No. 2 are, therefore, not tenable and are rejected.

6. The main submission of the learned Counsel for the appellant is that the provisions of Section 140 of the Motor Vehicles Act, 1988 as amended by Act No. 54 of 1994, which came into force on 14.11.94, do not have any retrospective effect and, therefore, the enhanced compensation of Rs. 50,000 under Sub-section (2) of Section 140 would not be payable to persons who are victims of accidents which occurred before 14.11.1994. It is further submitted by him that in the instant case the accident took place on 18.1.1994 and, therefore, the respondents-claimants are not entitled to the enhanced compensation of Rs. 50,000 under Sub-section (2) of Section 140 on account of no fault liability. In support of his submission, he has placed reliance on two decisions, National Insurance Co. Ltd. v. Heera 2000 ACJ 963 (Rajasthan) and New India Assurance Co. Ltd. v. Jhamku S.B. Civil Misc. Appeal No. 520 of 1998; decided on 9.4.1999. Both decisions of this Court lay down the law that the victims of accidents which took place before the date on which the amending Act came into force, would not be entitled to enhanced compensation payable under the amended Act.

7. I do not find any sufficient reason to take different view. Therefore, the appeal deserves to be allowed.

8. For the reasons mentioned above, the appeal is allowed. The impugned order dated 23.7.1997 passed by the Motor Accidents Claims Tribunal, Udaipur in Movani v. Motilal, Motor Accident Claim No. 119 of 1996, is hereby modified and amount of Rs. 50,000 awarded by the Tribunal is substituted by the amount of Rs. 25,000 payable under the unamended provisions. The record of the lower court be returned without unnecessary delay.

9. The appeal is disposed of accordingly.

