

(2000) 05 RAJ CK 0016
In the Rajasthan High Court

New India Assurance Co. Ltd.

APPELLANT

Vs

Pala Ram and Others

RESPONDENT

Date of Decision : 16-05-2000

Acts Referred:

Motor Vehicles Act, 1988 — Section 134, 140, 187
Penal Code, 1860 (IPC) — Section 279, 304A, 337, 338

Citation : (2001) 2 ACC 421

Hon'ble Judges : Arun Madan, J

Bench : Single Bench

Judgement

Arun Madan, J.—Heard learned Counsel for the appellant on admission.

The appellant New India Assurance Company has come up by way of this miscellaneous appeal against the interim award dated 23.2.2001 passed by the Motor Accident Claims Tribunal, Kotputli (for short "the Tribunal") in Claim Petition No. 341/2000 filed by the claimant i.e. respondent No. 1-Pala Ram for award of Rs. 16,10,000/- by way of compensation and Rs. 25,000/- by way of interim compensation. The learned Tribunal vide aforesaid order awarded interim compensation of Rs. 25,000/- to respondent No. 1 while the claim petition is still pending for final adjudication by the learned Tribunal.

2. The contention of the learned Counsel for the appellant is that the liability of the either party is yet to be finally determined in the claim petition hence, the respondent No. 1 is not entitled to interim compensation.

3. From the appeal it is averred that on 31.10.1998 respondent No. 1 was travelling in a bus from Sunderpura to Talot to attend a marriage accompanying 50 other persons. At about 2.00 p.m. one truck bearing No. RJ-02/G 2080 came from the opposite side and collided with the bus; as a result of which bus overturned and three persons namely, Ramesh aged about 18 years, Ram Karan aged 19 years (conductor of the bus), and Kumari Reena aged 5 years died at the spot while other persons including the claimant-respondent No. 1 sustained grievous injuries.

4. Respondent No. 2-Shimbhu Dayal (the driver of the truck) was charge sheeted for offence Under Sections 279,337,338 and 304-A, I.P.C. r/w Sections 134/187 of the Motor Vehicles Act, 1988 (for short "the Act").

5. In my view, the contentions of the learned Counsel for the appellant are not sustainable in the light of the provisions of Section 140(1) of the Act which provides, as under:

LIABILITY WITHOUT FAULT IN CERTAIN CASES

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 an 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.

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

6. In the light of the above provisions of the Act, prima facie, I am of the view that the learned Tribunal after examining all aspects of the matter has rightly awarded interim compensation of Rs. 25,000/- to respondent-claimant No. 1.

7. During the course of hearing, I am informed by the learned Counsel for the appellant that in terms of the order of the learned MACT, Kotputli as aforesaid, the appellant has already deposited 50% of the interim compensation with the MACT. This fact is borne out from the document dated 28.4.2001 furnishing the cheque of Rs. 12,500/- to the MACT. The same is directed to be taken on record.

8. Prima facie, I am of the view that no ground for interference with the impugned interim award dated 23.2.2001 of MACT, Kotputli is made out moreover, the rights of the either party are yet to be finally determined in the claim petition which is pending before the Tribunal. In my view, the claimant i.e. respondent No. 1 is entitled for interim compensation.

9. At this stage, learned Counsel for the appellant prays that the appellant-The New India Assurance Company may be given opportunity of leading evidence before the MACT.

10. Accordingly, the appellant. The New India Assurance Company is directed to deposit remaining interim compensation amount of Rs. 12,500/- with the MACT, Kotputli which will be subject to the final decision of the claim petition pending before it. The learned Counsel for the parties shall be at liberty to lead evidence before the MACT, Kotputli.

With the above directions this miscellaneous appeal stands disposed of.