
(1992) 10 MP CK 0003
In the Madhya Pradesh High Court

New India Assurance Co. Ltd.

APPELLANT

Vs

Ramdeen and Others

RESPONDENT

Date of Decision : 15-10-1992

Acts Referred:

Motor Vehicles Act, 1939 — Section 110A, 110B, 92A

Citation : (1994) 2 ACC 260

Hon'ble Judges : T.N. Singh, J

Bench : Single Bench

Judgement

T.N. Singh, J.—This is insurer's appeal against the final award passed on 27.2.1988 u/s 110-B, Motor Vehicles Act, 1939, for short, "the Act". An application u/s 110-A of the Act was filed claiming compensation in the sum of Rs. 2,12,000/-. During the course of trial of that application, on 22.12.1987, an order of interim compensation was passed in the sum of Rs. 13,000/- invoking the provisions of Section 92-A of the Act. However, when final award was passed to enforce liability on "fault", the Tribunal found that negligence of the driver of the offending motor vehicle was not proved and, therefore, the claim was dismissed. Admittedly, the order dated 22.12.1987 has remained unchallenged so far. Admittedly, also, there is no cross-objection in this appeal for enhancement of the compensation to enforce liability on "fault".

2. Insurer's Counsel, Mr. V.K. Sharma, submitted that Section 92-A was not born when (Sic. accident took place and the) order dated 22.12.1987, he submits, is illegal. He has further submitted that the Tribunal ought to have recalled that order when passing the final award, but that has not been done illegally. Therefore, the final award is challenged.

3. In my opinion, there is no scope for my interference with the impugned order because I have taken the view after going through the evidence that the Tribunal faulted in reaching the finding that negligence is not proved. I am also of the view that the order dated 22.12.1987 having become final, that cannot be challenged in this appeal. That was separate order passed and interim order

passed in the course of trial of the claim determining liability, legally or illegally, of parties with respect to the time made. Even if the provisions of Section 92-A could not have been invoked and that order was illegal, that being not challenged, has become final.

4. On merits, what I find in this case is beyond any pale of controversy. The fact established is that the bus turned turtle. That position is not disputed. The doctrine of *res ipsa loquitur* is immediately attracted. No other evidence had to come to establish the negligence of the driver. Unfortunately, there is no cross-objection challenging the impugned award passed on 27.2.1988 dismissing the claim and as such, I cannot interfere with that order. It is true, the insurer would have been liable in respect of liability on "fault" to the extent of Rs. 5,000/- only in terms of Section 95(2)(b)(ii), Clause (4), as it then existed, but there is no occasion for me to vary in any manner the impugned award dated 27.2.1988 and to grant any relief on that basis to the insurer. The short and simple reason is that the insurer is bound by the order dated 22.12.1987 passed against him which is not appealed against.

5. However, the claimant-respondent Nos. 1 to 5, have relied on this Court's Full Bench decision in *Prakramchand Vs. Chuttan and Others*, to submit that any award of interest less than 12 per cent is illegal and without jurisdiction and the order dated 22.12.1987 is carrying interest at the rate of 10 per cent per annum, prayer for varying that is made, but in that regard, I am required constitutionally to exercise my own jurisdiction to allow that prayer *suo motu*.

6. In the result, the appeal fails and is dismissed, but I direct that the insurer appellant shall not only discharge his liability under the order dated 22.12.1987 by paying Rs. 15,000/- to the claimants, but on that amount interest shall also be paid at the rate of 12 per cent per annum from the date of application till payment.