

(1998) 07 GUJ CK 0058
In the Gujarat High Court
Case No : F.A. No. 2829 of 1995

New India Assurance Co. Ltd.

APPELLANT

Vs

Sanjay Vajubhai Pari and Others

RESPONDENT

Date of Decision : 20-07-1998

Acts Referred:

Motor Vehicles Act, 1988 — Section 140

Citation : (1999) 1 ACC 679 : (1999) ACJ 1247 : (1999) 1 GLR 403 : (1999) 2 RCR(Civil) 428

Hon'ble Judges : S.K. Keshote, J

Bench : Single Bench

Advocate : H.M. Bhagat, for the Appellant; D.H. Waghela, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Keshote, J.—This appeal is preferred by the appellant, New India Assurance Co. Ltd., who is the original opponent No. 3 in the claim petition filed by respondent No. 1 claimant for compensation to be awarded to him for the injury sustained by him in a motor vehicular accident which took place on 4.1.1991 at about 3.00 p.m., on Jamnagar main road near Madhapar village.

2. In the claim application, respondent-claimant filed an application Exh. 2 for grant of interim compensation as provided u/s 140 of the Motor Vehicles Act, 1988. Under the impugned order dated 12.12.1994 of the Motor Accidents Claims Tribunal (Aux.), Rajkot, a sum of Rs. 12,000 with running interest at the rate of 12 per cent per annum from the date of application till realisation was ordered to be paid by the appellant and respondent Nos. 2 and 3. Hence, this appeal before this Court by the appellant.

3. Only contention made by the learned Counsel for the appellant is that claimant-respondent is not entitled for interim compensation because the entire facts are got up and the vehicle which is stated to have been involved in the accident has not really caused the accident. Carrying this contention further

learned Counsel for the appellant urged that the other vehicle is responsible for the accident and as such no order could have been passed for interim compensation against the appellant.

4. On the other hand, the counsel for the respondent-claimant contended that it is an interlocutory order against which normally this Court may not interfere. It has next been contended that the Motor Accidents Claims Tribunal has not decided the matter finally and in case ultimately it is found that the vehicle which was insured by the appellant is not in any manner responsible for causing of the accident, it is competent to pass appropriate order directing the insurance company of the vehicle which is found involved in the accident to indemnify the amount paid by the appellant to the claimant-respondent in pursuance of impugned order with interest.

5. I have given my thoughtful consideration to the submissions made by the learned Counsel for the parties.

6. Section 140 of Motor Vehicles Act, 1988 has been enacted with the purpose and object to provide immediate financial help to the victims of the accident in the case of injury or to the dependants in the case of fatal accident. In the claim petition filed by the claimants for compensation, it is legal obligation on the part of the Tribunal to suo motu consider the matter to grant the interim compensation to the claimants. From the language of Section 140 of the Motor Vehicles Act, it is clear that either claimants may move an application for interim compensation or where the application for interim compensation is not moved, the Tribunal may consider the matter for grant of interim compensation suo motu. As by the very nature of this name given to it and coupled with the fact that it is a benevolent provision of the Act it has to be decided immediately and without waiting for the full-fledged trial of the claim application. The benefit falls under the category of "no fault liability" and to award this compensation, the Tribunal is not required to even hold summary adjudication. On the basis of material which has come on record, the Tribunal has to record its satisfaction that the accident has been caused by vehicle due to its rash and negligent driving by the driver in which the applicant sustained the injury or in a fatal accident the bread-earner has lost the life. The court has seen many of the cases where lengthy arguments from both the sides are being permitted and by dictating lengthy judgments, considerable time has been taken in disposal of these applications. This approach of the Tribunals frustrates the very purpose and object of this benevolent provision. Immediately on service of summons of the claim application, the Tribunal has to undertake this exercise and pass appropriate order in accordance with law. Niceties of the legal issues which may arise or may be raised in reply to the claim application should not be permitted to that extent, ordinarily permitted at the final stage, at the stage of dealing with the question of awarding interim compensation as provided u/s 140 of the Act, 1988. From the impugned interim award of the Tribunal, I find that on the basis of the material which was there before it, it has rightly reached to the conclusion

that the accident has been caused because of rash and negligent driving on the part of the driver of the offending vehicle which was insured by the appellant herein. The impugned order passed by the Tribunal is an interlocutory order and I find sufficient merits in the contention of the learned Counsel for the respondent that it has to be accordingly dealt with by this Court. After considering the documentary evidence which was there on record of the claim application, the Tribunal has reached to the prima facie conclusion that the vehicle insured by the appellant is involved in the accident in which the applicant-claimant has sustained serious bodily injuries, which resulted in permanent partial disability. It is the case as what the counsel for the appellant contended where in the accident two vehicles were involved. After taking evidence of the parties, at the final stage, if the Tribunal accepts that the driver of the other vehicle is wholly responsible for this accident then the Tribunal can take care of this situation and pass appropriate order for reimbursement to the appellant of that amount which is paid by it to the claimant-respondent in pursuance of the impugned order from the amount to be paid by the owner or driver of the said vehicle. In case where both the vehicles are held to be involved in the accident then proportionate reimbursement may be there from the other insurance company or driver or owner of the said vehicle. The appellant will not suffer in any way. It is only the tentative opinion formed and the final stage has not been reached.

7. Learned counsel for the appellant then contended that this amount cannot be recovered from the claimant and this amount may not be ordered to be paid to him. It is true that this amount even if ultimately it is found that vehicle insured by the appellant is not involved in the accident cannot be recovered from the claimant as it is based on the principle of "no fault liability" but as observed earlier in the foregoing paras of the judgment, the appellant is otherwise sufficiently protected and the Tribunal may pass the order for reimbursement of the amount in this very proceedings against the owner of the vehicle insured by the appellant. However, it is made clear that whatever findings given by the Tribunal in this case for awarding of the interim compensation to the claimant are not final between the parties. The main matter has to be decided on merits without being influenced by the finding given by the Tribunal at this stage. The Tribunal has passed just and reasonable order to which no exception can be taken.

8. In the result, this appeal fails and the same is dismissed.