

(1999) 01 J&K CK 0008

In the Jammu And Kashmir High Court

Case No : Civil Rev. No. 4 of 1999 with CMP No's. 7 and 8 of 1999

New India Assurance Co. Ltd.

APPELLANT

Vs

Uri Civil Contractors and Others

RESPONDENT

Date of Decision : 28-01-1999

Acts Referred:

Motor Vehicles Act, 1988 — Section 140

Citation : (2000) ACJ 1540

Hon'ble Judges : Bashir-Ud-Din, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Syed Bashir-Ud-Din, J.—Motor Accidents Claims Tribunal (District and Sessions Judge), Baramulla, passed an order on 9.12.1995

allowing respondents' claim for interim award for the sum of Rs. 50,000 u/s 140 of Motor Vehicles Act. The New India Assurance Co. Ltd. was

ordered to pay the interim compensation to the heirs of the deceased victim of vehicular accident in question. The insurance company filed an

application for modification of the order seeking its absolvment from being saddled with the said compensation as awarded under above interim

award u/s 140 of Motor Vehicles Act. This application came to be rejected by the M.A.C.T., Baramulla on 15.9.1998, thereby, allowing the

original order of 9.12.1995 to stand.

2. Against this order of Claims Tribunal, petitioner New India Assurance Co. Ltd. has filed a revision petition accompanied by an application

seeking condonation of delay in filing the petition beyond prescribed time.

3. The condonation application with revision has been listed before this court

repeatedly. But the petitioner or the petitioner's counsel has not appeared to prosecute the matter.

4. Record has been perused and matter considered.

5. The compensation awarded in this case on account of death arising from the vehicular accident u/s 140 of Motor Vehicles Act is on the basis of

no fault liability. Neither the appeal nor a revision is provided under Motor Vehicles Act against such interim award. The provisions of CPC cannot

be made applicable to this case, as exercise of powers u/s 140 of the Motor Vehicles Act comes within the sweep of exercise of special powers in

exercise of special jurisdiction under the Act. Under Motor Vehicles Act powers can be exercised in appeal or revision only if appeal or revision is

provided by Motor Vehicles Act, which is not the case under Motor Vehicles Act. In fact keeping in view the beneficial purpose behind the

enactment of Section 140 of the Motor Vehicles Act and placing construction to the provisions which would advance the purpose underlying the

enactment in juxtaposition to the specific provision of Motor Vehicles Act, it can be said that the insurance company is liable for the interim award,

leaving the question of adjustment and working out of equities between the parties to be determined by the Tribunal on enquiry.

6. In this case in fact what is sought to be challenged in revision, is not interim award itself but the order rejecting an application of the assurance

company to modify the interim award passed u/s 140 of the Motor Vehicles Act on 15.9.1998. Notwithstanding the form of such application, in

fact the application is a review petition wherein award of interim compensation awarded by the Tribunal has been sought to be reviewed. This

application has been dismissed and the order of dismissal of this application is sought to be impugned in the revision. There is no provision in the

Motor Vehicles Act where the order rejecting a review petition of an interim award can be challenged in revision. The challenge in revision thrown

to the rejection of the review application by the Tribunal, is on a still weaker wicket than the challenge in revision thrown to an interim award itself.

Obviously, High Court cannot exercise such a jurisdiction, as no power for interfering with such order is found in the Motor Vehicles Act. The

High Court cannot be expected in exercise of special jurisdiction under Motor Vehicles Act to interfere with the impugned order in proceedings in

revision outside the Motor Vehicles Act. High Court cannot exercise jurisdiction when a revision is not contemplated or provided for by the Motor

Vehicles Act. In absence of any provision for revision in the Motor Vehicles Act the operation of statutory provision of Section 140 of Motor

Vehicles Act cannot be circumvented to avoid or delay the payment of awarded interim compensation. The purpose of such welfare provision

cannot be allowed to be frustrated. The revision petition in such circumstances is not maintainable.

7. Once the revision is not maintainable the motion seeking condonation of delay in preferring such a revision too is not maintainable. However,

even if the application is examined on merits it cannot succeed. The reason for seeking condonation of delay put forth is that though the petitioner

knew the order of the Tribunal on the date when it was pronounced and even was given a copy of the order, petitioner took time to correspond

with their Regional and Head Offices and it was only after hearing from the Regional Office on 14.12.98 that certified copy was applied for on

15.12.1998 which was obtained on 30.12.1998 and the petition was filed on 4.1.1999. The intervening days were consumed in preparing and

filing the condonation application with revision. In the motion in fact apart from omnibus and the generalised pleas of the Regional and Head

Offices of being seized of the matter, no explanation is on record to reveal, why so much of time was taken in preparing and filing the motion.

Under the guise of a generalised statement, the delay cannot be condoned when no explanation and sufficiency of cause or reason are placed on

record. Though the delay is ascribed to the period consumed in supplying copy to the petitioner from 15.12.98 to 30.12.1998, but same is not

borne out by the record in so far as certified copy of interim order itself reveals that the copy was ready on 15.12.98 but the assessed copying

charges were paid on 30.12.1998. Therefore, copy was supplied on 30.12.1998. The period consumed by the petitioner to furnish the copying

charges cannot be excluded.

8. Seen and judged in totality, no sufficient cause is made out to warrant condonation of delay on merits. In the result, the condonation application

with revision petition is dismissed. Certify the decision to the Tribunal.