
(1999) 09 MP CK 0031
In the Madhya Pradesh High Court
Case No : M.A. No. 217 of 1997

Oriental Insurance Co. Ltd.

APPELLANT

Vs

Gopal Singh and Others

RESPONDENT

Date of Decision : 06-09-1999

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 141, 149(1), 166, 168

Citation : (2000) ACJ 255 : (1999) 2 JLJ 338 : (1999) 2 MPLJ 541

Hon'ble Judges : Usha Shukla, J; D.M. Dharmadhikari, J

Bench : Division Bench

Advocate : N.S. Ruprah, for the Appellant; Sanjay K. Agrawal, for the Respondent

Judgement

D.M. Dharmadhikari, J.

This appeal and the connected appeal Misc. Appeal No. 218/1997 between the same parties u/s 173 of the Motor Vehicles Act, 1988 preferred by the Insurance Company has been filed against the common award dated 2-1-1997 passed in two Claim Petitions No. 77/90 and 78/90 respectively arising out of the same accident by the First Additional Motor Accidents Claims Tribunal, Katni and is being decided by this common judgment with connected appeals M. A. No. 306/97 Gopal Singh and Anr. v. Rajendra Kumar Joli and Ors. and M.A. No. 307/97 Gopal Singh and Anr. v. Rajendra Kumar Joli and Ors. filed by the claimants in the two claim cases. The appellant-Insurance Company in this appeal and in connected appeal No. 218/97 filed by it, prays for a direction that it be absolved from the liability for payment of compensation on the ground that on the date and time of accident, there was no insurance coverage. The other two connected appeals M.A. 306/97 and M.A. 307/97 have been filed by the claimants seeking enhancement of the quantum of compensation awarded for two deaths in the accident.

On 29-4-1990 in the early hours of morning at about 6.30 Smt. Nanhi alias Durgesh wife of claimant Gopal Singh with her daughter Shweta and son

Abhishek were going in Fiat Car No. UAI 3142 from Jabalpur to Kanpur. In the course of their journey, at some place within the jurisdiction of Katni Court, Truck No. M.K.A. 1004 coming from opposite direction collided with the Car resulting in death of Smt. Nanhi alias Durgesh aged 32 years and child Abhishek aged 4 years. The Truck was owned by Rajendra Kumar Joli (respondent No. 3), driven by Ravi Kumar Sahni (Respondent No. 4) and insured by the appellant-Insurance Company.

In the two separate claim petitions filed by the claimant Gopal Singh and his daughter Shweta for death of Smt. Nanhi and Abhishek, the Claims Tribunal rejected the plea taken by the Insurance Company that there was no insurance coverage to the Truck involved in the accident on the date and time mentioned above. On examining the contents of the insurance cover note and scrutinising the oral evidence led on behalf of the Insurance Company, the Claims Tribunal held the Insurance Company liable jointly with owner and driver for payment of compensation.

On the basis of evidence led by the claimants the Tribunal awarded a total sum of Rs. 73,200/- for the death of Abhishek and a sum of Rs. 70,200/- for the death of Smt. Nanhi alias Durgesh.

We shall first take up for decision Misc. Appeals No. 217/97 and 218/97 filed by the Insurance Company seeking their exoneration from the liability towards compensation. In the appeals preferred by the Insurance Company, we shall first take up for consideration the preliminary objection raised against the appeals on behalf of the owner and the driver of the Truck involved in the accident.

Shri Sanjay K. Agarwal learned counsel appearing for the respondents, raising a preliminary objection to the maintainability of the appeal filed by the Insurance Company submits that over and above the interim compensation of Rs. 28,526/- in each of the two appeals no further amount as required by the provisions of Section 173 of the Act, as a pre- condition of preferring appeal has been deposited by the Insurance Company and the appeal, therefore, deserves to be summarily dismissed on the above ground of non deposit of the requisite amount under the Act as a pre- condition of preferring the appeal.

Learned counsel Shri N. S. Ruprah appearing for the Insurance Company in the two appeals preferred by it invites attention of this Court to the order sheets dated 17-3-1997. This Court by order dated 17-3-1997 passed in each of the two appeals on the statement made on behalf of the Insurance Company that "interim compensation in the sum of Rs. 28,526/- had already been paid"; admitted the appeal and stayed the recovery of the balance amount of compensation awarded by the Tribunal in each of the two claim petitions. On behalf of the Insurance Company it is argued that requirement of first proviso to Section 173 of the Act is deposit of minimum Rs. 25,000A or 50% of the amount awarded by the Tribunal whichever is less. Learned counsel for the Insurance Company submits that in accordance with the provisions of Section 141 of the

Act the interim compensation for "No fault liability" awarded u/s 140 is to be taken into account for determining the quantum of compensation payable under the final award based on findings of fault or commission of tort by the owner and driver of the vehicle involved in the accident. The submission made is that the interim award on "No fault liability" merges in the final award passed by the Tribunal on finding fault or tort on the part of the owner or driver of the vehicle involved. The arguments advanced is that if the award of interim compensation merges in the final award and the payment already made under the former award satisfies the requirement of proviso below Section 173, the appeals cannot be held as not maintainable for want of requisite deposit.

Learned counsel appearing for the owner and driver of the Truck involved, in reply, submits that payment of interim compensation u/s 140 would not enure for the benefit of appeal to be made on deposit of requisite amount against the final award. The learned counsel laid much emphasis on the language of first proviso to Section 173 of the Act and it is contended that for preferring appeal, deposit of Rs. 25,000/- or 50% of the awarded amount whichever is less in the High Court, is a mandatory pre- condition for admission of the appeal. The amount, whatsoever, deposited as interim compensation in the Tribunal could not be treated to be a deposit in the "High Court" as is the requirement of first proviso to Section 173 of the Motor Vehicles Act.

The contentions advanced on behalf of the Insurance Company and on the other side on behalf of the owner and driver of the vehicle involved in the accident require proper interpretation and construction of Section 173 of the Act for the purpose of ascertaining its true meaning and intent. Section 173 of the Motor Vehicles Act, 1988 read as under :-

"173. Appeals.- (1) Subject to the provisions of sub-section (2), any person aggrieved by an award of a Claims Tribunal may, within ninety days from the date of the award, prefer an appeal to the High Court:

Provided that no appeal by the person who is required to pay any amount in terms of such award shall be entertained by the High Court unless he has deposited with it twenty-five thousand rupees or fifty percent, of the amount so awarded, whichever is less, in the manner directed by the High Court;

Provided further that the High Court may entertain the appeal after the expiry of the said period of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.

(2) No appeal shall lie against any award of a Claims Tribunal if the amount in dispute in the appeal is less than ten thousand rupees."

The aim and object of requiring deposit of Rs. 25,000/- or fifty percent amount of the award whichever is less; as a pre condition of appeal, appear to be with twin purpose. The Legislature by introducing first proviso u/s 173 clearly intends that during pendency of appeal against the award the victim of the accident must

be provided with certain percentage of amount of compensation as minimum required relief and he should not be allowed to wait indefinitely until decision of the appeal. The other purpose is that the appellants should not be allowed to prefer an appeal on frivolous grounds just to delay the payment of compensation under the award. Only such appeals which are bona fide and backed by payment of reasonable amount under the award should be allowed to be entertained.

The language of first proviso quoted above uses the expression "unless he has deposited with it". It prima facie conveys that the requisite amount of rupees 25000/- or fifty per cent of the award whichever is less should be deposited along with the memo of appeal in the High Court.

In construing the proviso, the proviso has to be read as a whole and apart from the above language, on which much emphasis has been laid, the other expression used in the same proviso particularly the words; "in the manner directed by the High Court", cannot be ignored. The first proviso has to be read as a whole in all its parts to ascertain the meaning conveyed by the language employed, particularly the expressions "unless he has deposited with it" and the latter part "in the manner directed by the High Court" should both be given full meaning and effect.

On reasonable construction of the language employed by the proviso, we are of the considered opinion that the requisite amount, as a pre condition for preferring appeal, can be deposited in the High Court and if the High Court directs, it can be deposited in the Tribunal which is the proper forum where the amount should be deposited. From there, it may be collected by the claimants without much difficulty.

The provisions of Section 140 under Chapter X of the Act allow a claim petition to be filed for grant of compensation even if there is "No fault" on the part of any party involved in the accident. The claimant who has preferred a claim on "No fault liability" is, however, not precluded from claiming compensation on proof of fault or commission of tort on the part of the owner and driver of the vehicle involved. The Act contemplates a situation where for the same accident a claim for interim compensation on "No fault liability" is filed by the claimants u/s 140 and in respect of the same accident a claim petition is filed u/s 166 of the Act for compensation on the ground of "fault" or "tort" committed by the owner or driver of the vehicle involved. To meet such eventualities where two awards are passed by the Tribunal u/s 140 and u/s 166, Section 141 is introduced, so that the interim compensation paid u/s 140 is accounted for in the final award and the persons held liable for compensation are not required to pay doubly. The provisions of Section 141 need be noticed which are as under :-

"Section 141. Provisions as to other right to claim compensation for death or permanent disablement.- (1) The right to claim compensation u/s 140 in respect of death or permanent disablement of any person shall be in addition to any other right, except the right to claim under the scheme referred to Section 163A

(such other right hereafter in this section referred to as the right on the principle of fault) to claim compensation in respect thereof under any other provision of this Act or of any other law for the time being in force.

(2) A claim for compensation u/s 140 in respect, of death or permanent disablement of any person shall be disposed of as expeditiously as possible and where compensation is claimed in respect of such death or permanent disablement u/s 140 and also in pursuance of any right on the principle of fault, the claim for compensation u/s 140 shall be disposed of as aforesaid in the first place.

(3) Notwithstanding anything contained in sub-section (1), where in respect of the death or permanent disablement of any person, the person liable to pay compensation u/s 140 is also liable to pay compensation in accordance with the right on the principle of fault, the person so liable shall pay the first mentioned compensation and -

(a) if the amount of first mentioned compensation is less than the amount of the second mentioned compensation, he shall be liable to pay (in addition to the first-mentioned compensation) only so much of the second-mentioned compensation as is equal to the amount by which it exceeds the first-mentioned compensation;

(b) if the amount of first-mentioned compensation is equal to or more than the amount of the second-mentioned compensation, he shall not be liable to pay the second-mentioned compensation."

The above provisions of Section 141 clearly support the stand taken on behalf of the Insurance Company that the payment made u/s 140 towards interim compensation would be deemed to be a payment against the final award u/s 166 of the Act as in accordance with Section 141 of the Act, the interim compensation merges in the amount finally awarded u/s 166 of the Act. The provisions of Section 168 of the Act, particularly the proviso below Section 168; in a case where claim petitions are filed both under Sections 140 and 166, suggest joint disposal of the same in accordance with Chapter X. The provisions in Section 168 indirectly support the submission made on behalf of the Insurance Company that the award of interim compensation merges in the final award and any payment made towards award of interim compensation would be deemed to be made towards final award.

The arguments advanced on behalf of the owner and driver of the vehicle, therefore, cannot be accepted that the interim compensation paid would not enure for the benefit of the appellant in preferring an appeal on condition of deposit.

It appears to us rather absurd that although the Insurance Company has paid in each case more than 50% of the amount awarded finally by the Tribunal it should be compelled to make a further payment of Rs. 25,000/- or fifty percent of the balance amount of compensation in the High Court. The argument advanced on

behalf of the owner and driver of the vehicle, if accepted, would mean that even though the insurance company, in each of the two cases, has deposited Rs. 28,526/- against the two awards, as against the final award of Rs. 73,200/- and rupees 70,200/- in each of the two claim cases, it would be required to further make a deposit of fifty percent of the balance amount of compensation in each of the two cases.

The Provisions of Section 173 of the Act cannot be construed to mean that thereby the legislature expects the appellant to pay almost the whole amount awarded against him and which he seeks to challenge in appeal. As we have mentioned above the dual purpose of requiring payment of some minimum amount of compensation as a pre condition of appeal, is not to keep the claimants waiting indefinitely for relief and to insist on the appellants to file appeals on substantial and genuine grounds after showing their bona fides by depositing a certain percentage of amount awarded.

As we have held above, the proviso below Section 173 has to be reasonably construed by giving full effect and meaning to all the words employed in its language. If meaning and effect is to be assigned to the expression "in the manner directed by the High Court" used in Section 173 of the Act, it can reasonably be held that the High Court in its discretion while entertaining the appeal, may, direct, that the interim compensation already paid in the Tribunal in a given case would be the requisite deposit. That was the course adopted by the High Court in these two appeals preferred by the Insurance Company, as is clear from the order dated 17-3-1997 passed separately in each of the two appeals. By the orders passed in the appeals, the High Court on the statement made on behalf of the Insurance Company of depositing interim compensation, admitted the appeals and stayed the recovery of the balance amount of compensation. In passing the two orders in the two appeals in the manner aforesaid, the High Court has consciously exercised its power under the first proviso to Section 173 of the Act and the preliminary objection to the maintainability of the appeals raised by the Insurance Company is found to have no merit. Accordingly, we overrule the same.

Now we take up for consideration the two appeals filed by the Insurance Company on merits. The only ground urged is that on the date and time of the accident, there was no insurance coverage. The Tribunal has very carefully scrutinised the documentary and oral evidence led by the insurance company in support of its case. There is on record an insurance cover note (Ex. D3) issued on 29-4-1990 expressly mentioning therein coverage for insurance upto mid night of 28-4-1991. The accident took place on 29-4-1990 sometime between 6 to 6.30 a.m. In the cover note the effective date and time of commencement of insurance for the purpose of the Act, mentions the time 9 a.m. and date 29-4-1990.

The Insurance Company has come up with a plea that the owner of the vehicle in collusion with the Field Officer of the Insurance Company accepted the insurance

premium for the vehicle after the accident. When this fraud was discovered by the insurance company, the insurance policy was cancelled by communication dated 29-5-1990 (Ex. D 1-A). In support of their case, the insurance company did not produce the Field Officer in the witness- box to prove, his alleged collusion with the owner of the vehicle. The Insurance Company examined their Divisional Manager J. S. Ahluwalia as N.A.W. 2. This witness in his cross-examination in para 5 admitted that in the original cover note there was no mention of time as 9 a.m. In the carbon copy of cover note Ex.D/3 in the appropriate column, the insurance coverage is shown from 29-4-1990 at 9 a.m. In the state of above evidence the Claims Tribunal did not rely on the cover note Ex.D/3 which is a carbon copy to accept their case that the insurance coverage was expressly from 9 a.m. of 29- 4-1990. The insurance company did not produce the policy issued pursuant to the cover note although a mention of it is made by its number in the cover note Ex. D/3. The Policy number mentioned is 307/00719/30/91/00355. The figure at the end i.e. 00355 is written in ink and it appears to have been written subsequently. The Divisional Manager Shri J. S. Ahluwalia of the insurance company himself in para 5 of his statement under cross- examination, admitted that in the cover note Ex.D/3 there was no mention of any time. Therefore, if the cover note Ex.D/3 is read by ignoring the mention of time 9 a.m., the cover note issued on 29-4-1990 grants the coverage from mid night of 28-4-1990. The accident in this case has happened after the mid night of 28-4-1990 that is in the early hours at about six in the morning. We find no error in the appreciation of evidence of the insurance company and findings reached by the Tribunal to hold that the vehicle was insured on the date and time of accident and the insurance company cannot avoid its liability on the alleged ground of want of insurance coverage. We rely in the case of New India Assurance Co. Ltd. Vs. Ram Dayal and Others, and decision of Single Bench of this Court in the case of United India Insurance Co. Ltd. v. Smt. Tulsi Bai and Ors. 1997 (2) JLI 17.

As we have held above that the evidence of the insurance company itself was not definite as to whether the cover note contained any specific time showing commencement of the insurance coverage. The decisions relied on behalf of the ,owner and driver of the vehicle particularly in the cases of M/s. National Insurance Co. Ltd. Vs. Smt. Jijubhai Nathuji Dabhi and others, . Oriental Insurance Co. Ltd. Vs. Sunita Rathi and Others, and New India Insurance Co. Vs. Bhagwati Devi and Others, ; are all distinguishable where there was specific mention of time and date of commencement of insurance policy for its coverage. Such is not the case here. We, therefore, uphold the findings reached by the Tribunal against the insurance company and hold that the insurance company is liable jointly with the owner and driver of the vehicle for payment of compensation. Consequently, both the appeals preferred by the insurance company that is, this appeal and Misc. Appeal No. 218/97 are hereby dismissed.

We now take up for consideration Misc. Appeals No. 306/97 and 307/97 preferred by the claimants seeking enhancement of the quantum of

compensation. Shri Ashok Lalwani learned counsel appearing for the claimants submits that in both the cases of death, the compensation awarded is too low and deserves to be suitably enhanced.

The Claims Tribunal for the death of a child aged 4 years has granted a compensation of 73,200/- and a lesser compensation in the sum of Rs. 70,200/- has been awarded for the death of Smt Nanhi alias Durgesh who was aged 32 years and is found to have been engaged in earning some income. So far as child Abhishek is concerned, the minimum compensation awardable for death under the new Act is Rs. 50,000/-. At the time the accident took place, the minimum prescribed compensation for death was only Rs. 25,000/-. We cannot ignore the fact that the child was son of the claimant who was employed in G.C.F. Looking to the status and income of the family, the child would have definitely received proper education and thereafter, expected a reasonable career in service or profession. On a notional basis, the Tribunal has awarded a compensation only by calculating his expected income at Rs. 30 per day based on minimum wages prescribed for labour. As we have held above the compensation for death of the child should be conventional. Keeping into account the status of the family of the deceased, we consider it fit to enhance the compensation for death of child from Rs. 73,200/- to Rs. 80,000/-. Similarly, for the death of Smt. Nanhi alias Durgesh who was aged 32 years and was contributing some amount to the family, we find that the amount of compensation in the sum of Rs. 70,200/- awarded is less. No compensation has been awarded to the claimant for the expenses he would have incurred after the death of his wife for running the house-hold work. When the life partner dies the husband has to incur additional expenses to run the house-hold. Under this head, therefore, we consider it fit to increase the amount of compensation by another Rs. 20,000/- . On a broad estimate, the compensation awarded for death of Smt. Nanhi alias Durgesh is, therefore increased from 70,200/- to Rs. 90,200/-. On the increased amount of compensation, the claimants would be entitled to interest at the rate granted by the Tribunal.

Consequent to the above discussion, resultantly, M.A. 217/97 and M.A. 218/97 preferred by the Insurance Company are hereby dismissed. The other Misc. Appeals No. 306/97 and 307/97 preferred by the claimants for enhancement of compensation are allowed by enhancing the quantum of compensation for death of child Abhishek from Rs. 73,200/- to Rs. 80,000/- and for the death of Smt. Nanhi alias Durgesh from 70,200/- rupees to 90,200/-. In the circumstances, the parties shall bear their own costs.