

(2006) 02 MP CK 0101
In the Madhya Pradesh High Court

Oriental Insurance Company

APPELLANT

Vs

Misro Devi and Others

RESPONDENT

Date of Decision : 07-02-2006

Acts Referred:

Motor Vehicles Act, 1988 — Section 171, 173

Citation : (2006) 2 ACC 840

Hon'ble Judges : K.C. Sharma, J

Bench : Single Bench

Judgement

K.C. Sharma, J.—Though this appeal u/s 173 of the Motor Vehicles Act, 1988 the appellant seeks to quash the award dated 4.5.1992 by which the learned Tribunal has awarded compensation of Rs. 3,20,000 to the claimants.

2. Mr. Rathore appearing for the appellant has strenuously contended that out of the accident more than one claim petitions were filed in the instant case and the learned Tribunal has committed grave error in not deciding all the claim petitions together, thereby causing prejudice to the appellant and, therefore, the impugned award is liable to be quashed only on this ground. In support of his argument, learned Counsel has relied upon K.R. Visalakshi and Others Vs. Pookodan Hamza and Others, wherein the Division Bench of Kerala High Court held that Tribunal should have considered all the claim petitions together arising out of same accident.

3. I have given an anxious consideration to the above argument and gone through the case law cited at the bar. In the case relied upon by the learned Counsel, several claim petitions were filed. The Division Bench of the High Court observed that Tribunal should have considered all the claim petitions together. The Division Bench further observed that in that case, possibly, the Tribunal would have entered the same finding in all the claim petitions and that being so, the Division Bench did not consider it appropriate to remit all the applications to the Tribunal for a joint trial. In this view of the matter, the case relied upon by the learned Counsel is of no help to the appellant. However in the case at hand,

on being confronted, learned Counsel for the appellant has not been able to state as to what prejudice has been caused to the appellant by not deciding all the claim petitions arising out of the same accident, together. Further the finding arrived at by the learned Tribunal while deciding the instant claim petition has not been challenged.

4. The last limb of argument of the learned Counsel for the appellant is that the Tribunal has committed an illegality in issuing direction for retrospective enhancement of interest for default. The Tribunal has ordered that in case the amount of compensation so awarded is not paid to the claimants within 3 months from the date of order, the appellant Insurance Company shall be liable to pay interest @ 15% with effect from the date of application. Learned Counsel submitted that such a direction for retrospective enhancement of interest in the event of default in payment of compensation virtually amounts to imposition of penalty, which is not statutorily envisaged and prescribed. In support of his submission, learned Counsel has relied upon a decision of the Apex Court in *National Insurance Co. Ltd. v. Kesha Bahadur* 1 (2004) ACC 581 (SC) : (Civil Appeal No. 399 of 2004) decided on 20th January, 2004.

5. I have given my thoughtful consideration to the above submission and carefully gone through the case law cited at the bar. In *Kesha Bahadur* (supra), Their Lordships of the Apex Court, considering the provisions of Section 110CC (corresponding to Section 171 of the New Act) held as under:

...Once the discretion has been exercised by the Tribunal to award simple interest on the amount of compensation to be awarded at a particular rate and from a particular date, there is no scope for retrospective enhancement for default in payment of compensation. No express or implied power in this regard can be culled out from Section 110-CC of the Act or Section 171 of the New Act. Such a direction in the award for retrospective enhancement of interest for default in payment of compensation together with interest payable thereon virtually amounts to imposition of penalty which is not statutorily envisaged and prescribed.

6. Relying upon the above decision of the Apex Court, it must be held that once the Tribunal has exercised discretion to award simple interest at the rate of 10% p.a. on the amount of compensation with effect from the date of application, there is no scope for retrospective enhancement of interest for default in payment of compensation.

In the result, the appeal stands partly allowed to the extent indicated above, without any order as to costs.