
(2007) 11 MP CK 0003
In the Madhya Pradesh High Court

Oriental Insurance Company Ltd.

APPELLANT

Vs

Smt. Kantidevi and Others

RESPONDENT

Date of Decision : 13-11-2007

Acts Referred:

Motor Vehicles Act, 1988 — Section 140

Citation : (2008) ILR (MP) 275 : (2008) 2 JLJ 393 : (2008) 3 MPHT 458 :
(2008) 1 MPLJ 633

Hon'ble Judges : P.K. Jaiswal, J

Bench : Single Bench

Judgement

P.K. Jaiswal, J.

Heard.

These appeals are filed by the Insurance Company against the interim award dated 20-4-2007, whereby the learned Additional Motor Accident Claims Tribunal, Gwalior, allowed the applications filed by the claimants u/s 140 of the Motor Vehicles Act, 1988 (for short "the Act") and held that the owner, driver and the Insurance Company are jointly and severally liable to pay the interim compensation within a period of one month from the date of order, failing which they are liable to pay interest @ 6% per annum from the date of order till its realization.

For the sake of convenience, I state the facts occurring in Misc. Appeal No. 728/07 arising out of award dated 20-4-07.

On 15-11-2005 deceased and injured were travelling in a goods carriage vehicle bearing registration No. MP07/G-6231 and due to rash and negligent driving by the respondent No. 8- Leelaram, the said vehicle met with an accident. Due to which Disai, Kanchu Rajput, Shatrughan, Pawan, Dinesh, Ramkishan, Shivbalak, Videsh, Ganesh and Naresh received serious injuries and Dular Chand Sani, Rajkumar Sani, Tulsi and Mahto died on the spot. Constable Ashok Kumar lodged Dehati Nalishi vide Crime No. 0/5 under Sections 279, 337 and 304-A of the

Indian Penal Code. On the basis of Dehati Nalishi, FIR was registered vide Crime No. 331/05 on 15-11-2005. In the FIR, it is very specifically stated that the deceased and injured were travelling in the offending vehicle.

During the pendency of the claim petition, the claimants filed an application u/s 140 of the Act. The appellant-Insurance Company filed their reply and raised an objection that the vehicle is registered as goods carriage vehicle and in the said vehicle, 16 persons were travelling and no extra premium was paid nor their risk was covered and therefore the Insurance Company is not liable to indemnify the award. Thereafter on 17-3-07, written argument was filed by the Insurance Company. In the written argument, it is stated that at the time of accident, the deceased and injured were travelling in the vehicle and it is wrongly averred in the claim petition that they were sitting on the footpath and due to rash and negligent driving by the driver, the vehicle was overturned.

Learned Counsel for the appellant drew my attention to the impugned award and submitted that the objection raised by the appellant was not decided at all nor the same was considered and without considering the objection raised by the Insurance Company, the impugned award has been passed.

He also drew my attention to the Single Bench decision of this Court in the case of Prakash Tiwari v. Sadharam Sahu and Ors. 1997 AJR (2) 347, and submitted that the learned Tribunal committed error in not exonerating the Insurance Company for payment of interim compensation.

It is lastly submitted that the offending vehicle was involved in a vehicular accident and the owner is liable to pay the interim compensation to the claimants on the basis of no fault liability.

On the other hand, the learned Counsel for the claimants urged that in fact nobody was found sitting in the pickup van of the owner and therefore as per terms and conditions of the policy, the Insurance Company is liable to pay the interim award awarded by the Claims Tribunal and the impugned award passed by the learned Tribunal is just and proper.

Motor vehicle Act is a beneficial legislation and provisions of Section 140 of the Act have been introduced in the year 1988 on the ground of no fault liability and immediate relief. It is settled position under the law that u/s 140 of the Act at the stage of deciding an application for interim compensation under no fault liability, no defence is available to the Insurance Co. u/s 149(2) of the Act. The scope of inquiry is limited. Dispute of liability on the basis of breach of policy condition is foreign to the scope of inquiry u/s 140 of the Act. It has been further held that no fault liability is a statutory liability and defence u/s 149(2) of the Act is not available to the Insurance Company at the stage of interim compensation provided that the vehicle is insured with the Insurance Company.

As far as the accident is concerned, it is not in dispute that the accident took place and the vehicle involved in the accident belonged to the respondent No. 9.

As per FIR, the deceased and injured were sitting in the Pickup Van. Even though the Insurance Company may not be liable to pay any compensation in view of violation of policy conditions, but u/s 140 of the Act, the owner of the vehicle is liable to pay a sum of Rs. 50,000/- on the basis of no fault liability. Once the accident is established and death of the person in the accident is also established, compensation under the provisions of Section 140 of the Act is liable to be paid by the owner of the vehicle.

This question was considered by the Apex Court in the case of Smt. Yallwwa and Ors. and National Insurance Co. Ltd. and Anr. 2007 (56) AIC 57 . Paragraphs 9, 11, 16 and 19 are relevant, which read as under:

9. It is not in dispute that an award of the Tribunal is to be made in terms of Section 168 of the Act. For the said purpose, the Tribunal is required to issue a notice/to the insurer and give the parties an opportunity of being heard. While making an award in terms of Section 168 of the Act, the procedure laid down u/s 166 of the Act are required to be complied with. The proviso appended to Section 168 of the Act, however, lays down that where such application makes a claim for compensation u/s 140 in respect of the death or permanent disablement of any person, such claim and any other claim (whether made in such application or otherwise) for compensation in respect of such death or permanent disablement shall be disposed of in accordance with the provisions of Chapter X of the Act. Section 140, as noticed hereinbefore, provides for no fault liability. It uses the words "accident arising out of the use of a motor vehicle", the owner of the vehicle and when more than two vehicles are involved, "the owners of the vehicles" shall, jointly and severally be liable to pay compensation.

One of the defences available to the insurer is breach of conditions specified in the policy. When such a defence is raised, the Tribunal is required to go into the said question. Section 140 of the Act does not contemplate that an Insurance Company shall also be liable to deposit the amount while it has no fault whatsoever in terms of Sub-section (2) of Section 147 of the Act.

The question which is required to be considered is what would be the meaning of the term "award" when such a contention is raised. Although in a given situation having regard to the liability of the owner of the vehicle, a Claims Tribunal need not go into the question as to whether the owner of the vehicle in question was at fault or not, but determination of the liability of the Insurance Company, in our opinion, stands on a different footing. When a statutory liability has been imposed upon the owner, in our opinion, the same cannot extend the liability of an insurer to indemnify the owner although in terms of the insurance policy or under the Act, it would not be liable therefor.

Furthermore, evidently, the amount directed to be paid even in terms of Chapter X of the Act must as of necessity, in the event of non-compliance of directions has to be recovered in terms of Section 174 of the Act. There is no other provision in the Act which takes care of such a situation. We, therefore, are of

the opinion that even when objections are raised by the Insurance Company in regard to its liability, the Tribunal is required to render a decision upon the issue, which would attain finality and, thus, the same would be an award within the meaning of Section 173 of the Act.

The Hon'ble Apex Court in the case of Smt. Yallwwa (supra), has held that once the Insurance Company raised a dispute in respect of breach of conditions specified in the policy, the Tribunal is required to go into the said question. Section 140 of the Act does not contemplate that an Insurance Company shall also be liable to deposit the amount while it has no fault whatsoever in terms of Sub-section (2) of Section 147 of the Act. Once objections are raised by the Insurance Company in regard to its liability, the Tribunal is required to render a decision upon the issue.

From the perusal of the impugned order, I find that the question regarding breach of the policy, has not been considered by the learned Tribunal while deciding the application u/s 140 of the Act though the objections are raised by the Insurance Company in regard to its liability. Therefore, I am of the considered view that the learned Tribunal is required to render a decision upon the issues raised by the appellant.

Learned Counsel for the claimants drew my attention to the Full Bench decision of this Court in the case of Gaya Prasad and Ors. v. Suresh Kumar and Ors. 1992 J.L.J. 143 and the Apex Court's decision in the case of Shivaji Dayanu Patil and another Vs. Smt. Vatschala Uttam More, , and submitted that compensation on the principle of no fault liability holding of regular trial in the same manner as for adjudicating claim petition is not permissible. It is also submitted that FIR is not a substantial piece of evidence and all the eye-witnesses have very categorically stated that the deceased and injured were not travelling in the offending vehicle and at the time of accident, they were sitting on the footpath and therefore the learned Trial Court has not committed any error in directing the Insurance Company to pay the interim compensation to the claimants. In support of the said contention, he drew my attention to the decision of the Apex Court in the case of Asharam and Another Vs. State of Madhya Pradesh, , Mahila Dhanwanti and Others Vs. Kulwant and Others, , Dheeraj Singh v. Ajay Kumar 2002 (II) MPWN 181, Nanhu Singh Vs. Jaheer and Others, and Hajarilal and Others Vs. Lakhnpratap and Others, . The Apex Court in the case of Oriental Insurance Company Ltd. v. Premalata Shukla and Ors. 2007 (3) TAC 11 , has held that the factum of accident could not be proved from FIR. It is also to be noted that once a part of contents of document admitted in evidence, the party bringing the same on record cannot be permitted to turn round and contend that other contents contained in the rest part thereof had not been proved.

The Apex Court in the case of Smt. Yallwwa (supra) has held that the Proviso appended to Section 166 of the Act, makes the owners of the vehicles liable but not the insurer *per se*. Irrespective of the fact whether a claim petition is required to be adjudicated under Chapter X or Chapter XII of the Act, it is permissible to

raise a defence in terms of Sub-section (2) of Section 149 of the Act.

Here in the present case, the learned Tribunal has not decided the objection raised by the appellant in regard to its liability nor on the basis of the FIR and the Court statement of the eye-witnesses, has held that the deceased were travelling in the offending vehicle or they were sitting on the footpath. The learned Tribunal without deciding the objections directed the Insurance Company to pay the interim compensation to the claimants.

For the above mentioned reasons, the impugned orders are liable to be set aside and accordingly they are set aside. The Tribunal is directed to decide the objections raised by the Insurance Company regarding its liability on the basis of the material available on record and decide the applications u/s 140 of the Act filed by the claimants afresh. The amount deposited by the appellant in compliance to the order passed by this Court or in compliance to the provisions of Section 173 of the Act be refunded to the Insurance Company. In case, if it is found that the amount is already received by the claimants, then the same may be recovered from the owner of the vehicle. The amount of interim compensation received by the claimants and refunded to the Insurance Company may be recovered by the claimants now from the owner of the offending vehicle and owner of the vehicle shall make payment of the aforesaid amount to the claimants.

All the appeals stand partly allowed and disposed of to the extent as indicated hereinabove, without any order as to costs.