
(2003) 02 BOM CK 0119
In the Bombay High Court
Case No : First Appeal No. 78 of 2002

Rama Khade

APPELLANT

Vs

Sk. Sakir and Another

RESPONDENT

Date of Decision : 28-02-2003

Acts Referred:

Maharashtra Motor Vehicles Rules, 1989 — Rule 260(3)
Motor Vehicles Act, 1988 — Section 140

Citation : (2004) ACJ 1370 : (2004) 1 MhLj 971

Hon'ble Judges : D.S. Zoting, J

Bench : Single Bench

Advocate : R.M. Borde, for the Appellant; C.V. Thombre and S.K. Naikwade, for the Respondent

Final Decision : Allowed

Judgement

D. S. Zoting, J.—Heard Mr. R.M. Borde, learned Counsel for the appellant. Mr. C.V. Thombre, learned Counsel for respondent No. 1 and Mr. S.K. Naikwade, learned Counsel, for respondent No. 2.

2. Admit.

With consent of the parties, taken up for hearing forthwith.

3. Being aggrieved by the Judgment and Award dated 3-8-2001 passed by the Major Accident Claims Tribunal, Beed in M. A. C. 228/2000, below Exh. 5 granting interim relief in favour of the original claimant (respondent No. 1) directing the driver as well as the owner to pay the said amount to the original claimant.

4. The original claimant filed claim petition u/s 166 of the Motor Vehicles Act for grant of compensation on account of the permanent disability sustained by him in a vehicular accident that had taken place on 7-1-2000. Jeep bearing registration No. MH-12/A-4559 is involved in the accident. Present respondent No. 2 is the owner of the vehicle, whereas the appellant is the driver of the said

jeep.

5. The grievance of the appellant (driver) is that while granting interim relief u/s 140 of the Motor Vehicle Act though the owner and Insurance Company (if the vehicle is insured) are the only necessary parties to the said proceedings, award came to be passed against the driver also. Mr. R. M. Borde, the learned Counsel for the appellant (driver) has placed reliance on the provisions of Section 140 of the Motor Vehicles Act, 1988 as well as Sub-rule (3) of Rule 260 of the Maharashtra Motor Vehicles Rules, 1989.

6. Section 140 of the Motor Vehicles Act, 1988, reads as under :

"(1) Where death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicle shall, or, as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this section.

(2).....

(3).....

(4).....

(5) Notwithstanding anything contained in Sub-section (2) regarding death or bodily injury to any person, for which the owner of the vehicle is liable to give compensation for relief, he is also liable to pay compensation under any other law for the time being in force :

(Provided that the amount of such compensation to be given under any other law shall be reduced from the amount of compensation payable under this section or u/s 163A).

On careful reading of the section, it is abundantly clear that driver does not come in the picture while deciding application u/s 140 of the Motor Vehicles Act, 1988. The section clearly reveals that it is the responsibility of the owner of the vehicle involved in an accident to give compensation for the relief together with the joint and several liability of the Insurance Company, in case the vehicle is insured with it.

7. This is also further made clear from Sub-rule (3) of Rule 260 of the Maharashtra Motor Vehicles Rules, 1989, which reads as under:

"(3) Where the applicant makes a claim for compensation u/s 140, the Claims Tribunal shall give notice to the owner and insurer, if any, of the vehicle involved in the accident directing them to appear on the date, not later than fifteen days from the date of issue of such notice. The date so fixed for such appearance shall also be not later than fifteen days from the receipt of the claim application filed by the claimant. The Claims Tribunal shall state in such notice that in case they fail to appear on such appointed date, the Claims Tribunal shall proceed ex parte

on the presumption that they have no contention to make against the award of compensation."

A careful reading of the Sub-rule (3) of this Rule shows that the Tribunal shall give notice in respect of the claim or compensation u/s 140, to the owner and insurer. This sub-rule does not speak for giving notice to the driver.

8. Thus, after going through the provisions of Section 140 of the Motor Vehicles Act, 1988, as well as Rule 260 of the Maharashtra Motor Vehicles Rules, 1989, there cannot be any doubt that while deciding the said application, there is no need to give notice to the driver.

Similarly, he cannot be held liable for payment of the compensation along with the owner and the Insurance Company.

9. In the present case, the direction is issued to the driver (original respondent No. 2) along with the owner to pay the compensation of Rs. 25,000/- by way of interim relief u/s 140 of the Motor Vehicles Act, 1988, which is contrary to the provisions of Section 140 of the Motor Vehicles Act, 1988 as well as Rule 260(3) of the Maharashtra Motor Vehicles Rules, 1989. In the result, the appeal succeeds. The impugned order so far as it relates to respondent No. 2 (driver) of the vehicle, is hereby quashed and set aside. The amount if any deposited by the driver be refunded to him.

10. Needless to say that this order shall not come in the way of the original claimant to execute the award against the owner.

11. Appeal is disposed of.