

(2008) 08 DEL CK 0148

In the Delhi High Court

Case No : MAC App. No. 340 of 2008

Shatrudhan Singh and Usha Devi

APPELLANT

Vs

Devi Lal Mahota, Rani and Master Chotu @ Sonu

RESPONDENT

Date of Decision : 05-08-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 140(1), 173
Penal Code, 1860 (IPC) — Section 279, 304A

Citation : (2009) ACJ 1938

Hon'ble Judges : Vidya Bhushan Gupta, J

Bench : Single Bench

Advocate : Rakesh Khanna, Jinendra Jain and Faizy Ahmed Syed, for the Appellant; Ayush Gupta, for the Respondent

Final Decision : Dismissed

Judgement

V.B. Gupta, J.—The present appeal u/s 173 of the Motor Vehicles Act, 1988 (for short as the "Act") has been filed by the Appellant against the interim award passed by Ms. Sukhvinder Kaur, Presiding Officer, Motor Accident Claims Tribunal, New Delhi dated 30.11.07 & 16.02.08.

2. It is stated by the Appellant that Respondent No. 1 to 3 had filed the claim petition before the Tribunal alleging that on 09.02.07 the deceased was standing along with her husband near Delhi Haat. One Maruti Van No. DDA 8487 was coming from the direction of AIIMS Hospital and was going towards Safdarjung Airport direction. At about 7.30 a.m. on 09.02.07 the Maruti Van being driven by Appellant No. 1 (herein) came from the side of AIIMS Hospital in a rash and negligent manner at a very fast speed and hit Smt. Devanti Devi, the deceased and caused the accident. The deceased was immediately taken to the AIIMS Hospital in very serious and critical condition where she was given all the best and required medical attention but unfortunately she expired on 11.2.07.

3. Vide the order dated 30.11.07, the Tribunal passed an interim award u/s 140 of the Act for Rs. 50,000/- with interest @ 9% per annum in favour of the

claimants and Appellant No. 2.

4. Being dissatisfied with this order, Appellants filed an application for review of the above said order.

5. No reply to the application was filed by the Respondents but their Counsel addressed the arguments.

6. Vide order dated 16.02.08, the Tribunal dismissed the said application.

7. It has been contended by the Ld. Counsel for the Appellant that neither accident was caused by the Appellant No. 1 nor Maruti car bearing No. DDA 8487 owned by the Appellant No. 2 was ever involved in the alleged accident. Appellant No. 1 was on duty at the time of accident and attendance register is a public document. Further, it is clear from the letter of the SHO & I.O. P.S. Kotla Mubarakpur, dated 22.03.07 that death was not caused due to the alleged accident dated 09.02.07 and in fact death was caused due to the accident took place on 11.02.07 by some other cause.

8. On the other hand, Learned Counsel for the Respondents has contended that as per F.I.R. the involvement of the vehicle in question is there and the Court has to pass the interim order, after prima facie, satisfying about the involvement of the vehicle.

9. Section 140 of the Act provides for liability to pay compensation in certain cases on the principle on no fault.

10. It read as under;

140. Liability to pay compensation in certain cases on the principle of no fault.-

(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) x x x (3) In any claim for compensation under Sub-section (1), the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person.

(4) A claim for compensation under Sub-section (1) shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made nor shall the quantum of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement.

11. For getting interim relief u/s 140 of the Act, the Tribunal is only required to

see prima facie the factum of accident involving the offending vehicle and factum of death of the person in the road accident.

12. The Tribunal has come to a prima facie finding that the deceased died in a road accident arising out of the use of the offending vehicle. In this regard the Tribunal held;

Respondent Nos. 1 and 2 in their joint written statement have though disputed the involvement of Maruti Van bearing No. DDA 8487 in the accident, have admitted that the said vehicle belonged to Respondent No. 2. The involvement of vehicle No. DDA 8487 is prima facie established from the certified copy of the FIR placed on record. The plea taken by Respondent Nos. 1 and 2 that Respondent No. 1 was on duty at the time of accident and had been falsely implicated in the case cannot be considered at all at this stage. The said contention can be proved only at the time of evidence. Even otherwise the copy of attendance register placed on record only shows that he was on duty on the date of accident. The possibility of leaving his work place even on the day he was on duty can not be straight away ruled out. Further, the contention made by Id. Counsel for the applicant/Respondent Nos. 1 and 2 that the victim had met with some other accident on 11-1-07 and was again admitted in AIIMS Hospital is baseless because from the application moved by the IO, the copy of which is annexure P2, for seeking the opinion regarding injuries, the IO has made a request to the concerned doctor for giving the opinion whether the injuries sustained on 9-2-07 had caused the death of deceased or otherwise. Merely because the victim was discharged in the evening of 9-2-07 was again brought in hospital on 11-2-07 does not lead to an inference in any way that victim had again met with an accident on 11-2-07. Even from the MLC of the deceased dated 11-2-07, the certified copy of which has been placed on record, the doctor has noted down the alleged history of RTA two days back which reveals that the victim was admitted again on 11-2-07 for the complication arising out of the injuries sustained in the accident on 9-2-07. The order dated 30-11-07 is the interim award u/s 140 of the MV Act. The documents placed on record prima facie establish the involvement of Maruti Van No. DDA 8487 in the accident in which the deceased Devanti Devi has expired. There is also no dispute that Respondent No. 1 has also been charge sheeted for the offences u/s 279/304-A IPC for the accident in question and the offending vehicle belonged to Respondent No. 2. In view of the above discussions I do not find any merits in the application. The application is, therefore, dismissed.

13. In National Insurance Co. Ltd. Vs. Swaran Singh and Others, , the Apex Court has observed as under;

In each case, on evidence led before the claim Tribunal, a decision has to be taken whether the fact of the driver possessing licence for one type of vehicle but found driving another type of vehicle, was the main or contributory cause of accident. If on facts, it is found that the accident was caused solely because of some other unforeseen or intervening causes like mechanical failures and similar

other causes having no nexus with the driver not possessing requisite type of licence, the insurer will not be allowed to avoid its liability merely for technical breach of conditions concerning driving licence.

14. In view of the above decision, the contention of the Learned Counsel for Appellant at this stage is not sustainable, since evidence is yet to be recorded and the Trial Court has to decide the matter in the light of evidences which is yet to be gone into by the Trial Court and these pleas can be raised at the time of final arguments and not at the stage of interim relief.

15. In the light of the above discussion, it is clearly borne out from the record that the tribunal has correctly awarded the interim award to the claimants and thus, I find myself in agreement with the order of the Ld. Tribunal. I, therefore, do not find any infirmity in the impugned orders.

16. There is no manner of doubt that Section 140 of the Act is a beneficial and social welfare piece of legislation. It is well settled that in construing social welfare legislation, the Courts should adopt a beneficial rule of construction and in any event, that construction should be preferred which fulfills the policy of legislation. The construction to be adopted on a statute should be such so as to achieve the purposes for which it is enacted and in favour of those in whose interest the Act has been passed.

17. The provisions contained u/s 140 of the Act were brought in the statute book to grant interim relief to the victim of an accident or his dependant/s by way of an interim compensation. This obviously is a beneficial provision to give relief to a person who has suffered grievous injury or to the dependants of a victim who are left without a bread earner. The object thereof cannot be permitted to be frustrated. Of course, if the vehicle in question is not insured at all, the question of making the insurer liable would not arise. But, the insurer cannot, by raising all possible pleas, avoid payment of interim compensation and thereby defeat the object of the provision.

18. Accordingly, there is no merit in this appeal and the same is hereby dismissed with costs of Rs. 5,000/-. Appellants are directed to deposit the costs by way of a cheque in the name of Registrar General of this Court within four weeks from today.

19. List on 15th September, 2008 for compliance.