

(2003) 11 MP CK 0044

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 275 of 2003

Smt. Geeta Devi Mishra and Others

APPELLANT

Vs

Anil Kumar Tiwari and Others

RESPONDENT

Date of Decision : 17-11-2003

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 147, 149(2), 173
Repealing and Amending Act, 2001 — Section 4

Citation : (2005) ACJ 424 : (2004) 1 MPHT 82 : (2004) 1 MPLJ 373

Hon'ble Judges : S.P. Khare, J

Bench : Single Bench

Advocate : S.K. Tiwari, for the Appellant; V.K. Pandey, for the Respondent

Final Decision : Allowed

Judgement

S.P. Khare, J.

This is an appeal by the claimants against the order by which their application u/s 140 of the Motor Vehicles Act, 1988 (hereinafter to be referred to as "the Act") for compensation on the principle of "no fault" has been rejected.

There was an accident on 11-12-2000 near Village Dhandhari on the road in which Vikrant Mishra died. Appellant Nos. 1 and 2 are his parents. Jeep No. M.P. 18-B/4175 was involved in this accident. It was being driven by respondent No. 1 Anil Kumar Tiwari and it was owned by respondent No. 2 Gajendra Pratap Singh. It was insured with respondent No. 3 New India Insurance Company Limited.

The Additional Motor Accident Claims Tribunal (hereinafter to be referred to as "the Tribunal") awarded an amount of Rs. 25,000/- as compensation u/s 140 of the Act against the owner and the driver and not against the Insurance Company. The insurer has been exonerated on the ground that there has been a breach of the condition of the insurance policy inasmuch as the jeep was being used as a taxi at the time of accident. The amount of Rs. 25,000/- instead of Rs. 50,000/- was awarded in view of the Repealing and Amending Act, 2001.

After hearing the learned Counsel for both the sides, this Court is of the opinion that the view taken by the Tribunal on both the points, referred above, is erroneous. It was disputed question of fact whether the jeep was being used as taxi at the time of the accident and the breach of the condition of the insurance policy is yet to be proved. The Tribunal has observed that in another case arising out of the same accident, it has been held that the jeep was being used as a taxi. But that finding is not binding on the claimants in the present case. It is not one of those cases where on the face of insurance policy no liability could be fastened on the insurance company. The claimants need immediate relief. The policy prima facie covers risk as per Section 147 of the Act. At the stage of decision of the application u/s 140 of the Act the plea of breach of the conditions of insurance policy could not be entertained by the Tribunal. This legal position has been settled by the Division Bench of this Court in *National Insurance Company v. Thaglu Singh*, 1994 MPLJ 663. It has been held that the statutory scheme envisages that if there is a motor accident and death or permanent disablement results from such an accident, owner of the vehicle or vehicles involved shall be liable to pay the prescribed compensation without proof of negligence and irrespective of any contributory negligence of the deceased or injured and the amount so paid has to be adjusted out of the compensation found due under the final award. There is no provision requiring the recipient of compensation of no fault liability to refund any part of the amount received at any stage. The legislative intent is to ensure that some succour reaches the victim or the dependents without going into the question which may arise for consideration while passing the final award. If the vehicle is insured, naturally the liability would fall on the insurer; permitting the insurer at that stage to raise any defence other than that there is no insurance policy in force at the relevant time or to raise statutory defences contemplated in the succeeding Chapter would be to frustrate the legislative object in introducing the concept of no fault liability. The insurer is duly protected inasmuch as if ultimately in the final award the insurer is exonerated, the Tribunal can issue appropriate direction enabling the insurer to collect the same from the owner of the vehicle. This could be the only legitimate conclusion to be drawn from the peremptory language of Section 92-A of the 1939 Act or Section 140 of the 1988 Act.

The same view has been taken by the Full Bench of this Court in *Oriental Insurance Co. Ltd. v. Annamma*, 1995 MPLJ 699. These decisions have been subsequently followed in a number of cases. One of them is the recent case of *Dinesh Kumar Vs. Babulal and Others*, in which it has been held that the question of conditions of the policy is "foreign to the scope of enquiry in a claim 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.

The impugned order shows that the Tribunal has relied upon the decision of the Single Bench in *New India Assurance Co. v. Ajay*, 1994 JLJ 515. The decisions of

the Larger Benches have taken a different view and, therefore, no reliance could be placed on this judgment. The Tribunal has again referred to the case of Hemlata Sahu and Others Vs. Ramadhar and Another, but the question which arose for decision in that case was different. That was a case in which it was held that the insurer does not insure the insured. The question of consideration of the alleged breach of insurance policy at the stage of awarding interim compensation did not arise in that case.

In view of the above legal position the insurance Company was liable to pay the amount of compensation of Rs. 50,000/- u/s 140 of the Act to the claimants.

The Tribunal has again under a wrong notion held that the Repealing and Amending Act, 2001 has deleted that provision in Section 140 of the Act which enhanced the compensation from Rs. 25,000/- to Rs. 50,000/-. The Motor Vehicles (Amendment) Act, 1994 incorporated the amendment in Section 140 of the original Act and thereafter the amending Act lost its utility and, therefore, it was repealed by Repealing and Amending Act, 2001. The amendment incorporated in Section 140 of the Act has become a part of the original Act or parent Act and, therefore, the Repealing and Amending Act, 2001 does not obliterate the amendment which has become a part of that Act. The Repealing and Amending Act, 2001 has only reduced the bulk of the statute book. This has been described as "legislative spring-cleaning". Section 4 of the Repealing and Amending Act, 2001 clearly saves the enactment in which the repealed enactment has been incorporated. The amended Section 140 continues to retain its amended efficacy. This legal position has been made crystal clear by Chhattisgarh High Court in Smt. Mukta Bai and Ors. v. Satyanarayan Gupta and Ors., 2003(3) M.P.H.T. 28 (CG) and also by this Court in Smt. Phoolmati Bai and Others Vs. Mohd. Azad and Others,

In the result this appeal is allowed. The impugned order dated 4-1-2003 is set aside and the respondent Nos. 1 to 3 are directed to pay jointly and severally the amount of Rs. 50,000/- as interim compensation to the claimants.