(2002) 03 JH CK 0119

In the Jharkhand High Court

Case No : Misc. Appeal No. 84 of 2001

Taukir Alam APPELLANT

Vs

Firdoshi Bibi and Another RESPONDENT

Date of Decision : 19-03-2002

Acts Referred:

Motor Vehicles Act, 1939 — Section 92A
Motor Vehicles Act, 1988 — Section 140

Citation : (2002) 03 JH CK 0119

Hon'ble Judges : Vinod Kumar Gupta, C.J;Vishnudeo Narayan, J

Bench : Division Bench

Advocate : Rajeeva Sharma and Himesh Patwari, for the Appellant; D.C. Ghose, for the respondent-Insurance Company, for the Respondent

Final Decision : Allowed

Judgement

1. Mr. D.C. Chose, Advocate appears for respondent No. 2, National Insurance Company, at the instance of the Court. He has assisted the Court in the disposal of the appeal.

2. There is a delay of nine days in filing this appeal. Cause shown is sufficient. Delay in filing appeal is condoned. The appeal is taken up today itself for final disposal.

3. Vide order dated 9th January, 2001 passed by the learned Additional District Judge-cum-Motor Vehicle Accident Claims Tribunal Judge, Sahebganj, while dealing with a petition u/s 140 of the Motor Vehicles Act, l988 (the Act), even though the learned Tribunal has awarded compensation of Rs. 25,000/- u/s 140 (supra) has fastened the liability to pay this amount upon the appellant-owner and has absolved the Insurance Company-respondent No. 2 from paying this amount. The learned Tribunal has relied upon a Judgment of the Supreme Court in the case of National Insurance Company Limited v. Jethu Ram and Ors. 2000 (2) BLJ 944. The learned Tribunal with reference to the aforesaid Supreme Court judgment has observed that in the aforesaid judgment, the Supreme Court has

taken a view that the insurer has no liability to pay compensation in terms of Section 92-A of the Motor Vehicles Act, 1939. Undoubtedly Section 140 of the M.V. Act, 1988, is in pari materia to Section 92-A of the Motor Vehicles Act, 1939.

4. We have heard the learned counsel for the parties. The Tribunal totally misdirected itself in holding that in the case of Jethu Ram (supra), the Supreme Court has taken the view that u/s 92-A, the insurer is not liable to pay the awarded amount. It appears that the Tribunal did not at all understand the elementary and basic ratio of the judgment of the Supreme Court. All that the Supreme Court was saying in the aforesaid judgment was that if a Tribunal, based upon policy of insurance, holds that the insurer is not liable to pay the compensation amount, u/s 92-A also it cannot fasten the liability upon the insurer to pay the interim compensation amount as well. In other words in Jethu Ram''s case (supra), their Lordships of the Supreme Court were of the view that if, by referring to the policy of insurance and other materials, the Court finds that the insurer is not liable to pay the compensation amount, artificial distinction cannot be created between the liability to pay in the final analysis and the liability to pay or not to pay at the interim stage. Whether it is the liability to pay in the final analysis or the liability to pay u/s 92-A, the insurer is either liable or not liable, the learned Tribunal, by misdirecting itself passed a patently erroneous order which deserves to be set aside.

5. For the aforesaid reasons, therefore, while setting aside the judgment of the Tribunal, we allow this appeal and direct that the amount of compensation in question shall be paid to the claimants by respondent No. 2-Insurance Company. The respondent No. 2 shall pay the amount to claimant within two months, falling which, it shall carry interest @ 12 per cent per month. Statutory amount deposited by the appellant in this Court shall be refunded to him.

