

Pramodkumar Vs. Liladhar and Others

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Court : Mumbai Nagpur

Decided On : Nov-18-2013

Judge : A.P. Bhangale

Appeal No. : First Appeal No.258 of 2011

Appellant : Pramodkumar

Respondent : Liladhar and Others

Judgement :

Oral Judgment:

1. Heard the learned counsel appearing for both the parties.
2. This appeal challenges judgment and order dated 12.8.2010, passed by the learned Member, Motor Accident Claims Tribunal, Gondia, in Claim Petition No.6 of 2003, whereby the Tribunal awarded sum of Rs.1,72,000/- inclusive of no fault liability payable jointly and severally by owner, driver and insurer of the offending motor vehicle. The owner of the offending vehicle was specifically and exclusively directed to pay the interest on the awarded amount at the rate of 7.5% per annum from the date of claim petition i.e. w.e.f. 18.12.1995 till realization of the amount.
3. The liability to pay the interest on the awarded amount imposed by the Tribunal is disputed by the appellant on the ground that the lawyer engaged by the appellant did not take care to prosecute the petition properly and hence claim

petition was decided ex parte on 16.11.2005. It is the case of the appellant that he came to know of the ex parte award on 22.2.2006 and moved for setting aside ex parte award while appellant also prayed for condonation of delay. On 1.7.2010, the application for setting aside ex parte award was allowed subject to payment of costs in the sum of Rs.1,000/-. Thus, the appellant got opportunity to contest the claim petition on merits. As a result thereof, the impugned judgment and award was passed whereby the insurer was exempted from payment of interest for the period during which proceedings were delayed for no fault on the part of insurer. According to the Tribunal, delay which resulted in final disposal of the claim petition was solely because of the appellant as he had belatedly moved for setting aside the ex parte award and was allowed to contest the petition on merits. The learned counsel for the appellant submitted that the interest liability ought not have been imposed upon the appellant by the learned Member of the Tribunal. The contention is not acceptable nor convincing to discharge appellant from the liability to pay interest for delay caused on behalf of the appellant.

4. The learned counsel for the insurer has strongly objected the submission from the appellant on the ground that the owner of the offending motor vehicle is liable to pay the interest and not the insurer since it was because of owner of the offending motor vehicle that delay occurred for disposal of the claim petition. Therefore, the owner of the offending vehicle was rightly held exclusively responsible to pay the amount of interest for delayed period.

5. Some facts may be necessary to be borne in mind for decision in this appeal.

The motor vehicular accident had occurred on 2.8.1995 when deceased Sital was going to coaching class by bicycle through the over bridge. She was aged about 17-year old. Tempo Trax bearing registration No.MH-35/B/9766 came from opposite direction driven rashly and negligently by respondent No.3 and gave dash to the bicycle of Sital. In the result, she suffered serious injuries and died after she struggled for survival for 15 days.

The parents of the deceased claimed compensation in the sum of Rs.3,37,000/-.

6. It was the case of the appellant (owner of the offending vehicle) as well as driver that there was no negligence on the part of the driver. Their defence was considered by the Tribunal on the basis of the evidence led and it was held that the offending vehicle was driven by Raju Haribhau Kalsarpe and was owned by the present appellant Pramod Gupta while it was insured with New India Assurance Company Limited. The Tribunal also held that the driver of the offending motor vehicle was required to take more precaution and care as Sital was driving bicycle and Raju was driving tempo Trax. Under these circumstances, the award in the sum of Rs. 1,72,000/- was passed inclusive of no fault liability.

7. Looking to the the facts and circumstances of the case, the compensation amount as granted cannot be considered as unreasonable or unjust. The interest amount awarded at the rate of 7.5% was also reasonable. Such amount of interest is payable from the date of the claim petition till the amount is realized. The insurer cannot be fastened with liability for no fault of the insurer particularly when the owner of the offending motor vehicle was represented by an Advocate in the claim petition and delay was caused for alleged carelessness on the part of the lawyer. The claim petition was initially heard and decided ex parte against the owner of the offending motor vehicle as the owner of the offending motor vehicle and an Advocate representing him were absent.

8. Be that as it may, the owner of the offending motor vehicle availed of an opportunity of being heard on merits in respect of the claim petition after delay was condoned. He was held rightly answerable for delay caused in the final decision and for payment of interest for the delayed period. The contention that the lawyer was careless is matter of debate and the question to be agitated between the appellant and his lawyer themselves. According to the learned counsel for the appellant, his lawyer is no more living. Even on this ground the appellant cannot escape from responsibility for payment of award amount. The insurer cannot be compelled to pay the interest amount because delay was caused by the appellant-owner of the offending motor vehicle. There would be no justification to ask insurer to bear responsibility for delay caused by the owner of the offending motor vehicle or his Advocate resulting from carelessness on the part of the owner of the offending motor vehicle and / or his lawyer and secondly, the award was further

delayed because of proceedings pending for setting aside the ex parte award and for hearing the claim petition on merits. The onus lies upon the owner of the offending motor vehicle to discharge the liability for payment of interest which is reasonable at the rate of 7.5% per annum from the date of petition till realization on the award sum of Rs. 1,72,000/- inclusive of no fault liability. The owner of the offending motor vehicle could not have been exonerated from payment of interest due on compensation awarded.

9. No interference is required in exercise of the appellate jurisdiction. The appeal is dismissed.

10. The amount deposited, if any, be transferred to the Tribunal for payment of compensation due along with sum of interest on the award compensation.

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