

Harsh Malik Vs. Munna Burman and ors.

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Court : Madhya Pradesh

Decided On : Mar-26-2003

Reported in : 2005ACJ71

Judge : S.L. Jain, J.

Acts : [Motor Vehicles Act, 1988](#) - Sections 140, 149(2), 166 and 167; Workmen's Compensation Act, 1923 - Sections 3(5)

Appeal No. : M.A. No. 784 of 2002

Appellant : Harsh Malik

Respondent : Munna Burman and ors.

Advocate for Pet/Ap. : Ashok Lalwani, Adv.

Disposition : Appeal allowed

Judgement :

S.L. Jain, J.

1. The respondent Nos. 1 to 3 had filed an application under section 166 of [Motor Vehicles Act, 1988](#) (hereinafter referred to as 'the Act' for short) for award of compensation in respect of an accident involving truck bearing No. MP 20-C 0058, resulting in the death of Bablu Burman, aged about 22 years, the son of

respondent Nos. 1 and 2 and brother of respondent No. 3.

2. Respondent Nos. 1 and 3 filed an application under section 140 of the Act marked as I.A. No. 1. In this application, it was contended that the death of Bablu Burman has resulted from an accident arising out of the use of motor vehicle, there fore, the appellant owner and insurance company are liable to pay the amount of Rs. 50,000 in respect of such death in the form of interim compensation for no fault liability.

3. The application was opposed by the appellant and the insurance company. It was stated by appellant that the deceased was not attended by respondent Nos. 1 to 3 and that after the accident the costs of the treatment of the deceased were borne by him. He also submitted that the vehicle was insured with respondent No. 4 and, therefore, respondent No. 4 is liable for the payment of the amount of compensation for no fault liability, as there was no breach of any condition of insurance policy on the part of the appellant.

4. Opposing the application, respondent No. 4 insurance company submitted that at the time of accident 14 passengers were being carried in the offending truck out of whom some of the passengers have died in the accident and some suffered injuries and about 10 claim cases are pending in the Tribunal. It was also averred by the insurance company that the accident occurred due to rash and negligent driving of the truck by the deceased himself. The driver did not possess valid and effective driving licence at the time of accident and, therefore, the insurance company was not liable to pay any compensation in respect of the death under the provisions of section 140 of the Act.

5. The learned Tribunal on the basis of the statement recorded by the police under section 161 of the Criminal Procedure Code, prima facie concluded that about 12-15 passengers were travelling in the offending truck on hire in breach of the conditions of the insurance policy and relying on *Prakash Tiwari v. Sadharam Sahu*, 1997 (2) MPLJ SN 33; *Hemlata Sahu v. Ramadhar*, 2000 ACJ 134 (MP) and *New India Assurance Co. Ltd. v. Ajay*, 1994 ACJ 987 (MP), held that as prima facie there was violation of the conditions of insurance policy, the insurance company is not liable to pay compensation under section 140 of the Act. However,

appellant owner of the offending truck was held responsible for the payment of compensation under section 140 of the Act.

6. Being aggrieved by the order impugned, the appellant owner has filed this appeal under section 173 of the Act.

7. I have heard Mr. Ashok Lalwani, learned counsel appearing for the appellant. At the time of hearing none appeared for the respondents.

8. Mr. Ashok Lalwani learned counsel appearing for the appellant owner contended that the only question which should have been considered by learned Tribunal while deciding an application under section 140 of the Motor Vehicles Act was as to whether the vehicle was insured or not and the Tribunal should not have considered the defences at the time of deciding the application under section 140 of the Motor Vehicles Act.

9. Undoubtedly, the insurance company is not liable to pay the compensation where the insured commits infringement of any of the conditions of the insurance policy. In such a situation, insurance company is not liable to pay towards the no fault liability also. But simply because in the statement recorded by the police under section 161 of the Criminal Procedure Code certain persons stated that passengers on hire were carried in the truck, it cannot be said that this fact has been proved. Had it been admitted then the position would have been different. But when ultimately it is a matter of proof as to whether the condition of insurance policy was infringed or not, the insurance company cannot get rid of its liability to pay compensation under section 140 of the Motor Vehicles Act.

10. Looking to the statutory scheme if the vehicle is insured the natural liability would fall on the insurer. Permitting the insurer at that stage to raise any defence other than one that there is no insurance policy in force, would frustrate the legislative object in introducing the concept of no fault liability. The legislative intent is to ensure that some succour reaches the victim or the dependant without going into the question which may arise for consideration while passing the final award. Simply because insurance company has taken some statutory defences, interim compensation cannot be denied. If ultimately, it is found that the insurer

has been successful in establishing the defences taken by it and consequently stands exonerated then the Tribunal can issue appropriate direction enabling the insurer to recover the amount paid by it from the owner of the vehicle. The court must take into consideration the high legislative purpose sought to be served by the provisions under section 140 of the Act.

11. Underlying idea behind section 140 is the payment of prompt and minimum compensation. The same cannot be allowed to be frustrated by raising various defences by the insurance company, the disposal of which would naturally take time, ultimately if it is found that the insurance company is not liable under the policy to indemnify the insured, the insurance company will be at liberty to recover the amount from the insured.

12. I would, therefore, hold that at the stage of passing the award under section 140 of the Act, the Claims Tribunal need not apply its mind to the defences available to the insurance company. The object of the section cannot be defeated on hyper technicalities. In *Mohammad Ilias v. Bodhani Bai*, 1991 ACJ 371 (MP), it has been clearly held that any defences raised by the insurer can be tried along with claim under section 110A (section 166 of the present Act) and if insurer is successful in establishing any such defence, owner of the vehicle is to be held liable to reimburse the said amount to the insurer in the final award by the Tribunal. Decision on such a defence can be arrived at only after the main application under section 166 is duly investigated and decided at a subsequent stage in accordance with law. Therefore, Claims Tribunal was not justified in exonerating the insurance company from its liability to pay compensation under section 140 of the Act. The owner of the vehicle and the insurance company shall be jointly and severally liable to pay compensation in respect of death in accordance with section 140 of the Act.

13. Mr. Lalwani has also submitted that the Tribunal had no jurisdiction to decide the claim of the dependants of driver who died in the accident. The remedy available to the dependants of the deceased driver is to file a claim petition before the Commissioner for Workmen's Compensation. This contention cannot be accepted. Section 167 of the Act gives an option to the claimant either to file a

claim under the Workmen's Compensation Act, 1923 or claim such compensation under the Act. At this stage it cannot be said that the accident occurred due to negligence of the driver during the course of his employment and, therefore, the Tribunal had no jurisdiction to entertain the claim petition and the only remedy available to the claimant is to file a claim petition before the Commissioner, Workmen's Compensation.

14. Again it is not a case of the appellant that claimants by filing claim petition before the Commissioner, have exercised their option.

15. I, therefore, conclude that it is not a case where from the averments of the claimants themselves the breach of the condition of the insurance policy is evident. Unless after the trial finally it is decided that the insurance company is not liable due to the breach of the conditions of the insurance policy insurer cannot escape from liability to pay compensation.

16. For the reasons stated above, the Tribunal was not justified in exonerating the insurance company from its liability to pay compensation on the basis of no fault liability.

17. In the result, I allow the appeal, set aside the order of the Tribunal and direct that the amount payable under section 140 of the Act shall be payable by the owner and insurance company jointly and severally. If ultimately, in the final award it is found that the insurer is not liable, the Claims Tribunal may issue appropriate directions for reimbursement of the amount from the owner of the vehicle. Costs as incurred.