

Lalu Ram Vs. Mohd. Umar and ors.

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Court : Rajasthan

Decided On : Jan-14-2008

Reported in : 2008(2)WLN303

Judge : Manak Mohta, J.

Appeal No. : S.B. Civil Misc. Appeal No. 2378/2007

Appellant : Lalu Ram

Respondent : Mohd. Umar and ors.

Judgement :

Manak Mohta, J.

1. This appeal is directed against the order dt. 06.07.2007 passed by learned Judge, Motor Accident Claims Tribunal, Udaipur in MACT Case No. 145/2005 rejecting the prayer to pass an interim award on an application filed by the claimant under Section 140 of Motor Vehicles Act, 1988 (for short 'the Act').

2. The brief facts of the case are that the claimant-Lalu Ram on 31.10.2003 at 6.30 p.m. along with one Kuka Ram were going on Suzuki motor-cycle No. RJ-27-12M-5080 from Udaipur to their village. The motor-cycle was being driven by Kuka Ram and he was sitting behind. It was alleged that in the way, a tempo bearing No. RJ-27P-4364 driven by its driver-Mohd. Umar in a rash and negligent manner after

overtaking them, suddenly and carelessly took right turn without giving any indication, as a result of which, the said tempo hit the motor-cycle and the claimant fell down and sustained injuries on his left shoulder and was taken to hospital where after examination, injury report was prepared and X-ray was taken, in which Clavicle bone was found fractured. The copy of injury report as well as that X-ray report was produced by the claimant along with the main claim petition. It was stated that in the accident he sustained grievous and simple injuries and his collar bone was fractured. It was further stated that in that respect, a case vide FIR No. 312/2003 was registered at Police Station, Pratapnagar for the offence under Sections 279, 337 and 338 I.P.C. The claimant filed a claim petition for awarding reasonable compensation against the driver, owner the insurance company of the said tempo to the tune of Rs. 8,95,600/-. In the same application he also made a prayer for awarding interim compensation under Section 140 of the M.V. Act. The case proceeded on his petition and is still pending for final adjudication. In the meantime, though at a belated stage, the claimant pressed for interim award which he had made earlier and for that he filed an application on 06.07.2007 during the pendency of the main petition. A reply to the said application was filed by the non-applicant but after hearing both the sides, the learned Tribunal rejected the application vide order dt. 06.07.2007 observing that the main case has been listed for final hearing and said prayer has been pressed at a belated stage, thus, no order for interim award was passed.

3. Thus, feeling aggrieved by the order dt. 06.07.2007, the appellant-claimant has filed this appeal. The notices of the appeal were given to the respondents.

4. During the course of arguments learned Counsel for the claimant-appellant submitted that the order passed by the learned Tribunal with regard to interim award is against legal provision, thus, is not sustainable. It was contended that the applicant had moved for interim award along with the main petition. It was the obligatory duty of the learned Tribunal to pass interim award in time and for that the claimant could not be blamed for the delay. It was further contended that the criteria for passing interim award are different than that of passing of final award, therefore, it was having no nexus with the final adjudication of claim. The reasons shown in the impugned order for not considering his prayer under Section

140 M.V. Act are not sustainable. It was also contended that the appellant was entitled to get interim award in his favour as his collar-bone has been fractured in the accident and in this respect injury report as well as the X-ray report were produced along with the main claim petition, from which, it was found 'fracture of mid part of left clavicle bone. It was urged that on that basis permanent disability could have been inferred. The appellant in addition to these documents also produced along with the claim petition a certificate of permanent disability given by the Board of Doctors as per rules before the learned Tribunal at the time of hearing but the learned Tribunal has not considered his prayer and has rejected his application on whimsical grounds and not awarded interim compensation under Section 140 M.V. Act, therefore, it was urged that the impugned order dt. 06.07.2007 be set aside and interim compensation under Section 140 M.V. Act may be awarded or the case may be remanded back for considering his prayer and the appeal may be allowed.

5. On the contrary learned Counsel for the respondent Insurance Company refuted the contentions and submitted that the appellant neither filed separate application under Section 140 M.V. Act for awarding interim award nor he had filed the requisite documents along with the application as per rules, thus, his prayer was not maintainable. It was also contended that the appellant had never pressed his application earlier and now the main case is fixed for final hearing, therefore, the learned Tribunal has rightly rejected his prayer to award interim compensation. The learned Counsel for the respondent also drew my attention towards Rule 10.3 of the Rules of 1990 made under the M.V. Act, 1988. On these submissions, it was prayed that the appeal may be dismissed.

6. I have considered the rival submissions made by the learned Counsel for the parties and have perused the impugned order dt. 06.07.2007 as well as the record of the case.

7. It is revealed from the record that the claimant had made a prayer in the main claim application for awarding interim compensation under Section 140 of M.V. Act. It is also revealed that he had produced injury report and X-ray report in respect of the injuries sustained by him in the said accident. A certificate of

permanent disability was also filed on 06.07.2007 by the claimant. It is further revealed that the appellant has pressed his prayer of interim award for that he moved an application on 06.07.2007 but the learned Tribunal has rejected his application without considering his prayer on the merits of the case but his prayer was rejected by saying that the case has reached at the final stage and the applicant has not pressed his prayer earlier, therefore, no order for the compensation was passed and the application was rejected. In my opinion, the reasoning assigned by the learned Tribunal for not considering the appellant's prayer on merit was not correct. Under Section 140 of M.V. Act, the Tribunal is expected to pass order on merit of the application. The consideration for awarding interim award are different than adjudication of final award. Substantive rights are not determined at this stage. The amount awarded under the interim award is adjustable in final award. The contention of the respondent side that the application was not in proper form and was not accompanied with the requisite documents but that have not been made grounds for rejecting the application, thus, the contentions of the respondents are not tenable. I have also perused the relevant Rules of 1989 but without commenting anything on the merit of the application, the injury report and X-ray report had been filed along with the main petition. As per the X-ray report there was a fracture of 'mid part of left clavicle' bone. Thus, the learned Tribunal should have considered and decided the prayer on merit. For these reasons the impugned order is not sustainable by which prayer not awarding interim award has been rejected. Thus, the case requires reconsideration and for that, the matter is required to remand back to the learned Tribunal to decide afresh, the respondent will be free to raise all objections as he wishes.

8. In the result, on the basis of the aforesaid conclusion, the impugned order is set aside and the matter is remanded back to the learned Tribunal to consider and decide afresh the prayer of the appellant under Section 140 M.V. Act as per law. The learned Tribunal will not be influenced by any observations made in the order and shall decide the case as per merit and in accordance with law. No order as to costs.

