

SUPREME COURT OF INDIA

Indra Devi

Vs.

Bagada Ram

C.A.No.1508 of 2004

(Aftab Alam and R.M.Lodha JJ.)

18.08.2010

JUDGEMENT

Aftab Alam, J.

1. This is the claimant's appeal from a motor accident claim case.
2. On March 31, 1999, one Ramniwas while going on a motorcycle dashed against the rear side of a truck that was headed in the same direction as the motorcycle. Ramniwas died in the accident. His heirs and legal representatives, the appellants before this Court, moved the MACT, Sojat, Branch Jaitaran, District Pali in MACT Case No.59 of 1999 against the owner of the truck and its insurer, the New India Assurance Company Ltd. for compensation in terms of section 166 of the Motor Vehicles Act, 1988.

“In course of the proceedings, the appellants claimed no fault compensation under section 140 of the Motor Vehicles Act which was granted to them by the Tribunal and the compensation amount was duly paid by the insurance company. In the main proceeding, however, the Tribunal came to find and hold that insofar as the accident is concerned there was no lapse on the part of the driver of the truck nor was it due to any mechanical fault in the truck.

The accident was caused due to the careless and negligent driving of the deceased himself. On that finding, the Tribunal naturally rejected the claim of compensation on the principle of fault. But it did not stop there and went on to hold that the insurance company was entitled to the refund of the amount of no fault compensation along with interest @ 9% p.a. In the operative portion of the judgment, the tribunal ordered as follows:

"According to the above analysis, this claim is dismissed. An amount of Rs.50,000/- has been given to the applicants by The New India Assurance Co. Ltd. as an interim

relief and The India Assurance Co. Ltd. will be entitled to have it back with 9% interest p.a.”

3. The claimants took the matter to the High Court in appeal (Civil Miscellaneous Appeal No.323 of 2002). The High Court dismissed the appeal by judgment and order dated August 20, 2002. The High Court agreed with the Tribunal's finding that the deceased alone was responsible for the accident and hence, the claimants were not entitled to any compensation. Unfortunately, the High Court did not address the issue of no fault compensation and overlooked the direction of the Tribunal for refund of the amount of interim compensation alongwith interest @ 9% p.a.

4. The claimants are now before this Court aggrieved by the direction to refund the amount of interim compensation to the insurance company alongwith interest.

5. The impugned direction is clearly erroneous and unsustainable in law.

“The Tribunal has completely failed to realize the true nature and character of the compensation in terms of section 140 of the Act. The marginal heading to section 140 describes it as based `on the principle of no fault'. As the expression `no fault' suggests the compensation under section 140 is regardless of any wrongful act, neglect or default of the person in respect of whose death the claim is made.”

6. We have examined the nature of the `no fault compensation' payable under section 140 of the Act in Eshwarappa @ Maheshwarappa and Anr. vs. C.S. Gurushanthappa and Anr. (Civil Appeal No.7049 of 2002), the judgment in which is pronounced today. We, therefore, do not wish to elaborate the point further. Suffice to say that in view of our judgment in Civil Appeal No.7049 of 2002, the Tribunal was patently in error, in directing for the refund of the amount of `no fault compensation' already paid to the claimants, to the insurance company. The High Court was equally in error in missing out this grave mistake in the judgment and order passed by the Tribunal and not setting it right.

7. The present appeal must, therefore, be allowed. The order of the Tribunal insofar as it permits the insurance company (respondent no.2) to recover the amount of interim compensation alongwith the interest from the claimants/appellants is set aside.

8. In the result the appeal is allowed but with no order as to costs.