

RAJASTHAN HIGH COURT

New India Assurance Company Ltd.

Vs.

Lala Ram

Civil Misc. Appeal No. 49 of 2000

(H.R. Panwar, J.)

11.05.2001

JUDGEMENT

H.R. Panwar, J.

1. This appeal is directed against the judgment and award dated 12-10-1999 passed by the Motor Accident Claims Tribunal, Pratapgarh (for short 'the Tribunal') under Section 140 of the Motor Vehicles Act, 1988 (for short 'the Act') in favor of respondent-claimant No. 1 for a sum of Rs. 50,000/- and against the appellant-New India Assurance Company Limited (for short 'the insurer') and respondent Nos. 2 and 3.

2. Being aggrieved by the impugned judgment and award, the appellant-insurer filed this appeal before this Court.

3. I have heard learned counsel for the parties and perused the judgment impugned.

4. It is contended by the learned counsel for the appellant that the driver of the offending tractor No. RJ-9R/1421 was having no valid license at the relevant time of accident. As such, by allowing the driver without having been valid license, the owner of the vehicle violated the terms and conditions of the policy. According to the learned counsel for the appellant, the learned Tribunal erred in passing the award against the appellant-insurer.

5. It is not in dispute that on 27-3-95, one Smt. Badami Bai was crushed under the left wheel of the tractor and it resulted in her death. It is also not disputed that the tractor

was owned by respondent No. 3 Lachia and was validly insured with the appellant-insurer. A report of this accident was lodged at the police station and after usual investigation, the police filed the challan against respondent No. 2 Lachia (Driver of the tractor).

6. The learned Tribunal came to the conclusion that death of Smt. Badami Bai has resulted from an accident arising out of the use of motor vehicle i.e. Tractor No. RJ-9R/1421 and Lachia is the registered owner of the said tractor and the said tractor was validly insured with the appellant-insurer on the date of accident and accordingly, learned Tribunal passed an interim award as envisaged under Section 140 of the Act for a fixed sum of Rs. 50,000/-. It is not disputed that respondent No. 1 is legal representative of deceased Smt. Badami Bai.

7. I have given my thoughtful consideration to the contentions raised by the learned counsel Mr. B. S. Rajpurohit appearing on behalf of the appellant- insurer.

8. Chapter X of the Act provides liability without fault in certain cases. Section 140 of the Act provides liability to pay compensation in certain cases on the principle of no fault. Sub-section (1) of Section 140 provides where death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicle shall, or, as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this Section. Sub-section (2) of Section 140 of the Act provides that the amount of compensation which shall be payable under sub-section (1) in respect of the death of any person shall be a fixed sum of fifty thousand rupees and the amount of compensation payable under that sub-section in respect of the permanent disablement of any person shall be a fixed sum of twenty five thousand rupees. Sub-section (3) of Section 140 of the Act provides that in any claim for compensation under sub-section (1) the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person. Sub-section (4) of Section 140 of the Act provides that a claim for compensation under sub-section (1) shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made nor shall the quantum of compensation recoverable in respect of such death or permanent

disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement. Thus, while making the Award under Chapter X of the Act, the Tribunal is required to satisfy that the death or permanent disablement of any person has resulted from an accident arising out of the use of motor vehicle or vehicles, owner of the vehicle or insurer, as the case may be, shall be liable to pay fixed amount as provided under sub-section (2) of Section 140 of the Act. The claim of compensation for death or disablement has to be disbursed expeditiously.

9. Moreso, the claim petition under Section 140 of the Act cannot be adjudicated alike with the claim petition filed under Sections 165 and 166 of the Act on the principle of fault liability. Defenses, if any, available to the appellant- insurer can only be raised in the main claim petition under Section 166 of the Act by joining the issue and the learned Tribunal after framing the proper issue and only after the evidence of the parties is recorded can come to the conclusion with regard to violation of the terms and conditions of the policy and not otherwise.

10. Section 144 of the Act of Chapter X provides overriding effect. The provision of this Chapter shall have effect notwithstanding anything contained in any other provision of this Act or of any other law for the time being in force. Thus, Section 144 overrides effect of any other provision of the Act including defense provided to the insurance company under Section 149(2) of the Act. Thus the claim under Section 140 of the Act cannot be defeated by the insurer with the aid of the provisions of Section 149(2) of the Act.

11. Thus, in view of the aforesaid discussion, I find no merit in this appeal. Accordingly it fails and is hereby dismissed. No order as to costs.

Appeal dismissed.