

RAJASTHAN HIGH COURT

National Insurance Co. Ltd.

Vs.

MACT, Jaipur.

Civil Writ Petition No. 3922 of 2001

(S.K. Keshote, J.)

09.08.2001

ORDER

S. K. Keshote, J.

1. Heard learned counsel for the petitioner.
2. Relying on the decision of the Apex Court in cases of *New India Assurance Company Ltd. v. Smt. Sita Bai*¹ *New India Assurance Company Ltd. v. Bhagwati Devi*² *National Insurance Co. Ltd. v. Jijubhai Nathuji Dabhi (Smt.)*³ and, *Oriental Insurance Co. Ltd. v. Sunita Rathi*⁴ learned counsel for the petitioner submitted that the Assurance Company in the claim petition filed by the claimants for the compensation for the death of their bread earner was not necessary party.
3. It has next been contended that when the Company was not necessary party, the Tribunal has committed a serious error of jurisdiction to order for payment of Rs. 50,000/- to the claimants under Section 140 of the Motor Vehicles Act, 1988 on the principle of no fault liability by the Company.
4. I have given my thoughtful considerations to the submissions made by the learned counsel for the petitioner.
5. The Tribunal has noticed that the amount of the premium for the policy of the offending vehicle was received by the Company on 8-5-2000 at 12.30 p.m. and this cover note has been issued. The accident has taken place at 9.25 p.m. The Assurance Company is considered to be a necessary party to the claim petition. Accordingly the Tribunal is also ordered for the payment of this amount of Rs. 50,000/- by the

Assurance Company. It is the contention of the learned counsel for the petitioner that cover note also mentions the date of the commencement of the risk from 9-5-2000 and as such the matter is covered by the Hon'ble Supreme Court decisions.

6. It is not the stage where we have to go on these contentions raised by the learned counsel for the Assurance Company at this stage. The deceased was a third party so far as the insurance of this vehicle is concerned. The Tribunal has considered this aspect and held that the Assurance Company is a necessary party to the claim petition.

7. This is an interlocutory order against which this petition under Article 227 of the Constitution is difficult to entertain. The order passed by the Tribunal under which it directed the Assurance Company to pay Rs. 50,000/- on the principle of no fault liability under Section 140 of the Motor Vehicles Act to the claimants is an interlocutory order in which no interference is called for of this Court under Article 227 of the Constitution. The legislature in its wisdom has not provided any appeal or revision against the interlocutory orders passed by the Tribunal or more precisely the order/interim award made by the Tribunal under Section 140 of the M. V. Act, 1988.

8. We have to go by the substance of the matter the challenge is made by the petitioner to the order of the Motor Accident Claims Tribunal, Jaipur City, Jaipur under which it has given direction to the company to pay Rs. 50,000/- to the claimants .

9. So far as the first part of this order is concerned there cannot be any grievance by the petitioner.

10. The grievance has been raised by the petitioner to the second part of this order where it put liability of Rs. 50,000/- upon the Assurance Company. The legislature with some purpose and object has not provided any appeal or revision against the interlocutory orders passed by the Motor Accident Claims Tribunal under the Motor Vehicles Act in the claim application for compensation filed by the claimants. The purpose is very obvious to give the finality to that order. So far as final award is concerned, it is appealable but the appeal is provided on a condition of depositing of 25% of the awarded amount. When the legislature thought of providing the appeal against the final award only after deposit of 25% of the awarded amount how for it is justified for the Court to interfere against the interlocutory order against which no appeal or revision is provided and that too without a single penny has been paid by the

Company to the claimants or deposited with the Tribunal or this Court. The law is also well settled that under Article 227 of the Constitution, the Court cannot assume unlimited prerogative to correct all species of hardship or wrong decisions. It must be restricted to cases of grave dereliction of duty and flagrant abuse of fundamental principles of law or justice, where grave injustice would be done unless the High Court interferes.

11. The order impugned in this petition if is maintained by the Court it will not result in causing any irreparable injury or any injustice to the petitioner. The petitioner is necessary party to the claim petition. In the main petition the Tribunal has to decide the matter regarding the liability of the Assurance Company. The amount of the interim compensation awarded under Section 140 of the M.V. Act, 1988 is ultimately to be deducted from the amount of the compensation finally awarded. This dispute *inter se* is of the owner and the Assurance Company regarding this liability of the Assurance Company to pay Rs. 50,000/-. When this amount is to be deducted from the amount finally awarded naturally at that point of time the Tribunal will take all the care and where Assurance Company succeeds to prove its case this amount is to be deducted and it can be paid to the assurance company. So if we go by this aspect of the matter certainly Assurance Company is not to lose or suffer any loss where ultimately it succeeds in the matter. This tendency of the Assurance Company of filing petition under Article 227 of the Constitution against the interlocutory order of the tribunal deserves to be deprecated.

12. Not only this the Assurance Company by filing this petition against this interlocutory order/interim award of the Tribunal on the principle of no fault liability is in fact contrary to and in derogation of the basic conception, object and purpose of inserting the provisions 92-A (old) and 140 of the M.V. Act, 1988. This is a benevolent provision having the socio economic approach. This interim award is to be made in favor of the claimants so that immediate financial aid comes in their hands. The Assurance Company by adopting this Course and entering into litigation making all efforts to frustrate this benevolent socio economic provision.

13. The Assurance Company is not an ordinary litigant. It is the State or agency or instrumentality of State within the meaning of Article 12 of the Constitution and in the matter where ultimately it is not to lose anything filing of this petition is wholly misconceived, misplaced and ill advised.

14. Having gone through the order/interim order of the award I find that this approach of the Tribunal to disburse 50% amount of the interim compensation in favor of the claimants is not reasonable and inconsonance with the principles of providing immediate financial aid to the dependants. In the matter of disbursement and investment of the amount of interim compensation the principles which are to be followed at the time of passing order for disbursement and investment of the amount of final award. Otherwise also in case 50% amount is given to the claimants what it is thought of scantling or taking away of this amount by the unscrupulous persons cannot be over ruled. I do not find any justification in this approach of the Tribunal.

15. In case the amount of Rs. 50,000/- has not been deposited so far by the petitioner the Assurance Company is to deposit this amount within a period of two months from today and on deposit of the same the Tribunal is directed to invest the same in long term FDR in the name of its Registrar and monthly interest accrued thereon be paid to the claimants Smt. Kamlesh Rathore, Parijat Singh Rathore and Garim Rathore under the guardianship of their mother Smt. Kamlesh Rathore in her saving account. The Tribunal is further directed to see that these claimants may not be unnecessarily put to or subjected to any harassment in the matter of withdrawal of the interest. The Tribunal to deposit this amount with a schedule Bank near to the house of these claimants and where they are having their Saving Bank account and necessary instructions be given to the Bank concerned to credit the monthly interest accrued on this deposit in their saving account.

16. In the result this petition fails and same is dismissed subject to the aforesaid directions.

Petition dismissed.

Cases Referred.

1. (2000 (1) TAC 3 (SC))
2. (1999 (2) TAC 441 (SC))
3. (1997) 1 SCC 66
4. (1998 (1) TAC 697 (SC))