

INDRA DEVI & ORS.

v.

BAGADA RAM & ANR.

(Civil Appeal No. 1508 of 2004)

AUGUST 18, 2010

[AFTAB ALAM AND R.M. LODHA, JJ.]

Motor Vehicles Act, 1988:

ss. 140 and 166 – ‘No fault compensation’ – Tribunal while rejecting the claim petition filed u/s 166 against the insured and insurer for death of the victim, on the ground that the accident occurred due to careless and negligent driving of deceased himself, directing refund of no fault compensation along with interest – High Court affirming the order – HELD: The impugned direction is clearly erroneous and unsustainable in law – The Tribunal has completely failed to realise the true nature and character of the compensation in terms of s.140 of the Act – The marginal heading to s.140 describes it as based ‘on the principle of no fault’ – As the expression ‘no fault’ suggests, the compensation u/s 140 is regardless of any wrongful act, neglect or default of the person in respect of whose death the claim is made – In view of the judgment in Eshwarappa’s case*, the Tribunal was patently in error, in directing for refund to the insurance company of amount of ‘no fault compensation’ already paid to the claimants, – 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 aside – Order of Tribunal insofar as it permits the insurance company to recover the amount of interim compensation along with interest from the claimants set aside – Interpretation of Statutes.

Interpretation of Statutes:

A *Aid to construction – Marginal heading – Relevancy of
*Eshwarappa @ Maheshwarappa and Anr. decided by
Supreme Court on 18.10.2010 – relied on.*

Case Law Reference:

B **CA No. 7049 of 2002** relied on **para 6**

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C From the Judgment & Order dated 20.08.2002 of the High
Court of Rajasthan at Jodhpur in S.B. Civil Misc. Appeal No.
323 of 2002.

D Aishwarya Bhati (Gp. Capt. Karan Singh Bhati) for the
Appellants.

H.K. Puri, K. Sarada Devi for the Respondents.

The Judgment of the Court was delivered by

E **AFTAB ALAM, J.** 1. This is the claimant's appeal from a
motor accident claim case.

F 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
G 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
H 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

A 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.

R.P.

Appeal allowed.