HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU

MA No. 254/2018
IA No. 01/2018
c/w
MA No. 252/2018
IA No. 01/2018
MA No. 253/2018
IA No. 01/2018
MA No. 255/2018
IA No. 01/2018

Pronounced on : 12 .06.2020

National Insurance Company Ltd. …. Appellant(s)

Through:- Mr. Sanjay K. Dhar, Advocate

V/s

Feroz-ud-Din & anr. …..Respondent(s)

Through:- Mr. M. P. Gupta, Advocate

Coram : HON'BLE MRS. JUSTICE SINDHU SHARMA, JUDGE

JUDGMENT

01. Appellant/Company has challenged the award dated 04.10.2018 passed by the Motor Accident Claims Tribunal, Doda (hereinafter to be referred to as 'Tribunal') in these four appeals. Since these appeals involve common questions of fact and law, therefore, the same were heard together and are being decided by a common judgment.

02. Briefly stated facts which arises for the consideration in these appeals are that, on 16.10.2017 about 10.15 a.m, an accident occurred Near Kashor, Jodhpur within the jurisdiction of Police Station, Doda, which resulted in the death of Nelofar Raza D/o Late Sh. Bashir Ahmed, Zia Bashir S/o Late Sh. Bashir Ahmed, Fehmida Begum W/o Late Sh. Bashir Ahmed and Shaiqa Bano D/o Late Sh. Bashir Ahmed. Bashir Ahmed, being the owner of the vehicle No. JMU-CC/2715 (Alto 800) was driving the said

vehicle at the time of accident and his wife & daughter were the occupants, who died in the accident alongwith him.

03. Claimants are grandparents of the deceased whose son was driving the said vehicle on the fateful day and they have filed four claim petitions against DM, National Insurance Company Limited & others for compensation under Sections 166 and 140 of the Motor Vehicle Act, 1998.

04. Appellant-Insurance Company objected to the claim petitions on the ground that the claim petitions are not maintainable because insurer can only indemnify the insured, who died and in the absence of his legal heirs arrayed as party.

05. Learned Tribunal, while considering the application under Section 140 of the MV Act, found that as the offending vehicle was duly insured with the appellant company, as such, the respondent/insurer is under legal obligation to indemnify the owner and the Tribunal has awarded interim award of Rs. 50,000/- in each claim petitions in favour of the respondents-claimants.

06. Appellant is aggrieved of the award dated 04.10.2018 and has assailed it on the ground that since insured has not been impleaded as party in the claim petitions, therefore, insurer would not be liable to pay compensation as the liability of the insurer is to indemnify the insured, but this is a case where the insurer is dead. The question which, therefore, arises is whether the appellant can be held liable to indemnify the insured when he is dead and his legal heirs are the claimants. Since the insured being the driver at the time of accident is dead, the claimants are his legal heirs.

07. It is argued that the appellant cannot be made liable to pay compensation under no fault liability in the absence of the insured because

under the Insurance Policy, contract is to indemnify the insured against the third party liability.

08. Learned counsel for the appellant while elaborating on the contention, relying on the judgment of Supreme Court in **Oriental Insurance Company Ltd. Vs. Sunita Rathi, 1998 AIR (SC) 257,** however, the but only question to be decided in these cases was 'as stated by the lordship in Para-1 of the aforesaid judgment, which is reproduced as follows:-

> "1. This appeal by the insurer involves for decision only a short point relating to its liability under the policy of insurance issued subsequent to the accident even though it was issued sometime later on the same day. The Tribunal as well as the High Court have held against the insurer placing reliance on a two-Judge Bench decision of this Court in New India Assurance Co. Ltd. Vs. Ram Dayal & Ors. 1990 (2) SCR 570. The question is whether that decision has been correctly applied in the facts of the present case."

09. The appeals filed by the Insurance Company involve only a short point relating to its liability under the policy of insurance issued subsequent to the accident, even though it was issued some time later on the same day. After referring to the facts of the case, their lordship held in Para-3 of **Sunita Rathi's case (Supra)** that "*insurer cannot be held liable on the basis of above policy in the present case and, therefore, the liability has to be of the owner of the vehicle ....*".

10. By referring to the judgment of the High Court in Para-3, it was observed as under:-

> "It follows that the insurer cannot be held liable on the basis of the above policy in the present case and, therefore, the liability has to be of the owner of the vehicle. However, we find that the

> High Court, without assigning any reason, has simply assumed that the owner of the vehicle was not liable and that the insurer alone was liable in the present case. This conclusion, reached by the High Court, is clearly erroneous. The liability of the insurer arises only when the liability of the insured has been upheld for the purpose of indemnifying the insured under the contract of insurance. There is, thus, a basic fallacy in the conclusion reached by the High Court on this point."

11. However, the question involved was referred in Para-1 of the judgment which has been decided finally. It appears that the judgment was against the final award and not against the order passed under Section 140 of the Motor Vehicles Act. Conclusive para of the said judgment reads as under:-

> "For the aforesaid reasons, the appeal is allowed. The judgment of the High Court and Tribunal are set aside. However, as indicated earlier, the claimants are not required to refund the amount already paid to them by the insurer."

12. Reliance has also been placed on the judgment of High Court of Kerala in **National Insurance Company Ltd. vs. Sasilatha, 2000(1) ACJ 661,** holding that "*a reading of Section 140 would make it clear that no fault liability is cast on the owner of the vehicle and not directly on the insurer. If the owner of the vehicle is found liable under Section 140, naturally, the liability of the insurer also would arise*".

13. Appellant has also referred the judgment of this Court in **Oriental Insurance Company Limited vs. Sangeeta & ors., 1992 Kash.L.J. 661** but it was a case in which the final award was challenged. In Para-9 of the said judgment, it was held that "*I, therefore, hold that claimant's failure to implead the insured as respondent and to obtain a*

judgment against him has disentitled her to be indemnified by the appellant company". This was also the case of **Sunita Rathi (supra)**.

14. However, the High Court of Kerala relied on the judgment of Division Bench of Kerala High Court in **New India Insurance Company Ltd. Vs. Parameswaran, 2005 (4) KLT 343,** has held as under:-

> "4. Under Section 140 of the Act, liability to pay compensation is absolute when the death or permanent disablement of any person is arising out of the use of a motor vehicle. Irrespective of the negligence, there is no necessity for the claimant to plead or establish that the death or permanent disablement was due to the wrongful act or negligent act of the owner of the vehicle. No-fault liability under Section 140 is created by the Statute is outside the law of tort and there is no necessity to enter into an enquiry that who was the wrong-doer. This is a substantive right accrued and the liability is incurred on the date of the accident and not on the date of consideration of the claim. So, the accidental death of the driver of the jeep occurred during the use of the vehicle by the owner and, in turn, the insurance company is liable to pay compensation under Section 140. Therefore, the Tribunal was right in awarding compensation under Section 140 and direction to pay the above with interest by the insurance company. Direction to pay interest is also fully justified as amount due under Section 140 was not made in time and there is erosion of money value due to passage of time."

15. The Supreme Court in Para-6 of the judgment in **Indra Devi & ors. Vs. Bagada Ram & anr., 2010 AIR (SC) 2913,** in which reference has been made to the judgment in **Eshwarappa @ Maheshwarappa and Anr. vs. C. S. Gurushanthappa and Anr., 2010 (5) R.A.J. 31**, has observed as under:-

> "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. 2010 (5) R.A.J. 31 (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."

16. In view of the above, it is not necessary to refer to the cleavage of judicial opinion in the matter as the law regarding no fault liability has been settled by their lordships of Supreme Court and it is not necessary to implead the insured, who is dead where the claimants are his legal heirs and entitled to compensation under Section 140 of the Motor Vehicle Act irrespective of the fact that whether the deceased was at fault as long as the Insurance Company is not disputing.

17. Hence the appeals are **dismissed** being without any merit. Appellant-company is directed to deposit the amount of award passed in all the claim petitions within a period of one month from today, failing which, same will be payable with 12% interest per annum.

(Sindhu Sharma)
Judge

JAMMU
12 .06.2020
Ram Murti

Whether the order is speaking : Yes.
Whether the order is reportable : Yes.