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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 27.11.2014

+ **CM(M). 922/2012**

ORIENTAL INSURANCE CO. LTD. Appellant

Through Mr.L.K.Tyagi, Advocate.

versus

SHISH PAL & ORS. Respondents

Through None.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

1. By the present petition the petitioner seeks to impugn the order dated 31.05.2012 passed by the Tribunal dismissing the application of the petitioner for directions to refund of Rs.50,000/- plus interest totalling Rs.55,162/- paid as per the order of the Tribunal dated 27.07.2006 in exercise of power under Section 140 of the M.V. Act on account of an alleged accident that had taken place on 30.04.1999 wherein it was alleged that Smt.Gasna Devi had expired in the said accident.

2. Subsequently the Tribunal passed an award on 25.02.2012 holding that the death of Smt. Gasna Devi was not as a consequence of any motor accident. The Tribunal held that she died due to natural causes inasmuch as she was seriously ill and was being transported in an Ambulance from GTB Hospital to Jeevan Nursing Home. In the accident that had taken place, she and other occupants of the ambulance did not receive any injuries. She was shifted to Jeevan Nursing Home in a separate vehicle and succumbed because of her illness and not because of her injuries.

3. Learned counsel appearing for the petitioner at the outset submits that he may be allowed to amend the petition and in the prayer clause he would like to add that apart from the order dated 31.05.2012 he also challenges the order dated 27.07.2006 by which the Tribunal directed the petitioner to pay the compensation of Rs. 50,000/- under Section 140 of the M.V. Act. The prayer is allowed.

4. Against the award of the Tribunal dated 25.02.2012, an appeal was filed before this court by the claimants being MAC. APP. 520/2012 which has also been dismissed on 21.11.2014 upholding the findings of fact recorded by the Tribunal.

5. Learned counsel appearing for the appellant submits that in view of the dismissal of the appeal and the award attaining finality, the petitioner is entitled to refund of Rs. 55,162/- which was paid pursuant to order of the Tribunal on 27.07.2006 in exercise of powers under Section 140 of the M.V. Act. He relies upon the judgment of the supreme Court in the case of ***National Insurance Company Ltd. vs. Jeetu Ram & Ors., II (1988) ACC 612 (SC)***. He also submits that a perusal of order dated 27.07.2006 would show that the award passed by the Tribunal for a sum of Rs.50,000/- was an interim order. He submits that the interim award would necessarily be subject to final orders.

6. The judgment in the case of ***National Insurance Company Ltd. vs. Jeetu Ram & Ors. (supra)*** is related to a case where in exercise of powers under Section 92A of the Motor Vehicles Act, 1939 the Tribunal had directed the Insurance Company to pay the appropriate sum to the extent of Rs. 15,000/- in the case of death and Rs.7,500/- in the case of permanent disablement.

Ultimately the Tribunal came to a conclusion that under the policy of insurance the insurer is not liable to pay compensation. However, it held that the amount payable under section 92 of the Motor Vehicles Act, 1988 has to be borne by the insurer and the owner would not be liable to pay the said amount. The Supreme Court reversed this direction which was also upheld by the High Court.

7. The Supreme Court in para 2 held as follows:-

“2. On a close scrutiny of the aforesaid provisions, we do not find anything contained therein which would suggest that the liability which accrues under the provisions of Section 92-A has to be borne by the insurer even if it is ultimately held that under the policy of insurance the insurer is not liable to pay the compensation in question. In our considered opinion the Tribunal and the High Court have misread the aforesaid provisions of the Motor Vehicles Act, In the aforesaid premises the impugned judgment of the Tribunal and High Court cannot be sustained so far as it relates to the liability of the insurer arising under Sections 92-A and 92-B of the Act. These appeals are allowed. The insurer having paid the amount under the aforesaid provisions is entitled to get it reimbursed from the owner.

8. In any case reference may also be had to the judgment of the Supreme Court in ***‘Eshwarappa @ Maheshwarappa and Anr. vs. C.S.Gurushanthappa and Anr.’ 2010 ACJ 2444*** which in para 17 held as follows:

“17.The provisions of Section 140 are indeed intended to provide immediate succour to the injured or the heirs and legal representatives of the deceased. Hence, normally a claim under Section 140 is made at the threshold of the proceeding and the payment of compensation under Section 140 is directed to be made by an interim award of the Tribunal which may be adjusted if in the final award the claimants are held entitled to any larger amounts. But that does not mean, that in case a claim

under Section 140 was not made at the beginning of the proceedings due to the ignorance of the claimant or no direction to make payment of the compensation under Section 140 was issued due to the over-sight of the Tribunal, the door would be permanently closed. Such a view would be contrary to the legal provisions and would be opposed to the public policy.”

9. The High Court of Orissa in *New India Assurance Company Ltd. vs. S. Transport Pvt. Ltd. & Ors. 2002 (II) OLR 710* held as follows:-

“2.

.....Concept of 'No fault liability' cannot be applied in case of 'interim award'. Concept of 'No fault liability' comes into play when the claimant does not claim more than the amount fixed under Section 140 of the Motor Vehicles Act. Interim award is an interim relief pending the main claim case. Court should be prima facie satisfied about the basic facts required for fastening liability. The Tribunal is also to find out prima facie whether the driver had a valid driving licence. But in view of the judgment of the Supreme Court in *New India Assurance Co., Shimla v. Kamla and Ors.*, it is the Insurance Company which is initially liable to satisfy the award of compensation in favour of a third party, even if the driver has no valid driving licence, subject to its right to recover the said amount from the owner of the vehicle. In the present case, the deceased was a third party. Accordingly, the interim award against the Insurance Company does not deserve any interference. It is well settled that the interim award is subject to the final award in the main claim case and the Insurance Company is entitled to get reimbursement from the owner if it is established that the Insurance is not liable to indemnify the owner.”

10. It would follow that the order passed by the Tribunal on 27.7.2006 in exercise of power under section 140 of the M.V.Act was subject to final orders that may be passed by the Tribunal. The final orders came in the Award dated 25.2.2012 holding that the appellant/insurer has no liability to pay any

compensation. In fact the order dated 27.7.2006 itself shows that it was in the nature of an interim Award.

11. In the light of the above position I direct respondent No.1 to refund the said sum of Rs. 55,162/- to the petitioner received as per the order dated 27.07.2006 within six weeks from today. In case he fails to do the needful, the petitioner would be entitled to take appropriate steps for getting the same recovered along with interest @ 9% per annum from the date of this order.

12. Petition stands disposed of.

JAYANT NATH, J

NOVEMBER 27, 2014
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