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

Date of Decision: 12th April, 2021

\+ **CM(M) 18/2021 & CM APPL. 810/2021**

NATIONAL INSURANCE CO.LTD ..... Petitioner

Through Mr. Pankaj Seth, Advocate.

versus

SMT. NEETU ..... Respondent

Through None.

AND

\+ **CM(M) 57/2021**

NATIONAL INSURANCE CO.LTD ..... Petitioner

Through Mr. Pankaj Seth, Advocate.

versus

KAMAL KUMAR ..... Respondent

Through None.

CORAM:
JUSTICE PRATHIBA M. SINGH

<u>Prathiba M. Singh, J.</u> (Oral)

1. This hearing has been done through Video Conferencing.

2. The present two petitions have been filed challenging the impugned orders passed by the Presiding Officer, (East), Karkardooma Courts, Delhi accepting the legal offer made by the insurance company and passing an interim award in terms of the said legal offer.

3. The challenge by the Petitioner/insurance company, in the respective matters, is to the effect that Section 140 of the Motor Vehicles Act, 1988 (*hereinafter, 'the Act'*) by which interim compensation could be awarded, stands deleted from the Act by virtue of the amendment brought in by the Motor Vehicles (Amendment) Act, 2019 (*hereinafter, 'the Amendment Act, 2019'*). It is further submitted by Mr. Seth, ld. Counsel appearing for the insurance company that under Section 149(3) of the Act, an award in terms of the legal offer can be passed only if the said offer is accepted by the insured

person. He relies upon ***Bajaj Alliance General Insurance Co Ltd. v. Ashok Kumar & Ors., [MAC. APP. 940/2019, decided on 19th February, 2020]*** passed by the ld. Single Judge of this Court.

4. A perusal of the Motor Vehicle Act, 1988 shows that as per Section 140 of the unamended Act, the interim compensation could be granted in the following manner:

> *"140. **Liability to pay compensation in certain cases on the principle of no fault.**—*
> *(1) 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.*
> *(2) 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].*
> *(3) 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.*
> *(4) 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.

[(5) Notwithstanding anything contained in sub-section (2) regarding death or bodily injury to any person, for which the owner of the vehicle is liable to give compensation for relief, he is also liable to pay compensation under any other law for the time being in force:

Provided that the amount of such compensation to be given under any other law shall be reduced from the amount of compensation payable under this section or under section 163A.]"

5. This provision has been deleted vide the Amendment Act, 2019. Insofar as Section 149(3) of the Act, contained in Chapter XI of the Act, is concerned, the same has been amended by Section 51 of the Amendment Act, 2019. The language in Section 149(3) as amended, is quite clear i.e., it is only if the Claimant, to whom the offer is made, "*accepts such offers*", the settlement can be recorded by the Claims Tribunal. Section 149(3) of the Act reads as under:

"*149.*

....

(3) If, the claimant to whom the offer is made under sub-section (2),—

(a) accepts such offer,—

(i) the Claims Tribunal shall make a record of such settlement, and such claim shall be deemed to be settled by consent; and

(ii) the payment shall be made by the insurance company within a maximum period of thirty days from the date of receipt of such record of settlement;

(b) rejects such offer, a date of hearing shall be fixed by the Claims Tribunal to adjudicate such claim on merits."

6. A perusal of the order of this Court dated 19th February, 2020 relied

upon by ld. Counsel, Mr. Seth also shows that the ld. Single Judge has accepted the contention made on behalf of the insurance company that there is no provision under the Act, for passing of interim award. The order of this Court dated 19th February, 2020, reads as under:

> "*The appellant has challenged the interim award dated 04"" September, 2019 whereby the Claims Tribunal has passed interim award for Rs. 1,40,351/-.*
>
> *Learned counsel for the appellant urged at the time of the hearing that there is no provision in the Motor Vehicles Act for passing of an interim award for Rs. 1,40,351/-.*
>
> *Respondent No.l is present in Court along with his counsel and has no objection to the appeal being allowed.*
>
> *The appeal is allowed and the interim award dated 04^'' September, 2019 is set aside. Pending application is disposed of.*
>
> *The statutory amount be refunded back to the appellant.*
>
> *Copy of this order be given dasti to counsel for the parties under signatures of the Court Maste*r."

7. Under section 140 of the unamended Motor Vehicles Act, 1988, the maximum compensation that could be paid as interim compensation was a fixed amount. The amount awarded in the present case is not a fixed amount but a sum of Rs. 90,050/- in ***CM(M) 18/2021*** and Rs. 69,810/- in ***CM(M) 57/2021***. The question that arises is as to whether the present cases would be governed by the unamended Motor Vehicles Act, 1988 or the amended Act.

8. There is some doubt as to whether Section 149 of the amended Act is applicable to the present case as the policy is dated 18th November 2017 in both these matters, i.e. prior to the amended Act coming into force. Further Sections 50 and 51 of the Motor Vehicles (Amendment) Act, 2019, vide which chapter

X of the Motor Vehicles Act was deleted and new provisions were added, also appears to not have been notified as of yet.

9. Under such circumstances, the present case would still be governed by the unamended Motor Vehicles Act, 1988. Even in the unamended Act, since the amount payable as interim compensation is a fixed amount, the passing an interim award by the Tribunal on the basis of the offer made by the Insurance Company would not be tenable.

10. Therefore, under these circumstances, the interim awards passed in both these orders are set aside. Considering the fact that the accidents took place in 2018 and the claims are pending before the MACT, it is directed that MACT shall expeditiously adjudicate the claim petitions of the Respondents/Claimants and finally dispose them off on or before 31st July, 2021.

11. The MACT would be free to also consider and grant interim compensation in terms of the unamended Act, in accordance with law, if the claimants file an application for the said purpose.Both these petitions are disposed of in the above terms. All pending applications are also disposed of.

12. Copy of this order be communicated to the Presiding Officer, (East), Karkardooma Courts, Delhi. Next dates of hearing are cancelled in these matters.

PRATHIBA M. SINGH
JUDGE

APRIL 12, 2021
Rahul/Ap/Ak
(Corrected and released on 16th April 2021)