

(2003) 09 JH CK 0005

Jharkhand High Court

Case No: Misc. Appeal No"s. 128 and 153 of 2002

National Insurance Company
Ltd. and New India Assurance
Co. Ltd.

APPELLANT

Vs

Kaushalya Sardarin (Smt.) and
Others

RESPONDENT

Date of Decision: Sept. 8, 2003

Acts Referred:

- Motor Vehicles Act, 1988 - Section 171

Citation: (2007) 2 AndhWR 575 : (2007) ACJ 2332 : (2004) 2 ACC 240 : (2004) 2 JCR 296

Hon'ble Judges: Gurusharan Sharma, J; Amareshwar Sahay, J

Bench: Division Bench

Advocate: Ram Kishore Pd., in M.A. No. 153 of 2002 and G.C. Jha, in M.A. No. 128 of 2002,
for the Appellant; Ananda Sen, for Respondents 1 to 4, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

1. Heard the parties M.A. No. 153 of 2000 is barred by time and as such IA No. 938 of 2003 at Flag A has been filed to condone the delay. We find that the said delay has properly been explained. Delay is therefore condoned. These two appeals arise out of a common judgment dated the 8th March, 2002 passed by the Motor Vehicle Accident Claim Tribunal, Saraikella in Compensation Case No. 24 of 1999, whereby the Tribunal held that the motor accident dated 27.11.1999 took place on account of contributory negligence of the drivers of the Truck (PAT 7477) and the minibus (BR-16B-0657) and assessed Rs. 3,26,000/- payable to the claimants, to the extent of half and half by the Insurers, of both the vehicles. Both the appeals have been heard together and are disposed of by a common order. In paragraph 11 of the impugned judgment, the Tribunal observed that Exhibit 6, the driving licence of Md. Idrish,

who was driver of the minibus was a professional driving licence with entitlement to drive light motor vehicle.

2. In the present appeals, counsel for both the Insurance Companies submitted that the claimants had claimed total amount of Rs. 2,85,000/- only payable as compensation to them, whereas the Tribunal awarded more than their claim, i.e. Rs. 3,26,000/- which was not permissible on the ratio of a decision of the Supreme Court in [Adikanda Sethi \(Dead\) through Lrs. and Another Vs. Palani Swami Saran Transports and Another](#), . We find no substance in this argument on the ratio of a recent decision of three judges" Bench of the Apex Court in [Nagappa Vs. Gurudayal Singh and Others](#), , wherein it has been held that under the provisions of the Motor Vehicles Act, 1988, there is no restriction that compensation could be awarded only up to the amount claimed by the claimant. In an appropriate case where from the evidence brought on record, if the Tribunal/Court considers that claimant is entitled to get more compensation than claimed, the Tribunal may pass such award. The only embargo is that it should be "Just" compensation. It is true that Adikanda Sethi (supra) was not considered in Nagappa (supra), but we find that in the said case, the Apex Court on calculation of annual dependency and applying appropriate multiplier, assessed a sum of Rs. 1,40,000/- payable as compensation, but since the claim was limited to Rs. one lac, the claimants were held entitled to get Rs. one lack with interest @ 6%, per annum, whereas three Judges" Bench in Nagappa (supra) considered this aspect of the matter thoroughly and held as under :

"Firstly, under the provisions of Motor Vehicles Act, 1988, (hereinafter referred to as "the M.V. Act") there is no restriction that compensation could be awarded only up to the amount claimed by the claimant. In an appropriate case where from the evidence brought on record if Tribunal/Court considers that claimant is entitled to get more compensation than claimed, the Tribunal may pass such award. Only embargo is - it should be "just" compensation, that is to say, it should be neither arbitrary, fanciful nor unjustifiable from the evidence. This would be clear by reference to the relevant provisions of the M.V. Act. Section 166 provides that an application for compensation arising out of an accident involving the death of or bodily injury to persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both, could be made (a) by the person who has sustained the injury; or (b) by the owner of the property; (c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or (d) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be. Under the proviso to Sub-section (1), all the legal representatives of the deceased who have not joined as the claimants are to be impleaded as respondents to the application for compensation. Other important part of the said Section is Sub-section (4) which provides that "the Claims Tribunal shall treat any report of accidents forwarded to it under Sub-section (6) of Section 158 as an application for compensation under this Act." Hence, Claims Tribunal in appropriate case can treat the report forwarded to it

as an application for compensation even though no such claim is made or no specified amount is claimed....It appears that due importance is not given to Sub-section (4) of Section 166 which provides that the Tribunal shall treat any report of the accidents forwarded to it under Sub-section (6) of Section 158, as an application for compensation under this Act....Thereafter, Section 168 empowers the Claims Tribunal to "make an award determining the amount of compensation which appears to it to be just." Therefore, only requirement for determining the compensation is that it must be "just". There is no other limitation or restriction on its power for awarding just compensation,"

3. Mr. Ram Kishore Prasad, Counsel for the appellant in M.A. No. 153 of 2002 further submitted that in terms of Adikanda Sethi (supra), the rate of interest granted by the Tribunal @ 9 per cent per annum should be reduced to 6 per cent. u/s 171 of the 1988 Act the Tribunal in its discretion considering the facts and circumstances of the case has granted interest @ 9% per annum. We have no reason to interfere therewith."

4. Mr. Prasad also submitted that the Insurer had raised the question of invalidity of the driving licence of the driver of the minibus, before the Tribunal and as such an opportunity be given to realise the amount of compensation paid by the insurer in terms of the impugned Judgment from its owner on the ratio of the decision of the Apex Court in [New India Assurance Co., Shimla Vs. Kamla and Others etc. etc.,](#) . We find that the Tribunal decided the question in para 11 and held the drivers of the minibus as well as the truck were holding valid and professional driving licence and as such the Insurer on the ratio of Kamla's case (supra) is not entitled to realise the Compensation amount paid to the claimants from the owner of the minibus. The statutory amount deposited by the appellant in the two appeals by Challan Nos. J-82 dated 14.11.2002 and J-64, dated 29.8.2003, total Rs. 50,000/- are permitted to be withdrawn by the claimants-Respondents 1 to 4 on necessary verification and in accordance with law. These two appeals are dismissed.