

THE HIGH COURT OF SIKKIM: GANGTOK
(Civil Appellate Jurisdiction)

S.B.: THE HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE

MAC. Appeal No. 06 of 2018

Shri Narendra Kumar Chettri,
S/o T.B. Chettri,
Aged about 45 years,
R/o Development Area,
P.O. & P.S. Gangtok,
East Sikkim.

... Appellant

versus

1. Shri Ashok Kumar Pradhan,
Aged about 71 years,
R/o Development Area,
P.O. & P.S. Gangtok,
East Sikkim.

2. The Branch Manager,
Bajaj Allianz General Insurance
Company Limited,
Saharan House, 2nd Floor,
Above ICICI Bank,
2nd Mile, Sevoke Road,
Siliguri, West Bengal.

... Respondents

**Application under Section 173 of the Central Motor Vehicles
Act, 1988.**

Appearance:

Mr. Ajay Rathi and Ms. Phurba Diki Sherpa, Advocates
for the Appellant.

Mr. Rinzing Dorjee Tamang, Advocate for Respondent
No.1.

Mr. Thupden G. Bhutia, Advocate for Respondent No.2.

J U D G M E N T

(25.09.2018)

Bhaskar Raj Pradhan, J

1. This is an appeal filed by the Appellant under Section 173 of
the Motor Vehicles Act, 1988 (the said Act) against the order dated

23.02.2018 passed by the Motor Accident Claims Tribunal (Claims Tribunal), East Sikkim at Gangtok directing the Appellant to pay a sum of Rs.25,000/- (Rupees twenty five thousand) as interim relief on account of injuries to the Claimant in view of Section 140 of the said Act in MACT Case No.26 of 2016. In re: **Yalluwa (Smt.) & Ors. v. The National Insurance Company Ltd. & Anr.**¹ the Supreme Court would hold that an order of the Claims Tribunal awarding compensation under Section 140 is appealable under Section 173 as it amount to an “award” under Section 168 of the said Act. Section 169 of the said Act provides for the procedure and powers of the Claims Tribunal. It reads as under:

“169. Procedure and powers of Claims Tribunals.—(1) *In holding any inquiry under section 168, the Claims Tribunal may, subject to any rules that may be made in this behalf, follow such summary procedure as it thinks fit.*

(2) *The Claims Tribunal shall have all the powers of a Civil Court for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and of compelling the discovery and production of documents and material objects and for such other purposes as may be prescribed; and the Claims Tribunal shall be deemed to be a Civil Court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).*

(3) *Subject to any rules that may be made in this behalf, the Claims Tribunal may, for the purpose of adjudicating upon any claim for compensation, choose one or more persons possessing special knowledge of and matter relevant to the inquiry to assist it in holding the inquiry.”*

2. Section 169 makes it abundantly clear that an inquiry is required to be held under Section 168 of the said Act. While doing so, subject to any rules that may be made in this behalf, summary

¹ 2007 6 SCC 657

procedure as the Claims Tribunal thinks fit is required to be followed. The Claims Tribunal also has all the powers of the Civil Court for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and of compelling the discovery and production of documents and material objects and for such other purposes as may be prescribed.

3. In exercise of the powers conferred by Sections 28, 38, 65, 95, 96, 107, 111, 138 and 176 read with Section 211 of the said Act the State Government made the Sikkim Motor Vehicles Rules, 1991 (the said Rules) which was published in the Sikkim Government Gazette on 05.10.1991 on which date it came into force. Chapter VIII of the said Rules relates to the establishment of Claims Tribunal.

4. The said Rules under Chapter VIII prescribe two sets of procedure to examine a claim under Section 166 and a claim under Chapter X of the said Act.

5. Rule 247 to Rule 265 of the said Rules govern an application for compensation under Section 166 of the said Act. Detailed procedure regarding the form of application (Rule 247); examination of the application (Rule 248); summary dismissal of application (Rule 249); notice to parties involved (Rule 250); appearance and examination of parties (Rule 251); summoning of witnesses (Rule 252); appearance of legal practitioner (Rule 253); local inspection (Rule 254); inspection of vehicle (Rule 255); power of summary examination (Rule 256); method of recording of

evidence (Rule 257); adjournment of hearing (Rule 258); co-opting of persons during inquiry (Rule 259); framing of issues (Rule 260); determination of issues (Rule 261); maintaining of diary of proceedings (Rule 263); judgment and award of compensation (Rule 263); enforcement of award of the Claims Tribunal (Rule 264); the applicability of the Code of Civil Procedure, 1908 (CPC) in certain cases (Rule 265); form and number of appeals against the decision of Claims Tribunal (Rule 266); and fees payable for preferring the application under Section 166 of the said Act (Rule 267); have been made in Chapter VIII consisting of Rules 247 to 267 of the said Rules.

6. The procedure prescribed by the said Rules for the determination of a claim under Section 166 of the said Act is fairly detailed and elaborate compared to the procedure prescribed under Rules 268 to 275 of the said Rules for determination of a claim under Chapter X of the said Act.

7. An application in the case of a claim under Chapter X of the said Act, which includes a claim under Section 140 is however, governed by Rules 268 to 275 of the said Rules.

8. Rule 268 of the said Rules provides as under:

“268. Application for claim.- (1) Every application in the case of claim under Chapter X of Act, shall be made in Form SKV-71

(2) Every applicant along with application for claim shall pay a fee of ten rupees.”

9. Rule 269 of the said Rules provides as under:

“269. Consideration of the claim.- The Claims Tribunal shall

follow the procedure of summary trial as contained in the code of Criminal Procedure, 1898, (Central Act 5 of 1974) for the purpose of adjudicating and awarding a claim under Chapter X of the Act.”

10. The summary trial procedure as contained in the Code of Criminal Procedure, 1973 (Cr.P.C.) is required to be followed for the purpose of adjudicating and awarding a claim under Chapter X of the said Act.

11. Rule 270 to Rule 275 of the said Rules is relevant for the purpose of determination of the award of the claim made under Chapter X of the said Act and the basis on which the award of the claim is to be made.

12. Section 262 Cr.P.C. provides that in trials under Chapter XXI Cr.P.C. the procedure specified in Cr.P.C. for the trial of summons case shall be followed. Chapter XX Cr.P.C. provides for trial of summons cases by Magistrates. Section 251 Cr.P.C. provides for substance of accusation; Section 252 Cr.P.C. provides for conviction on plea of guilty; Section 253 Cr.P.C. provides for conviction on plea of guilty in absence of accused in petty cases and Section 254 Cr.P.C. provides for procedure when not convicted. When an application under Section 140 of the said Act is contested Section 254 Cr.P.C. and 255 Cr.P.C. would be relevant. Section 254 Cr.P.C. reads as under:

“254. Procedure when not convicted.(1) *If the Magistrate does not convict the accused under section 252 or section 253, the Magistrate shall proceed to hear the prosecution and take all such evidence as may be produced in support of the prosecution, and*

also to hear the accused and take all such evidence as he produces in his defence.

(2) *The Magistrate may, if he thinks fit, on the application of the prosecution or the accused, issue a summons to any witness directing him to attend or to produce any document or other thing.*

(3) *The Magistrate may, before summoning any witness on such application require that the reasonable expenses of the witness incurred in attending for the purposes of the trial be deposited in Court.”* (Emphasis supplied)

13. Section 255 Cr.P.C. reads as under:

“255. Acquittal or conviction. (1) *If the Magistrate, upon taking the evidence referred to in section 254 and such further evidence, if any, as he may, of his own motion, cause to be produced, finds the accused not guilty, he shall record an order of acquittal.*

(2) *Where the Magistrate does not proceed in accordance with the provisions of section 325 or section 360, he shall, if he finds the accused guilty, pass sentence upon him according to law.*

(3) *A Magistrate may, under section 252 or section 255, convict the accused of any offence triable under this Chapter, which from the facts admitted or proved he appears to have committed, whatever may be the nature of the complaint or summons, if the Magistrate is satisfied that the accused would not be prejudiced thereby.”* (Emphasis supplied)

14. Section 255 provides for acquittal or conviction upon determination after taking evidence under Section 254 Cr.P.C.

15. Section 169 of the said Act read with the relevant provisions of the said Rules relating to the procedure to be followed in case of a claim under Chapter X of the said Act and the relevant provisions for summary trials in Cr.P.C. makes it unequivocally clear that even for determination of the liability under Section 140 of the said Act the procedure prescribed for coming to a conclusion must be undertaken by the Claims Tribunal before awarding the

claim or rejecting it. The procedure for the determination of a claim under Section 140 of the said Act is not as exhaustive as a claim under Section 166 of the said Act. Although the procedure prescribed provides for a summary procedure under the Cr.P.C. the orders which need be passed is not of conviction or acquittal but for determining whether the claimant is entitled to the award under Section 140 of the said Act. The claim under Chapter X of the said Act is of civil nature although the said Rules prescribe a summary trial procedure applicable in criminal cases.

16. Rule 274 of the said Rules provides that the Claims Tribunal, before whom an application for compensation liability arising out of the provisions of Chapter X has been made, shall dispose of such application within 45 days from the date of receipt of such application. The mandate of the Rule 274 must be strictly followed. In the present case the application for claim of compensation under Section 140 of the said Act was preferred on 27.06.2016. The impugned order awarding Rs.25,000/- (Rupees twenty five thousand) to the Claimant was made on 23.02.2018 after one year, seven months and twenty seven days. The afore-quoted Rules provide “*summary procedure*” for determining the liability under Section 140 of the said Act. The perusal of the records, however, reflect that the Claims Tribunal failed to follow the “*summary procedure*” as prescribed and determined the award without even examining the ingredients of Section 140 of the said Act in the period of one year, seven months and twenty seven days. The very

purpose of providing the “summary procedure” as well as fixing a time frame to do so was lost in the process.

17. In re: *Yallwaa (Smt.) & Ors. (supra)* the Supreme Court would hold:

“9. It is not in dispute that an award of the Tribunal is to be made in terms of Section 168 of the Act. For the said purpose, the Tribunal is required to issue a notice to the insurer and give the parties an opportunity of being heard. While making an award in terms of Section 168 of the Act, the procedure laid down under Section 166 of the Act is required to be complied with. The proviso appended to Section 168 of the Act, however, lays down that where such application makes a claim for compensation under Section 140 in respect of the death or permanent disablement of any person, such claim and any other claim (whether made in such application or otherwise) for compensation in respect of such death or permanent disablement shall be disposed of in accordance with the provisions of Chapter X of the Act.

10. Section 140, as noticed hereinbefore, provides for no fault liability. It uses the words “accident arising out of the use of a motor vehicle”, “the owner of the vehicle” and when more than two vehicles are involved, “the owners of the vehicles” shall, jointly and severally, be liable to pay compensation. The said provision, therefore, makes the owners of the vehicles liable but not the insurer per se. Irrespective of the fact whether a claim petition is required to be adjudicated under Chapter X or Chapter XII of the Act, it is permissible to raise a defence in terms of sub-section (2) of Section 149 of the Act. It is even possible for the owner of the vehicle to raise a contention that his vehicle being not involved in the accident, he is not liable to pay any amount in terms of Section 140 of the Act.

11. One of the defences available to the insurer is breach of conditions specified in the policy. When such a defence is raised, the Tribunal is required to go into the said question. Section 140 of the Act does not contemplate that an insurance company shall also be liable to deposit the amount while it has no fault (sic obligation) whatsoever in terms of sub-section (2) of Section 147 of the Act.

12. There cannot be any doubt that an appeal is a creation of a statute.

13. *It may be noted that Chapter X of the Act provides for no forum for enforcement of the right under Section 140. The only forum available is in Chapter XII. The right under Section 140 can only be enforced under Section 168 as an award. An appeal, therefore, lies under Section 173 against such an award seeking to enforce the right under Section 140.*

14. *In P. Ramanatha Aiyar's Law Lexicon, 3rd Edn., 2005 at p. 427, it is stated:*

“ ‘Award’ means an arbitration award [Arbitration Act (10 of 1940), Section 2(b)]

‘Award’ means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10-A. [Industrial Disputes Act (14 of 1947), Section 2(f).]”

15. *In Oriental Insurance Co. Ltd. v. Mohiuddin Kureshi [(1994) 1 ACJ 74 : (1994) 1 Pat LJR 79] a Division Bench of the Patna High Court observed: (ACJ pp. 76-77, paras 7, 9 & 11)*

“7. Section 140 of the Motor Vehicles Act which is in Chapter X of the said Act provides for liability to pay compensation on the principle of no fault. An owner of a vehicle thus would be liable to pay compensation in case death or permanent disablement to any person has resulted from an accident arising out of use of a motor vehicle or vehicles and the amount of such compensation in terms of Section 140(2) is fixed as Rs 25,000 in case of death and Rs 12,000 in case of permanent disablement.

Sub-section (3) of Section 140 postulates that the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which claim was 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.

9. Section 141 of the said Act, however, provides that right to claim in terms of Section 140 shall be in addition to any other right under the provisions of the said Act or any other law for the time being in force.

Sub-sections (2) and (3) of Section 141 of the said Act read thus:

‘(2) A claim for compensation under Section 140 in respect of death or permanent disablement of any person shall be disposed of as expeditiously as possible and where compensation is claimed in respect of such death or permanent disablement under Section 140 and also in pursuance of any right on the principle of fault, the claim for compensation under Section 140 shall be disposed of as aforesaid in the first place.

(3) Notwithstanding anything contained in sub-section (1), where in respect of the death or permanent disablement of any person, the person liable to pay compensation under Section 140 is also liable to pay compensation in accordance with the right on the principle of fault, the person so liable shall pay the first-mentioned compensation and—

(a) if the amount of the first-mentioned compensation is less than the amount of the second-mentioned compensation, he shall be liable to pay (in addition to the first-mentioned compensation) only so much of the second-mentioned compensation as is equal to the amount by which it exceeds the first-mentioned compensation;

(b) if the amount of the first-mentioned compensation is equal to or more than the amount of the second-mentioned compensation, he shall not be liable to pay the second-mentioned compensation.’

11. From a conjoint reading of the aforementioned provisions, there cannot be any doubt that an application under Section 140 of the said Act can be filed separately.

However, Section 166 of the said Act contemplates filing of a composite application, as is evident from the proviso appended to sub-section (2) of Section 166 of the said Act.”

16. *The question which is required to be considered is what would be the meaning of the term “award” when such a contention is raised. Although in a given situation having regard to the liability of the owner of the vehicle, a Claims Tribunal need not go into the question as to whether the owner of the vehicle in question was at fault or not, but determination of the liability of the insurance company, in our opinion, stands on a*

different footing. When a statutory liability has been imposed upon the owner, in our opinion, the same cannot extend the liability of an insurer to indemnify the owner although in terms of the insurance policy or under the Act, it would not be liable therefor.

17. In a given case, the statutory liability of an insurance company, therefore, either may be nil or a sum lower than the amount specified under Section 140 of the Act. Thus, when a separate application is filed in terms of Section 140 of the Act, in terms of Section 168 thereof, an insurer has to be given a notice in which event, it goes without saying, it would be open to the insurance company to plead and prove that it is not liable at all.

18. Furthermore, it is not in dispute that there can be more than one award, particularly when a sum paid may have to be adjusted from the final award. Keeping in view the provisions of Section 168 of the Act, there cannot be any doubt whatsoever that an award for enforcing the right under Section 140 of the Act is also required to be passed under Section 168 only after the parties concerned have filed their pleadings and have been given a reasonable opportunity of being heard. A Claims Tribunal, thus, must be satisfied that the conditions precedent specified in Section 140 of the Act have been substantiated, which is the basis for making an award.

19. Furthermore, evidently, the amount directed to be paid even in terms of Chapter X of the Act must as of necessity, in the event of non-compliance with directions, has to be recovered in terms of Section 174 of the Act. There is no other provision in the Act which takes care of such a situation. We, therefore, are of the opinion that even when objections are raised by the insurance company in regard to its liability, the Tribunal is required to render a decision upon the issue, which would attain finality and, thus, the same would be an award within the meaning of Section 173 of the Act.”

[Emphasis supplied]

18. In the present case along with an application under Section 166 of the said Act for compensation a separate application under Section 140 of the said Act was also preferred before the Claims Tribunal on 27.6.2016. Written objection thereto was filed by the

Appellant on 26.12.2016. In the written objection the Appellant claimed that the vehicle was insured with the Respondent No.2 and had valid insurance certificate at the time of the accident covering period of insurance from 22.04.2015 to midnight of 21.04.2016 vide policy certificate no. OG-16-2451-1801-0000003. The Appellant also pleaded that he had no liability towards the claimant as the vehicle was insured and had valid insurance certificate at the time of accident of the said vehicle. The insurance policy certificate was filed by the Appellant along with his reply to the claim made by the claimant i.e. the Respondent No.1 under Section 166 of the said Act.

19. The no fault liability of the owner is absolute under Section 140 of the said Act. Between the owner and owners of the motor vehicle or motor vehicles the liability is also joint and several. However, when the owner claims to have been indemnified by the insurer against the said liability under Section 140 of the said Act the Claims Tribunal is required to issue notice upon the insurer, if not already done, hear the Claimant, owner and the insurer to determine if no fault liability of the owner has in fact been indemnified by the insurer by execution of the policy following the procedure laid down. In that event it would be open to the insurance company to plead and prove that it is not liable at all.

20. Chapter XI of the said Act deals with insurance of motor vehicles against third party risk. Section 145(c) of the said Act provides that the word "*liability*", wherever used in relation to the death of or bodily injury to any person, includes liability in respect

thereof under Section 140. Section 146 of the said Act mandates that no person shall use, except as a passenger, or cause or allow any other person to use, a motor vehicle in a public place, unless there is in force in relation to the use of the vehicle by that person or that other person, as the case may be, a policy of insurance complying with the requirements of Chapter XI of the said Act.

21. Section 147 of the said Act deals with requirements of policies and limits of liability. Section 149 of the said Act provides for the duty of the insurers to satisfy judgments and “awards” against persons insured in respect of third party risks. As per Section 149 of the said Act, if, after a certificate of insurance has been issued under sub-section (3) of Section 147 in favour of the person by whom a policy has been effected, judgment or “award” in respect of any such “liability” as is required to be covered by a policy under clause (b) of sub-section (1) of Section 147 of the said Act (being a liability covered by the terms of the policy) is obtained against any person insured by the policy, then, notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy, the insurer shall, subject to the provisions of Section 149, of the said Act, pay to the person entitled to the benefit of the decree any sum not exceeding the sum assured payable thereunder, as if he were the judgment debtor, in respect of the liability, together with any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments. Section 149(2) of the said Act provides that no sum shall be

payable by an insurer under sub-section (1) in respect of any judgment or “award” unless, before the commencement of the proceedings in which the judgment or “award” is given the insurer had notice through the Court or as the case may be, the Claims Tribunal of the bringing of the proceedings. In such an event the insurer shall be made a party and could defend the action on any of the grounds specified under sub-section (2) of Section 149 of the said Act. The explanation to Section 149 of the said Act provides that for the purpose of the said Section “award” means an “award” made by that Tribunal under Section 168 of the said Act.

22. This Court has perused the orders passed by the Claims Tribunal from 27.6.2016 till the passing of the impugned order dated 23.2.2018. The orders do not reflect that it satisfied itself of the requirements of Section 140 of the said Act and determined the ingredients thereof. This was a requirement under the substantive law contained in Section 140 of the said Act without fulfilment of which no order under the said section could have been passed. It also does not reflect that the Claims Tribunal followed the said Rules contained in Rule 268 to Rule 275 as mandated by Section 169 of the said Act nor any “summary procedure” which is required to be followed to make an inquiry to be satisfied that the claim under Section 140 of the said Act is valid and ought to be granted. The words “subject to” before the words “any rules that may be made in this behalf, follow such summary procedure as it thinks fit.” reflects the clear intention of the legislature that if rules have been made the rules ought to be followed. The expression “subject to”

conveys the idea of the said Rules yielding place to the “*summary procedure*” as the Claims Tribunal “*thinks fit.*” This was the procedural law which was required to be followed by the Claims Tribunal while determining whether or not the Claimant was entitled to an “*award*” under Section 140 of the said Act. When the said Rules provide for the procedure to be followed to determine the claim under Section 140 it was incumbent upon the Claims Tribunal to have followed the said procedure.

23. Section 140 of the said Act provides as under:

“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 1[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 2[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.”

24. A bare reading of Section 140 of the said Act reflects that without a determination about the factum of “*death*” or “*permanent disablement*” resulting from an accident arising out of the use of a motor vehicle the “*owner*” of the vehicle cannot be held liable to pay compensation in respect of such “*death*” or “*permanent disablement*” in accordance with the provisions of the said section. The determination as to who is the “*owner*” of the said motor vehicle is also imperative. The word “*owner*” has been defined under Section 2(20) of the said Act. Section 140(3) of the said Act makes it clear that in any claim for compensation under Section 140(1) of the said Act the Claimant shall not be required to plead or 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. Section 140(4) of the said Act further provides that the claim for compensation under section 140(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*”. The proviso to Section 140 of the said Act provides that the amount of compensation to be given under any other law shall be reduced from the amount of compensation payable under Section 140 or under Section 163A of the said Act.

25. To attract the liability of the “*owner*” under Section 140 of the said Act all that is required is an accident arising out of the use of a motor vehicle leading to “*death*” or “*permanent disability*” of any person. The liability of the “*owner*” is without fault but the fact of ownership of the motor vehicle is also required to be determined. The inquiry to award the compensation under Section 140 of the said Act is limited but the inquiry is a must. As held by the Supreme Court in re: ***Eshwarappa alias Maheshwarappa & Anr. v. C. S. Gurushanthappa & Anr.***² the Supreme Court would hold:

“20. *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.”*

26. Without determining whether the “*death*” or “*permanent disablement*” has been caused as a result of an accident arising out of the use of the motor vehicle or motor vehicles and is owned

² (2010) 8 SCC 620

by the “owner” no order under Section 140 of the said Act may be passed. Section 142 of the said Act provides that for the purpose of Chapter X, “*permanent disablement*” of a person shall be deemed to have resulted from an accident of the nature referred to in subsection (1) of Section 140 if such person has suffered by reason of the accident, any injury or injuries involving- (a) permanent privation of the sight of either eye or the hearing of either ear, or privation of any member or joint; or (b) destruction or permanent impairing of the powers of any member or joint; or (c) permanent disfigurement of the head or face. The order to be passed under Section 140 of the said Act must be passed urgently but cautiously to meet the requirement of the law i.e. to award compensation to the person who has suffered due to the accident without determination of any fault or negligence. Section 141 (2) of the said Act provides that a claim for compensation under Section 140 of the said Act in respect of “*death*” or “*permanent disablement*” of any person shall be disposed of as expeditiously as possible and where compensation is claimed in respect of such “*death*” or “*permanent disablement*” under Section 140 and also in pursuance of any right on the principal of fault, the claim for compensation under Section 140 of the said Act shall be disposed of as aforesaid in the first place. This, however, does not mean no inquiry is required to be conducted. An order passed under Section 140 of the said Act without determination following the procedure prescribed would have no sanctity in the eyes of law. The impugned order dated 23.2.2018 does not reflect that the Claims

Tribunal had even *prima facie* determined the ingredients of Section 140 of the said Act vis-à-vis the facts of the present case. The Claims Tribunal records that a perusal of the FIR dated 23.4.2016 reveal that the Claimant sustained “*severe injuries*”. Whether the severe injuries resulted in “*death*” or “*permanent disablement*”, which is the *sine-qua-non* of Section 140 of the said Act is not reflected in the impugned order.

27. The Claims Tribunal must always remember that procedural and substantive laws need to work together to ensure that justice is not only done but also seen to be done. Following the prescribed procedure ensures fairness and avoids arbitrariness in the process of determination. Procedural law engrafted in Rule 268 to Rule 275 of the said Rules would ensure due process which is fundamental to justice dispensation. Procedural due process is a right of the parties who may be affected by the award passed under Section 140 of the said Act. Procedural due process embodies the notion of legal fairness. It is equally important to keep in mind that the fundamental facts, as laid down above, being the ingredients of Section 140 of the said Act must be determined before passing an award under the said provision even if it is interim in nature.

28. In view of the aforesaid, the impugned order dated 23.02.2018 is set aside, the application filed by the Claimant under Section 140 of the said Act shall be reconsidered by the Claims Tribunal along with the objection filed by the Appellant after considering all the relevant material on record and following the procedure prescribed. The application made by the Respondent

No.1 under Section 140 of the said Act along with the objection filed by the Appellant is restored to the files of the Claims Tribunal for reconsideration as per law. As the pleadings are complete with regard to the claim under Section 140 of the said Act the Claims Tribunal shall dispose of the said claim expeditiously. The appeal is allowed.

Judge
25.09.2018

to/ Index: ~~yes~~/No
Internet: ~~yes~~/No