

Smt. Yallwwa & Ors vs National Insurance Co. Ltd. & Anr on 16 May, 2007

Equivalent citations: AIR 2007 SUPREME COURT 2582, 2007 (6) SCC 657, 2007 AIR SCW 4590, 2007 (5) AIR KAR R 164, (2007) 56 ALLINDCAS 57 (SC), (2008) 1 ANDHLD 117, (2007) 2 WLC(SC)CVL 589, (2007) 4 ALLMR 822 (SC), (2007) 6 KANT LJ 321, (2007) 3 UC 1818, 2007 (56) ALLINDCAS 57, (2007) 4 RAJ LW 3387, (2007) 2 CAL LJ 296, 2007 (3) SCC(CRI) 247, 2007 (8) SCALE 77, 2007 (4) ALL MR 822, (2007) 3 ACC 269, (2007) 3 KER LT 91, (2007) 3 MPLJ 260, (2007) 3 TAC 1, (2007) 3 ACJ 1934, (2007) 3 ALL WC 2480, (2007) 38 OCR 48, (2007) 5 MAD LJ 322, (2007) 4 MAH LJ 543, (2007) 4 PUN LR 82, (2007) 3 RECCIVR 265, (2007) 8 SCALE 77, (2007) 68 ALL LR 473, (2007) 4 ANDH LT 45, (2007) 4 CIVLJ 528, (2007) 3 CURCC 109, (2007) 5 SUPREME 144

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Bench: S.B. Sinha, Markandey Katju

CASE NO.:

Appeal (civil) 2674 of 2007

PETITIONER:

Smt. Yallwwa & Ors

RESPONDENT:

National Insurance Co. Ltd. & Anr.

DATE OF JUDGMENT: 16/05/2007

BENCH:

S.B. Sinha & Markandey Katju

JUDGMENT:

J U D G M E N T CIVIL APPEAL NO. 2674 OF 2007 [Arising out of SLP (Civil) No. 17016 of 2006]
S.B. SINHA, J :

1. Leave granted.

2. Whether an order passed under Section 140 of the Motor Vehicles Act, 1988 (for short, 'the Act') is an appealable one is the question involved in this appeal which arises out of a judgment and order dated 04.07.2005 passed by a learned Single Judge of the Karnataka High Court in M.F.A. Nos. 8227 of 2004 c/w 8234 to 8237,

8239 and 8240 of 2004.

3. The basic facts of the case are not in dispute. Appellants herein are the heirs and legal representatives of the coolies travelling from Kankanwadi to Saundatti in the State of Karanataka in a tractor trailer. The said tractor trailer met with an accident allegedly owing to rash and negligent driving on the part of its driver. Out of 44 persons travelling in the said tractor trailer, nine persons died and others received serious injuries.

4. Appellants herein filed claim petitions in terms of Section 166 of the Act read with Section 140 thereof before the Motor Accidents Claims Tribunal (for short, 'the Tribunal'). By reason of an order dated 13.09.2004, the learned Tribunal directed both the owner as also Respondent No. 1 (Insurance Company) to deposit a sum of Rs. 50,000/- each for every deceased within a period of one month.

5. Aggrieved by and dissatisfied therewith, Respondent No. 1 herein preferred appeals before the High Court. One of the contentions raised by the appellants was that the appeals under Section 173 of the Act were not maintainable, inter alia, on the premise that the said order dated 13.09.2004 was not an award within the meaning of Section 173 of the Act. In support of the said contention, reliance was placed on a decision of the Bombay High Court in Divisional Controller, Maharashtra State Road Transport Corporation v. Bapu Onkar Chaudhary [(2004) ACJ 35]. The High Court, however, in view of the fact that admittedly the deceased and the injured, who were travelling in the tractor trailer, were unauthorised passengers and also having regard to the decision of this Court in National Insurance Co.

Ltd. v. V. Chinnamma & Others [(2004) 8 SCC 697", opined that the said order would be an appealable one.

6. The learned counsel appearing on behalf of the appellants would submit that the right of appeal is a statutory right and in view of the fact that no adjudication was required to be made by the Tribunal while passing an order under Section 140 of the Act, the same would not come within the purview of the definition of the term 'award'. Reliance has been placed on British India General Insurance Co., Ltd. v. Captain Itbar Singh and Others [1960 (1) SCR 168] and Sadhana Lodh v. National Insurance Co. Ltd. and Another [(2003) 3 SCC 524].

7. The learned counsel appearing on behalf of the respondents, on the other hand, would support the judgment.

8. Section 140 of the Act is in Chapter X thereof provides for liability to pay compensation in certain cases on the principle of no fault. An application under Section 140 of the Act is maintainable by way of interim application or otherwise in a proceeding initiated in terms of Section 166 thereof. Section 166 of the Act, on the other hand, is in Chapter XII thereof. The said provisions read as under :

"Section 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 163 A."

"Section 166 - Application for compensation

1) An application for compensation arising out of an accident of the nature specified in sub-section (1) of section 165 may be made-

(a) by the person who has sustained the injury; or

(b) by the owner of the property; or

(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:

Provided that where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined, shall be impleaded as respondents to the application.

[(2) Every application under sub-section (1) shall be made, at the option of the claimant, either to the Claims Tribunal having jurisdiction over the area in which the accident occurred or to the Claims Tribunal within the local limits of whose jurisdiction the claimant resides or carries on business or within the local limits of whose jurisdiction the defendant resides, and shall be in such form and contain such particulars as may be prescribed:

Provided that where no claim for compensation under section 140 is made in such application, the application shall contain a separate statement to that effect immediately before the signature of the applicant.] [***] [(4) 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."

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 are 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. 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.

10. 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. Even it is 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 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 page 428, it is stated :

"Award" means an arbitration award [Arbitration Act (10 of 1940, S. 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 S. 10-A. (Industrial Disputes Act (14 of 1947, S. 2(f).]"

15. In Oriental Insurance Co. Ltd. v. Mohiuddin Kureshi alias Md. Moya and Others [(1994) ACJ 74], a Division Bench of the Patna High Court observed :

"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.

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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.

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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 claim 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 of 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.

20. In *British India General Insurance Co. Ltd. (supra)*, the question which arose for consideration was as to whether an insurer should be joined as a party in a proceeding under the Act apart from the provisions of the statute. Therein, the court was considering a claim under the Motor Vehicles Act, 1939. It was held therein:

"17. Again, we find the contention wholly unacceptable. The statute has no doubt created a liability in the insurer to the injured person but the statute has also expressly confined the right to avoid that liability to certain grounds specified in it. It is not for us to add to those grounds and therefore to the statute for reasons of hardship. We are furthermore not convinced that the statute causes any hardship. First, the insurer has the right, provided he has reserved it by the policy, to defend the action in the name of the assured and if he does so, all defences open to the assured can then be urged by him and there is no other defence that he claims to be entitled to urge. He can thus avoid all hardship if any, by providing for a right to defend the action in the name of the assured and this he has full liberty to do. Secondly, if he has been made to pay something which on the contract of the policy he was not bound to pay, he can under the proviso to sub-section (3) and under sub-section (4) recover it from the assured. It was said that the assured might be a man of straw and the insurer might not be able to recover anything from him. But the answer to that is that it is the insurer's bad luck. In such circumstances the injured person also would not have been able to recover the damages suffered by him from the assured, the person causing the injuries "

21. In *National Insurance Co. Ltd. v. Jethu Ram and Others [(1999) 9 SCC 62]*, this Court while construing the provisions of Section 92-A and 92-B of the Motor Vehicles Act, 1939, opined :

"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 judgments of the Tribunal and the High Court cannot be sustained so far as they relate to the liability of the insurer arising under Sections 92-A and 92-B of the Act ."

22. The decision of this Court in *United India Insurance Co. Ltd. v. Lehu and Others* [(2003) 3 SCC 338] is not of much assistance in this case. The question which arose for consideration therein was as to whether in a case where the licence of the driver of the motor vehicle involved in the accident was fake, the court can direct the insurance company to pay the amount of the compensation and recover the same from the owner, as the insurance company is liable to satisfied the award.

23. *Lehu* (supra) has been taken into consideration in a subsequent decision of this Court in *National Insurance Company Ltd. v. Swaran Singh and Others* (2004) 3 SCC 297], which has in turn been considered in *National Insurance Co. Ltd. v. Laxmi Narain Dhut* [2007 (4) SCALE 36] and *The Oriental Insurance Company Ltd. v. Meena Variyal & Ors.* [2007 (5) SCALE 269].

24. The recent decisions of this Court are authorities for the proposition that the insurance company would not be liable in cases where passengers of a vehicles are not third parties.

25. In *Sadhana Lodh* (supra), this Court was concerned with a case where an application was filed under Articles 226 and 227 of the Constitution of India, despite the fact that an appeal was maintainable against the award and in that view of the matter, the court opined that when an insurer has a right to prefer an appeal on limited grounds available under Section 149 of the Act, the grounds of challenge cannot be enlarged by filing a petition under Articles 226 and 227 of the Constitution of India. It was observed therein:

"7. The supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is confined only to see whether an inferior court or tribunal has proceeded within its parameters and not to correct an error apparent on the face of the record, much less of an error of law. In exercising the supervisory power under Article 227 of the Constitution, the High Court does not act as an appellate court or the tribunal. It is also not permissible to a High Court on a petition filed under Article 227 of the Constitution to review or reweigh the evidence upon which the inferior court or tribunal purports to have passed the order or to correct errors of law in the decision."

26. The said decision has also no application to the facts of the present case. So far as the decision of the Bombay High Court in *Bapu Onkar Chaudhari* (supra) is concerned, the High Court proceeded on the basis that in terms of the rules framed by the State of Maharashtra under the Motor Vehicles Act, an order passed under Section 140 would not come within the purview of the term 'award'.

27. In *Bapu Onkar Chaudhari* (supra), the Bombay High Court appears to have placed strong reliance on *Kaushnuma Begum and Others v. New India Assurance Co. Ltd. and Others* [2001 ACJ

428 : (2001) 2 SCC 9]. In Kaushnuma Begum (supra), this Court was concerned with the question as to whether the amount of compensation to be paid under Section 140 of the Act can be deducted from the final amount awarded by the Tribunal and while doing so, opined :

"20 . "No fault liability" envisaged in Section 140 of the MV Act is distinguishable from the rule of strict liability. In the former, the compensation amount is fixed and is payable even if any one of the exceptions to the rule can be applied. It is a statutory liability created without which the claimant should not get any amount under that count. Compensation on account of accident arising from the use of motor vehicles can be claimed under the common law even without the aid of a statute. The provisions of the MV Act permit that compensation paid under "no fault liability" can be deducted from the final amount awarded by the Tribunal. Therefore, these two are resting on two different premises. We are, therefore, of the opinion that even apart from Section 140 of the MV Act, a victim in an accident which occurred while using a motor vehicle, is entitled to get compensation from a Tribunal unless any one of the exceptions would apply. The Tribunal and the High Court have, therefore, gone into error in divesting the claimants of the compensation payable to them."

28. In Bapu Onkar Chaudhary (supra), the High Court of Bombay observed :

"19. A different phraseology is used in rules 273 and

281. The Claims Tribunal in passing orders, is required to record concisely in a judgment the findings of each of the issues framed and the reasons for such findings and make an award specifying the amount of compensation to be paid by the insurers and the owners of the vehicle, who may be found vicariously responsible for causing the accident and also the person or persons to whom compensation shall be paid."

29. The Bombay High Court posed unto itself a wrong question and, thus, misdirected itself in arriving at the said decision. Its endeavour to draw sustenance of its finding from the proposition that an order passed under Section 140 of the Act is not an award having regard to Rule 281 of the Maharashtra Motor Vehicles Rules, 1989 suffers from a manifest error as the Rule lays down the procedure for filing of an appeal and, thus, by reason thereof substantive right of appeal vested in a person under a legislative Act cannot be taken away.

30. In our considered opinion, the said decision does not state the law correctly. In our opinion, an order of the Tribunal awarding compensation under Section 140 of the Act is appealable under Section 173 as it amounts to an award under Section 173.

31. For the reasons aforementioned, there is no merit in this appeal, which is dismissed accordingly. However, in the facts and circumstances of the case, there shall be no order as to costs.