

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN  
BENCH AT JAI PUR

ORDER  
IN  
S. B. Civil Misc. Appeal No. 3462/2008

Brijendra Singh and Another Vs.  
The Oriental Insurance Company  
Limited, Bharatpur and Another

Date of Order :: 31.10.2011

Present  
Hon'ble Mr. Justice Mohammad Rafiq

Shri Satyapal Poshwal, counsel for appellants  
Shri A. N. Pareek, counsel for respondent insurance company

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By the Court:-

This appeal has been preferred by claimants seeking enhancement of compensation, whose application under Section 140 of the Motor Vehicles Act, 1988, for grant of interim compensation on the principle of 'no fault liability', has been rejected by Learned Motor Accident Claims Tribunal (Additional District Judge No. 1), Bayana (Bharatpur).

The appellants filed a claim petition before the Tribunal for payment of compensation on account of accidental death of Satya Prakash son of claimants-appellants, aged 20 years.

Contention of learned counsel for appellants is that learned Tribunal has erred in law in not allowing payment under Section 140 of the Act of 1988 for 'no fault liability' by holding that Satya Prakash did not die because of the motor

accident but he was hit on the head by a stone when the driver was crossing the road. He was travelling in Maruti Wagon Car RJ-05-3706. The driver of the said vehicle was one Iqbal. It is alleged that he hit a person crossing the road and thereupon five certain persons stopped the car and started pelting stone. One of the stones hit Satya Prakash and as a result of which he died. Learned counsel argued that the case of the appellants was squarely covered by a judgment of the Supreme Court in Laxmi bai Vs. Karnataka State Transport Corporation – RLW 2001 (2) SC 271, in which case also due to the pelting of stones a glass of window-pane was broken, which hit the claimant, resulting in visual disability to the extent of 35%. The Hon'ble Supreme Court held him to be entitled for compensation. Learned counsel also relied on the judgment of the Supreme Court in Rita Devi and Others Vs. New India Assurance Company Limited and Another – II (2000) ACC 291 (SC).

Learned counsel for the respondent opposed the appeal and supported the impugned award.

On hearing learned counsel for the appellants and perusing the impugned award, I find that the Tribunal has adopted wrong approach in holding that the vehicle was not *prima facie* involved in the accident. At the stage of grant of interim compensation for 'no fault liability', what was required to be seen by learned Tribunal was that the death was caused due to accident arising out of

use of motor vehicle, which fact is revealed from the record that death indeed caused due to the accident arising out of use of motor vehicle. The judgment of the Supreme Court in Laxmi bai (supra), has not been correctly appreciated by the Learned Tribunal. The Supreme Court in Indra Devi & Others Vs. Bagda Ram and Another – 2011 R.A.R. 21 (SC), has held that as the expression 'no fault' suggests the compensation under Section 140 of the Act is regardless of any wrongful act, neglect or default of person in respect of whose death the claim is made.

In view of the above discussion, the appeal is allowed. The respondent insurance company is directed to pay to claimant-appellants a sum of Rs. 50,000/- as 'no fault liability'. It is, however, made clear that observation made in this judgment would not adversely affect the interest of either party in the pending adjudication before the Tribunal.

(Mohammad Rafiq) J.