
(2002) 03 BOM CK 0019
In the Bombay High Court
Case No : First Appeal No. 286 of 2002

Ananda Dattatraya Patankar

APPELLANT

Vs

Kishore Narayan Patil and Others

RESPONDENT

Date of Decision : 22-03-2002

Acts Referred:

Motor Vehicles Act, 1988 — Section 140

Citation : (2002) 5 BomCR 565

Hon'ble Judges : J.G. Chitre, J

Bench : Single Bench

Advocate : K.S. Patil, for the Appellant; M.B. Kadam, for respondent No. 1, S.M. Karbhari, instructed by Singhania and Co., for the Respondent

Final Decision : Dismissed

Judgement

J.G. Chitre, J.—As a very short point stands for adjudication, this appeal is hereby decided finally at motion hearing stage. On 6-8-98 at about 9.40 p.m. at Vita-Khanapur Road when respondent No. 1 was getting down from rickshaw, a motor cycle bearing No. 1 MAL-3239 which was driven by respondent No. 2 gave a dash to respondent No. 1. On account of that accident, respondent No. 1 sustained injuries resulting into fracture. The claimant alleged that he sustained 17% permanent disability on account of the said accident. The said vehicle was owned by the appellant.

2. An application was moved by respondent No. 1 for getting the interim compensation in view of provisions of section 140 of the Motor Vehicles Act, 1988 (hereinafter referred to as M.V. Act for convenience) basing his claim on no fault liability doctrine. The insurance company disowned the liability of paying the compensation to the victim contending that the insurance cover expired on 5-8-1998. The appellant contended that a cheque was sent to insurance company for paying the due installment for renewing the existing insurance policy which he was having in respect of the said vehicle. On this point, the owner of the vehicle i.e. the appellant and the insurance company are at daggers

drawn against each other. The grievance of the present appellant is that though the appellant had filed a written statement, the concerned M.A.C.T. did not consider it while passing the interim Award in view of provisions of section 140 of the M.V. Act.

3. When a debatable question is arising for adjudication, the Court should be liberal in permitting a party to file a written statement if that party is not indolent and there are no grounds for denying an opportunity to such a party to file a written statement. For penalising such party for delay or undue delay, some costs can be saddled. Shri Patil further submitted that when the matter was placed for hearing before the M.A.C.T., his lawyer was not present for pressing the contentions raised by the appellant. The courts and Tribunals are not expected to ignore the contentions of the parties expressed by the written statements. It should consider them.

4. But these points which have been submitted by Mr. Patil do not affect the order which has been passed by the M.A.C.T. in view of provisions of section 140 of the M.V. Act. What the M.A.C.T. has to consider while passing the order in view of section 140 of the M.V. Act is to find out whether there is any nexus between the vehicle which was being driven at the time of the accident and the victim. The Tribunal has to see whether the said vehicle has caused the accidental injuries to the victim and whether any permanent disability has been prima facie caused. At that time, the M.A.C.T. is also obliged to see prima facie whether the said vehicle has been covered by the protection of the insurance and for that the M.A.C.T. will have to see whether the insurance protection cover was alive on the date and time of the said accident. In that context, the M.A.C.T. will have to see prima facie whether on the date of the accident at the time of the accident in question the insurance company has accepted the liability of indemnifying the vehicle owner from the resultant liability of paying the compensation by renewing the said insurance cover which the vehicle owner was already having in his favour. In border line cases this point assumes importance. The M.A.C.T. is obliged to see prima facie that the payment has been accepted by the insurance company and that the insurance policy has been renewed and a communication to that effect has been sent to the vehicle owner. Apart from that, the victims cannot be permitted to suffer on account of the quarrels between the owners of the vehicles and the insurance companies. They should be given which law allows them to have in view of section 140 of the M.V. Act. That amount is to be given to them as early as possible by asking them to furnish the surety bond or on personal surety bond also. The M.A.C.T. should keep in mind that those victims are required to spend lot of money for the purposes of getting immediate medical treatment which includes hospitalisation and emergency surgeries also. Such hapless victims should not be asked to run from pillar to post for the purposes of getting the amount which law permits them to get in view of no fault liability doctrine. Thus, the appeal stands dismissed. The concerned M.A.C.T. is hereby directed that the appellant should be permitted to contest the said claim petition on the basis of the written statement which has been filed by him. No

order as to costs.

5. The amount which has been deposited in the registry by the appellant should be permitted to be withdrawn by respondent No. 1 executing personal bond.