
(2016) 12 GUJ CK 0010
In the Gujarat High Court

Case No : First Appeal No. 2741 of 2016 with Civil Application No. 12227 of 2016

Bharti Axa General Insurance Co. Ltd. APPELLANT

Vs

Patni Kamleshbhai Ramanbhai RESPONDENT

Date of Decision : 06-12-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 140

Citation : (2017) 1 AnWR 66

Hon'ble Judges : Mr. R.P. Dholaria, J.

Bench : Single Bench

Advocate : Mr. Vibhuti Nanavati, Advocate, for the Appellant No. 1

Final Decision : Disposed Off

Judgement

Mr. R.P. Dholaria, J. (Oral) - As Mr. Vibhuti Nanavati, learned advocate for the appellant Insurance Company has requested to take up this appeal for final hearing at admission stage, this matter has been taken up for final hearing today.

2. This appeal is preferred by the appellant Insurance Company against the interim award dated 20/07/2016 passed by the Motor Accident Claims Tribunal (Auxiliary), Patan in MACP No.76 of 2015 granting interim compensation of Rs.25,000/- under Section 140 of the Motor Vehicles Act, 1988 (for short "the MV Act").

3. Heard Mr. Nanavati, learned advocate for the appellant Insurance Company and perused the impugned judgment and award.

4. Mr. Nanavati, learned advocate for the appellant Insurance Company has, inter alia, contended that the learned Tribunal has failed to appreciate the contention regarding involvement of rickshaw bearing registration No.GJ2TT436 in the accident. He has further contended that the learned Tribunal has failed to appreciate primary injury revealed before the Kakoshi Government Hospital as well as before the private doctor and also failed to appreciate that there is no uniformity between the said injury certificates and disability thereof. He has

further contended that the learned Tribunal has not appreciated the multiple contention raised during the course of argument and straightaway a very cryptic order has been passed without assigning any reasons. He has further contended that such specific defences were raised before the learned Tribunal but it was not considered by the learned Tribunal. He has vehemently argued to stay the disbursement order passed by the learned Tribunal.

5. Taking into consideration the above contention raised by Mr. Nanavati and having perused the impugned order and material on record, it appears that there are certain contentions which were required to be appreciated by the learned Tribunal. However, once this Court is satisfied regarding disability in view of the recitals revealed from the FIR as well as from the injury certificates issued by the private doctor Dr. Harshad Patel and in view of other contentions, this Court is not inclined to enter into merits of the contention raised by the learned advocate. Let it may be decided at the time of considering the claim petition. Therefore, this Court is not inclined to stay the disbursement order passed by the learned Tribunal at this stage. In the result, the present appeal stands disposed of. However, it is made clear that the aforesaid observations are made for limited purpose and the learned Tribunal shall decide the claim petition in its own merits without being influenced by the decision rendered by the learned Tribunal itself while considering the application under Section 140 of the MV Act and without being treating as constructive res judicata. While considering the main claim petition, the learned Tribunal shall afford reasonable opportunity to the rival parties to proceed so far as the controversy raised in this matter is concerned and the learned Tribunal shall decide the said issue without being influenced by any of the observations made by this Court at this stage.

6. As the main appeal is disposed of, no order is required to be passed in this present Civil Application and consequently, the same stands disposed of.