

(2023) 01 GUJ CK 0093
In the Gujarat High Court
Case No : R/First Appeal No. 784 Of 2020

Future General Insurance Co Ltd

APPELLANT

Vs

Munafhusain Ganimiya Saiyad

RESPONDENT

Date of Decision : 18-01-2023

Acts Referred:

Motor Vehicles Act, 1988 — Section 140

Citation : (2023) 01 GUJ CK 0093

Hon'ble Judges : Dr. Ashokkumar C. Joshi, J

Bench : Single Bench

Advocate : GC Mazmudar, HG Mazmudar

Final Decision : Allowed

Judgement

Dr. Ashokkumar C. Joshi, J

1. The present appeal is preferred by the appellant-Insurance Company challenging interim award dated 22.10.2019 passed by the Motor Accident Claims Tribunal (Auxi.) (Ad-hoc), Amreli in Motor Accident Claim Petition No.206 of 2017 granting interim compensation of Rs.50,000/- under Section 140 of the Motor Vehicles Act, 1988 (for short 'the MV Act').

2. Heard Mr. H.G. Mazmudar, learned advocate for the appellant Insurance Company and perused the impugned award.

3. Learned advocate Mr. Harsh R. Joshi has instructions to appear for the respondent Nos. 1 to 3 – original claimant and wants to file Vakalatnama.

3.1 Registry to accept the Vakalatnama from learned advocate Mr. Harsh R. Joshi for the respondent Nos. 1 to 3 and place on record.

4. Mr. H.G. Mazmudar, learned advocate for the appellant has, inter-alia, contended that the alleged incident has occurred in the year 2012 and this claim petition has been filed in the year 2017. He further submitted that the learned Tribunal ought to have examined the parties and appreciated the evidence on

merits before passing the impugned award.

5. Since this appeal is against interim award passed under Section 140 of the Motor Vehicles Act wherein full fledged trial is not provided and there appears no provision of adducing and leading oral as well as documentary evidence as it is to be done while carrying out the full fledged trial, whenever the learned Tribunal has already fastened the liability upon the appellant Insurance Company and that too at the interim stage, let the decision rendered by the learned Tribunal be considered as tentative decision at this stage.

6. Therefore, the issue raised by the learned advocate can only be adjudicated at the stage of full fledged trial. This issue cannot be decided at the interim stage and taking into consideration the intention of legislature for interim award, the appellant is at liberty to raise such issue while defending the main claim petition and the Tribunal shall decide the same on its own merits without being influenced by the decision rendered by the Tribunal itself while considering the application under Section 140 of the MV Act.

7. However, the Insurance Company shall be at liberty to agitate the said contention during the course of trial of main claim petition and at that time if findings goes in favour of present appellant-Insurance Company, in that case, learned Tribunal shall adjust the interim award passed by the learned Tribunal and further the learned Tribunal is directed not to treat the aforesaid observations as constructive res- judicata.

8. Since this is an appeal against the interim award and main claim petition is pending before the learned Tribunal, it appears just and proper to dispose of this appeal at the admission stage with a direction to the learned Tribunal to decide the main claim petition as expeditiously as possible, preferably within a period of six months from the date of receipt of this order.

9. With the aforesaid observation and direction, the present appeal is disposed of without going into the merits of the matters. The right of legal issue be kept upon for the Insurance Company, at the time of trial in main claim petition. 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 concerned and the learned Tribunal shall issue without being influenced by any of made by this Court at this stage. in this matter is decide the said the observations

10. The appellant has deposited awarded amount and same shall be invested in fixed deposit till final adjudication of petition.

11. R & P be sent back to the concerned Tribunal forthwith.