

(2015) 02 GUJ CK 0046
In the Gujarat High Court

Case No : First Appeal No. 365 of 2015 and Civil Application No. 2608 of 2015 in First Appeal No. 365 of 2015

HDFC Ergo General Insurance Company Ltd.

APPELLANT

Vs

Janakben and Others

RESPONDENT

Date of Decision : 26-02-2015

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 166

Citation : (2015) 02 GUJ CK 0046

Hon'ble Judges : Mohinder Pal, J.

Bench : Single Bench

Advocate : Maulik J. Shelat, for the Appellant

Final Decision : Disposed off

Judgement

Mohinder Pal, J.—This appeal has been preferred by the appellant/Insurance Company against the award passed by the Tribunal.

2. Learned counsel for the appellant has submitted that driver of the vehicle involved in the accident was not holding a valid licence at the time of the accident and as such there was breach of conditions of the policy as well as policy submitted by claimant was not genuine, statutory rights available to the Insurance Company in the claim petition filed under section 140 of the Motor Vehicles Act. Counsel has referred to a decision dated 04.07.2014 passed by a co-ordinate bench of this Court in case of New Indian Assurance Co. Ltd. v. Nisarhussain Mohmadhanif Shaikh in First Appeal No. 1889 of 2014, which is reproduced hereinbelow:

1. By way of this appeal the appellant- Insurance Company has challenged order dated 12.02.2014 passed by the Motor Accident Claims Tribunal (Auxi.), Ahmedabad (Rural), in MACP No. 2347 of 2010 filed under Section 140 of the Motor Vehicles Act.

2. It is submitted by learned advocate for the appellant that insurance company

has raised contention in First Appeal with regard to breach of condition of policy as well as statutory rights available to the insurance company in Claim Petition filed under section 140 of the Motor Vehicles Act. In view of decision of this Court in the case of United India Insurance Co. Ltd. Vs. Sidikbhai Ukabhai Solanki and Another, , the appellant Insurance company has preferred this appeal with a view to see that present no fault liability award is not treated as constructive res judicata while deciding claim petition under section 166 of the Motor Vehicles Act.

3. Considering the submission of learned advocate for the appellant herein, in the opinion of this Court, if necessary direction is given to the Hon''ble Tribunal not to treat the order passed by the Hon''ble Tribunal below application under Sec.140 as constructive res judicata nor will it come in way in any manner while deciding main claim petition filed under Sec.166 of the Motor Vehicles Act, then it will meet the ends of justice.

4. In view of above, order dated 12.02.2014 passed by the Motor Accident Claims Tribunal (Auxi.), Ahmedabad (Rural), in MACP No. 2347 of 2010 will not be treated as constructive res judicata and will not come in way in any manner while deciding claim petition filed under section 166 of the Motor Vehicles Act and Hon''ble Tribunal will decide the main claim petition on merits without being influenced by the order passed by the Hon''ble Tribunal below application under section 140 of the Motor Vehicles Act. Insurance Company is at liberty to raise all the contentions which are available under the law before the Hon''ble Tribunal.

5. In pursuance of the order passed by the Hon''ble Tribunal below application under section 140 of the Motor Vehicles Act, after balance amount is deposited by the Insurance Company, the Hon''ble Tribunal will pass necessary orders under the provisions of law to disburse and invest in cumulative deposit. The claimants will file an "Undertaking" on affidavit that claimants will not withdraw or permit to dismiss for default or non prosecution of main petition and will obtain judgment on merits.

6. In view of above, the first appeal is disposed of.

7. As the First Appeal is disposed of, Civil Application does not survive. The same is disposed of accordingly.

3. The facts of the present appeal are similar to the case referred above. Hence, the present appeal as well as civil application both stand disposed of in same terms as aforesaid decision. Pronounced.