

(2008) 06 BOM CK 0139

In the Bombay High Court

Case No : F.A. No's. 1182 to 1185 of 2008 with Civil Application No's. 3358 to 3361 of 2008

ICICI General Insurance Co. Ltd.

APPELLANT

Vs

Ransingh Pawra and Others

RESPONDENT

Date of Decision : 19-06-2008

Acts Referred:

Maharashtra Motor Vehicles Rules, 1989 — Rule 255, 280
Motor Vehicles Act, 1988 — Section 140, 149(2), 166, 173

Citation : (2008) 6 MhLj 278

Hon'ble Judges : Abhay S. Oka, J

Bench : Single Bench

Advocate : S.S. Patil, for the Appellant; R.R. Mantri, for the Respondent

Judgement

Abhay S. Oka, J.—Heard learned advocate appearing for the appellant and the learned advocate appearing for the contesting respondents (original claimants). Since the challenge is to the orders passed in the claim petitions u/s 140 of the Motor Vehicles Act, 1988, the appeals are taken up for final disposal at the stage of admission.

2. These appeals arise out of the claim petitions filed claiming compensation on account of the same accident. The case of the claimants is that they had hired a Tata transport vehicle for carrying fertilizers. It is their case that the persons who had hired the truck were travelling by the vehicle as owners of the fertilizer, which was being carried in bags. The said vehicle met with an accident. Some of the occupants were injured and some of the occupants lost their lives. Apart from filing the claim petitions u/s 166 of the said Act of 1988, the claimants applied u/s 140 of the said Act for grant of compensation on account of no fault liability.

3. The contention of the learned Counsel appearing for the appellant (insurer of the offending vehicle) is that the injured/deceased were travelling as gratuitous passengers in the goods vehicle. The contention is that apart from the fact that there was a breach committed by the insured of the terms and conditions of the

policy, the appellant is not liable to satisfy the liability in respect of such passengers. He invited my attention to the relevant part of the impugned judgment which records that an enquiry on the issue raised by the appellants regarding breach of the terms and conditions of the policy has to be held at the time of final disposal of the main applications.

4. The learned Counsel appearing for the claimants submitted that the aforesaid contention raised by the appellants was not raised by way of pleading. He submitted that in any event the said contention has been gone into by the learned Member of the Tribunal and the same has not been accepted by the learned Member of the Tribunal. He placed reliance on the certified copy of the spot panchanama and other material placed on record, which, according to him, shows that the passengers were accompanying the goods owned by them.

5. In the case of Smt. Yallwwa and Others Vs. National Insurance Co. Ltd. and Another, , the Apex Court has held that the adjudication made in a claim petition u/s 140 of the said Act is an award which is appealable u/s 173 of the said Act. The Apex Court held that while defending a claim petition u/s 140 of the said Act, the defences available under Sub-section (2) of Section 149 of the said Act are always available for insurer of the vehicle. Therefore, if such contention is raised, the Tribunal will have to decide it while disposing of the application u/s 140 of the said Act.

6. Perusal of the impugned order shows that though the learned Member of the Tribunal had adverted to the contention raised by the appellant-insurer, there is no consideration in the impugned judgment of the documents placed on record such as the certified copy of the spot panchanama. While deciding a claim petition u/s 140 of the said Act, the defence under Sub-section (2) of Section 149, if raised, is required to be considered. However, the Tribunal has to adopt summary procedure while disposing of a claim petition u/s 140 of the said Act. As per Rule 255 of the Maharashtra Motor Vehicles Rules, 1989, certain documents such as panchanama, F.I.R., Medical Certificate in Form Comp. B etc. are required to be produced along with the application u/s 140 of the said Act. Under Rule 280 there is a power vested in the Claims Tribunal to call for the supplementary information and documents from the Police, Medical and other authorities.

7. As a summary procedure is required to be adopted while deciding a claim petition u/s 140 of the said Act, the Tribunal cannot allow the proceedings u/s 140 to be converted in a full-fledged trial. The adjudication of the contentions raised by the parties has to be made on the basis of the documents which are required to be produced in accordance with Rule 255 of the said Rules, 1989 as well as the documents and information which is made available to the Tribunal after exercising of power under Rule 280 of the said Rules.

8. In the present case, I find that the Tribunal has not considered the documents which were required to be produced as per Rule 255 of the said Rules of 1989.

Though the Tribunal has referred to the defence raised by the appellant. I find that there is no consideration of the said defence on merits in the light of the documents produced on record. In the circumstances, the petitions u/s 140 of the said Act will have to be remanded to the Tribunal. Hence, I pass the following order:

- i) The impugned judgments and awards are quashed and set aside. The claim petitions filed u/s 140 of the Motor Vehicles Act, 1988 are restored to the file.
- ii) The parties are directed to appear before the learned Member of the Tribunal on 25-7-2008. The Tribunal will dispose of the petitions afresh in the light of the observations made in this judgment. The claim petitions shall be disposed of as expeditiously as possible and preferably on or before 31-8-2008.
- iii) The amounts deposited by the appellants in this Court shall be transferred to the concerned Tribunal. While disposing of the claim petitions u/s 140 of the said Act, the Tribunal will pass appropriate orders as regards the disbursement/ withdrawal of the said amounts.
- iv) All contention of the parties on merits are expressly left open.
- v) The appeals are partly allowed in the above terms with no order as to costs.

Civil applications for stay pending in these appeals do not survive and the same are disposed of.