(2020) 09 J&K CK 0003

In the Jammu And Kashmir High Court

Case No : Miscellaneous Appeal No. 214 Of 2018

Iffco Tokio General Insurance Co. Ltd — APPELLANT

Vs

Sheikh Mohammad Tufail And Others — RESPONDENT

Date of Decision : 01-09-2020

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 149, 166, 173

Citation : (2020) 09 J&K CK 0003

Hon'ble Judges : Sanjeev Kumar, J

Bench : Single Bench

Advocate : Sanjay K. Dhar

Final Decision : Disposed Off

Judgement

1. This appeal under Section 173 of the Motor Vehicles Act filed by Iffco Tokio General Insurance Company Ltd., (hereinafter referred to as the 'insurer') is directed against the interim award (no fault liability award u/s 140 of M.V.Act) dated 03.08.2018 passed by the Motor Accident Claims Tribunal, Doda (for short 'the Tribunal') in claim petition titled 'Sheikh Mohammad Tufail vs. Divisional Manager, Iffco Tokio General Insurance Company Ltd and others'.

2. Amongst others, the impugned interim award has been assailed on the ground that since the injured, at the time of accident, was travelling in the offending vehicle as a gratuitous passenger, therefore, in terms of the insurance policy, the insurer was not liable to indemnify the owner/insured of the said vehicle for any liability.

3. It is submitted that the Tribunal, without adjudicating upon the defence of the insurer, has fastened the liability to satisfy the interim award on the insurer and has, thus, defeated the right of the insurer to raise defence to the claim petition as provided under Section 149 of Motor Vehicles Act.

4. Having heard learned counsel for the insurer and perused the record, I am of the view that the insurer is entitled to defend the claim petition on all permissible

grounds as laid down in Section 149 of M.V. Act, disposal of application u/s 140 of M.V.Act, notwithstanding.

5. The aforesaid plea of the insurer needs to be determined in the trial to be held in the petition filed under Section 166 of M.V.Act.

6. Having regard to, prima facie, substance in the defence pleaded by the insurer in its objections before the Tribunal, it would be in the fitness of things to dispose of this appeal by providing that the disbursement of the amount deposited in the Registry of this Court on account of 'no fault liability' shall await the final outcome of the petition filed under Section 166 MV Act. Ordered accordingly.

7. This appeal is, accordingly, disposed of, leaving it open to the insurer to raise all the pleas, which, it has raised in this appeal, before the Tribunal and the same shall be tried and adjudicated upon by the Tribunal in accordance with law.