

(2014) 08 GUJ CK 0065

In the Gujarat High Court

Case No : First Appeal No. 2611 of 2014 and Civil Application No. 8690 of 2014
in First Appeal No. 2611 of 2014

National Insurance Company

APPELLANT

Vs

Dharmeshbhai Vithalbhai Babariya

RESPONDENT

Date of Decision : 08-08-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 166

Citation : (2014) 08 GUJ CK 0065

Hon'ble Judges : R.R. Tripathi, J

Bench : Single Bench

Advocate : Dakshesh Mehta, Advocate for the Appellant

Judgement

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R.R. Tripathi, J.—By way of this First Appeal the appellant-Insurance Company has challenged order dated 24/10/2013 passed by the Motor Accident Claims Tribunal (Auxi.), Junagadh in MACP No. 242 of 2011 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 24/10/2013 passed by the Motor Accident Claims Tribunal (Auxi.), Junagadh in MACP No. 242 of 2011 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, present First Appeal is disposed of. No order as to costs.

7. As the First Appeal is disposed of, Civil Application No. 8690 of 2014 does not survive and the same is disposed of accordingly.