

(2006) 01 GUJ CK 0067
In the Gujarat High Court

Case No : First Appeal No. 133 of 2006 and Civil Application No. 527 of 2006

New India Assurance Co. Ltd.

APPELLANT

Vs

Babubhai Purshottambhai Harijan and Others

RESPONDENT

Date of Decision : 24-01-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Gujarat Motor Vehicles Rules, 1989 — Rule 211, 212, 213, 214, 215
Motor Vehicles Act, 1988 — Section 140, 141, 141(2), 144, 145

Citation : (2006) 4 ACC 225 : (2008) ACJ 104

Hon'ble Judges : Bhawani Singh, C.J.; Abhilasha Kumari, J

Bench : Division Bench

Advocate : Sandip C. Shah, for the Appellant;

Final Decision : Dismissed

Judgement

Bhawani Singh, C.J.—This Appeal, by New India Assurance Company Limited, is directed against the Award passed by the Motor Accident Claims Tribunal (Aux.), Vadodara, dated 22.9.2005, below Exh.7, MAC Petition No. 1411 of 2004, u/s 140, Motor Vehicles Act, 1988.

2. Briefly stated, accident took place on 6.2.2004. Balubhai Parshottambhai Harijan (claimant) had gone to house of Bhailalbai Valjibhai Parmar at Tilakwada. At 8:00 p.m., he left for his house. He waited for bus at Tilakwada three roads but he boarded Truck No. GJ-1-T-4257 which came in the meanwhile. Truck was being driven rashly, negligently and at excessive speed. As a result, the driver of the truck lost control at the turn near bus stand of village Naliya, and bus turned turtle. As a result of this accident, claimant suffered fractures in legs, injuries on waist, chest and other parts of the body. Reaching home, he took treatment, reported the matter to police on the next day and took further treatment at private hospital as an indoor patient. At the time of accident, he was earning more than Rs. 1,500/- per month from labour work. He was subjected to operation for legs and treatment of other injuries, due to which, he

suffered serious pains. During treatment, he had to take medicines and special diet. He had to spend on transportation and attendant. After discharge from hospital, he had to take rest for long time. Because of injuries, he could not do labour work, therefore lost income. He underwent long treatment, physical pain, mental agony and incapacity to do usual work. He suffered permanent disability, therefore, could not do work as before. Total compensation of Rs. 1,25,000/- is claimed from the opponents.

3. With the claim petition, application u/s 140, Motor Vehicles Act, 1988, is filed for Rs. 25,000/- on the basis of facts stated in the claim petition.

4. Opponent-3 filed reply to claim petition and application u/s 140 denying the claims, stating interalia that both, claim petition and interim application are not maintainable in law, therefore liable to be dismissed. Averments with regard to age, occupation, address, income, nature of injuries of claimant, date, time and place of accident are denied. Registration number of offending vehicle, address of driver, owner and insurer are not admitted seeking strict proof thereof, particularly, with regard to taking place of accident by truck No. GJ-1-T-4257 on 6.2.2004 around 9:00 p.m. on the turning near bus stand situated on the way going from Tilakwada to Dabhoi because First Information Report was lodged on 7.2.2004, meaning thereby, incident of accident is fabricated. Averments that claimant had gone to Tilakwada to the house of Bhailalbhai Valjibhai Parmar and when he was returning home, took lift in truck No. GJ-1-T-4257 and accident took place as alleged due to driving of truck carelessly and negligently by the driver losing control over the steering and truck over-turning, as a result thereof, injuries suffered by the claimant, are also denied. It is stated that injuries are not accidental. Otherwise, after suffering them, claimant was not expected to take treatment at home and go to hospital next day after registering First Information Report. Income earned by the claimant is also denied. It could not be said whether at the time of accident, vehicle was insured with the insurer, otherwise, amount claimed is exaggerated. Claimant is not entitled to interim compensation of Rs. 25,000/- with interest.

5. On 22.9.2005, Claims Tribunal awarded compensation of Rs. 25,000/- with interest at the rate of 7.5% per annum from the date of application till realization against opponents jointly and severally, to be paid to the claimant or deposit the same in the Tribunal within a period of one month from the date of order. Precisely, the impugned award is as under:

1. Heard, the Ld. Advocates of the applicant and the opponents. Read, this application and the documents produced in this case, which consists of zerox copy of F.I.R., panchnama of scene of offence, disability certificate, policy of offending vehicle of the applicant.

2. I have carefully gone through the pleadings and the documentary evidences produced on record. Prima facie, it appears from the material on record that the accident with the vehicle in question has occurred. Thus, the two ingredients

attracting the provisions of Section 140 of the M.V. Act, the involvement of the vehicle and injuries to the applicant resulting from the accident are clearly established. While deciding this application, only defence is available to the opponents that the vehicle was not insured with the insurance Company. Therefore, this application is allowed and the opponents are jointly and severally held liable to pay the compensation amount of Rs. 25,000/- (Rupees Twenty Five Thousand Only) with interest @ 7.5% (Seven & Half) p.a., from the date of this application till realisation. The opponents are hereby ordered to pay the applicant or to deposit in this Tribunal, the aforesaid amount of compensation within the period of one month from today.

3. Out of the said amount of compensation, Rs. 17,500/- be invested in any of the Nationalised Bank for a period of 5 years with an instruction to the bank not to float any loan over it. However, the applicant is entitled to have periodically interest on it. Rest of the amount alongwith amount towards cost and interest be given to the applicant by an account payee cheque.

6. The aforesaid order is challenged by the appellant. Question advanced for consideration is whether the Claims Tribunal can competently pass order for compensation u/s 140 against the insurer without inquiring into the defences put up by the insurer and make it liable for payment of compensation. In other words, the liability to pay compensation u/s 140 could not be fastened on the insurer just because insurance policy was in force in respect of the offending vehicle on the date of accident and accident had taken place and claimant had suffered.

7. During the course of hearing, some decisions are found relevant on the question. In *New India Assurance Co. Ltd. Vs. Mithakhan Dinakhan Netiyar and Others*, J.M. Panchal, J. examined Section 140, Motor Vehicles Act, 1988, read with Rule 231, Gujarat Motor Vehicles Rules, 1989, and said in paragraphs 6 to 9 that:

6. Section 140 provides that where death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicle shall, or, as the case may be, the owners of the motor vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of the said section. The amount of compensation which is payable thereunder in respect of death of any person is a fixed sum of Rs. 25,000/- (Rupees twenty-five thousand) and the amount of compensation payable in respect of the permanent disablement of any person is a fixed sum of Rs. 12,000/- (Rupees twelve thousand). Sub-section (3) of Section 140 provides that in any claim for compensation under Sub-section (1) of Section 140, the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person. It is, thus, that to a limited extent relief has

been granted u/s 140 of the Act to the victim who has suffered permanent disablement. Such victim can claim Rs. 12,000/- without proof of any negligence on the part of the owner of the vehicle or of any other person. This part of the Act is clearly a departure from usual common law principle that a claimant should establish negligence on the part of the owner or driver of the motor vehicle before claiming any compensation for permanent disablement caused on account of a motor vehicle accident. To that extent substantive law of the Country stands modified.

There is no manner of doubt that Section 140 of the Act is beneficial and social welfare piece of legislation. It is well settled that in construing social welfare legislation, the Courts should adopt a beneficial rule of construction and in any event, that construction should be preferred which fulfills the policy of legislation. The construction to be adopted on a statute should be such so as to achieve the purpose for which it is enacted and in favour of those in whose interest the Act has been passed. The liability under this section is made indefeasible, peremptory and total. It has been put beyond dispute that insurer is clearly liable u/s 140 of the Act in view of the provisions contained in Section 145 & 147 of the Act.

7. Rule 231 of the Gujarat Motor Vehicles Rules, 1989 contains adequate provisions which would enable the Claims Tribunal to satisfy itself in respect of matters necessary for awarding compensation u/s 140 of the Act. Sub-rule (9) of Rule 231 provides that the Claims Tribunal shall proceed with the application for compensation, on the basis of -

- i. First Information Report;
- ii. Injury certificate or Post-mortem report in case of death;
- iii. Cover note, certificate of insurance or the policy, relating to the insurance of the vehicle against third party risks;
- iv. The nature of the treatment given by the medical officer who has treated the victim.

While making an order u/s 140 of the Act, the Tribunal is not required to follow the procedure contained in Rules 211 to 230 and 232 of the Gujarat Motor Vehicles Rules, 1989. Where compensation is claimed in respect of death or permanent disablement u/s 140 and also in pursuance of any right on the principle of fault, the claim for compensation u/s 140 of the Act is required to be disposed of in the first place in view of Sub-section (2) of Section 140 of the Act. For awarding compensation u/s 140 of the Act, the Claims Tribunal is required to satisfy itself in respect of the following matters :-

- i. an accident has arisen out of the use of a motor vehicle;
- ii. the said accident has resulted in permanent disablement of the person who is making the claim or death of the person whose legal representative is making

the claim;

iii. the claim is made against the owner and the insurer of the motor vehicle involved in the accident.

8. The question that falls for consideration is as to at what stage the Tribunal is to inquire into objection raised by the Insurance Company under the Act. Should such objections be treated as preliminary issue and be decided by the Tribunal in the first instance which in the nature of things would result in delay in regard to the payment of amount u/s 140 of the Act to the claimant and defeat the very purpose underlying the enactment of the provision? The object underlying enactment of Section 140 is to make available to the claimant compensation amount to the extent of Rs. 12,000/- in case of permanent disablement as expeditiously as possible and the said award has to be made before adjudication of the claim u/s 168 of the Act. It must be seen that Section 140 of the Act speaks of peremptory awards in cases of permanent disablement or death. The object underlying this consideration is the immediate relief to the disabled victim of accident in case of permanent disability. Provision of Section 140 is a piece of beneficial and ameliorative legislation providing for an immediate aid to the hapless and helpless victims of the motor vehicles. The objects for which Section 140 of the Act is enacted would be defeated if the Claims Tribunal is required to hold regular trial in the same manner as for adjudicating a claim made in a petition filed u/s 168 of the Act. Having regard to the purpose underlying the enactment of the said provision, I am of the opinion that the defences raised by the insurer or other objections of the insurer or the owner should be examined later when the claims petition is decided on merits. The Claims Tribunal would be entitled to make award u/s 140 of the Act as soon as it comes to the conclusion that the owner of the vehicle was involved and insured. The persons primarily responsible to pay compensation or damages for the accident to the injured or the heirs or legal representatives of the deceased are normally driver and owner of the offending vehicle. The liability of the insurer is spelled out qua the person or classes of persons specified in the policy that is qua the insured u/s 147(1) of the Act; and also qua the claimant of compensation u/s 147(2) and 149(1) of the Act. If an award is given against insured holding him liable to pay certain amount as compensation or damages in regard to the claim arising out of an accident with his motor vehicle, then the liability of insurer is absolute and the insurer cannot question its liability on the ground that the amount is awarded on the principle of no fault liability. Moment either it is admitted by the owner of the vehicle that his vehicle is involved in the accident or from the evidence adduced on the record, the Tribunal positively holds that the vehicle of the owner in question was involved in that accident, then the Tribunal without inquiring into correctness of other objections that may be raised by the Insurance Company would be entitled to make the award u/s 140 and require the Insurance Company to pay specified amount to the claimants forthwith and thereafter investigate and inquire into the correctness or otherwise of the other objections that are raised either by the Insurance Company or by the owner of the offending vehicle at the

time of deciding main petition.

9. From sub-rule (5) of Rule 231 of the Gujarat Motor Vehicles Rules, 1989 it is clear that a summary trial is contemplated for making an award or order u/s 140 of the Act. The defence as presently raised by the insurer is naturally an issue in the main petition and it will have to be disposed of in that petition and perhaps by elaborate evidence. This type of evidence necessary for disposal of an issue which is required to be dealt with in the main petition cannot be permitted to be led at the stage of making an order u/s 140 of the Act and in this view of the matter, I am unable to accept Mr. Makwana's challenge to the impugned order. Ultimately, if the defence of the insurer is upheld, the insurer would be entitled to claim the amount awarded against it from others, i.e. From driver and owners, but not from the claimant.

Finally, the Court held:

In view of the above discussion, I am of the opinion that the Tribunal was justified in not entertaining the defence raised by the petitioner when application u/s 140 of the Act came to be decided. No jurisdictional error is committed by the Tribunal necessitating interference of this Court with the impugned order while exercising powers u/s 115 of the Code of Civil Procedure.

8. Again, this question was examined by M.S. Shah, J. in Mahendrakumar Kalyanjibhai v. Haresh Bipinchandra Pathak and Anr. 1998(2) GLR 1199 . After elaborate in-depth examination of the question, the learned Judge did not take different view of the matter than what J.M. Panchal, J. had taken in New India Assurance Co. Ltd., Ahmedabad v. Mithakhan Dinakhan Notiyar and Ors. (supra), thereby, not accepting the opposite view in Full Bench decision of Karnataka High Court in M/s. United India Insurance Company, Bangalore Vs. Imman Aminasab Nadaf and others,

9. Chapter-X of the Motor Vehicles Act, 1988, deals with liability without fault in certain cases. Section 140 thereof reads:

140. Liability to pay compensation in certain cases on the principle of no fault --

1. Where death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicle shall, as the case may be, the owners of the vehicles shall, jointly and severally, be liable to any compensation in respect of such death or disablement in accordance with the provisions of this section.

2. The amount of compensation which shall be payable under sub-section (1) in respect of the death of any person shall be a fixed sum of fifty thousand rupees and the amount of compensation payable under that sub-section in respect of the permanent disablement of any person shall be a fixed sum of twenty five thousand rupees.

3. In any claim for compensation under sub-section (1), the claim shall not be

required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person.

4. A claim for compensation under sub-section (1) shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made nor shall the quantum of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement.

5. Notwithstanding anything contained in sub-section (2) regarding death or bodily injury to any person, for which the owner of the vehicle is liable to give compensation for relief, he is also liable to pay compensation under any other law for the time being in force :

Provided that the amount of such compensation to be given under any other law shall be reduced from the amount of compensation payable under this section or u/s 163A.

Sections 141 and 144 may also be relevantly quoted in-extenso.

141. Provisions as to other right to claim compensation for death or permanent disablement --

1. The right to claim compensation u/s 140 in respect of death or permanent disablement of any person shall be in addition to any other right, except the right to claim under the scheme referred to Section 163A (such other right hereafter) in this section referred to as the right on the principle of fault) to claim compensation in respect thereof under any other provision of this Act or of any other law for the time being in force.

2. A claim for compensation u/s 140 in respect of death or permanent disablement of any person shall be disposed of as expeditiously as possible and where compensation is claimed in respect of such death or permanent disablement u/s 140 and also in pursuance of any right on the principle of fault, the claim for compensation u/s 140 shall be disposed of as aforesaid in the first place.

3. Notwithstanding anything contained in sub-section (1), where in respect of the death or permanent disablement of any person, the person liable to pay compensation u/s 140 is also liable to pay compensation in accordance with the right on the principle of fault, the person so liable shall pay the first-mentioned compensation and --

(a) if the amount of the first-mentioned compensation is less than the amount of the second-mentioned compensation, he shall be liable to pay (in addition to the first-mentioned compensation) only so much of the second-mentioned

compensation as is equal to the amount by which it exceeds the first-mentioned compensation;

(b) if the amount of the first-mentioned compensation is equal to or more than the amount of the second-mentioned compensation, he shall not be liable to pay the second-mentioned compensation.

144. Overriding effect The provisions of this Chapter shall have effect notwithstanding anything contained in any other provision of this Act or of any other law for the time being in force.

10. The object behind these Sections is to speed up payment of compensation on no fault? principle. The victim(s) of accident are, under these beneficial provisions, entitled to get the minimum statutory relief expeditiously. Speed for expeditious disposal and payment of compensation is the essence. Otherwise, injustice and breach of legislative intent is the consequence. Section 140 is a piece of legislation intended to provide immediate relief to the victim(s). This provision is clearly a departure from the usual common law principle that claimant should establish negligence on the part of the owner or driver of the motor vehicle before claiming compensation for the death or permanent disablement caused on account of the use of a motor vehicle [See: Gujarat State Road Transport Corporation, Ahmedabad Vs. Ramanbhai Prabhatbhai and Another, The claimant is required to state that death or permanent disablement has resulted from an accident arising out of the use of a motor vehicle or motor vehicles. He is not required to prove it like claim of fault liability u/s 166. Sub-section 2 of Section 141 provides that claim for compensation u/s 140 in respect of death or permanent disablement shall be disposed of as expeditiously as possible and where compensation is claimed in respect of such death or permanent disablement u/s 140 and also in pursuance of any other right on the principle of fault, the claim for compensation u/s 140 shall be disposed of as aforesaid in the first place. Claim for compensation u/s 140 is independent. It need not be preceded or succeeded by claim u/s 166. Nowhere, Section 140 envisages this. Therefore, claim u/s 140 can be adjudicated and compensation awarded in absence of claim u/s 166 [See: Munshiram D. Anand Vs. Pravinsinh Prabhatsinh Anand Society, Navagam Gedh, Jamnagar, Object behind the former is to pay statutory compensation by expeditious disposal thereof and following the normal procedures for disposal in the later which generally takes time for proof and establishment of respective claims and defences of parties. Finally, Section 144 should clear the mist. It gives overriding effect to this Chapter over any other provisions of this Act or any other law for the time being in force. Therefore, this provision is independent as against other provisions in the Act providing for adjudication of claims for compensation, for example, Sections 161, 166 and 163. True it may be, all these claims are lodged before the Claims Tribunal and adjudicated by it, but that should not mean following the same method of trial. Deeper analysis of Sections 140, 161, 166 and 163A would demonstrate that the legislature provides different modes for adjudication of

claims under these provisions. Claim u/s 140 is decided summarily to achieve legislative intent of expeditious disposal of such claim for the benefit of victim(s) of accident. Therefore, defences put up by opponents can be adjudicated during trial of claim u/s 166 and in the event insurance company succeeding in establishing its defences, it can recover the loss from the insured, but not from the victims since they receive compensation under the principle of no fault liability?.

Even proviso to sub-section (1) of Section 168 provides that claim for compensation u/s 160 in respect of death or permanent disablement of any person, whether made in such application or otherwise, shall be disposed of in accordance with the provisions of Chapter-X.

11. There may be cases where claim is lodged u/s 140 alone. In that situation, insurance company can recover the amount from the insured. However, where both the claims are lodged, compensation paid u/s 140 can be adjusted with compensation ultimately awarded u/s 166 and where the Claims Tribunal ultimately holds that insurer was not liable to pay compensation, it would be entitled to reimbursement from the insured. [See: National Insurance Co. Ltd. Vs. Jethu Ram and Others,

12. With here to before examination of the matter, it cannot be said that compensation awarded u/s 140 is interim compensation simply because of adjustment against compensation awarded u/s 166. Opposite view taken by Full Bench of Karnataka High Court in United India Insurance Co. Ltd. v. Immam Aminasab Nadaf and Ors (supra) and in other decisions on similar lines, with respect, do not appeal to us in view of clear legislative intent running through provisions under Chapter-X of the Motor Vehicles Act, 1988 and Section 168.

13. Similar view has been taken by Single Judge of Patna High Court in Oriental Insurance Co. Ltd. Vs. Sarju Ram and Others holding that claim by claimant under no fault liability? u/s 140 can be disposed of independently irrespective of the fact whether claim u/s 166 has been filed by the claimant or not. Provisions under Chapter-X of the Act have over-riding effect over any other provisions of the Act. In this case, claimant had filed application u/s 140 but no application u/s 166 was filed. Therefore, question for determination was whether application u/s 140 could be entertained in absence of application u/s 166 or any other provisions of the Motor Vehicles Act, 1988. The learned Judge examined the provisions under Chapter-X of the Act and said in paragraphs-6 & 7 that:

6. From bare reading of the aforesaid provision, it is manifest that in case of death or permanent disablement of any person has resulted from an accident arising out of the use of the motor vehicle, the owner or the owners shall be jointly and severally liable to pay compensation. In such an application the claimant is not required to plead and establish negligence. Sub-section (5) very specifically clarified that notwithstanding payment of compensation under this Chapter, the owner of the vehicle is also liable to pay compensation under any

other law for the time being in force. It is, therefore, evident that claiming compensation under no fault liability u/s 140 of the Act is not dependent upon the filing of the application u/s 166 of the Act. This has also been clarified by the legislature u/s 141 of the Act

7. On the plain reading of this provision, it is abundantly clear that such application filed u/s 140 of the Act shall be disposed of independently irrespective of the fact whether claim u/s 166 of the Act has been filed by the claimant or not. The proviso to sub-section (1) of Section 168 also provides that where the claimant has made a claim for compensation u/s 140 of the said Act then such claim for compensation shall be disposed of in accordance with the provisions of Chapter X of the Act.?

Finally, the Court said in paragraph-19 that:

19. Having regard to the entire facts and circumstances of the case and the law discussed hereinabove, I am, therefore, of the definite opinion that Chapter X of the Act is an independent provision and the Tribunal is bound to decide the claim application filed u/s 140 of the Act for grant of interim compensation notwithstanding the claimant having filed any other application u/s 166 or under any other provisions of the Act. I am further of the opinion that the provision of Chapter X has overriding effect over any other provision of the Act and the Legislatures have made it clear u/s 144 of the said Act.

14. Therefore, what we conclude is, claims under Sections 140, 161, 166, 163A are independent of each other and tried accordingly. However, claim u/s 140 is triable summarily and expeditiously without requiring the victim to establish death or permanent disability due to any wrongful act, neglect or default or the owner of the vehicle concerned or of any other person. Compensation awarded under this provision is being awarded under no fault liability?, therefore final, claimable by the insurer from the insured. However, where claim u/s 166 is filed, adjustment of amount paid u/s 140 with amount awarded u/s 166 can be done since Court has to award `just" compensation u/s 168 of the Act and avoid unjust enrichment of the victim.

No other point is urged.

15. Therefore, we find no infirmity with the impugned order. Appeal is, therefore, dismissed.

16. Amount deposited in the Registry of this Court u/s 173, Motor Vehicles Act, 1988, be transmitted to the MACT concerned for payment. Civil Application stands disposed of.