
(2012) 06 BOM CK 0128
In the Bombay High Court
Case No : First Appeal No. 658 Of 2011

Shriram General Insurance Co. Ltd.

APPELLANT

Vs

Smt.Umadabi and Others

RESPONDENT

Date of Decision : 19-06-2012

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 140(1), 166

Citation : (2013) 2 ACC 651 : (2013) ACJ 959 : (2012) 6 BomCR 285

Hon'ble Judges : M.N. Gilani, J

Bench : Single Bench

Advocate : P.N. Khadgi, for the Appellant; K.S. Narwade, Advocate for Respondent Nos. 1 and 2 and Mr. A.J. Pophaly, Advocate, for the Respondent

Judgement

M.N. Gilani, J.—This appeal is directed against the order dated 15/03/2011 passed by the Member, Motor Accident Claim Tribunal, Pusad in M.A.C.P. No. 45/2010, whereby claim on the principle of "no fault liability" lodged u/s 140 of the Motor Vehicles Act (in short "the Act") was allowed. The original opponent nos. 2 and 3 were jointly and severally ordered to pay half of the amount of "no fault liability" i.e. Rs.25,000/and remaining half was to be paid by original opponent nos. 4 and 5 jointly and severally. The appellant before this Court is the original opponent no.5. Two vehicles bearing nos. MH34/ M/6271 and MH26/ H/6832 were involved in an accident, which occurred on 17/11/2009 on Wani Yavatmal Road. The deceased was cleaner on truck bearing no. MH26/ H/6832. While the truck bearing no. MH34/ M/6271 was proceeding ahead, the truck bearing no. MH26/ H/6832 coming from behind dashed against the truck ahead of it. Deceased sustained fatal injuries and died, which resulted in lodging the claim by the legal heirs of deceased u/s 166 inter alia u/s 140 of the Act for award of compensation on the basis of "no fault liability".

2. Observing that two vehicles were involved, the learned Tribunal apportioned the liability in the ratio of 50:50%. The reasons given by the learned Tribunal are thus :

It appears from the case papers that the deceased Mohd. Shoab was cleaner on truck of the opponent no.4. He died in motor accident on 17/11/2009. The opponent no.2 is the owner of the truck bearing no. MH34/ M/6271 validly insured with the opponent no.3. While opponent no.4 is the owner of truck no. MH26/ H/6832, which was validly insured with the opponent no.5. Therefore, opponent nos. 2 & 3 are jointly and severally liable to pay 50% interim compensation while opponent nos.4 & 5 are liable to pay 50% compensation of the interim relief to the claimants who are mother and brother of the deceased.

3. Aggrieved by the impugned order, the original opponent no.5, with whom the truck bearing no. MH26/ H/6832 was insured, filed this appeal.

4. Mr. Khadgi, learned Advocate for the appellant, contended that the accident occurred due to total negligence of the driver of the truck bearing no. MH34/ M/6271, which was insured with original opponent no.3 and, therefore, the entire liability ought to have been saddled upon it viz. M/s. Royal Sunderam Alliance Insurance Co. Ltd.

5. The answer to the controversy involved in this appeal lies in the plain reading of Section 140 of the Act, which reads as under :

(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, or as the case may be, the owners of the vehicles shall jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this section.

(emphasis supplied)

6. The scope of an enquiry under this Section is extremely limited only to ascertain as to whether : (i) the accident has arisen out of use of the motor vehicle; (ii) the said accident has resulted in a permanent disablement of the person who is making the claim or the death of a person whose legal representatives are making the claim; and (iii) the claim is made against the owner and insurer of the motor vehicle involved in the accident. Once these three factors are established prima facie, the claimant is entitled to succeed in an application under S.140 of the Act. Even if two vehicles are involved, the Tribunal is not required to consider the proportionate liability of the vehicles involved in the accident. Once it is found that vehicle or vehicles were involved in the accident, the Tribunal is obliged to pass interim award under the principle of "no fault liability". The very concept of "no fault liability" is that the amount is payable not because there was fault on the part of the driver of the vehicle, but because the vehicle was involved in the accident. That being so, in the case where two or more vehicles are involved in the accident, the Tribunal is not required to consider at the stage of passing the order under S.140 of the Act as to driver of which vehicle was more responsible and what could be the liability of the driver of each vehicle. In such cases, liability of the owners of all the vehicles involved in the accident and of course of the insurance company, if the vehicles

were insured, should be joint and several. This appears to be the true import of Section 140(1) of the Act. For the reasons aforestated, the order passed by the learned Tribunal will have to be modified.

Original opponent nos.2, 3, 4 & 5 shall jointly and severally pay Rs.50,000/- towards "no fault liability" to the claimant. In view of the fact that the amount has already been deposited, may be in proportion, the question of issuing direction about payment of interest does not arise. The Tribunal shall be at liberty to disburse the amount to the claimant. There shall be no order as to costs.