**(2010) 06 BOM CK 0032**

**In the Bombay High Court**

**Case No :** F.A. No. 191 of 2010

Suresh Shamrao Uieke APPELLANT

Vs

New India Assurance Co. Ltd. and another RESPONDENT

**Date of Decision :** 22-06-2010

**Acts Referred:**
Motor Vehicles Act, 1988 — Section 140, 140(4), 166

**Citation :** (2011) ACJ 1603 : (2010) 6 BomCR 645 : (2010) 4 CivCC 47 : (2011) 7 RCR(Criminal) 65

**Hon'ble Judges :** A.P. Bhangale, J

**Bench :** Single Bench

**Advocate :** Asghar Hussain, for the Appellant; T.D. Khade, for the Respondent

**Final Decision :** Allowed

## Judgement

A.P. Bhangale, J.—This is an appeal directed against the judgment and award passed on 20.12.2007 by learned Member, Motor Accidents Claims Tribunal, Nagpur, in Claim Petition No. 890 of 2003.

2. Heard finally by consent of Learned Counsel for the respective parties.

3. Claimant contended that on 5.5.2003 while he was trying to board the truck bearing No. MWY 4308 from left side, suddenly the truck was driven and in the result he fell down. He sustained multiple injuries and became permanently disabled due to the accident. The Motor Accidents Claims Tribunal (in short ''the Tribunal'') had dismissed the main petition u/s 166 of Motor Vehicles Act (hereinafter referred to as ''the said Act'') as Appellant was unable to prove rashness and negligence on the part of the truck driver with required ingredients of proof. According to Appellant, he had suffered permanent disability, which the doctor certified to be of 25 per cent. However, the Tribunal came to an erroneous conclusion that the Appellant-claimant was injured due to his own negligence and dismissed the petition.

4. Mr. Asghar Hussain, Learned Counsel for the Appellant, in support of appeal,

 

submitted that the Tribunal erred in not awarding sum of Rs. 25,000 with reasonable interest, in view of the provisions of Section 140 of the said Act. He further submitted that statutorily fixed liability to pay compensation u/s 140 of the said Act is an exception to general requirements of proof in claims proceedings lodged under the said Act. It has its social and beneficial object to provide urgent relief of compensation to victims of motor vehicle accident in cases of death or permanent disablement of victims and, therefore, independent of the other proceedings u/s 166 of the Act.

5. Mrs. T.D. Khade, Learned Counsel for Respondent No. 1, on the other hand, supported impugned award as correct.

6. The argument advanced on behalf of Appellant is quite convincing so far as ''no fault liability'' as contemplated u/s 140 of the said Act is concerned. The principles governing proceedings u/s 166 of the said Act are different from those applicable in the proceedings u/s 140 of the said Act towards no fault liability. The avowed intention of the legislature behind introducing liability without fault u/s 140 (old Section 92-A) is to provide expeditious monetary assistance to seriously injured victim or dependants of deceased victim in an accident caused by motor vehicle. The words are unambiguous and clear and must be given their natural effect to pass interim award.

7. The principle of ''no fault liability'' is carved out as an exception to confer timely or prompt benefit to victims of motor vehicle accidents. It would be instructive to note that victims cannot be made to wait for outcome of protracted adjudicatory process. u/s 140 of the said Act the legislature has contemplated liability without fault, in any case, resulting into an accident arising from the use of the mechanically propelled motor vehicle. The owner of the motor vehicle is primarily liable to pay compensation u/s 140 of the said Act. The compensation sum is statutorily fixed at Rs. 50,000 payable to dependants of victim if victim had died in the accident, and at Rs. 25,000 if victim suffered permanent disablement. The claimant applying u/s 140 of the said Act need not plead and establish that such accident had occurred due to any wrongful act/neglect or default on the part of owner of motor vehicle or any other person. Section 140(4) of the said Act clarifies that claim u/s 140 shall not be defeated on account of wrongful act/ neglect or default of victim in the incident of accident. The liability of owner is in addition to any other liability under any law for the time being in force, although such other liability to pay compensation shall be reduced by the sum already paid u/s 140 of the said Act on account of no fault liability (vide proviso). Section 140 of the said Act does not require adducing proof of negligence and rashness on the part of driver or vehicle owner of offending vehicle. It is enough to prima facie establish that the accident arose out of the use of motor vehicle and it has resulted in death or permanent disablement to victim. There is no need for the Tribunal to enter into lengthy protracted proceedings to adjudicate the award u/s 140 of the Act for minimum sum of compensation is payable statutorily with or without interest from the date of

 

application till the interim compensation payable is deposited.

8. Learned Counsel for Appellant relied upon the ruling in Tara Devi v. National Insurance Company Ltd. 2008 (2) TAC 735 (Pat) , to argue that although in an application to claim compensation u/s 166 of the Act the claimants are required to prove that the act of rash and negligent driving of motor vehicle caused the accident, there is no such requirement u/s 140 of the Act. He further relied on United India Insurance Co. Ltd. Vs. Maganlal Hirabhai Patel and Others, . Gujarat High Court held that filing of petition u/s 166 of the Act is not condition precedent for an application u/s 140 of the said Act, which is based on ''no fault liability''. No other ruling is cited contrary to the above principle.

9. Looking to the submissions advanced and citations in the light of the provisions of Section 140 of the Act, in my opinion, the Tribunal erred in not awarding compensation statutorily fixed at Rs. 25,000 u/s 140 of the said Act, payable in favour of the Appellant as he had sustained injuries in an accident occurred as a result of use of the truck driven suddenly notwithstanding the reasons adduced for the refusal to pass award in main petition u/s 166 of the Act. Hence, I allow the appeal to the limited extent as indicated hereinabove and direct the Respondent No. 1 to pay a sum of Rs. 25,000 with 6 per cent interest per annum from the date of application till the amount is deposited in Tribunal towards ''no fault liability'' u/s 140 of the Act. The appeal is partly allowed accordingly. No order as to costs.

 