

(2015) 08 BOM CK 0120
In the Bombay High Court
Case No : First Appeal No. 777 of 2014

The Manager, HDFC Ergo General Insurance Co. Ltd.	APPELLANT
Vs	
Kalpana and Others	RESPONDENT

Date of Decision : 20-08-2015

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 140(2), 141, 147, 166

Citation : (2015) 08 BOM CK 0120

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

Bench : Single Bench

Advocate : A.J. Pophaly, for the Appellant; Ashish Kadukar, Advocates for the Respondent

Final Decision : Dismissed

Judgement

A.P. Bhangale, J—Heard.

2. Admit.

3. Mr. Ashish Kadukar, learned Counsel waives service on behalf of Respondent No. 1 and Mr. Rajnish Vyas, learned Counsel waives service on behalf of Respondent Nos. 5 and 6.

4. This appeal by the Insurance Company questions legality and validity of the impugned order below Exh.2 in M.A.C.P. No. 149 of 2011 whereby the learned Chairman, Motor Accident Claims Tribunal, Chandrapur by order dt. 8.7.2014 allowed the application for interim compensation under Section 140 of the Motor Vehicles Act, 1988 directing non-applicant nos. 1 to 3 jointly and severally to pay a sum of Rs. 50,000/- with interest @ 9 % p.a. from 15.9.2012 till realisation of the amount. On realisation of entire amount, the amount of Rs.10,000/- each was directed to be invested in the name of the minor claimants in fixed deposit in any nationalised bank till they attain the age of majority and balance amount was directed to be paid to the claimant no.1 Kalpana.

5. Brief facts are that, on 6.3.2011, Shahajirao Bhonduji Bhoyar proceeding on a bicycle was dashed by offending motor vehicle bearing registration No.MH-34/T-481. In the accident, Shahajirao died in the hospital on 8.3.2011. The motor cycle belonged to respondent no.5 Pocham Rajlingu Rahulawar and it was driven by respondent no.6 Mohan Raymalu Mithuwar at the time of accident. Interim compensation claim was resisted on the ground that the driver was driving the motor vehicle under the influence of liquor and that the owner of the offending motor cycle had relied upon fake and bogus policy dt. 3.3.2012. It is contended by the appellant that no Insurance Policy, as produced, was issued by the appellant and furthermore that it was fake and bogus. It is, thus, submitted that the learned Chairman of the Tribunal committed an error of law to award interim compensation holding the appellant jointly responsible along with the owner and driver of the offending motor cycle. According to the learned Counsel for the appellant, it was primary duty of the Tribunal awarding compensation u/s.140 of the Motor Vehicles Act, 1988 to satisfy itself as to whether there was privity of contract between the parties so that liability can be saddled upon the Insurance Company. Secondly, it is submitted that the motor cycle was driven without valid motor driving license and therefore, discretion to award compensation u/s.140 of the Motor Vehicles Act, 1988 was not exercised properly and therefore, the impugned order is liable to be quashed and set aside.

6. Mr.A.J. Pophaly, learned Counsel for the appellant referred to the ruling in the case of New India Assurance Company Ltd. Vs. Babasaheb Anna Mali and Others, (2002) 1 ACC 642 : (2002) ACJ 642 : AIR 2002 Bom 27 : (2002) 2 BomCR 682 : (2002) 1 BOMLR 22 : (2001) 4 MhLj 562 to argue that when extra premium was not paid in the Insurance policy to cover pillion rider, the expression "third party" in the policy would not cover the pillion rider of the motor vehicle and therefore, the Insurer could not have been saddled with no fault liability under Section 92-A of the Motor Vehicles Act (4 of 1939). This ruling appears under the old Act, u/s.92-A of the Old Act of 1939 and the Division Bench of the Bombay High Court has considered Section 95 of the Act of 1939, also requirement of policy contract and after considering the legal position then prevailing, the Judgment of the Single Bench directing the Insurer to deposit sum of Rs.3,500/- was held as legally not sustainable and was set aside.

7. Next ruling pointed out is also under the old Act in the case of New India Assurance Co. Ltd. Vs. Dinanath Agrawalla and Others, (2000) ACJ 525 : AIR 2000 Ori 40 : (1999) 2 OLR 584 . The Orissa High Court under the old Act took identical view about the right to claim compensation u/s. 92-A of the old Act and the submission advanced on behalf of Insurance Company that the insurer had no liability under the policy was considered. It was held that where prima facie there is material to show that the Insurance Company may have liability to pay, order u/s.92-A of the Act can be passed by the Tribunal asking the Insurance Company to make the payment.

8. The ruling then relied upon is in the case of Smt. Yallwwa and Others Vs.

National Insurance Co. Ltd. and Another, AIR 2007 SC 2582 : (2007) 148 PLR 82 : (2007) 8 SCALE 77 : (2007) 6 SCC 657 : (2007) 7 SCR 1113 : (2007) AIRSCW 4590 : (2007) 5 Supreme 144 . The Apex Court considered Section 140 of the Motor Vehicles Act which provides for no fault liability. The provision makes owner of the offending motor vehicle liable and it was held that one of the defences available to the Insurer is breach of condition specified in the policy. When such defence is raised, the Tribunal is required to go into the said question. It is observed by the Apex Court that

" one of the defences available to the Insurer is breach of conditions specified in the policy. When such defence is raised the Tribunal is required to go into the said question. Section 140 of the Act does not contemplate that an Insurance Company shall also be liable to deposit the amount while it has no fault (sic obligation) whatsoever in terms of sub-section (2) of Section 147 of the Act.

In para no.15 of the above Judgment, ruling in the case of Oriental Insurance Co. Ltd. Vs. Mohiuddin Kureshi alias Md. Moya and Others 4 is cited, in which it was observed that Section 140 of the Motor Vehicles Act in Chapter X of the Act provides for liability to pay compensation on the principle of no fault. An owner of a vehicle thus would be liable to pay compensation in case death or permanent disablement to any person has resulted from an accident arising out of use of a motor vehicle or vehicles and the amount of such compensation in terms of Section 140(2) is fixed as Rs.25,000 (Rs.50,000 w.e.f. 14.11.94 as amended) in case of death and Rs.12,000 (Rs.25,000 w.e.f. 14.11.94 as amended) in case of permanent disablement. Sub-section 3 of Section 140 postulates that the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which claim was made was due to wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person. Section 141 of the Motor Vehicles Act, 1988 requires disposal of claim u/s.140 expeditiously. It is, of course, open for the Insurer to plead and prove that it is not liable at all. No fault liability u/s.140 of the Motor Vehicles Act is distinguishable from the rule of strict liability as it is a statutory liability created as "no fault liability". The amount paid can be deducted from the final amount awarded by the Tribunal. It was held in Yellava's case (supra) that Award u/s.140 of the Act was appealable u/s.173 as it amounts to the Award.

9. Reliance is also placed upon the ruling in United India Insurance Company Limited Vs. Serjerao and Others, (2008) ACJ 254 : AIR 2008 SC 460 : (2008) 1 JT 82 : (2007) 13 SCALE 80 : (2008) 7 SCC 425 : (2007) 12 SCR 1150 wherein, in the facts and circumstances of that case, the Apex Court remitted the matter to the High Court to consider the matter afresh in the light of the rulings including Yellava's case (supra).

10. Mr. Pophaly, learned Counsel also placed reliance upon the unreported Judgment and Order passed by the Single Judge of this Court dt. 3.9.2013 in First Appeal No. 285 of 2012 and another, in which this Court held that the High Court cannot in all cases issue a direction to any Insurance Company, if it is not

found liable to pay compensation. The view was expressed that such direction is improper also because owners of the private vehicles are thereby encouraged to break law and to hire their vehicles for reward. Unless a clear message is sent to owners of private vehicles they would not stop using their vehicles as a Taxi. There are hundreds of vehicles which are private but are used as a Taxi with impunity. It is only because very few of them suffer accidents, this lawless conduct goes unnoticed and unpunished. If the owners of private vehicles are made to pay heavy compensation to occupants of their vehicles illegally hired for reward, this malice of hiring private vehicles as Taxi would not stop. In that view of the matter, direction to the Insurer to pay first and recover later was quashed.

11. On the other hand, the learned Counsel for the respondent made reference to the rulings in *Rajendra Golait Vs. Kalawati Yedme, Sanjay Yedme and The Manager, Reliance General Insurance Co. Ltd.*, (2010) 6 BomCR 91 and *Oriental Insurance Co. Ltd. Vs. Nargis Janghade, Rukhma Janghade, Sushant Janghade through natural Guardian Mother Repondent No, 1 and Sanjay Chute*, (2011) ACJ 1056 : (2010) 2 BomCR 140 : (2010) 112 BOMLR 413 : (2010) 1 MhLj 326 . In the rulings cited on behalf of the respondent, in relation to settled legal position at interim stage of compensation claim u/s.140r/w.166 of the Motor Vehicles Act, 1988, it was held that, at ad interim stage, the victim need not prove negligence or default of the owner or any other person. Once it is shown that the driver is involved in the accident caused by an insured motor vehicle, relief against Insurer or owner has to be allowed to provide expeditious relief to victim. Therefore, both owners and Insurers are made jointly liable to pay interim no fault compensation u/s.140 of the Act. It was held that although liability of Insurer u/s.140 of the Act is not direct, it may arise vicariously if owner of the insured vehicle is liable to pay compensation. Assuming for the sake of argument that ultimately in the claim petition even if it is held that the Insurer is not liable to compensate the claimant, it is possible for the Insurer to recover amount paid by way of compensation at an interim stage from the owner or/and driver of offending motor vehicle in view of settled position of law.

12. Legal position in view of Chapter VIII -Liability without fault in certain cases under the Motor Vehicles Act, 1988 is provided for u/s.140 of the Act on the principle of no fault. Therefore, in any case, wherein it is prima facie shown that death or permanent disablement has resulted from the motor vehicle accident, the owner of the offending motor vehicle shall be primarily liable to pay compensation if the vehicle is insured as on the date of accident. According to the owner of the offending motor vehicle, as on the date of accident, the insurer does have joint and several liability along with the owner/driver of the offending motor vehicle to pay compensation in the sum of Rs.50,000/- in case death has resulted from the motor vehicle accident and in the sum of Rs.25,000/- if permanent disablement has resulted arising from the motor vehicle accident. In such cases, it is not necessary for the claimant to plead and establish that death or permanent disablement has resulted due to any wrongful act, negligent or default of the owner of the offending motor vehicle. The object of the provision u/

s.140 of the Motor Vehicle Act is to provide immediate help to the victim of the motor vehicle accident or his or her dependents to meet the urgent expenses and unless owner of the offending motor vehicle and/or insurer and/or driver of the offending motor vehicle are jointly and severally held liable to pay compensation. At interim stage, the object of law to provide immediate compensation to the victim of motor vehicle accident or dependents of the victim would be defeated. Ultimately, it is possible for the Insurer to plead that Insurance contract was not binding upon it or on the ground that it was fake or bogus or on any such ground. It is for the Insurer to establish the pleading at final hearing of the motor accident claim petition filed u/s.166 of the Motor Vehicles Act, 1988 so that the amount paid by way of interim compensation can be recovered from the owner and/or driver of the offending motor vehicle. The object of Section 140 can be served if immediate compensation is made available on the principle of "no fault liability" to the victim of the motor vehicle accident or dependents of victim immediately or without delay because the trial though heard in accordance with summary procedure, may consume a lot of time for the parties to adduce evidence as it is a fact of common knowledge and experience that many such cases in respect of motor vehicle accidents are pending in the Tribunal established or constituted under the Motor Vehicle Act, 1988. Considering the problem of increasing pendency of motor vehicle accident cases, the view which is taken by the learned Chairman of the Motor Vehicle Claims Tribunal, Chandrapur appears sustainable.

13. I agree with the view that the fact of breach of terms and conditions of the insurance policy and the fact of fake and bogus policy need not be considered at the interim stage and shall be decided at the time of final decision of the Claim Petition. The learned Chairman proceeded to award interim compensation on the basis that there was prima facie material to show that the driver of the offending motor vehicle was driving it rashly and negligently and the accident took place, as a result of which the deceased has sustained fatal injuries and died. In my view, therefore, considering the provision u/s.140 of the Motor Vehicles Act and its social purpose to provide minimum assistance in the form of interim compensation to the victim of motor vehicle accident or dependents of the victim u/s.140 of the Motor Vehicles Act, 1988, liability is created on the basis of no fault. In other words, claimant need not plead and prove the liability of the Insurer and owner of the offending motor vehicle strictly in accordance with law. It is always open for the Insurer making interim payment of compensation u/s.140 of the Act to recover the amount paid by way of compensation at interim stage from the owner of the offending motor vehicle responsible in the motor vehicle accident. The pleadings by the Insurer and the evidence led by the Insurer on record can surely be considered by the Tribunal constituted under the Act at final hearing of the Motor Accident Claim Petition u/s.166 of the Motor Vehicle Act. The Tribunal can make necessary final award in respect of such Claim Application u/s.166 of the Act on merits and in accordance with law.

14. For these reasons, in my opinion, no sufficient ground has been made out to

interfere with the impugned order passed u/s.140 of the Motor Vehicles Act, 1988 on no fault liability basis. However, it is desirable that the numerous Motor Accident Claim Petitions filed u/s.166 of the Motor Vehicles Act are required to be heard expeditiously as early as possible preferably within six months from the date of such Claim Petition. In the result, therefore, the appeal is dismissed with the aforesaid directions.