IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD

FIRST APPEAL NO. 106 OF 1999

Laxman Budha Shivde,
Age Major, Occu. Business,
R/o. Shinde, Tq. Nandurbar,
Dist. Dhule.
(Now District Nandurbar) **....Appellant.**
(Ori. Resp.No. 1)

Versus

1. Wangibai Lala Pawara,
Age 48 years,

2. Dedibai Singa Pawara,
Age 73 years,

(In view of order dated 18.6.2008
appeal is abated as against
respondent Nos. 1 and 2)

3. Chima Lala Pawara,
Age 32 years,

4. Vikla Lala Pawara,
Age 29 years,

5. Ramsing Lala Pawara,
Age 26 years,

6. Rabin Lala Pawara,
Age 23 years,

7. Chikli Lala Pawara,
Age 20 years,

8. Bhika Lala Pawara,
Age 23 years,

9. Funti Lala Pawara,
Age 21 years,

10. Kunchya Lala Pawara,

Age 18 years,

All R/o. Harankhuri, Tq. Dhadgaon,
Dist. Dhule, Now Nanurbar. **.....Respondents (Ori. Petitioners)**

11. Vinod Pandharinath Shimpi,
Age Major, Occu. Driver,
R/o. Dhadgaon, Tq. Dhadgaon,
Dist. Dhule.

(As per order dt. 3.3.2009 appeal
is dismissed as against R. 11) **....Respondents. (Ori. Resp. No. 2)**

12. National Insurance Company Ltd.
Rana-Pratap Chowk, Dhule. **....Respondents. (Ori. Resp. No. 3)**

Mr. C.R. Deshpande, Advocate for appellant.

Mr. B. R. Warma, Advocate for respondent Nos. 3 to 7.

CORAM : T.V. NALAWADE, J.
DATED : 7th December, 2015.

JUDGMENT :

1) The appeal is filed by owner of the vehicle to challenge the judgment and award of Claim Petition No. 247/1992, which was pending before the Claims Tribunal, Dhule. In Claim Petition filed in respect of one death, the Tribunal has awarded the compensation of Rs. 63,000/-. The amount of Rs. 25,000/- was already paid to the claimants under the principle of 'no fault' by the Insurance Company. In the main proceeding, the proceeding filed on the principle of 'fault', under section 166 of Motor Vehicle Act, the Tribunal held that there has been breach of conditions of policy and so, the Tribunal has directed the

owner of the vehicle to pay the compensation. As the amount of Rs. 25,000/- is already paid by the Insurance Company and it is collected by the claimants, right is given to the Insurance Company to recover this amount under the same award with interest from the owner of the vehicle, present petitioner. The owner has challenged the decision as the Insurance Company is given right to recover the amount paid under the principle of 'no fault' from the owner. Both the sides are heard.

2) The learned counsel for owner placed reliance on some reported cases. In the case reported as **2007 (4) Mh.L.J. 543 (SC) [Yallwwa (Smt.)and Ors. Vs. National Insurance Co. Ltd. and Anr.],** the Apex Court has laid down that the order made under section 140 of the Motor Vehicle Act, 1988 is award and it is appealable under section 173 of this Act. There cannot be dispute over this proposition. Reliance is placed on the observations made by the Calcutta High Court in a case reported as **AIR 2010 CALCUTTA 19 [Prakash Chandra Biswas v. New India Assurance Co. Ltd. and Anr.].** In this case, the Calcutta High Court held that the order made under section 140 of the Motor Vehicle Act cannot be reopened in a proceeding filed under section 166 of M.V.Act.

3) The Apex Court has only held that the order made under section 140 of M.V. Act can be challenged by filing appeal as provided in section 173 of the M.V. Act. It is not laid down that the liability of Insurance Company to pay compensation cannot be considered in a proceeding filed under section 166 of M.V. Act to that extent again. The proceeding filed under section 140 of M.V. Act needs to be decided in summary manner and time limit is given for deciding such proceeding. This is a social legislation and when the order under section 140 of M.V. Act is made and defence of breach of conditions of policy is taken at the time of deciding the liability under section 140 of M.V. Act, the Court considers the rival contentions and papers on the basis of which the parties contest and defend the matter. At the most, some affidavits are filed. Thus, there is no trial in detail of the defence that there has been the breach of conditions of policy. When the fact of the policy is admitted by the Insurance Company, the law is well settled that even in case of breach of conditions of policy, the Insurance Company needs to pay the compensation first and it is entitled to recover the amount paid from the owner. It is the order of interim nature.

4) In view of the aforesaid circumstances, with due respect to the aforesaid decision of the High Court, this Court

holds that it is always open to Insurance Company to prove the breach of conditions of policy in the main proceeding, proceeding filed under section 166 of M.V. Act and it has right to prove that it is entitled to recover the amount from the owner of the vehicle. This amount includes the amount already paid under principle of 'no fault' also. Thus, the Tribunal has not committed any error in giving such right to Insurance Company in the present matter. There are no merits in the present matter.

5) In the result, the appeal stands dismissed.

[T.V. NALAWADE, J.]

ssc/