IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 2342 OF 2012
WITH
CIVIL APPLICATION NO. 14355 OF 2012
AND
CIVIL APPLICATION NO. 12484 OF 2015

Bajaj Allianz General Insurance Co. Ltd. .. Appellant
GE Plaza, Airport Road, Yerwada, Pune
Through its Branch Manager,
2nd Floor, Rajendra Bhavan,
Adalat Road, Aurangabad – 431 001.

Versus

1. Babasaheb s/o. Sadashiv Samudra .. Respondents
   Age. 15 years, Occ. Education,
   Being Minor through his Guardian
   Sau. Mandabai Sakharam Salve,
   Age. 61 years, Occ. Household,
   R/o. Salve Vasti, Jawala Shivar,
   Jawala, Tal. Jamkhed, Dist.
   Ahmednagar.

2. Buwasaheb s/o. Machindra Navsare
   Age. 46 years, Occ. Business & Agri.,
   R/o. Navsarwadi, Tal. Karjat,
   Dist. Ahmednagar.

Mr. S.G. Chapalgaonkar, Advocate for the appellant.
Mr. A.D. Aghav, Advocate for respondent No.1.
Mr. R.K. Temkar, Advocate for respondent No.2.

CORAM : A.M. BADAR,J.
DATED : 30.11.2015

ORAL JUDGMENT :-

1. Heard.

2. Admit. At the request of learned Counsel appearing for the parties, taken up for final hearing as R & P is received by the Court.

3. This is an appeal under section 173 of the Motor Vehicles Act, 1988, by the insurer of Mahindra Pickup Maxi truck bearing registration No. MH-16-Q-7198, challenging award of the learned Member, Motor Accident Claims Tribunal, Ahmednagar dated 17.09.2012 in M.A.C.P. No.441 of 2011, thereby directing owner as well as appellant-insurer to pay compensation of Rs.50,000/- towards 'No Fault Liability' on account of death Atul Sadashiv Samundra in vehicular accident caused by the said Mahindra Pickup Maxi truck.

4. Brief facts leading to institution of present

appeal can be summarized thus :-

. It is case of claimant/respondent No.1 herein that his brother namely Atul Sadashiv Samudra was returning from school. At that time, Mahindra Pickup Maxi truck bearing registration No. MH-16-Q-7198 owned by present respondent No.2 came and gave lift to Atul. During the course of journey, accident occurred because of rash and negligent driving of driver of said Mahindra Pickup Maxi truck causing death of Atul. With these averments along with claim petition under section 166 of the Motor Vehicles Act, claimant/respondent No.1 filed an application under section 140 of the Motor Vehicles Act, 1988 claiming compensation of Rs.50,000/- towards 'No Fault Liability' incurred by owner as well as insurer of the said Mahindra Pickup Maxi truck.

5. The application came to be opposed by filing reply by the insurer/present appellant. It is contended therein that the motor vehicle bearing registration No. MH16-Q-7198 is goods vehicle having public carrier permit

and it was not authorized to carry any passenger, it being goods vehicle. Hence, according to insurer, in terms of policy of insurance, which is in respect of goods vehicle, liability even on account of no fault cannot be fasten on the insurance company.

6. After hearing the matter, the learned Tribunal by impugned award dated 17.09.2012 allowed application with direction to owner as well as insurer to pay compensation of Rs.50,000/- to the claimant within one month of the order. In para 7 of impugned award, the learned Tribunal gave cryptic finding that at the stage of deciding application under section 140 of the Motor Vehicles Act, it is not necessary to prove whether terms and conditions of contract of insurance are breached or not.

7. Heard learned Counsel Mr. S.G. Chapalgaonkar appearing for appellant/insurance company. By relying on judgments in the case of **Yallwwa (Smt.) & ors. Vs.**

National Insurance Co. Ltd., reported in 2007 (4) Mh.L.J.543, United India Insurance Co. Ltd. Vs. Sarjerao & Ors. reported in AIR 2008 S.C.460(1) and National Insurance Co. Ltd. Vs. Anand Sawant and ors. reported in 2009 ACJ 216, he submitted that defence of breach of terms and conditions of the contract of insurance is available with the insurer even at the time of deciding application under section 140 of the Motor Vehicles Act. In submission of learned Counsel for the appellant, as undisputedly deceased was travelling in goods carriage vehicle, insurance company ought not to have been made liable for indemnifying insurer on account of 'No Fault Liability' incurred by him.

8. As against this, learned Counsel appearing for respondent No.1/original claimant submitted that as petition was for 'No Fault Liability' learned Tribunal was justified in making insurance company liable to pay compensation. Learned Counsel appearing for respondent No.2/owner of Mahindra Pickup Maxi truck, submitted that

instead of deciding the application under section 140 of the Motor Vehicles Act, learned Tribunal be directed to decide the claim on merit.

9. Upon hearing rival submissions and on perusal of record and proceedings, let us determine whether insurance company can take up defence of breach of terms and conditions of contract of insurance at the preliminary stage and whether in this case, it can be made liable to pay compensation on account of 'No Fault Liability'.

10. Section 140 of the Motor Vehicles Act is in Chapter 10, which deals with liability without fault in certain cases. As per sub-section (4) of section 140 of the Motor Vehicles act, claim for compensation made therein cannot 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. Contributory negligence if any of the deceased or

injured, in such claim cannot be considered for reducing quantum of compensation fixed therein.

11. In the instant case, pleadings in petition under section 140 of the Motor Vehicles Act makes it abundantly clear that the vehicle involved in the accident was a goods carriage. Similarly, perusal of said petition makes it clear that deceased Atul was a school going boy returning from the school on foot. Case of the claimant is to the effect that driver of the said Maxi truck gave lift to Atul and consequently Atul met with death in the vehicular accident caused by said truck. No other vehicle was involved in the said accident.

12. Thus, it is case of claimant that deceased was travelling in goods carriage. Cover note placed on record do show that the vehicle was Maxi truck used for carriage of goods. In the matter of **Yalawwa (Smt.) (Supra)**, Hon'ble Supreme Court had an occasion to examine somewhat similar situation and it is held therein that when the

defence of breach of terms and conditions of policy is raised, then same can be exmined even at the stage of deciding application for 'No Fault Liability'. Hon'ble Supreme Court made it clear that section 140 of the Motor Vehicles Act, 1988 does not contemplate that the insurance company shall also be liable to deposit the amount while it has no liability whatsoever in terms of contract of insurance. As such, though the learned Tribunal is not required to go into question as to whether driver of the vehicle in question was at fault or not while determining liability of insurance company, the learned Tribunal is required to go into question as to whether insurance company can be made liable to indemnify insured even at the stage of interim award under section 140 of the Motor Vehicles Act. Similar is law laid down in the matter of **National Insurance Co. Ltd. Vs. Anand Savant & Ors. (Supra)** as well as in the matter of **United India Insurance Co. Ltd. Vs. Sarjerao & Ors. (Supra)**.

13. In this view of the matter, impugned award directing appellant insurance company to bear the liability incurred by owner on account of death of Atul under section 140 of the Motor Vehicles Act cannot be justified.

14. Appeal is therefore allowed with following order:-

i. Impugned award dated 17.09.2012 passed by the learned Member, Motor Accident Claims Tribunal, Ahmendagar in M.A.C.P. No. 441 of 2011 between the parties, so far as it relates to directing insurance company to pay compensation under section 140 of the Motor Vehicles ACt, 1988 to the claimant therein/present respondent No.1, is quashed and set aside.

ii. Application under section 140 of the Motor Vehicles Act, 1988 as against appellant/insurance company is rejected.

iii. Record and proceedings be returned to the learned Tribunal. The learned Tribunal is requested to decide the claim expeditiously, as far as as within a period of six months from the date of communication of this order.

iv. As all parties are represented through their learned Counsels, they are directed to appear before the learned Tribunal on 22.12.2015.

v. Amount, if any, deposited by insurance company be refunded to it.

vi. As appeal itself is disposed of, pending civil applications do not survive and same are disposed of.

[A.M. BADAR,J.]