

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

FIRST APPEAL NO.917/2013

The Manager, Bajaj Allianz General Insurance Co. Ltd. Pune

..Versus..

Devidas Chintaman Kamble and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

CORAM : Z.A. HAQ, J.

DATE : 6.1.2015

Heard Shri D.N. Kukday, learned advocate for the appellant and
Shri R.M. Mardikar, learned advocate for respondent no.4. None for
other respondents.

The challenge in this appeal is to the interim award passed by
the Motor Accident Claims Tribunal under Section 140 of the Motor
Vehicles Act granting interim compensation of Rs.50,000/- for the
compensation due to death of Shri Chintaman Fakira Kamble - father
of the claimants.

The learned advocate for the appellant has submitted that the
truck involved in the accident was owned by the respondent no.4,

however, the facts on the record show that it was transferred before the accident and the owner and the driver as on the date of accident are not impleaded as party and, therefore, if the amount is paid to the claimant as directed by the Tribunal it would not be possible for the appellant to recover the amount if it is ultimately found that the Insurance Company is not liable to pay the amount. The defence of the appellant is that the deceased was travelling in the truck unauthorizedly and, therefore, there was a breach of policy and the appellant is not liable to pay the amount of interim compensation.

The submissions made on behalf of the appellant cannot be considered at this stage inasmuch as the adjudication on the point as to whether the deceased was travelling unauthorizedly in the truck cannot be adjudicated in these miscellaneous proceedings under Section 140 of the Motor Vehicles Act. I do not see any reason to interfere with the impugned award which is in consonance with the object of Section 140 of the Motor Vehicles Act. The appeal is, therefore, dismissed. In the circumstances, the parties to bear their

own costs.

The learned advocate for the appellant submits that while filing the appeal the amount of Rs.25,000/- is deposited. It is submitted that the amount be permitted to be withdrawn so that it can be deposited before the Tribunal. The appellant is permitted to withdraw the amount of Rs.25,000/- and the undertaking given on behalf of the appellant that the amount as per the impugned award would be deposited before the Tribunal within one month is accepted. On such deposit being made before the Tribunal, the amount shall be paid to the claimants as per the impugned award. The copy of this order be sent to the Tribunal for necessary information.

C.A.F. NO.828/2012

In view of disposal of the appeal, the civil application is rendered infructuous and is disposed of accordingly.

JUDGE