

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

FIRST APPEAL NO. 823 OF 2009

New India Assurance Company
Limited, Divisional Office No.1,
Adalat Road, Aurangabad,
through its Senior Divisional
Manager, Shri Vishwas s/o
Bansi Gaikwad, age 53 years,
occ. Service, R/o Aurangabad ..Appellant
[Orig.Resp.No.2]

VERSUS

- 1] Rukhmanbai w/o Bandu Jadhav,
age 40 years, occ. Nil,
R/o At Khadki Tanda, Aadul,
Tq. Paithan, Dist. Aurangabad,
- 2] Shaikh Gujran Shaikh Razzaq,
age 50 years, occ. Nil,
R/o Deogaon Rangari,
Tq. Kannad, Dist. Aurangabad ...Respondents
[No.1 Orig. Claimant
No.2 Orig.Resp.no.1]

FIRST APPEAL NO. 893 OF 2009

New India Assurance Company
Limited, Divisional Office No.1,
Adalat Road, Aurangabad,
through its Senior Divisional
Manager, Shri Vishwas s/o
Bansi Gaikwad, age 53 years,
occ. Service, R/o Aurangabad ..Appellant
[Orig.Resp.No.2]

VERSUS

- 1] Smt. Savitabai d/o Harichandra Jadhav,
age 20 years, occ. Nil,
R/o At Khadki Tanda, Aadul,
Tq. Paithan, Dist. Aurangabad,
- 2] Shaikh Gujran Shaikh Razzaq,
age 50 years, occ. Nil,

R/o Deogaon Rangari,
Tq. Kannad, Dist. Aurangabad ...Respondents
[No.1 Orig. Claimant
No.2 Orig.Resp.no.1]

FIRST APPEAL NO. 894 OF 2009

New India Assurance Company
Limited, Divisional Office No.1,
Adalat Road, Aurangabad,
through its Senior Divisional
Manager, Shri Vishwas s/o
Bansi Gaikwad, age 53 years,
occ. Service, R/o Aurangabad ..Appellant
[Orig.Resp.No.2]

VERSUS

- 1] Padmabai w/o Harichandra Jadhav,
age 50 years, occ. Nil,
R/o At Khadki Tanda, Aadul,
Tq. Paithan, Dist. Aurangabad,
- 2] Shaikh Gujran Shaikh Razzaq,
age 50 years, occ. Nil,
R/o Deogaon Rangari,
Tq. Kannad, Dist. Aurangabad ...Respondents
[No.1 Orig. Claimant
No.2 Orig.Resp.no.1]

FIRST APPEAL NO. 895 OF 2009

New India Assurance Company
Limited, Divisional Office No.1,
Adalat Road, Aurangabad,
through its Senior Divisional
Manager, Shri Vishwas s/o
Bansi Gaikwad, age 53 years,
occ. Service, R/o Aurangabad ..Appellant
[Orig.Resp.No.2]

VERSUS

- 1] Mathurabai d/o Harichandra Jadhav,
age 19 years, occ. Nil,
R/o At Khadki Tanda, Aadul,
Tq. Paithan, Dist. Aurangabad,

2] Shaikh Gujran Shaikh Razzaq,
age 50 years, occ. Nil,
R/o Deogaon Rangari,
Tq. Kannad, Dist. Aurangabad ...Respondents
[No.1 Orig. Claimant
No.2 Orig.Resp.no.1]

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Mr. M.M.Ambhore, advocate for Applicant
Mr. G.R.Syed, advocate for Respondent no. 1
Respondent no.2 served

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CORAM : SUNIL K.KOTWAL, J.

**DATE OF RESERVING
THE JUDGMENT : 03.10.2018
DATE OF PRONOUNCEMENT
OF JUDGMENT : 09.10.2018**

J U D G M E N T :

New India Assurance Company Limited has preferred these appeals against the order, passed by the Motor Accident Claims Tribunal, Aurangabad in Motor Accident Claim Petitions No. 773 of 2006, 772 of 2006, 774 of 2006 and 771 of 2006, respectively, passed under Section 140 of the Motor Vehicles Act, 1988 (hereinafter referred to as, 'the MV Act'), awarding interim compensation.

2. Original claimants are respondent no.1 in the respective appeals. Respondent no.2 is original owner of the offending vehicle.

3. Since these all appeals arise in respect of motor vehicular accident, dated 13.9.2006 by one and the same offending vehicle, bearing registration No. MH-20/AA-9750, these appeals are disposed of by this common judgment.

4. Facts leading to institution of these appeals, in brief, are that, on 13.9.2006 the claimants were traveling by offending tempo as labours of hirer of the tempo, which turn turtled, resulting into permanent disabilities to the claimants due to accidental injuries. Therefore, all the claimants filed respective claim petitions under Section 166 of the Motor Vehicles Act as well as moved application under Section 140 of the MV Act for interim compensation. All applications under Section 140 of the MV Act are allowed by the Tribunal and awarded interim compensation of Rs.25,000/- each to all the claimants.

5. Being insurer of this offending vehicle, these appeals are preferred by the insurance company against the impugned judgment and order.

6. Heard Shri Ambhore, learned counsel for the appellant and Shri G.R.Syed, learned counsel for respondent no.1/original claimant.

7. Learned counsel for the appellants submits that from the recitals of the copy of the first information report, it emerges that the claimants were traveling by offending tempo as labours of Shaikh Ibrahim Bagwan to go to the sweet lime orchard for plucking the fruits. He submits that the claimants being gratuitous passengers traveling by goods vehicle are not covered by the policy of insurance issued by the appellant insurance company. He submits that the order, passed by the Tribunal is bad in law and the insurance company deserves to be exonerated from any liability. He placed reliance on the judgment in the case of **"National Insurance Company Limited Vs Cholleti Bharatamma and ors."** [AIR 2008 SC 484], **"United India Insurance Company Limited vs Sarjerao and others"** [AIR 2008 SC 460] and **"National Insurance Company Limited vs Kaushalaya Devi and**

others" [(2008) 8 SCC 246].

8. Learned counsel for respondent no.1/claimants submits that while considering the no fault liability under Section 140 of the Motor Vehicles Act, rash or negligent driving by driver of the offending vehicle cannot be considered. His next submission is that at this premature stage, the Tribunal cannot determine whether there was breach of conditions of the policy of the insurance. He prays for dismissal of the appeals. He has placed reliance on the judgment in the case of **"Indira Devi vs Bagada Ram and Anr."** [2010 AIR SCW 4924], **"Eshwarappa alias Maheshwarappa and another vs C.S.Gurushanthappa and another"** [2010 AIR SCW 4918], and **"Smt. Rammurti wd/o R#amprakash Mishra and Ors. Vs Rudresh B. Tiwari through legal heirs and Ors."** [2015 (6) Mh.L.J.305].

9. No doubt, legal position is absolutely clear that while considering the application for grant of interim compensation under Section 140 of

the MV Act, the Tribunal need not go into the inquiry regarding default on the part of the driver. In **Eshwarappa alias Maheshwarappa** (supra), the Apex Court ruled that claim under Section 140 of the MV Act can be made at the beginning or subsequently at any time, as it is independent right given by statute to the claimants. In **Indira Devi vs Bagada Ram** (supra), the Apex Court held that default of the victim for the accident does not deprive him from no fault liability compensation. Expression "no fault" suggests the compensation under Section 140 is regardless of any wrongful act, neglect or default of the person in respect of whose death claim is made. There cannot be two opinions regarding legal position settled by the Apex Court in above cited authorities relied by the learned counsel for original claimants. However, in these appeals, I am bound to consider, though statutory liability to pay interim compensation under Section 140 of the MV Act lies on the owner of the offending vehicle, whether liability can be fastened on insurer of the

offending vehicle to indemnify the owner, though there is breach of condition of the policy of the insurance. The Apex Court in the case of **United India Insurance Co. Ltd. vs Sarjerao** (supra) has considered this aspect in view of law settled by the Apex Court in "**Yallwwa and Ors. Vs National Insurance Co. Ltd. And Anr.**" [2007 (8) SCALE 77]. In the case of **Yallwwa vs National Insurance Co. Ltd.** (supra) in paragraphs 16 to 19 it was observed as follows : -

16. The question which is required to be considered is what would be the meaning of the term award when such a contention is raised. Although in a given situation having regard to the liability of the owner of the vehicle, a claim Tribunal need not go into the question as to whether the owner of the vehicle in question was at fault or not, but determination of the liability of the insurance company, in our opinion, stands on a different footing. When a statutory liability has been imposed upon the owner, in our opinion, the same cannot extend the liability of an insurer to indemnify the owner, although in terms of the insurance policy or under the Act, it would not be liable therefor.

17. In a given case, the statutory liability of an insurance company, therefore, either may be nil or a sum lower than the amount specified under

Section 140 of the Act. Thus, when a separate application is filed in terms of Section 140 of the Act, in terms of Section 168 thereof, an insurer has to be given a notice in which event, it goes without saying, it would be open to the insurance company to plead and prove that it is not liable at all.

18. Furthermore, it is not in dispute that there can be more than one award particularly when a sum paid may have to be adjusted from the final award. Keeping in view the provisions of Section 168 of the Act, there cannot be any doubt whatsoever that an award for enforcing the right under Section 140 of the Act is also required to be passed under Section 168 only after the parties concerned have filed their pleadings and have been given a reasonable opportunity of being heard. A Claims Tribunal, thus, must be satisfied that the conditions precedent specified in Section 140 of the Act have been substantiated, which is the basis for making an award.

19. Furthermore, evidently, the amount directed to be paid even in terms of Chapter-X of the Act must as of necessity, in the event of non-compliance of directions has to be recovered in terms of Section 174 of the Act. There is no other provision in the Act which takes care of such a situation. We, therefore, are of the opinion that even when objections are raised by the insurance company in regard to its liability, the Tribunal is required to render a decision upon the issue, which would attain finality and, thus, the same would be an award within the meaning of Section 173 of the Act.

10. Thus, it becomes clear that while considering the application under Section 140 of the MV Act, the Tribunal and appellate Court must consider whether liability to indemnify the owner of the offending vehicle can be fastened on appellant insurance company, though owner of the offending vehicle has committed breach of condition of the policy.

11. In **National Insurance Co. Ltd. vs Cholletti** (supra), the Apex Court also held that gratuitous passengers traveling by goods vehicle is not covered by the policy of insurance in view of Section 147 of the MV Act. The owner alone is liable to pay the compensation to the claimants. Same view is taken by the Apex Court in the case of **National Insurance Company vs Kausalaya** (supra). In "**Oriental Insurance Co. Ltd. vs Brij Mohan and others**" (2007 (7) SCC 56], it was held that the insurance company has no liability for the death of labours traveling in trolley of the offending vehicle.

12. In the background of above discussed settled position of law, if the facts of the case in hand are considered, from the copy of first information report, dated 13.9.2006, lodged by one of the labour traveling by offending vehicle, it emerges that on the date and time of the occurrence of accident, total 21 labours were traveling by the offending tempo. Subsequently, this tempo turn turtled resulting into injuries to all the claimants. Thus, the claimants being labours of the hirer of the tempo, their risk is not covered by the policy of insurance. Therefore, obviously, the application filed by all the claimants under Section 140 of the MV Act deserves to be dismissed against original respondent no.2 insurance company. However, before parting with the judgment, I must make it clear that respondent no.2 owner of the offending vehicle is certainly liable to pay the interim compensation to the claimants as awarded by the Tribunal. The award, passed by the Tribunal needs to be modified to exonerate the appellant insurance company from the liability fastened against it by the Tribunal.

13. Accordingly, First Appeal Nos. 823 of 2009, 893 of 2009, 894 of 2009 and 895 of 2009 are allowed. The appellant insurance company is exonerated from the liability to pay the compensation to the claimants under Section 140 of the MV Act. The impugned award, passed by the Tribunal, be modified in above terms. Parties to bear their respective costs of the appeals. If compensation amount is deposited in this court, the same be refunded to the appellant, together with accrued interest thereon.

[SUNIL K.KOTWAL, J.]

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