

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

937 FIRST APPEAL STAMP NO.15866/2017
WITH CA/15291/2017 IN FAST/15866/2017

NEW INDIA ASSURANCE CO. LTD, THR ITS BRANCH MANAGER
AURANGABAD
VERSUS
KAMAL AKASH PAWAR AND ORS.

...

Advocate for Appellant : Mr.D.P.Deshpande
Advocate for Respondent No.1 to 4 : Mr.S.S.Dargad

...

CORAM : M.S.SONAK, J.
DATE : 9.1.2018

PER COURT:-

1) Heard Mr.D.P.Deshpande, learned counsel for the appellant and Mr.S.S.Dargad, learned counsel for respondent Nos.1 to 4 (original claimants).

2) The appellant Insurance Company questions order dated 3.11.2016 by which the Tribunal has directed the appellant to pay Rs.50,000/- towards no fault liability. Mr.Deshpande points out that in the original FIR, there was no reference of the vehicle, which is allegedly

involved in the accident. The policy drawn on, which the Tribunal has relied is itself disputed. In these circumstances, Mr.Deshpande submits that no order should have been made as against the Insurance Company.

3) Since, the order is made under Section 140 of the Motor Vehicles Act against no fault liability, there is no reason to interfere with the same on the aforesaid ground. No doubt the appellant will be entitled to urge all these grounds in the proceedings under Section 136 of the Motor Vehicles Act and such grounds will be taken into consideration on their own merits and in accordance with law. However, at this stage, there is no necessity to interfere in the Award, except, clarification that in case, it is ultimately held that the vehicle in question was not at all involved in the accident, the claimants may have to refund such amount to the Insurance Company.

4) Accordingly, the claimants to file an undertaking

before this Court as well as before the Tribunal before withdrawal of the amount, which is stated to be deposited in this Court.

5) Registry to permit withdrawal subject to filing of such undertaking both in this Court as well as before the Tribunal.

6) The Appeal and Civil Application are disposed of in the aforesaid terms.

[M.S.SONAK, J.]