IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 2346 OF 2011
WITH
CIVIL APPLICATION NO. 5043 OF 2011
WITH
CIVIL APPLICATION NO.4879 OF 2016
IN
FIRST APPEAL NO. 2346 OF 2011

Shriram General Insurance Company Limited …Appellant

Versus

Kumar Ganaga @ Ganagamma Ramulu & Anr …Respondents

……

Mr.Nikhil Mehta i/b. KMC Legal Venture for the Appellant.
Mr.S.R.Gupta and Mr. R.B.Gupta for Respondent No.1.

……

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE : **FEBRUARY 13, 2018**

P.C.:

1. Admit. By consent of the parties, the Appeal is heard finally and decided at the stage of admission.

2. This Appeal is directed against the award dated 9th August, 2011 passed by the learned Member, Motor Accident Claims Tribunal, Mumbai in M.A.C.P. No. 2688 of 2010 under Section 140 of the Motor Vehicles Act, 1988. Respondent no.1 i.e., original claimant met with an accident on 25th September, 2010 and she was treated for fracture of tibia. Due to accident, the original claimant has restricted movement of left ankle, deformity of tibia because of mal union. The original claimant has suffered permanent partial disablement in an accident and, therefore, she has filed the claim application under Section 166 of the Motor Vehicles Act through her father. At the stage of hearing of the application under Section 140 of the Motor Vehicles Act, the original claimant produces the document i.e., a certificate showing that motor vehicle no. MH-03-M-8129 was insured with the insurance company i.e., present appellant. The period of policy is from 21st May, 2010 to 20th February, 2011. She has also produced the document consisting the information given by the R.T.O., Mumbai. Thus, it shows that *prima-facie* the offending vehicle was insured with the insurance company i.e., present appellant at the time of accident. The learned Tribunal, after considering the documentary evidence, has allowed the claim

application filed under Section 140 of the Motor Vehicles Act and granted amount of Rs. 25,000/- . Being aggrieved by the said award, the insurance company has filed this Appeal.

3. The learned Counsel for the appellant/ insurance company submits that the offending vehicle was not insured with the insurance company. The policy which is produced before the Court stands in the name of other vehicle and not in the name of offending vehicle.

4. The learned Counsel for respondent no.1 while opposing this Appeal, has supported the award passed by the learned Member of the tribunal.

5. The award under Section 140 of the Motor Vehicle Act was passed in the year 2011. Today, nearly 5 to 6 years have passed. The learned Counsel for the appellant/ insurance company submits that an amount of Rs. 25,000/- has already been deposited by the insurance company. Considering the defence of the appellant/ insurance company, I am of the view that it is matter of evidence and hence, it can be decided at the time of deciding the main application filed under Section 166 of the Motor Vehicles Act. Hence, First

Appeal is disposed of. Civil Applications are also accordingly disposed of. The Tribunal to try and decide the main application within a period of two months from today.

6. All contentions are kept open before the tribunal.

(MRIDULA BHATKAR, J.)