

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

C.A.F. NO.4380/2017
IN
FIRST APPEAL STAMP NO.20924/2017

Bajaj Allianz General Insurance Co. Ltd., Sadar, Nagpur
..Vs..
Vinod S/o Kashinath Agrey and another

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

Court's or Judge's orders

Shri D.N. Kukday, Advocate for the applicant / appellant.

CORAM : Z.A. HAQ, J.
DATE : 5.3.2018.

Heard.

Accepting the explanation given in the application, delay of 277 days in filing the appeal is condoned. The civil application is **allowed** accordingly.
No costs.

FIRST APPEAL STAMP NO.20924/2017

Taken up for hearing.

Heard Shri D.N. Kukday, Advocate for the appellant and Ms. M.H. Pathade, Advocate for the respondent No.1 / claimant.

The appellant / insurance company has challenged the order passed by the Motor Accident Claims Tribunal by which the application (Exh. No.5) filed by the claimant under Section 140 of the Motor Vehicles Act is allowed.

The learned Advocate for the appellant has

submitted that the claimant has made the claim for injury / fracture, pleading that it is suffered by him in the accident which took place on 29th July, 2015, however, the documents on record show that the claimant was hospitalized on 27th July, 2015 for treatment and was discharged on 4th October, 2015 and, therefore, the case made out by the respondent / claimant is false and cannot be accepted.

The Advocate for the respondent No.1 / claimant has pointed out that this defence is not raised before the Tribunal and it is being raised for the first time before this Court.

This appeal is filed against an order passed under Section 140 of the Motor Vehicles Act and the substantive claim petition is pending for adjudication before the Tribunal. At this stage, it would not be appropriate for this Court to examine the issue raised by the appellant specially when the parties have yet to lead evidence to prove their case.

In the facts of the case, I see no reason to interfere with the impugned order. The appeal is **dismissed**. In the circumstances, the parties to bear their own costs.

The amount deposited by the appellant be given to the respondent No.1 / claimant alongwith interest on it, if any.

JUDGE