IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

915 FIRST APPEAL NO.661 OF 2018

Bajaj Allianz General Insurance Co. Ltd.,
The Branch Manager,
G.E. Plaza, Airport Road, Yerwada,
Pune.

Through its Authorized Signatory/Branch Manager,
2nd Floor, Rajendra Bhavan,
Adalat Road, Aurangabad – 431 001.

… **Appellant**.

… **Versus** …

1 Vivek Govindlal Sharma,
Age 47 yrs., Occ. Business,
R/o Bajarpeth Wambori,
Tq. Rahuri, Dist. Ahmednagar.

2 Nitin Sahebrao Gite,
Age 42 yrs., Occ. Transport,
R/o Lohasarkhandgaon, Tq. Pathardi,
Dist. Ahmednagar.

… **Responents**.

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Mr. S.G. Chapalgaonkar, Advocate for the appellant

Mr. A.D. Ostwal, Advocate for the respondent No.1

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 25th SEPTEMBER, 2019

JUDGMENT :

1 Present appeal has been filed by the original respondent No.2 challenging the order below Exh.5, which was under Section 140 of Motor Vehicles Act, 1988 in M.A.C.P. No.130/2015 by learned Member, Motor Accident Claims Tribunal, Ahmednagar dated 29.09.2016.

2 The facts giving rise to the application, in short, were that the claimants i.e. present respondent No.1 was proceeding on motorcycle with his nephew Nikhil on 16.04.2014 from Ahmednagar-Aurangabad road at about 3.15 p.m.. When they were near Warulwadi Phata, they were dashed by a pick up van bearing registration No.MH 16/AE-8492, which was a Tata 407 vehicle. It has been contended by the claimant that the driver of the pick up van was rash and negligent and as a result of his negligence the accident took place. The claimant as well as his nephew sustained serious injuries. They were shifted to Anand Rishiji Hospital, Ahmednagar, wherein it was found that claimant sustained compound fracture Tibia fibula right and deep wound to left leg. Thereafter, he was shifted to hospital at Pune. Surgery was done, nailing was done, rod was inserted. It is stated that he has 25% of permanent physical disability. For claiming compensation he has filed the application under Section 166 of the Motor Vehicles Act, in which he has filed the application under Section 140 of the Motor Vehicles Act for getting statutory amount in compensation of Rs.25,000/-.

3 Matter proceeded ex parte against respondent No.1.

4 The insurance company filed written statement denying all the averments in the petition. The involvement of the vehicle itself was challenged. So also, the allegations regarding negligence on the part of driver of pick up van bearing No.MH 16/AE-8492. A specific defence has been raised, that the First Information Report itself is belated. Vehicle number was given differently and then the vehicle number has been changed. It is stated, that only in order to suit a vehicle which is insured, the number of vehicle, which is owned by respondent No.1 and insured with it, has been given. Therefore, according to the insurance company, a false claim has been filed as against the insurance company.

5 It appears that at the time of hearing the application Exh.5, the learned Tribunal had heard both sides and then it is stated that documents have been perused. After hearing both sides the application came to be allowed. Both the respondents were directed to pay compensation of Rs.25,000/-, jointly and severally, to the claimants, within a period of 30 days, and in case of failure to deposit that amount, it would be along with interest @ 7.5 % per annum from the date of application till actual realization of the entire amount. This order is challenged in this appeal.

6 Heard learned Advocate Mr. S.G. Chapalgaonkar for the appellant and learned Advocate Mr. A.D. Ostwal for respondent No.1. Respondent No.2 though served remained absent.

7 It has been vehemently submitted on behalf of the appellant that the perusal of police papers would show that involvement of Tata 407 bearing registration No.MH 16/AE-8492 is deliberately made, though in the First Information Report vehicle mentioned was pick up van bearing No.MH 06/G-3275. The First Information Report has been lodged after two months by the injured and no proper reason can be said to have been given for that belated information. The learned Tribunal did not consider, that even for deciding an application under Section 140 of the Motor Vehicles Act, which can be said to be on a prima facie evidence, a clear finding will have to be given regarding the involvement of the vehicle. A very cryptic order has been passed. The police papers definitely show that there was a collusion in between the claimant and the police as well as the owner of the vehicle.

8 Per contra, the learned Advocate appearing for the respondent No.1 submitted that no fault can be found in the order, that has been, passed by the learned Tribunal. Clearly, there is a mention that he has perused all the police papers, which was in fact, the prima facie evidence before the learned Tribunal. Those documents clearly showed that the vehicle, which

was involved in the accident, was Tata 407 bearing No.MH 16/AE-8492. It was duly insured with the appellant on the date of the accident and therefore, the insurance company is liable, jointly and severally, with respondent No.1, who did not contest the application.

9 At the outset, it can be seen that all the points, which have been raised by the insurance company, appears to have not been considered by the learned Tribunal. Only one line has been stated that he has heard the learned Advocate appearing for the insurance company, but then which points he had raised, have not been stated. Definitely, those points would have been inconsonance with the written statement, that has been filed by the insurance company. The impugned order says that the learned Tribunal had considered First Information Report, supplementary statement of the claimant, spot panchnama, medical documents of the claimant and the disability certificate. There is absolutely no discussion regarding the point of delay in lodging the First Information Report. Perusal of the First Information report would show, that number of the offending vehicle was given to the claimant by his villager Chandrakant Gholap. It was a pick up van bearing registration No.MH 06/G-3275. But then in the supplementary statement, which was recorded next day to the First Information Report, shows that he comes with the another theory and says, that he came to know

on that day that the vehicle, which gave dash to his motorcycle, was in fact, Tata 407 bearing No.MH 16/AE-8492. He has not stated that, that correction was made by Chandrakant Gholap, the source of fresh information has not been stated by him in his supplementary statement. In fact, perusal of the spot panchnama was an empty formality, for the simple reason, that it has been prepared on the spot of accident, after the period of two months. Naturally, the situation immediately after the accident, was not present at the spot, at the time of accident. The spot is stated to have been shown by the claimant himself by going to the spot. No other document was on record on the point of involvement of the vehicle. Therefore, taking into consideration all these aspects i.e. basically point of delay raised by the insurance company, the learned Tribunal ought to have considered this point and given its findings. Though at the stage of deciding an application under Section 140 of the Motor Vehicles Act, the Tribunal is required to consider prima face evidence, that has been, produced on record, yet that does not contemplate that a cryptic order is to be passed. The learned Advocate appearing for the appellant has rightly relied on the decision in **Smt. Yallawwa vs. National Insurance Company, 2007(3) T.A.C. 1**, wherein, it has been held that the Tribunal must consider all the defences, those are available for the insurance company or to the owner of the vehicle at the time of passing order under Section 140 of the Motor Vehicles Act. Therefore, taking into consideration those documents, which were before the learned Tribunal, when the application was decided, would show that a proper explanation would have been given by the claimant himself or it would have been extracted in the evidence regarding the involvement of the vehicle. Merely because supplementary statement has been recorded on the next date, it ought not to have been considered as a peace of evidence showing the involvement of the vehicle, whose number has been subsequently given. In fact, it ought to have been the course for the Tribunal to deal with that application along with the main petition itself, when certain explanations were necessary, which could have been given at the time of evidence only. Such a cryptic order cannot be allowed to be sustained.

10 The Record and Proceedings was called and from the Record and Proceedings it appears that the claimant has led the evidence and completed his side. It will not be appropriate for this Court to take into consideration that evidence on record and decide this appeal. Now, the petition is for the evidence of the respondent. Therefore, it would be appropriate to direct the Tribunal to decide the application under Section 140 of the Motor Vehicles Act along with the main petition itself. It would be in the interest of both the parties and therefore, this Court by refraining itself by making further observations would like to direct the Tribunal accordingly. Hence, following

order.

ORDER

1 Appeal is hereby partly allowed.

2 The order and Award passed by Member, Motor Accident Claims Tribunal, Ahmednagar on application Exh.5 under Section 140 of Motor Vehicles Act in M.A.C.P. No.130/2015 on 29.09.2016 is hereby set aside.

3 The said application is hereby remanded to the Tribunal with direction, that it should be decided along with the main petition itself.

4 Since the stage of the petition is for leading evidence by the respondents, it is expected that the Tribunal would decide the matter within a period of 4 months.

5 Needless to say that the Tribunal should not get influenced by any observations made in this Judgment.

6 Amount be refunded.

(Smt. Vibha Kankanwadi, J.)

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