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

**FIRST APPEAL NO.128 OF 2017**

United India Insurance Company Ltd.,
Through its Branch Manager,
Branch at Chhatrapati Sankul, Beed.

Through its Authorized Signatory/Divisional
Manager, Divisional Office No.1,
Osmanpura, Aurangabad.

… **Appellant**.

… **Versus** …

1 Trimbak Dadarao Phad,
Age 63 yrs., Occ. Nil,

2 Vaijinath Trimbak Phad,
Age 37 yrs., Occ. Agri.,

3 Govind Trimbak Phad,
Age 34 yrs., Occ. Agri.,

All are r/o Daundwadi, Tq. Ambajogai,
Dist. Beed.

4 Namdeo Vaijinath Gitte,
Age : major, Occ. Business,
R/o Nandagaul, Tq. Parli Vaijinath,
Dist. Beed.

… **Respondents**.

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

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**CORAM : SMT. VIBHA KANKANWADI, J.**

**RESERVED ON : 03rd JULY, 2019**

**PRONOUNCED ON : 22nd JULY, 2019**

**JUDGMENT :**

1 Present appeal has been filed by the original respondent No.2-insurance company challenging the order passed on Exh.5 in M.A.C.P. No.98/2014 by learned Member, Motor Accident Claims Tribunal, Ambajogai, Dist. Beed, whereby the said application under Section 140 of Motor Vehicles Act, 1988 came to be allowed against the appellant.

2 The factual matrix leading to the appeal are that the present respondent Nos.1 to 3 filed petition for compensation under Section 166 of M.V. Act for getting compensation on account of death of one Indirabai w/o Trimbak Gitte, who had expired in a motor vehicle accident on 28.11.2012. It was contended that deceased was the wife of claimant No.1 and mother of claimant Nos.2 and 3. She was proceeding to Parli in jeep bearing No.MH 19/L-1733 on 28.11.2012. The said jeep was owned by respondent No.1 and it was insured with respondent No.2 on the date of accident. It is stated that due to the negligence on the part of driver of jeep, it gave dash to one Ape rickshaw bearing No.MH 23/H-6441 and in

that accident Indirabai sustained grievous injuries. She was taken to hospital, however, she succumbed to those injuries on the same day. The claimants have claimed compensation of Rs.4,00,000/- and in that application they had filed application for No Fault Liability under Section 140 of M.V. Act.

3 Respondent No.2-present appellant filed say-cum-written statement. Age, occupation and income of the deceased was denied. It was denied that she was travelling from the vehicle owned by respondent No.1 on the day of accident. Statutory defences were taken contending that the jeep was a private vehicle and it was used for carrying passengers on fair and therefore, there is breach of terms of policy. It was also stated that the driver of the jeep was not holding valid and effective driving licence on the date of the accident.

4 Taking into consideration the documents on record and hearing both sides the learned Member, Motor Accident Claims Tribunal, Ambajogai allowed the application and directed respondent Nos.1 and 2 to pay amount of Rs.50,000/-, jointly and severally, to the claimants. This order is under challenge in this appeal.

5 Heard learned Advocate Mr. S.G. Chapalgaonkar for appellant. Though the respondents were served, nobody appeared. It

has been vehemently submitted on behalf of the appellant that after the impugned order was passed, it was revealed to the insurance company that the insurance policy, that was produced on record, is in fact a fake policy. On verification of GENISYS system of the company it was revealed that the policy is issued by mis-utilization of premium amount from scroll balance of Indo-Mobile Sales and Services Private Limited. Cheque worth Rs.2,06,979/- was given by the said company which is a dealer business agency, who issues only new vehicle package policies. The present policy in this case covered liability only purportedly issued only against payment received from Indo-Mobile Sales and Services Private Ltd. and further verification of the scroll revealed that the proposal of the policy was incorporated in the data on 04.12.2012 and date of collection of premium is shown as 06.12.2012. Accident took place on 28.11.2012. Under such circumstance, now it is tried to be contended that the respondent No.1/owner of the vehicle in collusion with officers of the insurance company obtained anti dated insurance policy, after the accident by using the scroll/balance of premium deposited by tie-up dealer and therefore, on this count the appeal has been filed to get the said impugned order set aside and prayed for exonerating the insurance company. The learned Advocate appearing for the appellant also relied on the order passed by this Court (Hon'ble Shri.

Justice P.R. Bora) in Civil Application No.3400 of 2016 in First Appeal Stamp No.7530 of 2016 dated 24.10.2016, wherein under similar circumstances this Court had come to the conclusion that the effect of the impugned order should be kept in abeyance and the Trial Court was directed to dispose of the claim petition itself and the withdrawal of the amount was subject to the final outcome of the claim petition.

6 Taking into consideration the submissions made, following point arise for determination. Findings and reasons for the same are as follows.

> “Whether the learned Tribunal erred in allowing petition under Section 140 of Motor Vehicles Act ?”

7 At the outset, the legal position as it emerges from the decision in **Rajendra Ramkrishna Govardhan vs. Kalawati Sitaram Yedme and others, 2010(6) Bombay Cases Reporter 91** and **Oriental Insurance Company Ltd. vs. Nargis Premlal Janghade and others, 2010(2) Bom. C.R. 140** can be stated that "At ad-interim stage of compensation i.e. claim under Section 140 of Motor Vehicles Act, the victim need not prove negligence or default of the owner or any other person. Once it is shown that the driver is involved in the accident caused by an insured motor vehicle, relief against insurer or owner has to

be allowed to provide expeditious relief to victim." No doubt, the above said legal position would come into effect, when there is admitted insurance policy cover to the offending vehicle. Further, the insurance company is definitely justified in taking statutory defences those are available to it, in order to defend the petition under Section 140 of Motor Vehicles Act also. As the position in this case emerges that in the written statement as on today it appears that the appellant has not taken the defence of fake policy, though the Award was passed by the learned Tribunal on 20.10.2015 and the present appeal has been filed in 2017, yet no attempts have been made to get the written statement amended. The Record and Proceedings of the matter was called by order dated 06.01.2017. That means, since 20.10.2015 to 06.01.2017 there was no attempt on the part of the appellant to make necessary amendments in the written statement. Now, only in appeal the said defence about fake policy has been raised and along with the appeal an application has been filed i.e. Civil Application No.14946 of 2016 for permitting appellant to adduce additional evidence. Even if we consider the documents, which have been attached with the said application, it can be seen that by letter dated 04.05.2016 the Advocate who was representing the insurance company before the Tribunal, was requested to submit revised written statement on urgent basis. Yet, no steps were taken. Another fact to be noted that, the fact that "the policy which was produced along with the petition is fake", is yet to be proved by the appellant. It was submitted that in connivance with the employee of the insurance company, many fake policies have been generated and to that extent offence has been registered against the employee of the insurance company. It was also tried to be submitted that when the charge sheet was filed against the driver of the jeep, offence has been registered for plying the jeep without insurance. It is to be noted that the said First Information Report or charge sheet was before the learned Tribunal. So also, the copy of the policy was produced and under such circumstance, when it was found that there are no indications about the policy as a 'fake policy', the learned Tribunal has passed the order under No Fault Liability holding the owner as well as insurance company liable to pay the said amount. When the fact, that the said policy is a 'fake policy' is yet to be proved, it will not be proper to interfere with the order passed by the learned Tribunal. In the above decided case (Civil Application No.3400 of 2016 ) by this Court, in fact, the application for withdrawal of the amount by the original claimant was allowed but it was made subject to the outcome of the main petition. That means, the appeal was not allowed and the point was kept open. Decision of this Court (Bench at Nagpur) **The Manager H.D.F.C. Ergo General Insurance Company Ltd. vs. Kalpana Shivaji**

**Bhoyar and others** (First Appeal No.777 of 2014 decided on 20.08.2015 (A.P. Bhangale, J.) would be helpful here, wherein under similar circumstances it was observed, "I agree with the view that the fact of breach of terms and conditions of the insurance policy and the fact of fake and bogus policy need not be considered at the interim stage and shall be decided at the time of final decision of the claim petition."

8 I am also of the same view that unless it is proved by the insurance company that the policy is fake, the prima facie document is required to be considered and the order holding the insurance company, appellant herein, need not be disturbed. However, further clarification may be given that the withdrawal of the amount under No Fault Liability i.e. under Section 140 of Motor Vehicles Act would depend on the final outcome of the claim petition by the Tribunal. Another fact, which is required to be highlighted here is that, if on the basis of the additional documents tried to be produced before this Court in First Appeal without there being amendment in the written statement and adducing of evidence if the insurance company is allowed to exonerate from the liability to pay compensation under No Fault Liability, then it would frustrate the very object of the provision. With these observations following order is passed.

**ORDER**

1 The First Appeal stands dismissed.

2 No order as to costs.

3 Record and Proceedings be sent back to Motor Accident Claims Tribunal, Ambajogai, immediately.

4 Taking into consideration the fact that the petition is filed in 2014 the learned Tribunal is directed to expedite the matter. Allow the insurance company to carry out the amendment, if necessary, in the written statement and then after leading evidence by both sides to decide the matter finally, as expeditiously as possible and not more than six months from the date of receipt of writ together with Record and Proceeding.

5 Pending Civil Applications stand disposed of accordingly.

**( Smt. Vibha Kankanwadi, J. )**

agd