

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

FIRST APPEAL NO. 392/2017

(RAVI BABANRAO PURI & ANOTHER VERSUS MOHAMMOD SHAH NAZIM & OTHERS)

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

Court's or Judge's orders

Shri N.R. Tekade, counsel for the appellants.
 Shri J.B. Gandhi, counsel for the R-1 to 5.

CORAM : A.S. CHANDURKAR, J.

DATE : JANUARY 10, 2019.

In view of notice for final disposal issued earlier, the learned counsel for the parties have been heard. An order passed under Section 140 of the Motor Vehicles Act, 1988 is under challenge at the instance of the owner and driver of the offending vehicle.

It is submitted by Shri N.R. Tekade, learned counsel for the appellant that by way of full and final settlement of the claim of the deceased, an amount of Rs.5,50,000/- was paid to the claimants. By suppressing that fact, the present proceedings under Section 166 of the said Act seeking compensation came to be filed. In those proceedings, the application under Section 140 of the said Act was filed. He submitted that in the reply filed in those proceedings these contentions were raised and without deciding the same, the amount of 'No Fault Liability' came to be awarded. It is thus submitted that on these counts, the impugned order is liable to be set aside.

Shri J.B. Gandhi, learned counsel for the respondents-claimants supported the impugned order. He denied that the alleged payment was towards the full and final settlement of the claim in question. Placing reliance on the decision in *ICICI General*

Insurance Co.Ltd. Versus Ransingh Dadla Pawra & Others [2008 (6) Mh.L.J. 678], he submitted that as the proceedings are of a summary nature, the defence as raised has to be considered when the claim petition is finally decided.

The scope of proceedings under Section 140 of the said Act are limited to the grant of amount of No Fault Liability. This aspect is clear from the decision relied upon by the learned counsel for the respondents. There is no scope to consider other defences than the one if raised under Section 149(2) of the said Act. The appellant no.1 is the driver and the appellant no.2 is the owner of the offending vehicle. All defences are available for them to be raised when the claim petition is adjudicated on merits. In that view of the matter, the challenge as raised in this appeal does not deserve to be accepted.

By clarifying that it is open for the appellants to raise all permissible defences while opposing the claim for compensation and by further directing the Claims Tribunal to decide the claim petition on its own merits without being influenced by any observation made herein, the First Appeal is dismissed with no order as to costs.

The points raised in this appeal are kept open.

The amount of statutory deposit made by the appellants in this Court shall be transferred to the Claims Tribunal, Akola at the earliest. The proceedings in Motor Accident Claims Petition No.18 of 2016 are expedited.

JUDGE