IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

901 FIRST APPEAL NO.3543 OF 2018
WITH CA/14371/2018 IN FA/3543/2018

Reliance General Insurance Co.Ltd.,
through its Divisional Manager,
Son Plaza, 2nd Floor, Subhash Chowk,
Murarji Peth Dist.Solapur,
through its Divisional Manager
Yogesh s/o Diliprao Dhase,
age 32 yrs., occu.service,
C-9, 10 ABC Complex, 2nd Floor,
Near Man-Mandir, Adalat Road,
Aurangabad. ..APPELLANT..
(Org.res.no.3)

VERSUS

1] Dilip s/o Bhagwanrao Srimangle,
age 25 yrs., occu.Hair Saloon Now Nil
r/o Karna Post Chandola
Tq. Mukhed Dist.Nanded.

2] Manappa s/o Malikarjun Jangam,
age 40 yrs., occu.business,
r/o at post Kautha Tq.Kandhar Dist.Nanded.

3] Venkati s/o Pandurang Shinde,
age 40 yrs., occu.business,
r/o Yeloor Tq.Kandhar Dist.Nanded.
..RESPONDENTS..
(No.1 – org.claimant
Nos.2 & 3 – org.res.nos.1 & 2)

...
Advocate for Appellant : Shri Usmanpurkar Aniruddha S.
Advocate for Respondent no.1 : Shri Kadam Nitin S.
Respondent nos.2 & 3 served.

CORAM: V.L. ACHLIYA, J.

DATE: 04.03.2020

JUDGMENT :

1] Admit.

2] By consent, appeal is heard finally at the stage of admission.

3] Being aggrieved and dissatisfied by order dated 13.7.2018 passed by learned Member, Motor Accident Claims Tribunal, Kandhar Link Court, Mukhed, Dist.Nanded in Motor Accident Claim Petition No.18/2017, the appellant (original respondent no.3) insurance company has preferred this appeal. By the impugned order, the Tribunal has allowed the application u/s 140 of the Motor Vehicles Act preferred by the respondent no.1 – claimant and directed the appellant as well as the respondent nos.2 & 3 to jointly and severally pay the amount of Rs.25,000/- to claimant towards No Fault Liability.

2] Heard learned counsel for the appellant and learned counsel representing the respondent no.1 - claimant. Respondent nos.2 & 3 though served failed to appear. Perused the record and proceedings.

3] The respondent no.1 – claimant has filed an application u/s 166 of the Motor Vehicles Act seeking compensation of

Rs.3,00,000/- with contention that he sustained injuries in motor vehicle accident occurred on 7.11.2016. He claimed that on 7.11.2016, he was traveling in Appe Piaggo auto-rickshaw bearing registration No.MH-26-AC-5134 driven by the respondent no.1, owned by the respondent no.2 and insured with the respondent no.3 – insurance company. Due to rash and negligent driving on the part of auto – rickshaw driver, the auto rickshaw turned turtled. It resulted into causing permanent disability to the claimant. Alongwith the application filed u/s 166 of the Motor Vehicles Act seeking compensation of Rs.3,00,000/-, the claimant has filed application u/s 140 of the Motor Vehicles Act seeking compensation of Rs.25,000/- towards No Fault Liability making the respondents liable to pay the same jointly and severally.

4] The respondent nos.1 & 2 failed to contest the application. The respondent no.3 i.e. the appellant contested the application with contention that the vehicle in question was insured covering only third party risk. The insured has taken the policy to cover the statutory risk. No risk of person other than third party covered under the terms of policy. The vehicle was insured for private use of the insured. No risk of passengers traveling in the auto rickshaw was covered by paying additional premium. It is further contended that the driver of auto rickshaw was not holding requisite license to drive the vehicle. In short, the appellant – insurance company has denied its liability to pay compensation on the ground of absence of contractual liability to indemnify the insured as well as on the ground of breach of policy condition. The Tribunal has refused to consider the defence of respondent no.3 – insurance company by observing that such defence requires no consideration at the stage of deciding the application u/s 140 of the Motor Vehicles Act. It is observed that while deciding the application u/s 140 of the Motor Vehicles Act, the Tribunal is required to conduct a limited enquiry as to whether there was vehicular accident and the claimant has sustained injury in such an accident causing permanent disability. Being aggrieved, the appellant has preferred this appeal.

5] Shri Usmanpurkar, learned counsel for the appellant assailed the order with contention that the Tribunal is bound to consider the statutory defences available for the insurance company as provided under Sub-section (2) of Section 149 of the Motor Vehicles Act while dealing with an application u/s 166 as well as u/s 140 of the Motor Vehicles Act. It is contended that if the application filed u/s 140 of the Motor Vehicles Act is opposed on the ground of breach of policy condition and the insurance company has denied its liability to pay the compensation in terms of policy, the

Tribunal is bound to consider such defence and decide the same while deciding the application filed u/s 140 of the Motor Vehicles Act. It is submitted that the impugned order passed by the Tribunal refusing to look into the defence of the appellant – insurance company is not sustainable in law. It is contended that there is no dispute that the claimant was traveling in a vehicle insured for private use. The risk of the occupant was not covered under the terms of policy secured by the insured. The Tribunal has committed serious error in law in observing that the defence of the appellant – insurance company cannot be looked into and examined at the stage of deciding application filed u/s 140 of the Motor Vehicles Act. It is submitted that the policy issued by the appellant – insurance covering the insurance of the vehicle covers the third party risk. At the relevant time of the accident, the respondent no.1 – claimant was traveling as a passenger in the vehicle registered and insured for private use. The risk of passenger traveling in the vehicle was not secured by insured by paying additional premium. By allowing carriage of the passenger in a vehicle registered for private use, the insured has committed breach of policy condition. It is submitted that the defence as raised by the appellant – insurance company before the Tribunal is well within the scope of Sub-section (2) of Section 149 of the Act as available to the insurance company to raise before the Tribunal to dispute and deny its liability to pay the compensation. It is submitted that only exception provided in an application to be decided u/s 140 of the Act and the main application u/s 166 of the Act is that the claimant is not required to prove the aspect of negligence while claiming the compensation on account of No Fault Liability. The statutory defences as available to the insurance company are available to resist the applications filed u/s 140 of the Act as well as u/s 166 of the Motor Vehicles Act, 1988. In case any such defence is raised by Insurance Company to oppose the application u/s 140 of the Act, then the Tribunal is bound to consider and decide such plea while deciding the application u/s 140 of the Act. It is submitted that the impugned order passed by the Tribunal holding that such defence cannot be looked into at the stage of deciding the application u/s 140 of the Act is erroneous and not sustainable in law. In support of the submission advanced, the learned counsel has referred and relied upon decisions of the Apex Court in the case of *Yallwwa (Smt.) & others v. National Insurance Co. Ltd. & another* reported at **(2007) 6 SCC 657**. He has further relied upon the decision of this Court in the case of *National Insurance Company Ltd. v. Anand Sawant & others* reported at **2009 (4) Mh.L.J., 280**; *New India Assurance Company Ltd. v. Lilabai Shrimant Missal & others* reported at **2015 (1) Mh.L.J., 827** and the judgment and order dated 22.7.2019 passed by this Court (Coram: Smt.Vibha Kankanwadi, J.) in **First Appeal No.171/2019** and group of matters.

6] On the other hand, learned counsel for the respondent no.1 – claimant supported the order passed by the Tribunal. It is contended that considering the object underlying Section 140 of the Motor Vehicles Act to provide immediate relief to victim of motor vehicle accident, elaborate enquiry is not contemplated at the stage of deciding application u/s 140 of the Act. Learned counsel submits that while deciding the application u/s 140 of the Act seeking compensation on account of permanent disability, the Tribunal has to conduct limited enquiry to satisfy itself that material on record is sufficient to *prima facie* prove that victim has suffered permanent disability in an motor vehicle accident. It is submitted that conduct of indepth enquiry by the Tribunal is not contemplated at the stage of deciding the application u/s 140 of the Act.

7] I have carefully considered the submissions advanced in the light of impugned order passed by the Tribunal. Perusal of the order reveals that the Tribunal has refused to consider the defence raised by the appellant – insurance company in opposing the application filed u/s 140 of the Motor Vehicles Act on the ground that the purpose of enquiry to be conducted in dealing with an application u/s 140 of the Motor Vehicles Act is limited and confined to find out whether the person has sustained injuries as alleged in a motor vehicle accident and amounts to causing permanent disability to claimant. The Tribunal has observed that the overall object behind enacting Section 140 of the Motor Vehicles Act being in the nature of providing immediate relief to the victim, the elaborate enquiry to find out whether there was any breach of policy condition on the part of insured is not contemplated while deciding such application. It is observed that the defence as that of breach of policy condition raised by appellant – insurance company cannot be looked into at the time of deciding the application filed u/s 140 of the Act. The relevant observations made by the Tribunal in its order read as under:-

> "6. This is an application u/sec.140 of Motor Vehicle Act. This provision is enacted to provide some solace to the petitioner at the interim stage because the disposal of the main petition may take some time for disposal. It is a beneficial legislation which empowers to the Tribunal to award some amount as a token for medical treatment and other ancillary expenses. It is not required to see at this stage that who was negligent, whose act was rash and whether there was breach of any conditions of insurance policy but, the Tribunal has only to see whether there was a vehicular accident and the petitioner sustained some bodily injury in it."

8] Thus, if we consider the overall challenge raised in the appeal, then the impugned order has been assailed on the ground that the Tribunal has erred in not considering the statutory defence available for the insurance company to deny its liability to pay the compensation. It is the contention of learned counsel for the appellant – insurance company that the statutory defences as available under Sub-section (2) of Section 149 of the Motor Vehicles Act are available for the insurance company to defend the application filed u/s 166 of the Motor Vehicles Act as well as the application filed u/s 140 of the Motor Vehicles Act. The Tribunal cannot make any distinction as to availability of defence to insurance company for defending application u/s 166 of the Motor Vehicles Act and Section 140 of the Motor Vehicles Act. It is contended that the order passed under both these provisions amounts to an award. Sub-section (2) of Section 149 makes no distinction as to availability of defence to defend the case by the insurance company u/s 166 of the Act as also available u/s 140 of the Act. It is contention of the learned counsel for the appellant that the vehicle in question was insured as a private car covering the statutory risk. The policy obtained by the respondent no.2 – insured being an Act policy, the risk of persons traveling in vehicle was not covered under the terms of policy. The claimant cannot be termed as third party so as to indemnify the insured and pay compensation to the claimant. The respondent no.2 – insured has not paid any additional premium to cover the risk of passengers traveling in the vehicle. The vehicle in question was registered for private use and in contravention of the terms of policy, the vehicle was used for carriage of passengers. The claimant was traveling in the said auto rickshaw as a passenger. In that view, the claimant being an occupant at the time of accident cannot be termed as a third party so as to foist the liability against the appellant – insurance company to indemnify the respondent no.2 – insured. In that view, the liability to pay compensation could have been ordered as against respondent nos.1 & 2 only. The order of the Tribunal refusing to look into the defence of the appellant – insurance company is contrary to law and liable to be set aside.

9] The contention of the learned counsel for the appellant that the Tribunal has erred in refusing to look into the defence of the appellant needs to be upheld in the light of decision rendered by the Apex Court in the case of *Yallwwa (Smt.) & others v. National Insurance Co. Ltd. & another* (supra) wherein it is held that under Section 140 of the Motor Vehicles Act, primarily the owner or owners of the vehicles are made liable to pay compensation and not the insurer *per se*. It is further observed that even the owner of the vehicle can raise contention that his vehicle being not involved in the accident, he is not liable to pay any amount in terms of Section 140 of the Motor Vehicles Act. It is categorically held that the defence available to the insurer as to breach of conditions specified in the policy is available to defend the application filed u/s 140 of the Motor Vehicles Act. Once such defence is raised, the Tribunal is required to go into said question. The Apex Court has further held that Section 140 of the Motor Vehicles Act does not contemplate that the insurance company shall also be made liable to deposit the amount when it is at no fault. In paragraph nos.9, 10, 11 & 16, the Court has observed as under:-

> "9. It is not in dispute that an award of the Tribunal is to be made in terms of Section 168 of the Act. For the said purpose, the Tribunal is required to issue a notice to the insurer and give the parties an opportunity of being heard. While making an award in terms of Section 168 of the Act, the procedure laid down under Section 166 of the Act is required to be complied with. The proviso appended to Section 168 of the Act, however, lays down that where such application makes a claim for compensation under Section 140 in respect of the death or permanent disablement of any person, such claim and any other claim (whether made in such application or otherwise) for compensation in respect of such death or permanent disablement shall be disposed of in accordance with the provisions of Chapter X of the Act.

10. Section 140, as noticed hereinbefore, provides for no fault liability. It uses the words "accident arising out of the use of a motor vehicle", "the owner of the vehicle" and when more than two vehicles are involved, "the owners of the vehicles" shall, jointly and severally, be liable to pay compensation. The said provision, therefore, makes the owners of the vehicles liable but not the insurer *per se*. Irrespective of the fact whether a claim petition is required to be adjudicated under Chapter X or Chapter XII of the Act, it is permissible to raise a defence in terms of sub-section (2) of Section 149 of the Act. It is even possible for the owner of the vehicle to raise a contention that his vehicle being not involved in the accident, he is not liable to pay any amount in terms of Section 140 of the Act.

11. One of the defences available to the insurer is breach of conditions specified in the policy. When such a defence is raised, the Tribunal is required to go into the said question. Section 140 of the Act does not contemplate that an insurance company shall also be liable to deposit the amount while it has no fault (*sic* obligation) whatsoever in terms of sub-section (2) of Section 147 of the Act.

16. The question which is required to be considered is what would be the meaning of the term "award" when such a contention is raised. Although in a given situation having regard to the liability of the owner of the vehicle, a Claims Tribunal need not go into the question as to whether the owner of the vehicle in question was at fault

> or not, but determination of the liability of the insurance company, in our opinion, stands on a different footing. When a statutory liability has been imposed upon the owner, in our opinion, the same cannot extend the liability of an insurer to indemnify the owner although in terms of the insurance policy or under the Act, it would not be liable therefor."

10] Thus, in terms of decision in the case of *Yallwwa (Smt.) & others v. National Insurance Co. Ltd. & another* (supra), the impugned order passed by the Tribunal is not sustainable in law. The Tribunal was under obligation to consider and decide the statutory defence raised by the appellant – insurance company, which has denied its liability to pay compensation u/s 140 of the Motor Vehicles Act.

11] In that view, the impugned order passed by the Tribunal deserves to be set aside and the case needs to be remanded to the Tribunal to decide the application u/s 140 of the Motor Vehicles Act filed by respondent – claimant afresh after giving opportunity of hearing to both the sides. Accordingly, the appeal is allowed. The impugned order dated 13.7.2018 passed by the Tribunal is set aside. The case is remanded to the Tribunal to decide the application filed u/s 140 of the Motor Vehicle Act afresh by giving opportunity of hearing to all concerned. The amount, if any, deposited by the appellant – insurance company shall be refunded to it.

12] The appeal is disposed of in above terms with no order as to costs. Civil Application No.14371/2018 filed for stay stands disposed of in terms of order in appeal.

(V.L. ACHLIYA, J.)

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