IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

FIRST APPEAL NO.390 OF 2021

The New India Assurance Co.Ltd.
Khamgaon
Presently through Chief Regional
Manager, Regional Office,
4th Floor, MECL Building, Seminary Hills,
Nagpur ..**APPELLANT**

Versus

1. Smt. Sunita Sahadeo Akarte,
aged about 49 years, Occ. Agriculture.

2. Sandeep Sahadeo Akarte,
aged about 29 years, Occ. Agriculture.

3. Sau. Deepali Abhijeet Kale,
aged about 26 years, Occ.Agriculture.

4. Sagar Sahadeo Akarte
aged about 24 years, Occ. Agriculture.

All above respondent nos.1 to 4 are
R/o Palshi Bk, Tq. Khamgaon,
Distt. Buldana.

5. Subhash Shaligram Murhe,
aged about Major, Occ. Owner of Vehicle,
MH-28-B-7629
R/o Pimpalgaon Kale, Tq. Jalgaon Jamod,
Distt. Buldana.

6. Vasantrao Ramdas Gavhal,
aged about Major, Occ. Business,
R/o Palshi Bk. Tq. Khamgaon,
Distt. Buldana.

7. Murlidhar Manohar Patil,

aged about 45 years, Occ. Driver,
R/o Ward No.8, Khudanpur Nandura
Tq. Nandura, Distt. Buldana. ..**RESPONDENTS**

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Shri A.U. Paunikar, Advocate for the appellant.
Shri G.I.Dipwani, Advocate for respondent nos.1 to 4.
Shri V.B.Bhise, Advocate for respondent nos.5 to 7.

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CORAM : **PUSHPA V. GANEDIWALA, J**
DATED : AUGUST 12, 2021.

ORAL JUDGMENT :

1. With the consent of both the counsels, the appeal is taken up for final hearing at the stage of admission.

2. Admit.

3. Heard.

4. The appellant – Insurance Company has challenged the Order dated 25.6.2018, granting compensation under Section 140 of the Motor Vehicles Act towards `no fault liability' in MACP No.61/2015 by the learned Member, Motor Accident Claims Tribunal, Khamgaon,

5. The stand of the Insurance Company is that the alleged vehicle – Eicher Tempo bearing No.MH-28/B/7629, being a `goods carrier' vehicle, carrying the pilgrims in a goods

carrier vehicle is fundamental breach of the policy and, therefore, the Insurance Company could not have been made liable jointly and severally alongwith other opponents for payment of compensation of Rs.50,000/- towards `no fault liability'.

6. The learned counsel Shri A.W. Paunikar appearing for the the appellant – Insurance Company submitted that the learned Tribunal has failed to consider the averments in the Written Statement of the Insurance Company; wherein there was specific pleading that the aforesaid vehicle Eicher Tempo bearing No. MH-28-B-7629 is in the category of goods carrying vehicle, however, at the time of accident, the said vehicle was being used for carrying unauthorized passengers by taking Rs.2300/- per person towards fare charges and, therefore, the owner of the vehicle has committed fundamental breach of terms and conditions of the policy and consequently, the Insurance Company is not liable to pay the compensation.

7. On the contrary, the learned counsel Shri G.I.Dipwani appearing for respondent nos.1 to 4/Claimants

submitted that the question with regard to the breach of the terms and conditions of the contract would require evidence before the Court and, therefore, at this stage, the stand taken by the Insurance Company cannot be considered.

8. I have considered the submissions put forth on behalf of both the parties.

9. At the outset, whether there was a wilful breach of the terms and conditions of the policy on the part of the owner of the vehicle is a question of fact which needs to be decided on the basis of evidence adduced by the parties before the Tribunal. The object and specific purpose for bringing Section 140 in the Statute Book, is to provide an instant remedy to the injured or dependents of the deceased who are the victims of the unfortunate motor accident and suffered both physically and financially due to untimely death of the deceased or sudden physical disability of the injured. It is a kind of immediate respite to the injured or the family members of the deceased. Even, at this stage, whether the deceased or the injured was at fault is not to be considered. Therefore, in the

absence of oral and documentary evidence on record, finding with regard to the wilful breach of the terms and conditions of the insurance policy by the insured cannot be recorded or else, it would amount to recording a finding in favour of the Insurance Company and exonerating it completely at the threshold, that is certainly not the object and purpose of bringing this salutary and beneficial provision in the Statute book.

10. In this context, the Co-ordinate Bench of this Court in the case of **United India Insurance Co.Ltd. Nagpur Vs. Vijay Manikarao Surkar** in CAF No.1654/218 In F.A.St.No.4176/2018 (decided on 26.11.2018), observed that at the stage of deciding application under Section 140 of the Motor Vehicles Act, the object of the Act for which the provision of `No Fault Liability' is incorporated in the Statute Book is to be kept in mind.

11. The Co-ordinate Bench of this Court further, in the case of **National Insurance Company Ltd. Vs. Udhao s/o Narayan Butle and others** reported in **2014 (3) Mh.L.J. 41**,

observed that the contention that the victim was not authorized to travel as a passenger in the truck, can be considered when the main petition under Section 166 of the Motor Vehicles Act is decided on merits on the basis of the evidence.

12. Furthermore, in the case of **Smt. Rammurli wd/o Rampraksh Mishra and ors Vs. Rudresh B.Tiwari and Ors**., in First Appeal No.336 of 2003 (decided on 6.8.2015), yet another Co-ordinate Bench of this Court while deciding the appeal against an order passed under Section 140 of the Motor Vehicles Act observed thus:

> "Chapter 10 with Sections 140 and 144 provid*es for interim compensation on `No Fault" Basis. According to this provision Rs.50,000/- is to be given to the kith and kin of the deceased and Rs.25,000/- to the grievously injured victim. The compensation under Section 140 is made payable if prima facie evidence of following is available:*
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> *(i)Accident by the offending vehicle;*
> *(ii)Offending vehicle being insured; and*
> *(iii) Death or grievous injuries have been caused".*

13. In the case in hand, a question whether there was

fundamental or wilful breach of policy or not, as stated earlier, is to be decided on the basis of evidence adduced before the Tribunal. At this stage, since, there is prima facie material on record to indicate the death of the deceased in the motor accident involving the alleged vehicle - Eicher Tempo bearing No. MH-28-B-7629, which was insured with the appellant, the the impugned Order passed under Section 140 of the Motor Vehicles Act cannot be blamed. The insurer, therefore, cannot escape from its liability under Section 140 of the Motor Vehicles Act. However, it is open for the Insurer to contest the main petition under Section 166 of the Motor Vehicles Act on merits.

14. For the reasons aforestated, the appeal is devoid of merits and the same is dismissed. The Insurance Company to deposit the amount of compensation, if not already deposited, within a period of six weeks with the Registry of this Court. Thereafter, the claimants would be entitled to withdraw the same.

JUDGE

Ambulkar