

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

FIRST APPEAL NO. 07 OF 2019

ICICI Lombard General Insurance Co. Ltd., thr. its Manager

..VS..

Ravindra Shriramji Raut and ors.

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

Court's or Judge's orders

Smt. A.S. Athalye, Advocate for Appellant.
Shri D.N. Choudhari, Advocate for Respondent nos. 1 to 3.
Shri S.D. Dharaskar, Advocate holding for Shri V.B.Bhise,
Advocate for Respondent no.4.

CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : 09/02/2021

Heard finally with consent of the learned
Counsel for the parties.

2. The Appellant herein has challenged the order dated 23.03.2017 whereby the learned Member of Motor Accident Claims Tribunal, Amravati has allowed the appeal under Section 140 of the Motor Vehicles Act, 1988 (for short 'the M.V. Act') and directed the Appellant-Insurance Company to pay compensation of Rs.50,000/- to the Respondent nos.1 to 3.

3. The Appellant shall be hereinafter refereed to as 'Appellant-Insurance Company' and Respondents are referred to as 'Claimants'.

4. Respondent nos. 1 to 3 who are the original Claimants had filed an application under Section 166 along with application under Section 140 of the M.V.

Act, in view of the accidental death of one Ankush Raut in motor vehicular accident. The Claimants have stated that said Ankush was a pillion rider of motorcycle bearing No. MH-27-BA-9900 which was driven by one Anjiky Chaudhari. It was stated that the said accident was caused due to rash and negligent driving by said Anjinka Chaudhari. The Applicants had therefore claimed compensation from the insured and insurer/ owner of the said offending vehicle.

5. The Appellant-Insurance Company contested the application mainly on the ground that the deceased was not a pillion rider but a rider of the motor cycle. It is alleged that since the deceased was not a 'third party', the Insurance Company was not liable to pay any compensation.

6. It may be mentioned that the Claimants have averred that the deceased was a pillion rider, whereas the Respondent no. 1 had lodged the F.I.R. against the deceased alleging that the accident was caused due to rash and negligent driving of the deceased. It may be noted that the question whether the deceased was a pillion rider or whether he was a rider of the vehicle is a triable issue, which can be decided only on merit of the matter. The object of Section 140 of the M.V. Act is to provide immediate succour to the victims of the road accident or heirs/legal representatives of the victims. Depriving them of the benefit of interim relief

will defeat the very object of the provision. The interest of the Insurance Company can be protected by passing a conditional order.

7. Under the circumstances, the appeal has no merits and is accordingly dismissed.

8. The amount of Rs.50,000/- which is deposited by the Appellant be transferred to the M.A.C.T. Amravati. The Respondent nos.1 to 3 are permitted to withdraw the said amount subject to an undertaking that they will refund the amount with interest, in the event the Appellant succeeds in proving that they are not liable to indemnify the insured.

JUDGE

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