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

FIRST APPEAL NO. 1230 OF 2010

The New India Insurance Company Ltd.,
through its Regional Manager,
Regional Office, 4th Floor,
Dr. Ambedkar Bhavan, Seminary Hills,
Nagpur

...**APPELLANT**

VERSUS

1. Smt. Sunanda wd/o Harichandra Dighore,
Aged about 29 yrs., Occ. Housework,

2. Ashish s/o Harichandra Dighore,
Aged about 9 yrs., Occ. Nil,

3. Smt. Sayatra w/o Gomaji Dighore,
Aged about 55 yrs., Occ. Housework,

R. Nos. 1 to 3 all R/o Sonapur,
P.O. Govindpur, Tah. Nagbhir,
Dist. Chandrapur

(R. No. 2 minor through his mother
Natural guardian – Respondent No. 1.)

4. Shri Mahadeo s/o Ramchandra Gabhane
Aged about 40 yrs., Occ. Agriculture,
R/o. Sonapur, P.O. Govindpur,
Tah. Nagbhir, Dist. Chandrapur

5. Shri Ramesh s/o Laxman Kamadi,
Aged about - yrs., Occ. -,
R/o. Near Bank of India, Nawargaon,
Tah. Sindewahi, Dist. Chandrapur

...RESPONDENTS

Shri M.B. Joshi, Advocate for appellant.
None for the respondents.

<u>CORAM</u> : PUSHPA V. GANEDIWALA, J.
<u>DATE OF RESERVING THE JUDGMENT</u> : JULY 28, 2021
<u>DATE OF PRONOUNCING THE JUDGMENT</u> : AUGUST 06, 2021

<u>JUDGMENT</u> :

Heard.

2. This appeal, filed under Section 173 of the Motor Vehicles Act, 1988, is directed against the order dated 26/08/2010 passed by the Motor Accident Claims Tribunal, Chandrapur in Claim Petition No. 51/2005 whereby the learned Tribunal has directed the appellant to pay an amount of Rs.50,000/- (Rs. Fifty thousand only) with interest at the rate of 7% per annum towards 'No Fault Liability' (hereinafter referred to as NFL) under Section 140 of the Motor Vehicles Act, 1988.

3. The only question for consideration of this Court is 'whether the Tribunal has committed an error in directing the appellant/Insurance Company to pay compensation of Rs.50,000/- towards NFL under Section 140 of the Motor Vehicles Act, 1988'.

4. Shri M.B. Joshi, learned counsel for the appellant/ Insurance Company vehemently urged that the learned Tribunal has committed an error in granting the compensation towards NFL. It is submitted that the nature of the insurance policy was 'Act only policy', and therefore, pillion rider is not covered. The Tribunal could not have granted compensation towards NFL to the legal representatives of the pillion rider, he being not a third party.

5. It is the case of the claimant before the Tribunal that on 20/02/2005 at about 7.30p.m. the deceased Harishchandra s/o Gomaji Dighore was going with respondent No.4 on Hero Honda Motor Cycle bearing No. MH-34/B-9023 as a pillion rider. It is stated that respondent No.4 while driving the vehicle in a rash and negligent manner, lost his control and the vehicle jumped after striking to stone resulting in falling of pillion rider who received serious injuries and died on the spot.

6. The legal representatives of the deceased i.e. respondent Nos.1 to 3 filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 claiming compensation of Rs.3,00,000/- with an application for interim compensation of Rs.50,000/- towards NFL. The learned Tribunal on the basis of *prima facie* material before it, allowed

the application and directed the appellant/Insurance Company and the owner to pay jointly and severally Rs.50,000/- to respondent Nos.1 to 3 towards NFL along with interest at the rate of 7% per annum from the date of application till realization. This order is impugned in this appeal.

7. The learned Counsel invited the attention of this Court to a document in the compilation of the memo of appeal, which is purported to be a document prepared from the cover note of the policy and submitted that the policy was 'Act only policy'. It is the main contention of the learned counsel for the appellant that deceased being pillion rider and the Insurance policy is 'Act only policy', the Insurance Company is not liable and, therefore, learned Tribunal could not have directed the appellant/Insurance Company to pay Rs.50,000/- towards NFL to the claimants/respondent Nos.1 to 3.

8. None present for the respondents. I have considered the submissions made on behalf of the appellant and perused the record and proceeding of the Court below.

9. At the outset, on bare perusal of document of policy i.e. cover note which is placed on the record of the Tribunal at page No.46

and the document which is filed by the appellant in the compilation of this Court, it appears that these documents do not tally with each other.

10. The document of policy at page No.46 of the Tribunal's record does not show that it is an 'Act only policy'. Secondly, it being a cover note, the terms and conditions of the contract of insurance are not deducible from this document and, therefore, at the stage of interim application, no findings can be recorded that the appellant/Insurance Company is not liable to pay compensation, considering the nature of the policy. A contentious and disputable issue with regard to nature, terms and conditions of the policy is to be decided by the Tribunal. The learned Tribunal decided the application under Section 140 of the Motor Vehicles Act, 1988 on the basis of *prima facie* material on record. The document i.e. cover note on page No.46 in the Tribunal record, does not indicate that the policy is 'Act only policy'. What is decided by the Tribunal is based on this document. Furthermore, even if, at all at the end of the Trial, it is held that the Insurance Company is not liable for want of coverage in the insurance policy, the Insurance Company would not be left with no remedy. The Insurance Company can very well recover the said amount under the provisions of law.

11. In this view of the matter, I do not find merit in this appeal warranting any interference in the impugned judgment of the Tribunal. The appeal deserves to be dismissed and the same is accordingly dismissed with costs.

12. R. & P. be sent back forthwith to the learned Tribunal. The learned Tribunal to decide the matter expeditiously and preferably within a period of six months from the date of receipt of record and proceedings.

13. The Registry to remit the amount of Rs.50,000/- with accrued interest thereon to the Motor Accident Claims Tribunal, Chandrapur. On remittance of the same, the claimants shall be entitled to withdraw the same.

JUDGE

**DB*