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

FIRST APPEAL NO. 1965/2019

Future Generali India Insurance Co. Ltd.

-VERSUS-

Smt. Lata wd/o. Raju Purake & ors.

Office notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's Orders

Shri H. N. Verma, Advocate for appellant.
Shri B. S. Mandhare, Advocate h/f Shri P.S. Mirache, Advocate for respondent Nos. 1 to 3.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATE : 18.01. 2021.

The appellant herein has challenged the order dated 24.09.2019 passed by the Member, Motor Accident Claims Tribunal, Nagpur in M.A.C.P. No. 746/2017. By the impugned order, the Claims Tribunal has allowed application under Section 140 of the Motor Vehicles Act (for short 'M. V. Act') and directed the appellant and the respondent No. 4 to pay jointly and severally compensation of Rs. 50,000/- to the respondent Nos. 1 to 3, who shall hereinafter be referred to as the claimants.

2. The claimants have filed an application under Sections 166 and 140 of the M. V. Act for compensation on account of death of Raju Purake, who died due to the injuries sustained in a motor vehicle accident. The claimants have contended that on the date of the accident, the offending vehicle was owned by respondent No. 4 and insured with the appellant. The claimants have alleged that the accident was caused due to the negligence of the driver. In an application under Section 166 of the M. V. Act, they have claimed compensation of Rs. 19,20,000/- and have also claimed interim compensation under Section 140 of the M. V. Act for no fault liability.

3. The Claims Tribunal, upon considering the documents on record, allowed the application and directed the appellants and respondent No. 4 to pay an amount to Rs. 50,000/- to the claimants. This order is under challenge in this appeal.

4. Learned counsel for the appellant states that the insurance policy relied upon by the claimants is a fake policy. He therefore contended that the Insurance Company is not liable to pay any

compensation and as such, no order could have been passed against the Insurance Company for paying interim compensation under Section 140 of the M. V. Act.

The short point for consideration is whether the Claims Tribunal has justified in allowing the application under Section 140 of the M. V. Act.

5. The record reveals that the claimants had alleged that the vehicle involved in an accident was insured by the appellant – Insurance Company. They have relied upon copy of the insurance policy. The appellant – Insurance Company has denied its liability on the ground that the policy produced by the claimants is a fake policy. Suffice it to say that, the question whether the Insurance Policy is genuine or fake is a triable issue and will have to be determined by the Tribunal on merits at appropriate stage. It may be noted that 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 the claimants, who are the dependents of late Raju Purake, of interim

compensation on the ground raised by the appellant or compelling them to recover the compensation from the owner, would in my considered view, defeat the very object of this benevolent provision having socio-economic object. Moreover, the amount of the interim compensation awarded under Section 140 of the M. V. Act is ultimately to be deducted from the final amount of compensation awarded under Section 166 of the M. V. Act.

6. The entire dispute regarding the liability of the insurer to indemnify the insured will be decided on merits. Until such time, the interest of the appellant – Insurance Company can be safeguarded by directing the claimants to give an undertaking to refund the amount to the Insurance Company, in case it is proved that the policy is fake and it is held that the appellant is not liable to indemnify the Insured/respondent No. 4.

7. Under the circumstances, the appeal is dismissed. The claimants are permitted to withdraw the amount of interim compensation subject to giving

an undertaking that they shall refund the amount received under Section 140 of the M. V. Act with interest, in the event the appellant – Insurance Company proves that the policy is fake and it is totally absolved of its liability of indemnifying the Insured.

8. Learned counsel for the respective parties have stated that the evidence has already commenced. Hence, the Tribunal is requested to make an endevour to dispose of the claim petition as expeditiously as possible and preferably within a period of six months.

(**SMT. ANUJA PRABHUDESSAI, J.)**

Gohane.