IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1117 OF 2008

Bajaj Allianze General Insurance Co.
through it Branch Manger,
Rajendra Chamber, Adalat road,
Aurangabad

...APPELLANT
(Original Respondent No.2)

VERSUS

1. Hussainbi Shaikh Rasool @ Babu
Age : 35 years, Occu. : Household,

2. Shaikh Imran Shaikh Rasool @ Babu,
Age : 16 years, Occu. : Student,

3. Shaikh Tasneem Shaikh Rasool @ Babu,
Age : 14 years (minor),

4. Shaikh Saddam Shaikh Rasool @ Babu,
Age : 11 years (minor),

5. Saheblal Maheboob Sab,
Age : 62 years, Occu. : Nil,

6. Maqboolbi Saheblal,
Age : 58 years, Occu. : Household,

Respondent Nos.2 to 4 are minors
u/g. of their mother i.e. respondent No.1.
All r/o. : Wajegaon, Nanded

7. Fattusab Kashimsab Ghorwade,
Age : Major, Occu. : Business,
R/o. : Nalegaon, Tq. Chakur,
Dist. Latur

...RESPONDENTS
(R.Nos.1 to 6 – ori. claimants
and R. No.7 – ori. rspdt No.1)

...

Mr. S.G. Chapalgaonkar – Advocate for Appellant
Ms. A.N. Ansari – Advocate for Respondent Nos.1 to 6

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CORAM : S.G. DIGE, J.
RESERVED ON : 24.08.2022
PRONOUNCED ON : 06.10.2022

<u>JUDGMENT :</u>

. This appeal is preferred by the appellant – Insurance Company against the order passed by the learned Motor Accident Claims Tribunal, Nanded *(for short 'the Tribunal')* below Exh.5 i.e. under Section 140 of the Motor Vehicles Act *(for short 'the M.V. Act')*.

2. It is contention of learned Counsel for appellant that, the appellant had taken specific plea in written statement and denied the liability to pay compensation on the ground that, deceased was travelling on the head of the tractor. The seating capacity on the head of tractor was only one. The risk of the passenger travelling on the tractor was not covered under the policy. Further, there was breach of permit as well as insurance policy conditions. The driver was not holding valid and effective driving license. The police,

on investigation charge sheeted the driver for not holding driving license. These facts are not considered by the Tribunal and fastened the liability on appellant - the Insurance Company.

3. It is contention of learned Counsel for respondents that, at the time of passing of order under Section 140 of the M.V. Act fault of other party is not necessary to be considered. It was no fault liability. The Tribunal had passed the order, considering all the aspects. Hence, the order passed by the Tribunal is legal and valid.

4. I have heard both the learned Counsel. Perused order passed by the Tribunal.

5. It is contention of learned Counsel for appellant that, appellant is not liable to pay compensation on the ground that, driver was not holding valid and effective license as well as breach of policy terms and conditions. As issue revolves in respect of under Section 140 of the M.V. Act it reads as under :

> *140. Liability to pay compensation in certain cases on the principle of no fault.-*

(1) Where death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle of motor vehicles, the owner of the vehicle shall, or, as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this Section.

(2) The amount of compensation which shall be payable under sub-section (1) in respect of the death of any person shall be a fixed sum of [fifty thousand rupees] and the amount of compensation payable under that sub-section in respect of the permanent disablement of any person shall be a fixed sum of [twenty-five thousand rupees].

(3) In any claim for compensation under sub-section (1), the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person.

(4) A claim for compensation under sub-section (1) shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made nor shall the quantum of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement.

[(5) Notwithstanding anything contained in sub-section (2) regarding death or bodily injury to any person, for which the owner of the vehicle is liable to give compensation for relief, he is also liable to pay compensation under any other law for the time being in force :

Provided that the amount of such compensation to be give under any other law shall be reduced from the amount of compensation payable under this section or under section 163-A].

6. The First Information Report of the accident shows that, it was lodged by the brother of the deceased. In the said F.I.R. it is mentioned that, the deceased was travelling on the tractor bearing registration No. MH-24-D-2137. The driver of the tractor drove the tractor in rash and negligent manner due to which tractor is turtled in bed of river resulting into death of the deceased. From this F.I.R. it does not appear that whether deceased was sitting on head of the tractor of not? In respect of breach of terms of Insurance Policy, evidence is required to be seen in that regard. Hence, application under Section 140 of the M.V. Act can be heard with application under Section 166 of the M.V. Act.

7. In view of the above, I pass the following order :-

<u>ORDER</u>

(a) Appeal is allowed.

(b) The order passed by the Tribunal below Exh.5 dated 19.12.2007 is quashed and set aside.

(c) The application under Section 140 of the M.V. Act be heard along-with Claim Petition under

Section 166 of the M.V. Act. The claim under Section 140 of the M.V. Act is subject to outcome of findings under Section 166 of the M.V. Act.

(d) The amount deposited by the appellant under Section 140 of the M.V. Act be transmitted to the Motor Accident Claims Tribunal, Nanded.

(e) Appeal is disposed of in above terms.

(S.G.DIGE, J.)