

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

961 FIRST APPEAL NO.1102 OF 2012
WITH CA/7920/2012 IN FA/1102/2012

NEW INDIA ASSURANCE COMPANY LIMITED
VERSUS
CHETAN GOVIND BHISE AND ORS

...
Advocate for Appellant : Mr. S.S. Dargad h/f. Chapalgaonkar S.G.
Advocate for Respondents : Mr. T.G. Gaikwad for R/1 to 3
...

CORAM : Y.G. KHOBRADE, J.
DATE : 16th November, 2022

PC.:-

Heard advocate Mr. S.S. Dargad h/f. Mr. S.G. Chapalgaonkar learned counsel appearing for the appellant-Insurance Company and advocate Mr. T.G. Gaikwad learned counsel appearing for respondent nos.1 to 3 at length. Though the respondent no. 4 is served but none appeared for him.

2. Having regard to the submissions made on behalf of both the sides, I have gone through the record. The appellant-Insurance Company, the original-respondent no.2 in M.A.C.P. No.30/2011 invoked jurisdiction of this Court under Section 173 of the Motor Vehicles Act, 1988 and prayed for quash and setting aside the order dated 10.02.2012 passed below (Exhibit-5) i.e. application under Section 140 of the Motor Vehicles Act, whereby, the

application of the present respondent nos.1 to 3/original claimants came to be allowed and the present appellant and the respondent no.4 jointly and severally directed to pay compensation of Rs.50,000/- towards no fault liability on account of accidental death of Govind Bhise, the father of the present respondent nos.1, 3 and husband of respondent no.2.

3. The learned counsel appearing for the appellant submitted that the respondent nos.1 to 3 are original-claimants have filed M.A.C.P No.30/2011 alleging that on 01.06.2010 when Govind Bhise and his wife claimant no.2 were proceeding towards village Poos to attend the marriage by their own Maruti Car No.MH-12-FG-1671 and reached at the spot of incident but at that time one truck bearing no. MH-44-6171 came from opposite direction in high speed and gave dash to the car of the deceased due to which accident occurred and Shri Govind Bhise, the husband of claimant no.2 and father of claimant nos.1 and 3 succumbed to injuries while being treated at a Hospital at Ambejogai. But, as per the FIR lodged by the PSI-Kamble the said accident was caused because of rash and negligent driving on part of the deceased and said car turtled in ditch. However, the learned Member, M.A.C.T., passed the impugned order dated 10.02.2012 and awarded no fault liability under Section 140 of the Motor Vehicles Act to the respondent nos.1 to 3-original claimants and directed the present appellant-original respondent

no.2 and the present respondent no.4.

4. The learned counsel appearing for the appellant further submitted that on 28.11.2013 the learned Member, M.A.C.T., Ambejogai passed final judgment and award and rejected the claim petition of the respondent nos.1 to 3/original claimants on the ground that the truck allegedly involved in the accident never dashed to the car of the deceased and said truck never involved, however, the claimants - the original respondent no.1 i.e. the present respondent and CW2 Mr. Lalasaheb Rajaram Kamble in collusion with each other prepared false and fabricated documents to extract money from the Insurance Company and directed legal action against them.

5. The fact of dismissal of M.A.C.P. No.30/2011 has not been disputed by the respondent nos.1 to 3-original claimants. It is submitted that the present appeal under Section 173 of the Motor Vehicles Act is directed against the entire award passed under Section 140 of the Motor Vehicles Act and subsequently the main claim petition under Section 166 of the Motor Vehicles Act came to be dismissed after conclusion of the trial. Therefore to my mind the interim order is merged in the final order and it is not executable. Therefore, the impugned order dated 10.02.2012 passed below (Exhibit-5) in M.A.C.P. No.30/2011 does not survive and it is liable to be quashed and set aside. Accordingly, I proceed to pass the following order:

ORDER:

- I) First Appeal No.1102/2012 is allowed. No order as to costs.
- II) The impugned order dated 10.02.2012 passed below (Exhibit-5) in M.A.C.P No.30/2011 is hereby quashed and set aside.
- III) Amount, if any, deposited by the appellant-Insurance Company be refunded along with accrued interest.
- IV) Pending Civil Application, if any, also stands disposed off.

[Y.G. KHOBRADE, J.]