

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

**FIRST APPEAL NO.196 OF 2022  
WITH  
CA/11086/2019 IN FA/196/2022**

**SYED FAREED SYED GAFOOR  
VERSUS  
SHAIKH KAHAYYUM SHAIKH ISMILE AND ANOTHER**

....

Mr. S.P. Katneshwarkar, Advocate for the Appellant  
Mr. M.M. Ambhore, Advocate for Respondent No.2

....

**CORAM : SHRIKANT D. KULKARNI, J.**

**DATE : 22<sup>nd</sup> MARCH, 2022**

**PER COURT:-**

1. Heard finally at admission stage with the consent of both the sides.
2. Heard Mr. S.P. Katneshwarkar, learned counsel for the appellant and Mr. M.M. Ambhore, learned counsel for respondent no.2 / insurance company. The notice issued to respondent no.1 / owner of the vehicle is still awaited as per record.
3. Mr. Katneshwarkar, learned counsel for the appellant submitted that the claim petition filed by the appellant under Section 166 of the Motor Vehicles Act, 1988 came to be dismissed at the hands of the Member, M.A.C.T. at Basmathnagar.

The Tribunal was pleased to direct the applicant / claimant to return the amount of RS. 25,000/- received by him by way of interim compensation under Section 140 of the Motor Vehicle Act, 1988. He submitted that he is not pressing the grounds mentioned in the appeal memo except ground no. VI. He restricts his appeal to the extent of ground no. VI, which relates to repayment of the amount awarded under no fault liability.

4. Mr. Ambhore, learned counsel for respondent no.2 / insurance company also agreed to proceed with the appeal to the extent of ground no. VI.

5. Learned counsel for the appellant heavily placed his reliance on the decision in case of *Indra Devi and ors. Vs. Bagada Ram and Anr.* reported in *2010 AIR (SC) 2913*. He submitted that the main direction / order passed by the Tribunal to refund the amount of interim compensation awarded under Section 140 of the Motor Vehicle Act is contrary to the provisions of Section 140 of the Motor Vehicle Act. He pointed out para 5 of the citation wherein it is observed by the Hon'ble Supreme Court as under:

“The impugned direction is clearly erroneous and unsustainable in law. The Tribunal has completely failed to realize the true nature and character of the

compensation in terms of section 140 of the Act. The marginal heading to section 140 describes it as based on the principle of no fault. As the expression no fault suggests the compensation under section 140 is regardless of any wrongful act, neglect or default of the person in respect of whose death the claim is made.”

6. Learned counsel for the appellant submitted that the direction given by the Tribunal to return the interim compensation amount of Rs.25,000/- is contrary to the decision of the Hon'ble Supreme Court as well as contrary to the provisions of Section 140 of the Motor Vehicle Act. He, therefore, urged to set aside that direction.

7. Mr. Ambhore, learned counsel for respondent no.2 / insurance company supported the impugned judgment and award passed by the Tribunal. He submitted that it was an injury claim. The Tribunal has considered the evidence produced before it and accordingly dismissed the injury claim on its own merits. As such, the insurance company can recover the amount of interim compensation paid to him.

8. I have considered the submissions of Mr. Katneshwarkar, learned counsel for the appellant and Mr. Ambhore, learned counsel for respondent no.2 / insurance company. Perused the impugned judgment and award passed in M.A.C.P. no. 28 of 2014 by the M.A.C.T., Basmathnagar. On going through the impugned judgment, it is noticed that the Tribunal after considering the rival pleadings of the parties and evidence on record was pleased to dismiss the appeal under judgment and order dated 08.06.2018. The appellant is concerned and aggrieved by clause no.2 of the operative order, which relates to refund of interim compensation amount to the insurance company. The Tribunal was pleased to direct the appellant to refund the amount of Rs.25,000/-, which he has received as interim compensation to the insurance company or deposit it with the Tribunal. Whether such direction can be given regarding refund of interim compensation is the only question to be answered in this appeal.

9. Mr. Katneshwarkar, learned counsel for the appellant has rightly placed his reliance in case of ***Indra Devi and ors. Vs. Bagada Ram and Anr.*** (supra) whereby the issue is covered. It is held by the Hon'ble Supreme Court that the interim compensation

awarded under Section 140 of the Motor Vehicles Act is based on the principle of no fault. As the expression no fault suggests the compensation under Section 140 is regardless of any wrongful act, neglect or default of the person in respect of whose death the claim is made. The Hon'ble Supreme Court while allowing the appeal was pleased to set aside the impugned direction given by the Tribunal, which is confirmed by the High Court.

10. Having regard to the legal position made clear by the Hon'ble Supreme Court in above referred citation, clause 2 of the operative part of the order passed by the Tribunal is liable to be set aside. There is no need to discuss the rest of the grounds of the appeal, when the learned counsel for the appellant has restricted the appeal only on this ground.

11. Having regard to the above reasons and discussion, I proceed to pass the following order:

### **ORDER**

(i) The appeal stands partly allowed.

(ii) The impugned judgment and award passed by the Member, M.A.C.T., Basmathnagar in M.A.C.P no. 28 of 2014 is hereby modified by deleting clause 2 of the operative order as under:

“(1) The claim petition stands dismissed.

(2) Parties to bear their own costs.”

(iii) No order as to costs .

(iv) Award be drawn up accordingly.

(v) The first appeal is accordingly disposed of.

(vi) In view of disposal of the first appeal, civil application No.11086 of 2019 also stands disposed of.

**[ SHRIKANT D. KULKARNI ]**  
**JUDGE**

S.P Rane