

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 4480 OF 2017
WITH CA/8619/2021 IN FA/4480/2017

RELIANCE GENERAL INSURANCE COMPANY LTD THR ITS
AUTHORIZED OFFICIAL YOGESH D DHASE AURANGABAD
VERSUS
BABAN SHRIPATI CHAVAN AND OTHERS

...
Advocate for Appellant : Mr. A.S. Usmanpurkar
Advocate for Respondent Nos.1 to 4 : Mr. D.R. Jaybhar
....

CORAM : S.G. DIGE, J.
DATE : 29th June, 2022

ORDER :

. Heard learned Counsel for appellant and learned Counsel for respondents.

2. Learned Counsel for appellant submits that, learned Member, Motor Accident Claims Tribunal, Ahmednagar pleased to allow the application filed under Section 173 of Motor Vehicles Act, below Exh.5 (No fault Liability) vide order dated 16.06.2017. Learned Trial Court has directed that the respondent Nos.1 and 2, being owner and insurer of offending vehicle being registration No.PB-13-AB-8495, shall jointly and severally pay N.F.L. amount within one month

from the date of order, if the amount is not deposited within a period of one month then it will carry interest @9% per annum. The said order is challenged in this appeal.

3. Learned Counsel for appellant submits that, order passed by learned Tribunal is arbitrary, illegal and against the provisions of law. The appellant (insurance company) specifically denied the policy and submitted that, the said policy was not issued by the appellant and policy produced on record is fake. It ought to have been considered by the learned tribunal while passing the order under M.V. Act. It was not considered and liability was fixed on the appellant hence, requested to quash and set aside the impugned order.

4. It is the contention of learned Counsel for respondent Nos.1 to 4 that, the learned Tribunal has passed the order after considering the evidence produced before learned Tribunal under Section 140 of M.V. Act. It is not necessary to see whether policy is fake or original and learned Tribunal has passed the order not only against the appellant but also against the owner hence, the order passed by learned

Tribunal is legal and valid.

5. I have heard both the learned Counsel.

6. The appellant has taken stand that, the policy which is produced on record before learned Tribunal is fake. The learned Tribunal ought to have considered the fact whether the policy is fake or not ? However, *prima-facie* it appears that, the learned tribunal has not considered the said aspect. I am told that for proving the fact that, the policy is fake or not, the necessary evidence is required to be recorded before the learned tribunal. Hence, this matter is required to be remanded back to the learned tribunal, directing the tribunal to decide the matter afresh along-with main petition. It would meet the ends of justice. Accordingly, I pass the following order :

ORDER

- a) Appeal is allowed.
- b) The matter is remanded back to the learned Tribunal.
- c) The tribunal shall decide the application under Section 140 of Motor Vehicles Act along with

main petition under Section 166 of Motor Vehicles Act.

- d) Parties are at liberty to lead evidence in support of their contentions.
- e) The main petition shall be decided within four (4) months.
- f) Pending Civil Application is disposed of.
- g) Appeal is disposed of.

**[S.G. DIGE]
JUDGE**