

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

**FIRST APPEAL NO. 4382 OF 2016**

BAJAJ ALLIANZ GENERAL INSURANCE COMPANY LTD  
VERSUS  
SURESH BABASAHEB PAWADE AND ANOTHER

...  
Advocate for Appellant : Mr. S.G. Chapalgaonkar  
Advocate for Respondent No.1 : Mr. A.P. Deshmukh  
....

**CORAM : S.G. DIGE, J.**  
**DATE : 15<sup>th</sup> July, 2022**

**ORDER :**

. Heard learned Counsel for appellant and learned Counsel for respondent No.1.

2. Challenge in this appeal is to the order below Exh.5 passed by Motor Accident Claim Tribunal, Parbhani in Motor Accident Claim Petition No.279 of 2014, thereby allowing the application under Section 140 of Motor Vehicle Act (For short 'M.V. Act'). The appellant-original respondent Insurance Company has preferred present appeal.

**3. Brief facts of the case are as under :**

On 18.11.2012 original petitioner - Shri. Suresh Pawase (Respondent No.1) had been to village Wazure, he was walking on left side of road. At that time, one motorcycle bearing registration No. MH-22-AB-1563 came from backside in high speed and in rash and negligent manner and gave dash to the petitioner. Due to said dash petitioner sustained fracture injuries. After accident immediately he was shifted to Government hospital, Parbhani thereafter he was shifted to private hospital Parbhani where he was operated. On the basis of complaint police registered crime against driver of the motorcycle.

4. The petitioner filed Claim Petition for getting compensation before Motor Accident Claims Tribunal (*for short 'the Tribunal'*). The respondent No.2 owner of vehicle didn't appear before Tribunal after service of summons. The appellant - Insurance Company had filed written statement and contested the claim of petitioner. In the written statement appellant had taken stand that,

the offending motor vehicle is falsely involved in the accident. The Tribunal allowed the application under Section 140 of the M.V. Act directing the appellant and owner of vehicle to pay Rs.25,000/- jointly and severally, against said order this appeal.

5. Learned Counsel for the appellant submits that, during the pendency of present appeal, trial under Section 166 of the Act was conducted before the Tribunal and the Tribunal came to the conclusion that, the vehicle which was shown as involved in the accident falsely involved. Hence, the Tribunal has dismissed the application under Section 166 of the Act. It strengthens the appellant's contention in the appeal. The said judgment passed by the Tribunal is not challenged by the respondent No.1 hence, it has attained the finality and requested to allow the appeal.

6. Learned Counsel for respondent No.1 submits that, the order passed under Section 166 of the Act is independent award and only criteria is to satisfy *prima-*

*facie* case. Accordingly, claimant had proved before the the Tribunal that, he is entitled for the amount under Section 140 of the Act accordingly, the Tribunal has passed the said order.

7. Learned Counsel for respondent No.1 further submitted that, the judgment passed under Section 166 of the Act is appealable, though till date respondent No.1 has not preferred appeal against said judgment but respondent No.1 can consider, whether to challenge it or not ? So it cannot be the ground while considering appeal against the order under Section 140 of the Motor Vehicles Act.

8. I have heard both the learned Counsel. Perused order passed by the Tribunal. Admittedly, the claim petition filed by respondent No.1 under Section 166 of the Act is dismissed on the ground that, the vehicle which was shown as offending vehicle in the accident, actually was not involved in the said accident. The same ground is raised by the appellant in present appeal.

9. Section 140 of Motor Vehicles Act, 1988

***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 or 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 the 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 given under any other law shall be reduced from the amount of compensation payable under this section or under section 163-A].

10. This Section provides that when any persons suffers death or permanent disablement from an accident arising out of the use of motor vehicle or motorcycle vehicles thus it provides involvement of motor vehicle.

11. In present case appellant had filed written statement before the Tribunal and had taken the stand that, motorcycle which is shown as offending vehicle falsely involved in the accident. Considering the principle of no fault the Tribunal has directed the appellant to pay compensation to the respondent No.1 under Section 140

of the Motor Vehicle Act. Meanwhile, trial under Section 166 of Motor Vehicle Act proceeded before the Tribunal and the Tribunal find that, there is false involvement of offending motorcycle. Hence, Claim Petition filed under Section 166 of the Act is dismissed. It strengthens the stand taken by the appellant. Till date order of the Tribunal has not been challenged.

12. I do not find merit in contention of learned Counsel for respondent No.1 that, order passed under Section 140 of Motor Vehicle Act is independent award. When false involvement of offending vehicle is shown in the accident and it is proved then order under Section 140 of the Motor Vehicle Act cannot be considered as independent award. In view of the above, I pass the following order :-

**ORDER**

- a) Appeal is allowed.
- b) The order passed by learned Tribunal, Parbhani below Exh.5 dated 27<sup>th</sup> July, 2016 is quashed and set aside.

(c) The amount of Rs.25,000/- deposited by appellant be refunded to appellant.

(d) No order as to costs.

**(S.G. DIGE, J.)**