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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 956 OF 2022

WITH

INTERIM APPLICATION NO. 17685 OF 2022

IN

FIRST APPEAL NO. 956 OF 2022

Reliance General Insurance
Company Limited, 4th Floor,
Chintamani Avenue,
Opp. Western Express Highway,
Goregaon, Mumbai-400 063

....Appellant

vs.

1. Sameer Mohammad Khan

Age : 35 years

Occ: Bangarwala cum Sweeping work

R/o : Near Bhavani Bank, Footpath

Khar (East), Mumbai-400 051

2. Rupesh Sitaram Shelar

R/a : T Mahakali Chawl

Aliyavar Jung Marg

New Agripada Bhag 6

Santacruz (East), Mumbai-400 065

....Respondents

RAJESHWARI
RAMESH
PILLAI

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signed by
RAJESHWARI
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Mr. Pandit Kasar, Advocate for the Appellant/Applicant.

CORAM : GAURI GODSE, J.

DATE : 30th AUGUST, 2022.

P.C.

1. This Appeal is filed for challenging the judgment and award dated 16th March, 2021 passed by the Motor Accident Claims Tribunal at Mumbai in Motor Accident Claim Petition No. 848 of 2018. By this impugned judgment and award, Application filed below Exhibit 2 in Motor Accident Claim Petition No. 848 of 2018 under section 140 of the Motor Vehicles Act 1988 (“the MV Act”) is allowed by directing payment of compensation of Rs. 25,000/-.

2. It is the case of the Appellant that the insurance policy concerned in the claim Application was false, fabricated and fake policy. It is further the case of the Appellant that it had lodged police report to that effect. It is submitted on behalf of the Appellant that the specific contention raised by the insurance company was that insurance policy was a fake policy. Thus, the Tribunal ought not to have allowed the compensation under section 140 of the MV Act.

3. The impugned judgment records that on 8th April 2016 the claimant was walking by the side of the road and when he reached near Western Express Highway, Bandra (East), Mumbai and at that time offending motor cycle came in high and excessive speed and knocked down the claimant. It is further recorded that out of this accident the claimant suffered injuries which are reflected from the hospital papers produced on record. The Tribunal further recorded that the disability certificate prima facie showed that the claimant sustained disability to the extent of 48%. The impugned judgment further records the contention of the appellant insurance company that the Insurance Policy produced on record was false, fabricated and fake policy and that the Insurance Company had lodged police report to that effect.

4. Perusal of the impugned judgment and award shows that the Tribunal has specifically dealt with the contention raised by the Appellant insurance company that the insurance policy was a fake policy. This particular objection is considered by the Tribunal in paragraph 4 of the impugned judgment. It is observed by the Tribunal that the copy of the insurance policy which was placed on record prima facie showed that the offending vehicle was insured

with insurer on the date of accident. Further the Tribunal held that for the purpose of application under Section 140 of the MV Act it is not necessary to decide whether the offending vehicle was driven rashly or negligently. With these observations, contention of the Appellant with respect to the policy being fake is not accepted for the purpose of grant of compensation under section 140 of the MV Act.

5. The Tribunal relied upon copy of FIR, copy of spot panchanama, hospital papers and disability certificate and recorded a prima facie finding that out of the accident the claimant suffered injuries and sustained disability to the extent of 48%. Considering the nature of injuries and the disability sustained by the claimant the Tribunal allowed the application under Section 140 of the MV Act and directed respondent no. 2 and the appellant insurance company to jointly and severally pay a sum of Rs. 25,000/- to the Respondent No. 1 (Claimant).

6. I have perused the impugned judgment and award as well as grounds in the First Appeal. I do not find any merit with respect to the grounds raised in the Appeal and arguments made with respect to the policy being fake. Except

for raising a contention that the policy is fake, no material or evidence is produced on record to show that the policy is a fake policy. Perusal of the judgment of the Tribunal do not show that the Appellant produced office copies of the policies issued by the concerned branch on the relevant date, to show that no such policy (relied upon by the claimant) was issued on that day. Even in the present Appeal, the Appellant has not come out with the case that any such record was produced before the Tribunal. Even in this Appeal no such material is produced.

7. Proceedings under section 140 of the MV Act are summary in nature and this provision is for the purpose of granting immediate relief in case of death or permanent disability without any question being asked and/or independent of the compensation on the principle of fault. It is clear that once the policy is placed on record and no material whatsoever is produced on record to substantiate the contention that the policy was fake, the insurance company cannot escape its' liability to make payment of compensation under section 140 of the MV Act.

8. Therefore, I do not find any reason to interfere with the findings recorded in the impugned judgment. There is no merit in the Appeal. Hence, Appeal deserves to be dismissed.

9. Learned Advocate for the Appellant has expressed concern that once the contention of insurance company regarding fake policy is disbelieved by the Tribunal in the proceedings under section 140 of the MV Act and the same is confirmed by this court, then the Appellant will be precluded from raising the plea in the proceedings under section 166 of the MV Act. Thus, it is submitted that the contention with respect to genuineness of the insurance policy be kept open. The Appellant-Insurance company in a similar First Appeal being First Appeal No. 659 of 2021 had expressed similar concern. In the judgment delivered by me today in the said First Appeal, I have already taken a view that no such observation as requested by the learned Advocate for the Appellant is necessary for the reasons given in the said judgment. Since this First Appeal is similarly situated, similar view is taken by me with respect to the concern expressed by the learned Advocate for the Appellant in this Appeal.

10. Before dealing with the concern expressed by the learned Advocate for the Appellant, I find it necessary to note that by Section 50 of the Motor Vehicles (Amendment) Act, 2019 (32 of 2019) Chapter X of the MV Act, containing Sections 140 to 144 are omitted. By Notification dated 25th February 2022, the said amendment has been made effective from 1st April 2022. Thus for the purpose of deciding the claim Application of the Respondent no. 1 with respect to accident occurred on 8rd April 2016 and for the purpose of deciding present First Appeal, the omitted Chapter X of the MV Act was very much on the statute book. Thus, for dealing with the concern expressed by the learned Advocate for the Appellant it is first necessary to carefully peruse the relevant provisions of sections 140 and 141 of the MV Act, which read 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 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 subsection (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.”

“141. Provisions as to other right to claim compensation for death or permanent disablement.—(1) The right to claim compensation under Section 140 in respect of death or permanent disablement of any person shall be in addition to any other right, except the right to claim under the scheme referred to in Section 163-A (such other right hereafter in this section referred to as the right on the principle of fault) to claim compensation in respect thereof

under any other provision of this Act or of any other law for the time being in force.

(2) A claim for compensation under Section 140 in respect of death or permanent disablement of any person shall be disposed of as expeditiously as possible and where compensation is claimed in respect of such death or permanent disablement under Section 140 and also in pursuance of any right on the principle of fault, the claim for compensation under Section 140 shall be disposed of as aforesaid in the first place.

(3) Notwithstanding anything contained in sub-section (1), where in respect of the death or permanent disablement of any person, the person liable to pay compensation under Section 140 is also liable to pay compensation in accordance with the right on the principle of fault, the person so liable shall pay the first-mentioned compensation and—

(a) if the amount of the first-mentioned compensation is less than the amount of the second-mentioned compensation, he shall be liable to pay (in addition to the first-mentioned compensation) only so much of the second-mentioned compensation as is equal to the amount by which it exceeds the first mentioned compensation;

(b) if the amount of the first-mentioned compensation is equal to or more than the amount of the second-mentioned compensation, he shall not be liable to pay the second-mentioned compensation.”

(emphasis applied)

11. Careful perusal of the provisions mentioned above, make it clear that the claim made under section 140 of the MV Act is in addition to any other claim made, which is dealt with under the principle of fault and that the

amount of such compensation granted under any other law shall be reduced from the amount of compensation paid under section 140 of the MV Act. Subsection 3 of section 141 of the MV Act says that if the person liable to pay compensation under section 140 of the MV Act is also liable to pay compensation in accordance with the right on the principle of fault, then first the compensation payable under section 140 of the MV Act is to be paid. It further provides that when the amount payable under no fault liability is less than the amount payable under the principle of fault then the person liable to pay, has to pay only the exceeding amount. Lastly it also says that if the amount payable under the principle of fault is equal to or less than the amount payable under no fault liability, then the person liable to pay has to pay only the amount under the no fault liability. Thus, these two provisions make it clear that under any circumstances amount of no fault liability is to be paid irrespective of the decision on the claim based on the principle of liability and the amount if any, to be paid, on the principle of fault liability is always in addition to the amount of no fault liability. Even if all the provisions in the MV Act are considered, even in a case where the defense of the insurance company is accepted by deciding claim petition under section 166 of the MV

Act, there is no provision which entitles the insurance company to seek restitution/refund from the claimant of the amount paid in terms of award under section 140 of the MV Act.

12. Thus, the provision for payment under no fault liability is a preliminary stage followed by the claim under the principle of fault. Thus, parameters for deciding the claim under no fault principle and claim on the principle of fault are distinct.

13. Thus, in my view, no such observation as requested by the learned Advocate for the Appellant, is necessary for more than one reason. Firstly, the proceedings under section 140 of the MV Act are summary in nature. Secondly the findings and/or observations recorded by the Tribunal under such proceedings are not conclusive and the same are only for the purpose of grant of immediate relief. Thirdly as section 140 of MV Act itself is worded with a heading which says that “*Liability to pay compensation in certain cases on the principle of no fault*”, which means that the application under section 140 of the MV Act is not a composite application and thus grounds raised in defenses are also not composite and are in fact preliminary in nature. Thus, the

defenses raised in the proceedings under section 140 of the MV Act are dealt with only for the purpose of preliminary and/or prima facie consideration for grant of immediate relief. Thus, the findings/observations recorded by the Tribunal in the summary proceedings under section 140 of the MV Act, will not preclude the opposing party from raising same defenses in the proceedings under section 166 of the MV Act which is composite in nature.

14. Thus, it is always open for the Appellant insurance company to raise all possible grounds which are permissible in the proceedings under section 166 of the MV Act, irrespective of the findings/observations made by the Tribunal in the proceedings under section 140 of the MV Act.

15. With these observations recorded above the First Appeal is dismissed with no order as to cost.

16. In view of dismissal of the Appeal, pending Interim Application is infructuous and hence disposed of.

[GAURI GODSE, J.]