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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 969 OF 2022
WITH
INTERIM APPLICATION NO. 17752 OF 2022
IN
FIRST APPEAL NO. 969 OF 2022

Reliance General Insurance Company Limited, 4th Floor, Chintamani Avenue, Goregaon (East) Mumbai-400 063 ....Appellant/Applicant

vs.

1. Nidhi Dilip Naik
Age : 62 years, Occupation: Nil
R/a: Room no. 13, Khot Building
Akshikar Path, Chhabildas High School
Bhawani Shankar S.O. Mumbai-400 028

2. Awakash Gulabutta Soni
C-24, Ground Floor, Vijay Nagar Sangh
Shaikh Misree Road, Antop Hill,
Mumbai-400 037 .....Respondents

Mr. Pandit Kasar, Advocate for the Appellant.

CORAM : GAURI GODSE, J.

DATE : 30th AUGUST, 2022.

P.C.

1. This Appeal is filed for challenging the judgment and award dated 26th October, 2021 passed by the Motor Accident Claims Tribunal at Mumbai in Motor Accident Claim Petition No. 696 of 2019. By this impugned judgment and award, Application filed below Exhibit 2 in Motor Accident Claim Petition No. 696 of 2019 under section 140 of the Motor Vehicles Act 1988 ("the MV Act") is allowed by directing payment of interim compensation of Rs. 25,000/-.

2. In this Appeal it is submitted by the learned Advocate for the Appellant that the insurance company's contract between the insurer and the insured was not in existence on the alleged day of the accident and hence no interim compensation should have been awarded against the insurer for the injury caused to the claimant. It was submitted that the Insurance cover was not in existence on the day of alleged accident hence insurer would not be liable to pay any compensation for the act caused by the offending vehicle.

3. The impugned Judgment records that the claimant suffered partial permanent disability because of the injuries sustained by him in the motor vehicle accident occurred on 20th March, 2018 involving a motor cycle. The impugned judgment records that the appellant insurance company had filed written statement and had taken objection for the grant of any compensation as prayed. Perusal of the impugned judgment shows that no such contentions with respect to the existence of Insurance policy was taken by the appellant – insurance company before the Tribunal. Since this objection is raised by the learned Advocate for the Appellant in this appeal the same is examined by perusing the impugned judgment. In the impugned judgment in paragraph 3 the Tribunal records that certified copies of FIR, statement, spot panchnama and insurance policy are produced on record. The Tribunal further records that the original medical papers and original disability certificate is also produced on record. The impugned judgment records prima facie finding that the documents filed on record reveal that injuries caused to the claimant were because of the motor vehicle accident and admittedly at the time of accident offending vehicle was insured with the insurer. The Tribunal further records that at the stage of application under Section 140 of the MV Act the Tribunal

is not required to enter into merits and demerits of the case and that to provide minimum financial help in the form of interim compensation to the victim to the accident liability is created under section 140 of the MV Act on the basis of no fault. With these observations the Tribunal allowed the application filed by the claimant and directed the respondent no. 2 and appellant – insurance company to jointly and severally pay amount of Rs. 25,000/- to the respondent no. 1 (claimant).

4. 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 genuineness of the policy. The Appellant for the first time has raised contention with respect to genuineness of the policy by taking ground in the Appeal Memo of the present First Appeal. Perusal of the impugned judgment of the Tribunal shows that the appellant has neither taken any such contention nor has produced any such material or evidence to show that the insurance policy was not in existence at the time of accident. The Appellant has not raised any ground in this appeal that such contention was taken before the Tribunal but not considered. Hence

there is no merit in the submission made by the appellant with respect to the insurance policy not being in existence.

5. 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 policy is placed on record and no case is made out disputing the genuineness of the policy the insurance company cannot escape its liability to make payment of compensation under Section 140 of the MV Act.

6. 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. 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.

7. 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 20th March 2018 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.
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> (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.
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> (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.
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> (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;**
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> **(*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."**
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> ***(emphasis applied)***

8. 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. Sub-section 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.

9. 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.

10. 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.

11. 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.

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

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

[GAURI GODSE, J.]