

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

FIRST APPEAL (FA) NO. 167/2021

UNITED INDIA INSURANCE COMPANY LTD., NAGPUR

..VS..

PRAKASH SHIVAJI GONNADE AND OTHERS

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri B. Laheri, Advocate for appellant

CORAM : NITIN W. SAMBRE, J.

DATED : 29/08/2022

Heard Shri B. Laheri, learned Counsel appearing for the appellant – Insurance Company.

2. Appeal is preferred against the order passed below Exh. 5 by Motor Accident Claims Tribunal, Bhandara (for short the “Tribunal”) on 24.11.2020, thereby directing the respondents in exercise of power under Section 140 of the Motor Vehicles Act, 1988 (for short the “Act of 1988”) to pay by way of No Fault Liability an amount of Rs.50,000/- with accrued interest at the rate of 7% per annum w.e.f. 25.01.2012.

3. The contentions of the learned Counsel for the appellant Shri Laheri are in view of the law laid down by the Hon’ble Apex Court in the matter of *Yallwwa (Smt.) and Others Vs. National Insurance Co. Ltd. and Anr. [(2007) 6 SCC 657]*, the order passed in exercise of power under Section 140 of the Act of 1988 is appealable as same takes the colour of award. Apart from above, his contentions are since third party liability cannot be fastened in view of the terms of the policy, the Tribunal has committed error of law. So as to substantiate his contention, he has drawn support from the judgment of the Division Bench this Court in the matter

of *New India Assurance Co. Ltd. Vs. Babasaheb Anna Mali and ors.* [2002 (1) T.A.C. 47 (Bom.)].

4. I have appreciated the aforesaid submissions. It appears that in the pending claim petition proceedings under Section 140 of the Act of 1988 were taken up with prayer for grant of No Fault Liability which is allowed by an *interim* order. It appears that an accident took place on 25.01.2012 and claimants were travelling in the offending vehicle.

5. For the purpose of deciding proceedings under Section 140 the Tribunal appears to have considered the very issue of occurrence of the accident, the involvement of the vehicle which is insured with the appellant. Fact remains that the main claim proceedings are still pending adjudication.

6. In the aforesaid background, it cannot be said that the Tribunal was in error in ordering payment of No Fault Liability particularly when the accident is not in dispute.

7. That being so, no interference is called for in appellate jurisdiction.

8. The issue as regards maintainability of appeal as is canvassed is not disputed. However, as regards the support drawn from the judgment of the Division Bench of this Court in the matter of *New India Assurance Co. Ltd. (supra)*, this Court is of the view that at the stage of passing an order under Section 140 of the Act of 1988 once the Tribunal is satisfied about occurrence of the accident, it was justified in ordering No Fault Liability.

9. No case for interference is made out, the first appeal is dismissed. No costs.

10. Pending civil application, if any, is also disposed of.

(NITIN W. SAMBRE, J.)

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