

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**FIRST APPEAL NO.89 OF 2021
WITH
INTERIM APPLICATION NO.457 OF 2021
IN
FIRST APPEAL NO.89 OF 2021**

The New India Assurance Co. Ltd. ...Appellant
V/s.
Mr. Khadbad R. Mishra &
Fooldevi Khadbad Mishra & Anr. ...Respondents

Mr. H. B. Takke i/by Mr. Milind More for Applicant.

Mr. T. J. Mendon for Respondent No.1.

CORAM : AMIT BORKAR, J.

DATE : JANUARY 10, 2023

PC.:

1. The insurance company is challenging judgment and order passed by the Motor Accident Claim Tribunal, Mumbai (hereafter refer as “Tribunal” for short) on an application under Section 140 of Motor Vehicles Act, 1988 (for short “the said Act”) in this first appeal.

2. According to the claimant, the accident took place on 11th April 2018 at 22.30, when the applicant’s son was proceeding on motorcycle as a pillion rider from Vasai to Sativali, when car bearing registration no.MH-12-NB-3358 gave dash to the applicant’s son. In view of the death of the applicant’s son, he filed

Claim Application No.1126 of 2018 under Section 166 of the said Act, claiming compensation of Rs.10,00,000/-.

3. The said claim was contested by the insurance company mainly on the ground that the cheque of Rs.2,33,934/- towards premium of policy was dishonoured, resulting into cancellation of policy.

4. The learned Tribunal after hearing both sides allowed the application under section 140 of the said Act, directing the insurance company to pay amount of Rs.50,000/- along with interest @ 7.5% per annum from the date of order till realization.

5. Insurance company has, therefore, filed present appeal.

6. Learned advocate for the insurance company contended that due to dishonour of premium cheque, the policy was cancelled before the date of accident. Therefore, according to the company on the date of accident, there was no valid policy in respect of insured vehicle. According to the insurance company, therefore, it cannot be directed to pay no fault liability.

7. The Tribunal after considering the defence of the company has recorded a finding that the fact of cancellation of policy was not informed either to the insured or to the road transport officer. Neither RPAD receipt, nor acknowledgment to prove the intimation of cancellation of policy on the insured had been produced on record. The intimation issued to RTO was also not produced on record. The insurance company having not been able to produce the documentary evidence regarding cancellation

of policy before the date of accident, the Tribunal was justified in granting amount of Rs.50,000/- towards claim under Section 140 of the said Act. As the accident has resulted into the death of applicant's son, in the absence of proof of cancellation of policy, in my opinion, the Tribunal was justified in allowing the application under Section 140 of the said Act.

8. It is always open for the insurance company to produce material to show that the policy was cancelled before the Tribunal at the time of hearing of the claim application.

9. There is no merit in the appeal. The appeal is, therefore, dismissed.

10. In view of dismissal of appeal, interim application does not survive. Hence, it is also dismissed.

(AMIT BORKAR, J.)