IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.

FIRST APPEAL NO.55 OF 2023

Shriram General Insurance Co. Ltd.
Through its Branch Manager,
T-5, Sharda House, 3rd Floor,
345, Kingsway, Nagpur

...APPELLANT

VERSUS

1. Arvind Dattatray Shindode,
Aged 45 years, Occ. Service

through Power of Attorney wife
Smt. Rajashri w/o Arvind Shindode,
Aged 35 years, Occ. Service

R/o Building No.2, Qu. No. 7,
Patbandhare Depa. Anji (Ajni),
Nagpur

2. Abdul Salim Abdul Sattar,
Aged Major, Occ. Business,
R/o Tekanaka, Kamptee Road,
Nagpur

...RESPONDENTS

Shri G.I. Dipwani, Advocate for the appellant.
Shri S.R. Charpe, Advocate for respondent No.1.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : FEBRUARY 17, 2023.

ORAL JUDGMENT :

Heard finally with the consent of learned Counsel for the parties.

2. The appellant has challenged the order passed by the Motor Accident Claims Tribunal, Nagpur in M.A.C.P. No.788/2016 by which the Insurance Company was directed to pay the amount of compensation under Section 140 of the Motor Vehicles Act, 1988.

3. By the impugned order, the Claims Tribunal has allowed the claim application under the Motor Vehicles Act and directed the appellant to pay jointly and severally the amount of compensation of Rs.25,000/- to respondent No.1 who is the original claimant.

4. The claimant has filed the application for grant of compensation on account of accidental injuries sustained by him in an accident which took place on 08/06/2016 at 9.45 hours on Wardha road, opposite ICICI bank, Nagpur.

5. As per the contention of the claimant, said accident took place due to the rash and negligent driving of the original respondent No.1 and the vehicle is validly insured with respondent No.2. Therefore, respondent Nos.1 and 2 are jointly and severally liable to pay the compensation. It is further contended by the claimant that in the alleged accident his left leg was amputated at thigh and he had sustained grievous injuries which resulted into permanent disablement, therefore, he is entitled for the compensation.

6. To resist the claim of the claimant, Insurance Company denied the entire allegations of the claimant and came with a case that the policy on which claimant has relied upon is fake policy, and therefore, Insurance Company is not liable to pay compensation and prayed for exoneration from the liability.

7. After hearing both the sides, learned Tribunal held the appellant-Insurance Company liable to pay compensation and directed the Insurance Company to deposit the amount of Rs.25,000/- under Section 140 of the Motor Vehicles Act, 1988.

8. Being aggrieved and dissatisfied with the order passed by the Motor Accident Claims Tribunal, present appeal is preferred by the appellant – Insurance Company on the ground that the offending truck was not insured with the appellant – Insurance Company on the date of accident. The policy which is filed on record is a fake policy and learned Tribunal erroneously fasten the liability to pay no fault compensation on the Insurance Company. In fact, the Insurance Company is not at all liable to pay compensation as offending vehicle was not at all insured with the Insurance Company on the date of accident. Therefore, prayed for quashing and setting aside the said order.

9. Heard Shri Dipwani, learned Counsel for the appellant and Shri S.R. Charpe, for the respondent No.1.

10. Learned Counsel for the appellant submitted that the Insurance policy on which the claimant is relied upon is a fake policy, and therefore, the Insurance Company is not at all liable to pay compensation.

11. On the other hand learned Counsel for respondent No.1 submitted that admittedly the original claimant is a third party, and therefore, claimant is entitled to receive the compensation, and therefore, there is no merit in the appeal. He further submitted that nothing is placed on record to show that it is a fake policy. Therefore, appeal is devoid of merits and liable to be dismissed.

12. Heard rival submissions of the parties. The short point arise for consideration is whether the Claims Tribunal had justified in allowing the application under Section 140 of the Motor Vehicles Act, 1988.

13. Perused the application and the record submitted along with appeal.

14. There is no dispute that the vehicle truck bearing No.MH-40-Y-8165 is involved in the accident. It is also not in dispute that said accident took place due to rash and negligent driving of the truck driver as the crime was registered against the truck driver. The appellant-Insurance company has denied its liability on the ground that the policy produced on record on which the Tribunal relied upon is a fake policy. Whether the policy is fake policy or genuine policy is a triable issue and will have to be determined by the Tribunal on the basis of the evidence at appropriate stage. At the stage of consideration of application under Section 140 of the Motor Vehicles Act, 1988, only *prima facie* material is to be seen and on the basis of *prima facie* material, the Tribunal come to the conclusion that the Insurance Company has to deposit the amount.

15. Learned Counsel for the appellant placed his reliance on the order passed by this Court in First Appeal No.1965 of 2019 (*Future Generali India Insurance Co. Ltd. Vs. Smt. Lata wd/o Raju Purake and ors.*) decided on 18/01/2021, wherein this Court has observed that the issue regarding fake policy is a triable issue and will have to be determined by the Tribunal on merits. Depriving the claimants who are dependents of late Raju Purake, of interim compensation on the ground raised by the appellant or compelling them to recover the compensation from the owner, would in my considered view, defeat the very object of this benevolent provision having socio-economic object. Moreover, the

amount of compensation awarded under Section 140 of the Motor Vehicles Act is ultimately to be deducted from the final amount of compensation awarded under Section 166 of the Motor Vehicles Act, 1988.

16. In the present case, the case of the appellant is of the similar situation. The Insurance company has claimed that the policy is fake policy and the same issue can be decided on the basis of evidence adduced by the Insurance Company.

17. The entire dispute regarding the liability of the insurer to indemnify the injured will be decided on merits. Until such time, the claimants cannot be deprived of from getting the compensation amount, therefore, the interest of the claimants is to be safeguarded as well as the interest of the Insurance Company also needs to be safeguarded by directing the claimant to give an undertaking in the event that if Insurance Company succeeded to prove that the policy is a fake policy then the claimant has to refund the amount to the Insurance Company.

18. In case, if it is proved that the policy is fake and insurance company is not liable to indemnify the insured the respondent-owner - claimant has to refund the amount to the Insurance Company and can recover the same from the owner.

19. Under the circumstances, the appeal is dismissed. The claimants are permitted to withdraw the amount of interim compensation subject to furnishing undertaking that they shall refund the amount received under Section 140 of the Motor Vehicles Act with interest in the event the Insurance company proves that the policy is fake and it is totally exonerated of its liability of indemnify the owner.

20. In view of the above observation, the appeal is dismissed.

21. The Tribunal is directed to make an endeavour to dispose the claim petition as expeditiously as possible.

(URMILA JOSHI-PHALKE, J.)

**Divya*