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

FIRST APPEAL NO. 550 OF 2023

The S.B.I. General Insurance Company Ltd.
148, 3rd Floor, Above S.B.I. Personal Banking
Branch, Thapar Enclave, Maharajbaug Road,
Nagpur, Dist. Nagpur (MS). . . . **APPELLANT**

// **V E R S U S** //

1. Smt. Reshma Parvin Siddiqui Wd/o.
Safir @ Shafir Ahamad Saddiquie,
Aged 45 years, occ. House-hold lady,

2. Mohammad Anwar Raza S/o. Shafir
Ahamad Hussain,
Aged about 26 years, Occ. Education,

3. Farhin Fatma D/o. Shafir Ahamad
Hussain, Aged 21 years, Occ. Education

(All R/o. Ward No. 2, Cement Nagar,
Nakoda, Tq and Dist. Chandrapur)

4. Mohd. Arshad Emtiyaz Ahamad,
Aged 35 years, Occ. Driver,
R/o. Behind Bobade Mangal Karyalaya,
Ward No. 3, Ghuggus,
Tq. Dist. Chandrapur. . . . **RESPONDENTS**

Mrs. Mrunal Naik, Advocate for appellant.
Shri R. M. Thaliyani, Advocate a/w. Ms. Ragini K. Swami, Advocate for respondent nos. 1 to 3.

CORAM :- M. W. CHANDWANI, J.

CLOSED ON :- 19.07.2024

PRONOUNCED ON :- 30.08.2024

<u>ORAL JUDGMENT</u> :-

Heard.

2. **Admit**. Heard finally by consent of the learned counsel for the parties.

3. The impugned order is passed by the Motor Accident Claims Tribunal, Chandrapur on 16.07.2020 below the Application (Exh.5) for grant of compensation under Section 140 of the Motor Vehicles Act, 1988 (for short, “the Act”) in Motor Accident Claims Petition No. 100/2015, thereby awarding interim compensation of Rs.50,000/ towards no fault liability to the respondent nos.1 to 3, the claimants.

4. The said order is questioned by the appellant – Insurance Company on the ground that the deceased, whose is husband of the owner of the car, was an occupant of the car therefore, he was not a third party and by no stretch of imagination, can termed to be covered under the policy.

5. According the learned counsel for the appellant, the Supreme Court has observed that pursuant to the provisions of Section 140 of the Act, interim compensation can be awarded in exercise of

powers under Section 168 of the Act, while awarding such compensation the liability of the Insurance Company needs to be appreciated which liability cannot be treated at par with that of the vehicle owner or the driver of the vehicle. According to her, the award of interim compensation is not sustainable. *Per contra*, the learned Counsel for respondent nos.1 to 3 supported the impugned order.

6. Upon appreciation of rival submissions, it is required to be noted that the policy speaks of the Comprehensive Liability and personal accident cover for Owner-Driver of Rs.2,00,000/- and for passengers of Rs.50,000/-. The claim of the Insurance Company that it is not liable under the said policy, at this stage need not to be gone into, as *prima facie* it could be noticed that the liability to pay compensation under the no fault liability clause can very well be read from the insurance cover.

7. Apart from the above, appropriate orders in case if the Claim Petition fails, can be passed taking care of the interest of the appellant –Insurance Company at an appropriate stage. The liability of the Insurance Company whether to pay the compensation or not, can be gone into only upon appreciation of the evidence at an appropriate stage of the claim petition.

8. That being so, I hardly noticed any substance in the appeal. As such, the appeal fails. Hence, the following order is passed:-

i) The appeal is dismissed.

ii) The amount, which is deposited in this Court by the appellant, be remitted back to the Motor Accident Claims Tribunal, Chandrapur alongwith accrued interest, if any, with further directions to the appellant to deposit the remaining amount with the Tribunal within four weeks from today.

iii) The Tribunal will be at liberty to permit withdrawal of the said amount by the claimants, by imposing such conditions as it deems fit, in the facts and circumstances of the case.

(M. W. CHANDWANI, J.)

RR Jaiswal