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

FIRST APPEAL NO.439 OF 2022

APPELLANT (Ori. Res. No.2) (On R. A.) : **HDFC Ergo General Insurance Co. Ltd.**, 1st Floor, HDFC House, Through Its Manager, Shriram Tower, behind NIT Building, Kingsway, Sadar, Nagpur

..VERSUS..

RESPONDENTS (Ori. Pet. No.1 & 3) (On R. A.) :

1 **Chandrashekhar S/o Premdas Wasnik**, Age 41 Years, Occ.- Farm Labour

2 **Gitabai W/o Chandrashekhar Wasnik**, Age 33 Years, Occupation Housewife

3 **Anurag S/o Chandrashekhar Wasnik**, Age 15 Years, Occupation Student

(The Respondent No.3 is minor through Respondent No.1) R/o C/o, Mukundrao Bagade, Ward No.3, Vaishali Nagar, Bramhani Nagpur

4 **Sanjay B. Kakde**, Aged about Major, Occupation Owner, R/o V A Foda Post-Kalmeshwar, Th-Varoda Village, Kalmeshwar, District Nagpur.

Mr Amit M. Kukday, Advocate for Appellant.

CORAM : M. W. CHANDWANI, J.

DATE : 22nd AUGUST, 2024.

ORAL JUDGMENT

1. Heard.

2. **Admit**.

3. Heard Mr Amit M. Kukday, learned counsel appearing for the appellant.

4. The impugned order is passed by the Motor Accident Claims Tribunal, Nagpur, on 23.06.2021 below the application (Exhibit – 5) for grant of compensation under Section 140 of the Motor Vehicles Act, 1988 (hereinafter referred to as “the Act of 1988” for short) in Claim Petition No.397 of 2019, thereby awarding interim compensation of Rs.50,000/- towards No Fault Liability to respondent Nos.1 to 3 herein.

5. The impugned order is challenged by the appellant – Insurance Company on the ground that the policy in question is a fake and fabricated policy and therefore, the respondent No.4 alone is liable to pay the compensation amount towards No Fault Liability to the original claimants.

6. I have gone through the impugned order passed below Exhibit – 5, which reveals the involvement of the offending motorcycle in the accident. The Form AA and Panchanama of spot of incident also supports the same. The claim of the Insurance Company is that the policy in question is a fake and fabricated policy and therefore, the Insurance Company is not liable under the said policy. At this stage, there is no need to go into that, as *prima facie*, it can be noticed that the liability to pay compensation under 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 the 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 the appropriate stage of the claim petition.

8. That being so, I hardly find any substance in the instant appeal. As such, the appeal fails. The same is dismissed.

9. The amount deposited in this Court by the appellant be remitted back to the Motor Accident Claims Tribunal, Nagpur and the Tribunal will be at liberty to permit withdrawal of the said amount by imposing such conditions as it deems fit in the facts and circumstances of the case.

(M. W. CHANDWANI, J.)

TAMBE