



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

FIRST APPEAL NO. 314 OF 2010

The New India Assurance Co. Ltd.
 Through the Manager,
 Dr. Ambedkar Bhavan, 4th Floor,
 MECL Building, Seminary Hills,
 Nagpur

} **.. Appellant**
 (Original opponent No.2)

Versus

- 1) Balaram Sakharam Shingne
 age about 50 years, Occ : Labourer,
 R/o Hivara Ashram, Vivekanand
 Nagar, Tq. Mehkar, District Buldhana
- 2) Sheikh Ismail Sheikh Musleem
 age – Major, Occ : Business
 R/o Ward No.17, Bagwanura,
 Tq. Mehkar District Buldhana

} (Original Claimant)

} **.. Respondents**

Owner of Matador No. MH-20-F-6187

Mr. Sandip Marathe, Advocate for the petitioner.
 Mr. M.P.Kariya, Advocate for respondent No.1.
 Mr. Rahul Ghuge, Advocate for respondent No.2.

CORAM : ABHAY J. MANTRI, J.

DATED : JUNE 30, 2025

ORAL JUDGMENT

Heard finally with the consent of the learned counsel
 appearing for the parties.

(2) The appellant New India Assurance Company Ltd. challenges the order dated 09/05/2009 passed below Exh.5 in MACP 193/2006, by the learned Motor Accident Claims Tribunal (hereinafter referred to as '**Tribunal**'), whereby directed the appellant and respondent Nos.2 do jointly and severally pay compensation amount of Rs.25000/- to the applicant/respondent No.1.

(3) On 16/08/2001, the applicant/respondent No.1, Balaram, was going in the Metador bearing MH-20-F-6187 (for short, **Matador**) of opponent No.1/respondent No.2, Sheikh Ismail, as a 'Cleaner' from Hiwraashram to Mehkar, and on the way the said Metador turned turtle, and an accident occurred. In the said accident, Respondent No. 1 sustained injuries. Accordingly, an FIR was registered against the driver of the Metador. Due to the said accident respondent No.1 Balaram had sustained 40% permanent disability, therefore, he has filed claim petition before the learned Tribunal, wherein he has filed application under Section 140 of the Motor Vehicles Act, 1988 (herein after referred to as '**the Act**') for grant of compensation under 'no fault liability'. The appellant and respondent No.2 opposed the said application. After considering the rival contentions, the learned Tribunal held that the appellant and respondent No. 2 are jointly and severally liable to pay a compensation of Rs. 25,000 to respondent No. 1, Balaram. Aggrieved by the said order, the appellant Insurance Company has preferred this appeal.

(4) Having heard the rival submissions and perusal of the record, the following point arises for the determination :-

1) Whether any interference is required in the impugned order?

(5) Learned counsel for the appellant vehemently contended that the respondent No.2, the owner of the vehicle, has categorically denied that the claimant was travelling in the Matador on the date of the accident. The appellant Insurance Company also categorically denied that the claimant was travelling in the said vehicle as 'Cleaner', but *'averred that he was travelling as a fare-paying passenger'*. The learned Tribunal did not consider the above facts and erred in allowing the application as stated above.

(6) On the other hand, learned counsel for the respondent Nos.1 supports the order passed by the learned Tribunal and contended that the question of travelling of respondent No.1 in the Metador as a 'Cleaner' or *'fare paying passenger'* will be determined after the evidence of both parties and therefore, submitted that no interference is required in the impugned order.

(7) Having heard the rival submissions and perusal of the record, I would like to reproduce Section 140 of the Act, which reads thus :-

“140. Liability to pay compensation in certain cases on the principle of no fault.—

(1) Where death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicle shall, or, as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this section.

(2) The amount of compensation which shall be payable under sub-section (1) in respect of the death of any person shall be a fixed sum of 1 [fifty thousand rupees] and the amount of compensation payable under that sub-section in respect of the permanent disablement of any person shall be a fixed sum of 2 [twenty-five thousand rupees].

(3) In any claim for compensation under sub-section (1), the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person.

(4) A claim for compensation under sub-section (1) shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made nor shall the quantum of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement.

[(5) Notwithstanding anything contained in sub-section (2) regarding death or bodily injury to any person, for which the owner of the vehicle is liable to give compensation for relief, he is also liable to pay compensation under any other law for the time being in force:

Provided that the amount of such compensation to be given under any other law shall be reduced from the amount of compensation payable under this section or under section 163A.”

(8) On a plain reading of the above provision, it is evident that while considering the application under section 140 of the Act, the learned Tribunal has to consider the following factors only:

- (i) an accident arising out of the use of a motor vehicle or motor vehicle/s leading to the death or permanent disablement of any person,
- (ii) Sub-section (2) provides for a fixed amount of compensation

- (iii) Sub-section (3) provides that the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles.

(9) It is to be noted that the appellant does not dispute that the respondent No.1 was travelling in the said Matador at the time of the occurrence of the accident on 16/08/2001. At that time, the Matador was insured with the appellant. Similarly, it is not in dispute that the said Matador was owned by respondent No. 2 and insured with the appellant. Likewise, the appellant has produced a permanent disability certificate in "Form B" issued by the Medical Officer in charge of Buldhana, who had an M.S. (Ortho) degree. Which certified that the respondent No.1, Balaram, had sustained disability to the extent of 40%. However, the only grievance of the appellant was that the owner of the Matador had committed a breach of the policy. Therefore, the appellant is not liable to pay compensation. On perusal of the impugned order, it appears that the learned Tribunal has considered these factors and consequently allowed the application under Section 140 of the Act of 1988.

(10) The appellant's grievance is that respondent No.2 owner of the vehicle denied that claimant was travelling by the Matador on the

date of the accident, however, on the contrary the appellant Insurance Company itself in their written statement averred that claimant was travelling in the Matador as a fare paying passenger, these two stands are contradictory to each other. Moreover, the question of the determination of the status of the respondent No.1, whether he was seated in the said Matador in the capacity of 'Cleaner' or a fare-paying passenger, would be determined after adducing the evidence by the parties and not at this preliminary stage. Additionally, respondent No. 1 complied with the requirements of Section 140 of the Act. Therefore, prima facie, I do not find substance in the contention of learned counsel for the appellant in that regard.

(11) Learned counsel for the appellant Insurance Company has relied upon the judgment in ***New India Assurance Co. Ltd. vs. Puja Satish Gavali*** reported in ***(2019) SCC Online Bombay 1547*** and submitted that in view of the mandate in above decision, the appellant is entitled to ask for a refund of the compensation/amount deposited in the Court or, may recover it from the owner of the Matador. It is pertinent to note that in the said case, after the conclusion of the Trial, based on the evidence, the court held that the deceased was a 'gratuitous passenger' or 'fare paid passenger' in the vehicle and cannot be termed as 'third party'. However, in the case in hand evidence is yet to be adduced so the question of the determination of

the status of the respondent No.1, whether he was seated in the said Matador in the capacity of 'Cleaner' or a fare-paying passenger, would be determined after adducing the evidence by the parties and not at this preliminary stage. Thus, the mandate in the above decision is hardly of any assistance to the appellant in support of its defence.

(12) In the case in hand, as per the order of this Court, the appellant has deposited the entire amount of 'no fault liability' in this Court, and the matter was admitted on 05/04/2010. The Record and Proceedings of the learned tribunal were called, and since then, the original petition has been pending. It also appears that since 2010, the amount has been in this Court; therefore, it is required to be transferred to the learned Tribunal, considering the controversy that arises in the case in hand.

(13) I would like to refer the judgment of the Hon'ble Apex Court in the case of ***Eshwarappa alias Maheshwarappa and another vs. G.S.Gurushanthappa and another (2010) 8 SCC 620***, wherein the Hon'ble Apex Court after considering various provisions of the Act categorically held that under section 140 of the Act one may claim compensation under no-fault and therefore, directed the Insurance Company, to pay Rs.25000/- along with simple interest @6%p.a. to the appellant, therein. Thus, the case at hand is covered by the above-cited judgment.

(14) Upshot of the above discussion and considering the factual position, that the appellant is not disputing that the claimant was occupant of the said Matador, which was involved in the accident and insured with the appellant, in such an eventuality, as per the law laid down in the case of **Eshwarappa** (supra), the appellant Insurance Company is liable to pay Rs.25000/- to the claimant along with interest accrued thereon. It is made clear that if the appellant succeeds before the learned Tribunal, the appellant is entitled to recover the same from the owner of the Matador, i.e. respondent No.2, as observed in the judgment of **Puja**. (supra).

(15) Thus, considering the above discussion and mandate of Section 140 of the Act of 1988, as well as the law laid down by the Hon'ble Apex Court in **Eshwarappa** (supra), I do not find any perversity or illegality in the impugned order to interfere in the appeal. Hence, I answer the point in the negative. The appeal being bereft of merit, stands dismissed. Parties to bear their own costs.

(16) The Registry is directed to transfer the amount deposited by the appellant Insurance Company, along with accrued interest thereon, to the learned Tribunal at Buldhana to disburse it to Claimant/Respondent No. 1.

(17) Needless to clarify that since 2006, the petition has been pending; therefore, the learned Tribunal should endeavour to dispose of the same as early as possible, in any case within six months from the receipt of the record and proceedings.

[ABHAY J. MANTRI, J.]

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