

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1914 of 2004

with

Civil Application No. 6510 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

ORIENTAL INSURANCE COMPANY LIMITED

Versus

MINOR SANJAY BUPATBHAI LUHAR THRO' HIS MOTHER SITABEN

Appearance:

1. First Appeal No. 1914 of 2004
MR MAULIK J SHELAT for Appellant
MS AMITA M SHAH for Respondent No. 1
..... for Respondent No. 2
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CORAM : HON'BLE MR.JUSTICE A.M.KAPADIA

Date of decision: 25/02/2005

ORAL JUDGEMENT

1. By filing instant appeal under Section 173 of the

Motor Vehicles Act, 1988 ('the Act' for short), appellant, Oriental Insurance Company Limited, seeks to challenge the order dated 18.2.2003 rendered below application Ex.3 in MACP No.151 of 2002 by the MACT (Main), Ahmedabad by which the application filed by respondent No.1/original claimant under Section 140 of the Act under "No Fault Liability" principle claiming interim compensation of Rs.25,000/- for the injuries sustained by the claimant in a vehicular accident came to be allowed and thereby the appellant was directed to pay RS.25,000/- together with interest at the rate of 9% per annum jointly and severally with respondent No.2, owner of the vehicle and the appellant was directed to deposit the said amount within one month from the date of the order.

2. Respondent No.1 - Minor Sanjay Bupatbhai Luhar, through his guardian Sitaben Bupatbhai Luhar, who is the claimant, has filed MACP No.151 of 2002 before the MACT (Main), Ahmedabad claiming compensation of Rs.1,00,000/for the injuries sustained by the minor as a result of a vehicular accident which has taken place on 19.8.2001 while he was travelling in a rickshaw which met with an accident with a matador bearing registration No. GJ-19-T-222 which was insured with the appellant insurance company. It was the case of the claimant that on 19.8.2001 he boarded the rickshaw which met with an accident with the said matador in which he sustained head injuries as a result of which he suffered permanent partial disablement to the extent of 15%.

In the said claim petition the claimant has also filed an application under section 140 of the Act for interim compensation of Rs.25,000/-

3. The Tribunal after considering the FIR, Panchnama, injuries certificate, insurance policy, etc., came to the conclusion that the vehicle owned by respondent No.2 was involved in the accident and the said vehicle was insured with the appellant at the relevant time and as a result of the accident the claimant sustained head injuries which has resulted into permanent partial disability and therefore awarded RS.25,000/- by way of interim compensation under no fault liability principle which has given rise to the instant appeal.

4. Mr. MJ Shelat, learned advocate of the appellant, has contended that the injury sustained by the claimant is very minor and small which does not fall within the scope of section 142 of the Act. As per the medical certificate, the claimant had not received any

injury which is permanent in nature and fall within the criteria of section 142 of the Act. The certificate of the doctor shows only external abrasions on right side of the face and as per the certificate there is a minor head injury and the injured is advised rest. The injury is not permanent in nature and the claimant is not entitled for any amount under section 140 of the Act. He therefore urged that the impugned order is required to be quashed and set aside by allowing this appeal.

5. In counter submission, learned advocate of the claimant, has submitted that the application filed under section 140 of the Act is to be dealt with as required under section 231 (2) of the Gujarat Motor Vehicles Rules, 1989 ('the Rules' for short). According to him, so far as the procedure to decide the application under section 140 of the Act is concerned, the Tribunal has to follow the provisions prescribed under sub-rule (5) of Rule 231 of the Rules, which contemplates that the Tribunal shall follow the procedure of summary trial as contained in Chapter XXI of the Code of Criminal Procedure Code, 1973 and in the said procedure the claimant has to submit the documents as per sub-rule (2) of Rule 231 of the Rules. In instant case the claimant has produced all the required documents and therefore the Tribunal has rightly allowed the claim of interim compensation of Rs.25,000/-. Therefore, it is urged that the appeal may be dismissed with costs.

6. This Court has considered the submissions advanced by the learned advocates appearing for the parties, perused the averments made in the appeal, impugned award and the relevant documents produced by the learned advocates appearing for the parties and the statutory provisions contained under the Act and the Rules.

7. So far as the procedure to decide the application under section 140 of the Act is concerned, there is no manner of doubt that the Tribunal has to follow the provisions prescribed under sub-rule (5) of Rule 231 of the Rules, which contemplates that the Tribunal shall follow the procedure of summary trial as contained in Chapter XXI of the Code of Criminal Procedure Code, 1973 and in the said procedure the claimant has to submit the following documents as per sub-rule (2) of Rule 231 of the Rules, alongwith the claim application:

- (i) First Information Report;
- (ii) Injury certificate or Post-mortem report in case of death;

- (iii) Heirship certificate in case of death;
- (iv) Certificate from the registering authority regarding ownership of the vehicle involved in the accident;
- (v) Particulars of insurance of the vehicle involved in the accident.

On perusal of the impugned order, it is seen that the Tribunal has observed that the claimant has produced documentary evidence and reliable materials showing involvement of the vehicle in the accident in question, the resultant after effects of the injury and permanent disability sustained by the injured and enforcement of the insurance policy of the said vehicle. Considering the underlying idea behind Section 140 of the Act regarding prompt and immediate payment of the compensation, no defence produced by and on behalf of the opponents can be taken into consideration because the Tribunal has not to apply its mind to such various defences at this stage. On the basis of the said findings, the order granting interim compensation of Rs.25,000/- was passed by the Tribunal. The Tribunal for coming to the aforesaid conclusion considered the FIR, Panchnama, injury certificate, disability certificate and insurance policy.

8. So far as the contention advanced by Mr. Shelat, learned advocate of the appellant with respect to the injury is not of a permanent nature and does not fall within the criteria of section 142 of the Act can be raised in the main claim petition which is still pending before the Tribunal. If the appellant rises the said contention before the Tribunal, the Tribunal shall decide the same in accordance with law.

9. In view of the aforesaid state of affairs, I do not see any justifiable ground or valid reason to interfere with the impugned order at this stage. However, with a view to safeguard the interest of the appellant, an undertaking of the claimant is required to be obtained so that the original claimant shall not abandon the main claim petition and withdraw the amount with a view to fritter away the amount of compensation of Rs.25,000/- with interest thereon which is awarded in his favour.

10. In this view of the matter, it is directed that the original claimant shall file a solemn undertaking before the Tribunal within a period of four weeks of the service of this order to the effect that the main claim petition shall not be abandoned, shall not be withdrawn

and shall not be permitted to be dismissed for default or for any other cause and that the claimant shall obtain a decision on merit in the said claim petition. The amount awarded under the impugned order shall be adjusted against the final award that will be passed in the main claim petition if the claimant succeeds in the main claim petition. On the undertaking being filed by the claimant, as aforesaid, the Tribunal shall pass appropriate direction with regard to disbursement and investment of the awarded amount.

11. Subject to the aforesaid observations and directions, the appeal is dismissed with no order as to costs.

12. Since the appeal is dismissed, the above numbered civil application does not assume any survival value and hence it is also dismissed with no order as to costs. Rule is discharged.

R & P which has been called for shall be sent back to the Tribunal forthwith.

(A.M. Kapadia, J.)

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