

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**FIRST APPEAL NO. 2452 of 2012****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE M.D. SHAH**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?
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RELiance GENERAL INSURANCE CO LTD....Appellant(s)

Versus

RANJITSINH KALUSINH CHAUHAN & 1....Defendant(s)

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Appearance:

MR VIBHUTI NANAVATI, ADVOCATE for the Appellant(s) No. 1

RULE SERVED for the Defendant(s) No. 1 - 2

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CORAM: HONOURABLE MR.JUSTICE M.D. SHAH

Date : 30/04/2013

ORAL JUDGMENT

1. By this appeal, the appellant-Insurance Company has challenged order dated 1-6-2012 passed by the learned Motor Accident Claims Tribunal(Aux.), Sabarkantha at Modasa below Ex.5 in MAC petition No.790 of 2007.
2. It is submitted by learned advocate for the appellant that Insurance Company has raised contention in reference to breach of condition of policy as well as statutory rights available to the Insurance Company, while deciding application under Sec.140 of the Motor Vehicles Act. In view of a decision of this Court in the case of United India Insurance Co.Ltd. Vs. Sidikbhai Ukabhai Solanki and Anr. reported in 2012(2) GLH 465, the appellant-Insurance Company has preferred this appeal. Thus, present No Fault Liability award would be treated as constructive resjudicata while deciding claim petition filed under Sec.166 of the Motor Vehicles Act.
3. Considering the submission of learned advocate for the appellant herein, in the opinion of this Court, if necessary direction is given to the learned Tribunal not to treat the order passed by the learned Tribunal below application under Sec.140 as constructive resjudicata nor will it come in any way while deciding main claim petition filed under Sec.166 of the Motor Vehicles Act, then it will meet the ends of justice.
4. In view of the above, order dated 1-6-2012 passed by the learned Motor Accident Claims Tribunal(Aux.), Sabarkantha at Modasa below Ex.5 in MAC petition No.790 of 2007 will not be treated as constructive resjudicata and will not come in any way while deciding claim petition filed under Sec.166 of the Motor Vehicles

Act. Learned Tribunal will decide the main claim petition on merits without being influenced by the order passed by the learned Tribunal below application under Sec.140 of Motor Vehicles Act. Insurance Company is at liberty to raise all the contentions which are available under the law before the learned Tribunal.

5. In pursuance of the order passed by the learned Tribunal below application under Sec.140 of the M.V.Act, if any amount is deposited by the Insurance Company, the learned Tribunal will pass necessary orders under the provisions of law to disburse and invest in cumulative deposit. The claimant will file undertaking on affidavit that he will not withdraw or permit to dismiss for default or non-prosecution of main claim petition but will obtain judgment on merits.
6. In view of the above, the first appeal is disposed of.

(M.D.SHAH, J.)

RADHAN