

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**FIRST APPEAL NO. 3634 of 2014****With****CIVIL APPLICATION NO. 12460 of 2014****In FIRST APPEAL NO. 3634 of 2014****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE MOHINDER PAL**

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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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ICICI LOMBARD GENERAL INSURANCE CO LTD....Appellant(s)

Versus

VASHRAM KHETA VANIYA & 3....Defendant(s)

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Appearance:

MR NIKUNT K RAVAL, ADVOCATE for the Appellant(s) No. 1

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CORAM: HONOURABLE MR.JUSTICE MOHINDER PAL**Date : 28/11/2014****ORAL JUDGMENT**

1. This appeal has been preferred by the appellant/Insurance Company against the award passed by the Tribunal.

2. Learned counsel for the appellant has submitted that driver of the vehicle involved in the accident was not holding a valid licence at the time of the accident and as such there was breach of conditions of the policy as well as statutory rights available to the Insurance Company in the claim petition filed under section 140 of the Motor Vehicles Act. Counsel has referred to a decision dated 04.07.2014 passed by a co-ordinate bench of this Court in case of New Indian Assurance Co. Ltd. v. Nisarhussain Mohmadhanif Shaikh in First Appeal No.1889 of 2014, which is reproduced hereinbelow:

“1. By way of this appeal the appellant- Insurance Company has challenged order dated 12.02.2014 passed by the Motor Accident Claims Tribunal (Auxi.), Ahmedabad (Rural), in MACP No.2347 of 2010 filed under Section 140 of the Motor Vehicles Act.

2. It is submitted by learned advocate for the appellant that insurance company has raised contention in First Appeal with regard to breach of condition of policy as well as statutory rights available to the insurance company in Claim Petition filed under section 140 of the Motor Vehicles Act. In view of decision of this Court in the case of United India Insurance Co. Ltd. v/s. Sidikbhai Ukabhai Solanki and Anr. reported in 2012 (2)GLH 465, the appellant Insurance company has preferred this appeal with a view to see that present no fault liability award is not treated as constructive resjudicata while deciding claim petition under section 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 Honble Tribunal not to treat the order passed by the Honble Tribunal below application under Sec.140 as constructive resjudicata nor will it come in way in any manner 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 above, order dated 12.02.2014 passed by the Motor Accident Claims Tribunal (Auxi.), Ahmedabad (Rural), in MACP No.2347 of 2010 will not be treated as constructive res judicata and will not come in way in any manner while deciding claim petition filed under section 166 of the Motor Vehicles Act and Honble Tribunal will decide the main claim petition on merits without being influenced by the order passed by the Honble Tribunal below application under section 140 of the Motor Vehicles Act. Insurance Company is at liberty to raise all the contentions which are available under the law before the Honble Tribunal.

5. In pursuance of the order passed by the Honble Tribunal below application under section 140 of the Motor Vehicles Act, after balance amount is deposited by the Insurance Company, the Honble Tribunal will pass necessary orders under the provisions of law to disburse and invest in cumulative deposit. The claimants will file an 'Undertaking' on affidavit that claimants will not withdraw or permit to dismiss for default or non prosecution of main petition and will obtain judgment on merits.

6. In view of above, the first appeal is disposed of.

7. As the First Appeal is disposed of, Civil Application does not survive. The same is disposed of accordingly."

3. The facts of the present appeal are similar to the case referred above. Hence, the present appeal, along with the civil application, stands disposed of in same terms as aforesaid decision. Pronounced.

(MOHINDER PAL, J.)

KMGThilake)