

ORDER BELOW EX.2 IN APPLICATION NO.604 OF 2020

1. By this application under Section 140 of the M.V. Act, 1988, the applicant has claimed compensation under no fault liability for the injuries sustained by him in a vehicular accident on 02.03.2020 involving Motor Auto Rickshaw No.MH-03-BN-9100.
2. The Opposite Party is absent. Insurance company has filed its Written Statement and Reply (Ex.15) and thereby denied the claim on the ground that the Insurance policy relied upon by the applicant was wrong/fake policy/out of policy period at the time of the accident and hence, the applicant was not entitled for any compensation from the Insurance company.
3. Perused the documents filed on record like certified copies of FIR, Police Statement, Spot Panchanama, Insurance Policy, Medical Paper and original Disability Certificate along with List Exs.6 and 13. The doctor has recommended 48% permanent partial disability.
4. Heard learned advocate for the applicant and Insurer. The learned advocate of the applicant relied upon ***Manager, HDFC Ergo General Insurance Co. Ltd. Vs. Kalpana and others in 2015 (4) T.A.C. 25 (Bom.)*** and submitted that the defence raised by the Insurer was to be considered at the stage of final hearing and it would not be available to the Insurer at this stage. It is observed that the Hon'ble Bombay High Court in ***Kalpana (Supra)***, while not interfering with the order of granting compensation passed by the Tribunal in an application under Section 140 of the Motor Vehicles Act where the defence of breach of terms and conditions of the Insurance policy and that of fake and bogus policy was raised observed that-

“I agree that the fact of breach of terms and conditions of the Insurance policy and the fact of fake and bogus policy need not be considered at the interim stage and shall be decided at the time of final decision of the claim petition”.

5. It was further observed that “the claimant need not be plead and prove the liability of the Insurer and owner of the offending motor vehicle strictly in accordance with law. It is always open for the Insurer making interim payment of compensation under Section 140 of the Act to recover the amount paid by way of compensation at interim stage from the owner of the offending motor vehicle responsible in the motor vehicle accident. The pleading by the Insurer and the evidence led by the Insurer on record can surely be considered by the Tribunal constituted under the Act at final hearing of the Motor Accident Claim Petition under Section 166 of the Motor Vehicles Act. The Tribunal can make necessary final award in respect of such claim application under Section 166 of the Act on merits and in accordance with law”.

6. The facts are similar in the present application as well where the Insurer has pleaded that the insurance policy relied upon by the applicant was fake and bogus and so did not saddle any liability upon the Insurer to compensate the applicant.

7. Keeping in mind, the observations of the Hon'ble Superior court in *Kalpana (Supra)*, it can be the safely held that if the applicant is able to show prima facie that he was injured due to the negligent driving of the driver of the offending vehicle, which is evident from the police papers filed on record, and the offending vehicle which was insured with the Insurance company (for which he has filed the Insurance policy which is alleged to be fake by the

Insurer), he need not prove anything further at this stage. There is prima facie material to show that the driver of the offending motor vehicle was driving it rashly and negligently and so the accident took place. As a result of the accident, the injured had sustained serious injuries. Therefore, considering the provision of Section 140 of the M.V. Act and its purpose to provide minimum assistance in the form of interim compensation to the victim of motor vehicle accident, liability is created on the basis of no fault.

8. Bearing in mind the aforesaid principles and relying on the documents available on record, I find no difficulty holding that the applicant is entitled for the compensation of Rs.25,000/- on no fault basis for the injuries sustained to the applicant in the accident. Accordingly, I pass the following order :-

ORDER

1. Application is allowed.
2. Opposite Party and Insurance Company do pay jointly and severally a sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) to the applicant on account of NFL within a period of one month from the date of this order, failing which they shall pay interest on the said amount @ 7.5% p.a. from the date of order, till realization of the amount.
3. They are directed to make the payment by A/c payee crossed cheque drawn in the name of applicant by depositing the same in the Tribunal. The Account Officer shall handover the cheque to the applicant after the payment of deficit court fee, if any.

Date : 25.01.2022
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(Dr. Srishty Neelkanth)
Member, C.R. No.3
MACT, Mumbai