

2023 SCC OnLine Bom 1705

In the High Court of Bombay at Goa  
(BEFORE M.S. SONAK, J.)

Bajaj Allianz General Insurance Co. Ltd., Thr. its  
Manager ... Appellant;

*Versus*

Sagun Krishna Gaonkar and Others ... Respondents.

Appeal From Order No. 5 of 2022

Decided on August 19, 2023

Advocate who appeared in this case :

Mr. Amey Kakodkar, Advocate for the Appellant.

The Judgment of the Court was delivered by

M.S. SONAK, J.:— Heard Mr. A. Kakodkar, learned counsel for the Appellant.

2. This appeal is incorrectly registered as an Appeal From Order. The Hon'ble Supreme Court in the case of *Yallwwa (Smt) v. National Insurance Co. Ltd.*<sup>1</sup>, has held that an order made under Section 140 of the MV Act is also an award under Section 168 of the MV Act and is appealable under Section 173 of the MV Act.

3. Therefore, the registry to register this Appeal From Order as the First Appeal. This exercise must be carried out immediately.

4. The Appellant-Insurance Company challenges the impugned award on the ground that the insurance policy regarding the offending vehicle was not a comprehensive insurance policy and did not cover the occupants of the vehicle.

5. In my judgment, the impugned award, in this case, is made under Section 140 of the MV Act, based on the principle of no-fault liability. Although the point raised by the Insurance Company would require consideration, taking into account the fact that this is a death case and the compensation of only Rs. 50,000/- has been awarded, no good reason is shown to warrant interference at this stage.

6. However, the issue as to whether the Insurance Company is liable or not is kept specifically open. The impugned award in this case has not even gone into this issue. Therefore, while deciding the petition under Section 166 of the MV Act, the tribunal must go into this issue and determine the same. The circumstance that this appeal is not being entertained does not mean that this Court has gone into the issue or decided the same against the Insurance Company. Non-interference in the impugned award is only because an amount of Rs. 50,000/- has

been awarded under no-fault liability.

7. Further, it is clarified that if ultimately in the petition under Section 166 of the MV Act, it is held that the Insurance Company was not at all liable then it would be open to the Insurance Company to urge before the tribunal that the person liable i.e. the owner must pay this amount of Rs. 50,000/- to the Insurance Company.

8. With the above clarification, this Appeal is disposed of.

9. The Civil Application No. 8 of 2022 does not survive the disposal of Appeal From Order and the same is also disposed of accordingly.

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<sup>1</sup> (2007) 6 SCC 657

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