

Gujarat High Court

Royal vs Mehul on 24 March, 2011

Author: H.K.Rathod,&Nbsp

Gujarat High Court Case Information System

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FA/43320/2009      5/ 5      ORDER

IN  
THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST  
APPEAL No. 433 of 2009

With

CIVIL  
APPLICATION No. 1050 of 2009

With

FIRST  
APPEAL No. 434 of 2009

With

CIVIL  
APPLICATION No. 1052 of 2009

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ROYAL  
SUNDARAM ALLIANCE INSURANCE COMPANY - Appellant(s)

Versus

MEHUL

MAHENDRABHAI MAMTORA & 5 - Defendant(s)

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Appearance

:

MR

DAKSHESH MEHTA for

Appellant(s) : 1,

None

for Defendant(s) : 1 -

6.

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CORAM

:

HONOURABLE

MR.JUSTICE H.K.RATHOD

Date

: 04/02/2009

ORAL

ORDER

Heard learned Advocate Mr. Dakshesh Mehta for appellant.

By way of these appeals, appellant Insurance Co. has challenged interim award made by MACT concerned in Claim Petition 602/07 and 603/07 dated 30.7.2008 and 30.8.2008 respectively. This being fatal case, claimants have filed application under section 166 of MV Act before claims tribunal and during pendency of application under sec. 166 of MV Act, 1988, claimants filed application under sec. 140 of MV Act in aforesaid claim petitions claiming interim compensation and claims tribunal awarded Rs.50,000.00 on the basis of No Fault Liability. Therefore, these appeals have been filed by appellant insurance company.

Learned Advocate Mr. Mehta for appellant has raised contention objections were filed by appellant insurance company by filign written statement at Exh. 30 and 29 but claims tribunal has not considered same. He submits that insurance company has raised statutory defences covered by sec. 149(2) of MV Act and also requested claims tribunal to consider and decide same but claims tribunal not considered or decided such statutory defences raised by insurance company. He relied upon decision of apex court in Yallwwa (Smt.) & Others versus National Insurance Company & Others reported in 2007 ACJ 1934 = 2007(6) SCC 657 and submitted before this Court that it has been held by apex court that if any objection has been raised by insurance company covered by section 149(2), then, claims tribunal must have to decide and examine such objections even at the stage of application under sec. 140 of MV Act. Apart from that, application under sec. 166 of MV Act, 1988 filed by claimant is pending before claimants.

Considering these submissions made by learned Advocate Mr. Mehta for appellant, according to my opinion, claims tribunal has not considered statutory defence raised by insurance company, however, according to my opinion, admission of this appeal would be having no meaning because it will have to wait upto decision in an application under section 166 of MV Act, therefore, it is better to dispose of this appeal without expressing any opinion on merits while directing claims tribunal to examine application under section 166 of MV Act, 1988 and to examine and consider objections raised by insurance company in accordance with law with a further direction to claims tribunal not to permit claimant to withdraw application under section 166 of MV Act and claimant cannot abandon such proceedings. If these appeals are disposed of without expressing any opinion on merits while directing claims tribunal to decide main application of claimants in both appeals under sec. 166 of MV Act as expeditiously as possible, it would met ends of justice between the parties.

In view of these facts, these appeals are disposed of without expressing any opinion on merits. Claims tribunal concerned is directed to decide main application under sec. 166 of MV Act, 1988 as expeditiously as possible in accordance with law after hearing parties before it. Appellant insurance company is directed to deposit entire awarded amount together with costs and interest in each claim petition before claims tribunal within one month from the date of receipt of copy of this order. After realizing amounts from insurance company, claims tribunal is directed to pay 30% amount to claimants by way of an account payee cheque drawn in his favour and rest of the amount is ordered to be invested in any nationalized bank for a period of three years, to be renewed from time to time with cumulative interest , in the name of respondent claimant but FDRs to remain in custody of Nazir of the Claims Tribunal concerned and claimant will not be entitled to any interest upon such FDRs till application under section 166 of MV Act, 1988 is decided by claims tribunal in accordance with law. Claims Tribunal is further directed not to permit withdrawal of application under sec. 166

of MV Act and claimant shall not abandon proceedings of an application under sec. 166 of MV Act, 1988 but shall have to get it decided on merits by claims tribunal and claims tribunal shall decide application under sec. 166 of MV Act as expeditiously as possible, strictly in accordance with law after examining objections raised by insurance company without being influenced by award of claims tribunal under sec. 140 of MV Act, as well as present order passed by this court.

With these observations and directions, these appeals are disposed of without expressing any opinion on merits.

Since first appeals have been disposed of by this court, no order is required to be passed on civil applications for stay, therefore, civil applications for stay are also disposed of accordingly.

(H.K.

Rathod,J.) Vyas Top