

MHND210002952018 Rajshree Vivek Swami & Ors.



Versus

Sanjeevkumar & Ors.

ORDER BELOW EXH.05

1] This is an application under section 140 of the Motor Vehicle Act, 1988 for grant of interim compensation of Rs.50,000/- as an no fault liability.

2] It is case of petitioners that petitioner No.1 is wife, petitioner No.2 and 3 are minor sons of petitioner and deceased Vivek Revan Swami who died on 8/07/2018 in motor accident dated 8/07/2018. Deceased was teacher in Zilla Parishad School, Madhj, Tq. Umarga, Dist. Osmanabad. On the date and time of accident deceased Vivek and his brother in law Pravin Nillaya Swami were coming on motorcycle No.MH-24/AJ-4256 and MH-25/AE-3356 respectively from Umarga. When they reached near Baba Petrol Pump, a truck bearing No.KA-56/0077 came from opposite direction in high speed rashly and negligently and given dash to the motorcycle of deceased. In the said accident deceased Vivek sustained severe injuries and succumbed to injuries on the spot. Accordingly, police of Umarga police station has registered F.I.R.No.224/2018 on 9/7/2018 for the offence punishable

under section 279, 304-A of I.P.C. against driver of said offending vehicle.

3] Respondent No.1 (owner of offending vehicle) has filed written statement at Exh.27. Respondent No.2 (insurance company) has filed written statement at Exh.15. Respondent No. 3 (mother of deceased) has filed application at Exh.8 and contended that application of applicant/petitioners may be allowed.

4] According to respondent No.1 he is owner of offending vehicle-truck. However, he denied that due to rash and negligent driving of driver of offending vehicle the accident has taken place.

5] Respondent No.2 contended that offending vehicle is insured with it. Owner and driver of offending vehicle have committed breach of policy condition. Driver of the said vehicle was carrying more persons than permitted by insurance policy. He was not holding valid, proper and effective driving licence. Offending vehicle was goods carrying commercial vehicle but it was ply for carrying passengers. Hence it is not liable to pay compensation to petitioners. In view of above pleading respondent No.2 has denied all other adverse contents.

6] Heard counsel of petitioners and respondent No.2. Respondent No.1 and 3 and their counsel absent. Documents

filed by petitioners are copy of F.I.R., spot panchanama, inquest panchnama, postmortem report, insurance policy, RC book of offending vehicle and other documents. Considering rival contentions of parties as discussed above and documents; prima-facie it is established that at the relevant time deceased met with an accident and died in said accident. Respondent No.1 is owner of offending vehicle.

7] As far as liability of respondent No.2 / Insurance company is concerned, as per its written statement and copy of insurance policy prima facie it seems that the offending vehicle was validly insured with respondent No.2 at the relevant time of accident. Thus, respondent No.2 is not liable to pay compensation. Hence, respondent no.1 is only liable to pay compensation to petitioners.

8] At this stage as per section 140 of M.V.Act, petitioners shall not be required to plead and establish that the death has been occurred due to any wrongful act, neglect or default of the owner of vehicle concerned or any other person. Moreover, as per the said provision, a claim for compensation under sub section 1 shall not be defeated by reason of any wrongful act, neglect or default of person in respect of whose death the claim has been made nor shall the quantum of compensation recoverable in respect of such death be reduced on the basis of the share of such person in responsibility for such death.

9] Petitioner no.1 is wife of deceased. Petitioner no.2 and 3 are minor sons and respondent no.3 is mother of deceased. Thus, it can be said that petitioners and respondent no.3 were depending on income of deceased. Hence, in the facts and circumstances, petitioners and respondent No.3 are entitled for interim compensation of Rs.50,000/- under section 140 of M.V.Act from respondent No.1 and 2 jointly and severally. Thus, I pass following order.

ORDER

1. Application (Exh.5) is allowed as under;
2. Respondent No. 1 and 2 jointly and severally shall pay Rs.50,000/- towards NFL u/sec.140 of M.V.Act to petitioners and respondent No.3 equally within one month from the date of this order, failing which petitioners and respondent No.3 will be entitled to interest @ Rs.8% p.a. from the date of this order, till its realization.

Sd/-

Date : 23/07/2021

(N. P. Tribhuwan),
Adhoc Dist Judge-2,
Ex-Officio Member of MACT
Kandhar, Link Court Mukhed

CERTIFICATE

I affirm that the contents of this P.D.F. file Judgment are same word to word, as per the original Judgment.

Name of the Stenographer :N.M.Deshmukh,Steno (Grade-I)

Court Name : Adhoc. D.J.2
Court Kandhar
Link Court Mukhed.

Date of judgment : 23/07/2021

Judgment signed by the

Presiding officer on : 23/07/2021

order and judgment uploaded on: 23/07/2021