MACP/722/2011 ORDER

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Registered On : 29/06/2011

IN THE DISTRICT COURT AT VADODARA

MAC PETITION NO. 722 OF 2011.

MACP/722/2011

Petitioner :

1. DHIPRADA RAJKUMAR GUPTA
64,NANDANVAN SOCIETY
TARSALI
SUSHEN RING ROAD,
VADODARA

VERSUS

Respondent :

1. MADHURIBEN SUSHILKUMAR DUBE
A-5, SHRIKRISHNAPARK SOCIETY
OPP.NOVINO BETARY
MAKARPURA
VADODARA

2. INDRABHUSAN DUBE
AT.A-5,SHRIKRISHNA SOCIETY
OPP.NOVINO BETARY
MAKARPURA
VADODARA

3. I.C.I.C.I LOMBARD GENRAL INSURANCE COMPANY LTD
LANDMARK BUILDING
4TH FLOOR
OPP. CHAKLI CRICLE, ALKAPURI
VADODARA

Appearance:

P R PATEL For Petitioner 1

N V JOSHI For Respondent 3

Order Below Exh.6
in
Motor Accident Claim Petition No.722/2011.

1. The minor claimant namely Dhiprada Rajkumar Gupta through her natural guardian and father Rajkumar Daudyan Gupta has filed the present application U/sec.140 of the Motor Vehicles Act, 1988 to receive interim compensation of Rs.25,000/- for the injuries sustained by her in the accident occurred on 21/06/2010 at about 8 a.m opp. Greenpark society, Sussain-Tarsali Ring road, Vadodra, within the jurisdiction of Makarpura Police Station of Vadodara District.

2. Claimant's case is that Maruti Car No. GJ-6-DG-4845 is involved in the accident. Opponent No.1 is the driver, opponent No.2 is the owner and opponent No.3 is the insurer of the offending vehicle. Claimant claims interim compensation on the basis of "No Fault Liability".

3. In response to the notices issued to opponents. It appears that, despite granting sufficient opportunities to the opponent Nos. 1 and 2, they could not file their written statement. Opponent No.3 - insurer of the offending vehicle i.e. Maruti Car No. GJ-6-DG-4845 has appeared through Ld. Advocate Nandini Joshi and has filed written statement to this application at Exh.11

4. I have heard Ld. Advocate Mr. P.R. Patel appearing for the claimant and Ld. Advocate Nandini Joshi for the opponent No.3. I have also considered the written arguments Exh. 13 submitted by the Ld. Advocate Nandini Joshi for the opponent No.3.

6. Ld. advocate for claimant has produced following documentary evidence vide list Exh. 5 and 14 as mentioned below :

Mark 5/1 – Copy of FIR/Complaint.

Mark 5/2 – Copy of Panchnama of the place of incident.

Mark 5/3 – Copy of the RC book of the offending vehicle Maruti car No. GJ-6-DG-4845.

Mark 5/4 – Copy of the insurance policy of the offending vehicle Maruti car No. GJ-6-DG-4845.

Mark 5/5 – Copy of the charge sheet.

Mark 14/1- Copy of Injury certificate.

Mark 14/2 – Copy of the Disability certificate issued by Dr. G.M. Patel, M.S. (Ortho), Vadodara.

7. As against this, the opponent No.3 has produced documentary evidence vide lists. Exh. 12 which consists of duplicate copy of insurance policy with terms and conditions, letter addressed to Madhuri Dubey and Indrabhushan Dubey and the Copies of RPAD slips.

8. The Ld. Advocate for the opponent No.3 - Insurance Company has vehemently argued that the Insurance Company has a good defence regarding the driving license of the driver of the vehicle involved in the accident and would not be liable to pay any compensation to the claimant.

As per the oral Judgment passed by the Hon'ble High Court of Gujarat in First Appeal No.2103/2005, dated 17.11.2014 in case of New India Assurance Co. Ltd. Vs. Kalabhai Maganbhai Koli & Others, the Hon'ble High Court of Gujarat has held that;

"36. To reiterate, application under section 140 of the Act has to be decided by the Tribunal expeditiously and in a summary manner. At that stage, all that the Tribunal has to examine is whether such liability arises irrespective of the fact whether there was any negligence on part of the driver or owner of the motor vehicles. The Tribunal while deciding the application has to verify only following three aspects namely, (i) the accident has arisen out of use of motor vehicle, (ii) the said accident resulted in permanent disablement of a person filing the claim or in case of death his legal representatives (iii) the claim is made against the owner and the insurer of the motor vehicle involved in the accident.

37. No other inquiry is envisaged or permissible. The defences of the insurance company available under section 149(2) of the MV Act, would not be allowed to be raised. Correspondingly it would not be necessary for the Claims Tribunal to decide the same even if raised. At the same time, we are also of the opinion that the award under three aspects :

(a) the accident has arisen out of use of motor vehicle,

(b) the said accident resulted in permanent disablement of a person filing the claim or in case of death his legal representatives.

(c) the claim is made against the owner and the insurer of the motor vehicle involved in the accident.

ii) If the insurance company has raised dispute with any of these aspects, the Claims Tribunal would give its findings through a summary inquiry.

iii) If the insurance company has not raised any dispute with respect to any of these aspects or if raised, is decided against the insurance company by the Claims Tribunal, the same would bind the insurance company at the later stage of deciding the Claim Petition under Section 166 of the MV Act.

iv) No other defences including those referred to in section 149(2) of the MV Act would be available to the insurance company at the stage of application under section 140 of the MV Act. It would therefore, not be necessary, in fact, not permissible for the insurance company to raise such defences at this stage and if raised the Tribunal shall not decide the same at that stage."

9. From the documents produced by the claimant, it is prima facie established that Maruti Car bearing No. GJ-6-DG-4845 is involved in the accident. It is also established that opponent No.1 is driver, opponent No.2 is owner and opponent No.3 is insurer of the offending vehicle. On perusal of the Disability Certificate produced at Mark 14/2, it transpires that minor claimant has sustained 40% permanent partial disability.

10. On perusal of the policy particulars of the offending vehicle produced at Mark-5/4, it transpires that the policy of insurance is effective for the period from 22/02/2010 to 21/02/2011. The present accident occurred on 21/6/2010. This means that the policy of the insurance of the offending vehicle was in force at the time of accident. Therefore, opponent No.3 being insurer of the offending vehicle, is liable to indemnify the liability of owner of the offending vehicle to pay interim compensation to the claimant.

11. Thus, on perusal of documents produced, it transpires that injuries sustained by claimant has resulted into permanent disability, and the claim is preferred against owner and insurer of the offending vehicle. The injuries sustained by the claimant are caused consequent upon this vehicular accident, and therefore all the requirements and conditions mentioned in Sec.140 of M.V Act have been satisfied/attracted prima faciely. Moreover, it is not necessary at this stage to prove as to who was negligent, and who was liable and to what extent for this accident. As the claimant has claimed for compensation on the basis of no fault liability, in this event, without ascertaining the negligence of driver, it is desirable to decide this application without looking into the issue of negligence.

12.. Hence, I pass the following final order:

: ORDER :

- Application is hereby allowed against all the opponents.

- Claimant do recover a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) from all the opponents, jointly and/or severally together with running interest @ 9 % p.a., from the date of main claim petition till realization.

- Opponents are hereby directed to deposit in the office of this Tribunal the amount of award, as above, within one month from the date of this order.
- The order with regard to the investment and disbursement of the amount of compensation will be passed after depositing the aforesaid amount of compensation.

Pronounced in the open Court today on this 31st day of July, 2015.

(N.P. Chaudhary)
M.A.C. Tribunal (Aux.),
Code No.GJ 00 374.
Vadodara

Date : 31.07.2015
Place: Vadodara.