

ORDER BELOW EX.6
IN
M.A.C.P.NO. 90 OF 2016

1. By this application u/s.140 of the M.V. Act, applicants prayed for getting compensation of **Rs.50,000/-** on basis of the **No Fault Liability**.
2. Heard Ld. Advocate Mr. B.B. Waghela appearing for applicants. I have also heard Ld. Advocate Mr. N.G. Dudhwala for opponent No.1 and 2 and Ld. Mr. N.V. Joshi for opponent No.3.
3. Recently, Division Bench of Hon'ble Gujarat High Court in case of ***New India Assurance Co. Ltd. v/s. Kalabhai Maganbhai Koli & Others, 2016(1) GLH 68***, consolidated with other matters, has thoroughly examined entire issue of no fault liability and availability of defence at that stage and settled the law more particularly in para 36, 37 and 38. According to said law laid down by Division Bench of Hon'ble Gujarat High Court at the time of deciding the application u/s.140 of the M.V.Act, claim Tribunal has to verify only three aspects viz. whether the accident has arisen due to use of motor vehicle; the said accident resulted into the permanent disablement of a person filing the claim or in case of death, his legal representatives and whether claim is made out against the driver and owner of errant vehicle involved in the accident. Hon'ble Gujarat High Court has very succinctly opined that, if any of earlier stated dispute is raised then claim tribunal has to decide them through summary inquiry. But, insurance company or owner/driver of the offending vehicle would not be entitled to raise all other defences including those referred to in Sec.149(2) of the M.V.Act. If any such defences are raised, it is not obligatory upon the tribunal to decide the same at the stage of deciding No Fault Liability. They have to be left to be decided at the time of deciding main claim petition u/s.166 of M.V. Act.
4. In order to establish their case at juncture of No Fault Liability, applicants have produced following documentary evidence.

<u>Documentary Evidence</u>	<u>Mark</u>
1) Copy of FIR	5/1
2) Copy of Panchnama of place of incident	5/2
3) Copy of Inquest Panchnama	5/3
4) Copy of Post Mortem report	5/4
5) Copy of D.L. of Opponent No.1	5/5
6) Copy of R.C. Book of Opponent No.2.	5/6
7) Copy of Insurance Policy	5/7
8) Copy of permit of Goods Carriage	5/8

5. Above documents clearly establish that accident has arisen out of use of motor vehicle and deceased has suffered fatal injuries as the case may be and the claim is made out against the driver, owner & insurer of the vehicles involved in the accident.

6. In above circumstances, when three aspects/ ingredients as stated by Hon'ble Gujarat High Court completely stand in favour of applicants, this application is requires to be allowed.

7. Aptly it can be noted that, even in some previous judgments in case of ***Payalben Jayeshbhai Yagnik V/s. Jayeshbhai G. Yagnik, reported in 2003 (2) GLR-1055***, in the case of ***The New India Assurance Company Limited V/s. Methakhan Dinakhan Notiyar & Ors., reported in 1995 (2) GLR-1111*** and subsequently confirmed in case of ***United India Insurance Co. Ltd. v. Kadviben Udabhai Rathawa reported in 2006 (2) GLR 1257***, Hon'ble Gujarat High Court has established same principle as stated herein above. So, according to this Tribunal, applicants are entitled for adhoc compensation u/s.140 of the M.V.Act from opponents jointly and severally who are liable to pay No Fault compensation to the applicants with proportionate costs & interest at the rate of 9%. Hence, following order is passed.

: ORDER :

1. The application is hereby allowed.
2. The claimants are entitled to get Rs.50,000/- [Fifty Thousand rupees only] with running interest at the rate of 9% p.a. from the date of application till realization with proportionate cost from opponents jointly and severally, who are liable to pay the amount of N.F.L.
3. The opponents are hereby ordered to deposit the amount of interim compensation awarded with interest and cost in the office of this Tribunal within one month from the date of this order.
4. Disbursement order will be passed after deposit the amount.
5. Needless to observe that this order of compensation passed for No Fault Liability shall not operate as a constructive res judicata. Opponents are at liberty to raise all available statutory defence at the time of deciding the main claim petition filed u/s.166 of M.V. Act.

Pronounced & signed in the open Court today
on this 29th day of April, 2017.

Place: Vadodara
Date : 29/04/2017.

//L.K.Samtani//

JITENDRA C. DOSHI]
MACT (MAIN),
VADODARA.
Code No. GJ00909