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ORDER BELOW EXH.5.
INTERIM COMPENSATION APPLICATION IN
M.A.C.P No. 663 of 2016.

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1. This is an application made by and on behalf of the applicant U/s.140 of the Motor Vehicles Act, 1988, to obtain the interim compensation of Rs.25,000/- (Rs. Twenty Five Thousand Only) on account of accidental injuries sustained by him from an accident arising out of the use of Motor Vehicle in question.
2. The underlying idea of Sec.140 of the M.V.Act is to compensate legal heirs of deceased and/or the injured applicant immediately and promptly the interim compensation and therefore, at this stage, defence raised by the Opponents including the Insurance Companies cannot be seriously considered. The claim Tribunal has to consider only the involvement of the offending vehicle in the accident and it is prima-facie proved that the injuries occurred to the applicant is resulted from the alleged accident arising out of the use of the involved vehicle in question, then necessary urgent order regarding interim compensation is to be made.
3. Thus, at this stage, the Tribunal has not to apply it's mind for the various defences raised by the other side, because if ultimately, it is found that the Opponents-driver, owner and/or Insurance Companies are not liable to compensate the injured applicant, then their interest can be protected by the Tribunal at the time of final hearing of the compensation application.

4. The matter is proceeded ex-parte against the opponent No.1. Whereas, the right of reply of the opponent No. 2 has been closed after giving ample opportunities and sufficient time.
5. The applicant has submitted Xerox copies of FIR, Panchnama, Injury Certificate, charge-sheet, Disability Certificate and Insurance Policy of the vehicle No.GJ-01-KM-370 vide list Exh. 16/1 to 16/6 respectively. Since the Tribunal is travelling N.F.L. u/s.140 of the M.V.Act, therefore, it is just and proper to refer and rely upon the Xerox copies to decide this application under Section 140 of the Act.
6. Referring to the provisions of Sec.140 and other provisions of the Act and the law laid down by the Hon'ble Supreme Court and the Hon'ble Gujarat High Court in this regard, to decide the application U/s. 140 of the Act, following elements (points) are required to be considered.
 - (1) Whether the accident was caused by the alleged vehicle?
 - (2) Whether the petitioner sustained injury/deceased died due to the injuries caused in the alleged accident?
 - (3) Whether the opponents are liable as owner and/or insurer of the alleged vehicle?
7. The Hon'ble Gujarat High Court (Coram: Hon'ble Mr. Justice Akil Kureshi and Hon'ble Mr. Justice Vipul M. Pancholi) in the judgment in First Appeal no.2103 of 2005 in the case of New India Assurance Co. Ltd V/s Kalabhai Maganbhai Koti and others delivered on 17/11/2014 has observed in its judgment in para 38 as under:

38. *In the context of questions referred, we summarise our answers as under:*

[I] *At the stage of proceedings u/s 140 of the M.V. Act the claims Tribunal has to verify only following 3 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 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 aspect or if raised, is decided against the insurance company by the Claim Tribunal, the same would bind the insurance company at the later stage of deciding the claim petition u/s 166 of the MV Act.*

[iv] *No other defences including those referred to in Sec. 149[s] of the MV Act would be available to the insurance company at the stage of application u/s 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. There would therefore, be no question of any res judicata with respect to such issues at the stage when the claims Tribunal proceeds to decide the claim petition u/s 166 of th MV Act. "*

8. Thus, at this stage, the claim Tribunal has to consider only the involvement of the offending vehicle in the accident, and in the matter on hand it is prima-facie established that the petitioner sustained grievous injuries due to the accident arising out of the use of the involved vehicle in question.
9. Having considered all the documents produced vide Mark 16/1 to 16/6, it appears that the opponent No.1 was himself the owner of the said vehicle at the relevant time of the accident. Moreover, considering Insurance policy vide

Mark 16/6, it becomes clear that the said vehicle was insured with the opponent No. 2. The period of insurance is shown as 29/09/2015 to 28/09/2016. So, the policy was effective at the time of accident as the accident occurred on 3/01/2016. Therefore, opponent Nos. 1 and 2 are jointly and severally liable to pay compensation of Rs.25,000/- to the claimant along with interest @ 9% p.a. under the provision of Section 140 of the M. V. Act.

10. Further, in the case of *Dhirubhai Karshanbhai Chau V. Karmanbhai Harjibhai Pipaliya*, reported in **2014 (3) GLR 2692**, the Hon'ble High Court at Para -11 has held that :-

“ 11. The operative part of the impugned award reveals that the Tribunal has ordered that 70% of the awarded amount be deposited in F.D.R. In the name of the appellant and remaining 30% be paid in cash. Having regard to the object behind the enactment of Sec. 140 of the Act, viz. To provide immediate succour to the victim or to the heirs of the deceased, as well as considering the nominal amount involved, it was not permissible for the Tribunal to pass any order of depositing part of the awarded amount as the same would defeat the very object of Sec. 140 of the Act. Under the circumstances, as and when such amount is deposited with the Tribunal, the same shall be disbursed to the appellant.

11. In the light of above discussions, in the interest of justice following order is passed.

::: O R D E R :::

1. The application is hereby **allowed** against **opponent Nos. 1 and 2.**
2. The claimant do recover **Rs.25,000/- (Rs. Twenty five Thousand only)** **from the opponent Nos. 1 and 2**, together with running interest @ **9%** per annum from the date of this application till realization.

3. The **opponent Nos. 1 and 2** are hereby directed to deposit the above amount of award in the office of this Tribunal within one month from the date of this order.
4. Out of the amount of compensation along with proportionate costs and interest coming to the share of claimant, entire amount be paid to the claimant by issuing account payee cheque.

Pronounced in the Open Court on this 26th day of December, 2018.

Place: Ahmedabad
Date : 26/12/2018

(Ashokkumar Chimanlal Joshi)
Principal District Judge
M.A.C.Tribunal(Main),
Ahmedabad (Rural).
(Code : GJ00095)

DMM.