

ORDER BELOW EXH. 3 IN M.A.C.P. NO. 799 of 2012

1. This is an application for receiving interim compensation under the Provisions of Sec. 140 of the M. V. Act. The Opponent No. 2 has filed its written statement vide Exh. 17 and thereby objected the contents of the claim petition as well as the present application. It is mainly contended that at the time of accident, driver of the vehicle involved in the accident was not holding the legal and valid driving license and therefore, the Opp. No. 2 Insurance Company cannot be held liable to pay interim compensation. In short, the Ld. Advocate for the Opp. No. 2 Insurance Company has strongly objected the present application and ultimately prayed to dismiss the present application in toto.
2. Perused the application Exh. 3 and documentary evidence produced with list Exh. 20 consisting of material document such as copies of Complaint, Panchnama of Place of Accident, Charge Sheet, Injury Certificate, Disability Certificate, R. C. Book and Insurance Policy of the vehicle involved in the accident.
3. Having gone through the pleadings and documentary evidence on record, it appears that the injuries caused to the petitioner in vehicular accident and the offending vehicle[s] is/are involved in the accident. In order to get compensation U/s. 140 of the Act, ingredients attracting the

provisions of Sec. 140 of the M.V. Act are to be reasonably established by the petitioner. The Hon'ble Gujarat High Court in the recent **judgment in First Appeal No. 2103 of 2005 in the case of New India Assurance Co. Ltd Vs. Kalabhai Maganbhai Koti and others** has observed in its judgment in para 38 as under that:-

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 claimants 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 the MV Act. "

4. Thus, in view of the above observation of the Hon'ble High Court of Gujarat as well as considering the facts of the application supported by the documentary evidences on record, all ingredients attracting the provisions of Sec. 140 of the M.V. Act, involvement of vehicle[s], injury caused to the petitioner due to accident etc. appears to be prima-facie and reasonably established and therefore, in view of the above facts on record, all the opponents are liable to pay the interim compensation to petitioner subject to result of main claim petition of the petitioner[s].
5. The petitioner[s] has/have claimed interest @ 15% p.a. on the amount of interim compensation as claimed. But it is desirable that the petitioner[s] should be awarded interest @ 8.5% p.a. thereon subject to final outcome of the claim and hence the following order is passed.

ORDER

- *. The application is hereby allowed.
- *. The Opponents No. 1 & 2 jointly and severally are hereby ordered to pay to the petitioner [s] the sum of Rs. 25,000/- [Rs. Twenty Five Thousand only] being the amount of interim compensation under the provisions of Sec. 140 of the M.V. Act along with interest @ 9% p.a. from the date of application till realization thereof subject to the result of main claim petition.
- *. The opponents are hereby directed to deposit the above amount of award within 30 days from the date of this order.
- *. On realization of the interim award amount, the same shall be paid to the petitioner by A/c. Payee cheque on proper identification.
- *. Costs shall be cost in the cause.

Pronounced in the Open Court on this 15th day of October, 2015 at Ahmedabad [Rural] at Mirzapur.

**[B. G. Joshi]
UIC NO. : GJ00517
11th [Ad-hoc] Addl. District Judge
Ahmedabad [Rural] at Mirzapur.**

A.Y.M.