

=====

**ORDER BELOW EXH.3.**  
**INTERIM COMPENSATION APPLICATION IN**  
**M.A.C.P No. 1057 of 2016.**

=====

1. This is an application preferred by the petitioners U/s.140 of the Motor Vehicles Act, 1988, to obtain the interim compensation of Rs.50,000/- (Rs. Fifty Thousand Only) on account of death of deceased Arvindsingh Shivdutt Singh Rajput due to an accident arising out of the use of Motor Vehicle in question.
2. Brief facts of the petition are such that, on 18/04/2016, at about 10.15 a.m., the deceased was travelling as a pillion rider on the Motorcycle bearing No.GJ-1-PJ-4756 and his colleague was driving the said Motorcycle, and when they reached near Railway crossing, D Cabin, at that time the driver of Tanker bearing No. GJ-19-U-2549 came driving in excessive speed and in rash and negligent manner and dashed with the said Motorcycle. On account of this accident, deceased sustained fatal injuries and died during treatment.

3. The Respondent No.1 has been deleted as per order passed below Exh.14. Whereas the matter is proceeded ex-parte against the Respondent No.2.
  
4. The Respondent No. 3 - The New India Assurance Co. Ltd. appeared through its Ld. Advocate and filed written submission vide Exh.12, wherein the averments, allegations and statements of the claim petition are denied. It is further submitted that the Tanker was used for carrying petrol and driver was going for loading petrol in the said Tanker and the insured was not having valid permit for such hazardous goods. That the accident took place due to sole negligence of the driver of Motorcycle bearing No.GJ-1-PJ-4756, so the claim is liable to be dismissed against the Respondents. Alternatively, contributory negligence of the driver of Motorcycle be fixed to a great extent. It is further submitted that driver, owner and insurer of the said Motorcycle have not been joined as parties, this claim application is liable to be dismissed on account of non-joinder of necessary parties. It is prayed that the application be dismissed with costs.

5. The petitioners have produced copy of complaint, Panchnama, P. M. Report and Insurance Policy of Tanker No. GJ-19-U-2549 vide Mark 5/1 to 5/4.
6. Ld. Advocate for the petitioner has reiterated the facts of the claim petition and has prayed to allow present application.
7. Ld. Advocate for the Respondent No. 3 - The New India Assurance Co. Ltd. has reiterated the facts of the written submission filed by him vide Exh.12 and further argued that the petitioners are not entitled to get interim compensation and the application deserves to be dismissed.
8. Having gone through the pleadings and documentary evidence on record, it appears that the injuries were caused to the deceased in vehicular accident mentioned in the claim petition and the offending vehicle was prima-facie involved in the accident.
9. In order to award compensation U/s. 140 of the Act, ingredients attracting the provisions of Section 140 of the M.V. Act are to be

established by the petitioner/s. The underlying idea of Section 140 of the M. V. Act is to compensate legal heirs of deceased and/or the injured claimant immediately and promptly at the interim stage and therefore, at this stage, defence raised by the Respondents 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 in the matter on hand it is prima-facie established that the deceased died due to the accident arising out of the use of the involved vehicle in question. It is also settled law that, at this stage, the Tribunal is not required to consider the various defences raised by the other side, because if ultimately, it is found that the Respondents are not liable to compensate the petitioner, then their interest can be protected by the Tribunal at the final adjudication of the claim petition.

**10.**The Hon'ble Gujarat High Court in the case of *New India Assurance Co. Ltd Vs. Kalabhai Maganbhai Koti and others in First Appeal No. 2103 of 2005*, has observed 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. "*

**11.** Thus, in view of the above observation of the Hon'ble High Court of Gujarat as well as considering the facts of the petition supported by the documentary evidences on record, all ingredients attracting the provisions of Sec. 140 of the M.V. Act, involvement of vehicle, injury caused to the deceased due to accident etc., prima-facie appears to have been established. Therefore, considering

facts and evidences on record, the Respondents are liable to pay the interim compensation to petitioner subject to result of main claim petition of the petitioners @ 8% p.a. Hence, following order is passed.

**::: O R D E R :::**

- (1) The application is hereby **allowed** against the **Respondents**.
- (2) The petitioner do recover **Rs.50,000/- (Rs. Fifty Thousand only)** from the **Respondents, jointly and severally**, together with running interest @ **of 8%** per annum from the date of this application till realization.
- (3) The **Respondents** 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 individual share of the awarded compensation along with interest and proportionate costs of the petitioner, entire amount is ordered to be paid to the petitioners by issuing A/c. payee cheque.

**Pronounced in the Open Court on this 11th October, 2019.**

Date : 11/10/2019  
Place: Ahmedabad.

[ B. B. PATEL ]  
M.A.C.T. (Aux.) &  
7th Addl. District Judge,  
Ahmedabad [Rural] at Mirzapur.