

ORDER BELOW EXH. 3 IN
M.A.C. PETITION NO. 444/ 2019.

- (1) This application is preferred by the applicants i.e Legal Heirs of deceased Rameelaben Aetrambhai Bhoi namely Ae trambhai Nanabhai Bhoi and Vandevkumar Aetrambhai Bhoi under Section 140 of Motor Vehicles Act for interim compensation under the head “NO FAULT LIABILITY”.
- (2) Ld. Advocate Shri A. V Gautam has appeared for opponent no. 2 , and Ld. Advocate Shri D. C Chavda has appeared for Applicants. Heard the learned advocates appearing on behalf of the parties.

(2.1) Opponent No. 2 Insurance Company has filed its reply at Exh.27 and have denied all the facts narrated in the application in toto. It has been further stated that the accident in question has not occurred due to the negligence of the driver of the Auto-rickshaw No. GJ-07-AT-3263, instead it has occurred due to the sole negligence of Tractor involved in this accident, and hence, they are not liable to compensate the claimants. It is further stated that the driver of the offending vehicle was not holding a valid and effective driving license at the time of the accident and hence also present application of the applicants needs to be

dismissed. On all the above grounds the opponent has prayed to dismiss the present application of the applicant.

- (3) In the case of Eshwarappa @ Maheshwarappa v Gurushanthappa, reported in 2010(3) GLR (NOC-43) SC, Hon'ble Supreme Court has held that while deciding application under Section 140, only factor to be considered is, whether the accident has arisen out of the use of motor vehicle resulting into death or permanent disability and no other question regarding fault liability etc. could be gone into for deciding application u/s.140 of M.V. Act. Therefore, in view of the above decision, I hold that Insurance Company cannot raise defense regarding the breach of conditions. Such defense can be dealt with at the time of deciding Main Claim Petition u.s.166 of the Act after recording evidence.
- (4) The applicant has produced the relevant documents viz. FIR, Panchanama of place of accident, Disability Certificate, R.C. Books as well as insurance particulars of the vehicle/s involved in this accident. From the documents produced by the applicant, it is established that offending vehicle/s are involved in the accident and the Opponents are the driver/owners and insurer/s of offending vehicle/s. Moreover, on further perusal of papers produced in this case, it transpires that policy of offending vehicle was in force on the date of accident,

hence all the requirements and conditions mentioned in Sec.140 of M.V. Act have been satisfied. 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 applicant has claimed compensation on the basis of no fault liability, in this event without ascertaining the negligence of driver/s, it is desirable to decide this application without looking into the issue of negligence. Hence I pass the following final order :-

ORDER

- The application is hereby allowed.
- The applicant do recover Rs.50,000/- (Rupees Fifty Thousand only) from the Opponents with running interest at the rate of 9% p.a. from the date of main claim petition till realization.
- The 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.
- Above referred amount is to be paid to applicant by account payee cheque after proper verification.

Pronounced in the Open Court today, this 17th day of August, 2021.

Place : Nadiad
Dated : 17/08/2021

[Alihusen Mohibullah Shaikh],
M.A.C. TRIBUNAL (AUXI.)
Nadiad .
UID-00521