

Order below Exh.5**Application for Interim Relief in M.A.C.P.No.84/2014**

1. This application has been preferred by the petitioners alongwith main claim petition filed u/s.166 of M.V.Act, for getting interim relief as per S.140 of M.V.Act, with the case that deceased, Amitbhai Sumanbhai Patel, husband of the petitioner no.1, son of petitioner nos.2 and 3 and brother of petitioner no.4, has been died in the motor vehicular accident occurred between Hero Honda motorcycle no.GJ.21.N.1717 and truck no.GJ.21.T.4676, owned by opponent no.2 and insured with opponent no.3 and therefore, petitioners have claimed Rs.50,000/- as interim compensation under the aforesaid provisions.
2. Show cause notices were issued to all the opponents but, opponent nos.1 and 2, failed to appear though notices Exh.7 and 9 duly served to them. While opponent no.3 appeared and filed its W.S. vide Exh.23. The opponent no.3 has not denied the motor vehicular accident as alleged by the petitioners. It has also not denied about the effective Insurance Policy of truck involved in the said vehicular accident.
3. While going through the documentary evidence produced by the petitioners, it appears that the petitioners have produced total 17 documents in support of their petition wherein, F.I.R. of the incident, panchnama of the scene of accident, Inquest Panchnama and P.M.Note of deceased,

Amitbhai, copy of chargesheet filed against opponent no.1, Insurance Policy of truck no.GJ.21.T.4676, R.C.Book, goods permit of said truck and driving license of deceased-Amitbhai are also produced.

4. While going through the documentary evidence, it appears prima facie that the vehicular accident has occurred between the aforesaid two motor vehicles as alleged by the petitioners. The documentary evidence produced by the petitioners are duly supporting to their case. The petitioners have also produced copy of Insurance Policy of offending truck owned by opponent no.2 and insured with opponent no.3. While going through the said policy, it appears that on the date of incident, the policy was in existence. As per the Insurance Policy, the period of Insurance was from 09.11.2011 to 08.11.2012. While, the alleged motorvehicular accident was occurred on 22.06.2012. In the said policy, name of the insured is also mentioned. So, it can be said that opponent no.3 was the insurer of the offending vehicle, as per the said policy. While going through the R.C.Book of the truck, it also appears that said truck owned by opponent no.2 at the time of accident.
5. It is also undisputed fact that deceased, Amitbhai Sumanbhai Patel, has died in the said vehicular accident and being dependent and legal heirs of deceased, Amitbhai, the petitioners are entitled for interim compensation as per S.140 of M.V.Act.

6. While deciding the application filed as per S.140 of the Act, it is necessary for the Tribunal to make any inquiry about the fault of driver of vehicles involved in the accident. But, Tribunal has to see that whether vehicular accident as alleged by the petitioners, has been occurred or not? Whether vehicle involved in the said accident was owned by opponent and insured with opponent, as showed by the petitioners in the petition and, whether there is permanent disability or death of the concerned persons? So, considering this settled legal position, in the light of above stated facts and reasoning, I am of the opinion that petitioners, as dependent and legal heirs of the deceased, Amitbhai Sumanbhai Patel, are entitled for interim compensation of Rs.50,000/- from opponent nos.2 and 3, the owner and insurer of offending truck no.GJ.21.T.4676 and, therefore, I pass following order.

Order

1. The application stands allowed.
2. The petitioners are entitled to Rs.50,000/- (Rupees Fifty Thousand Only) as interim compensation, on the basis of "No Fault Liability" as per S.140 of M.V.Act, from opponent nos.2 and 3, jointly and severally.
3. The Opponents Nos.2 and 3 are jointly and/or severally ordered to pay to the Petitioners the sum of Rs. 50,000/- (Rupees Fifty Thousand only) within one month with

interest at the rate of 8% p.a. from the date of passing of this order.

Pronounced in open Court today on this 7th day of November, 2015.

(K.B.Gujarathi),
Chairman,
Motor Accident Claim Tribunal,
Navsari.

jas/-