

ORDER BELOW EXH.7 IN M. A. C. PETITION NO.1402 OF 2019

- 1] Heard Learned Advocates for the parties.
- 2] Read the application along with the main claim petition and documentary evidence produced vide Mark-9/1 to 9/6 and 23/1 to 23/4. In the present application, opponent Nos.1 & 2 are the owners and opponent No.3 is the insurance company of the Motor Car No.GJ-25J-0541 involved in the accident.
- 3] Perused the FIR and the panchnama of the place of accident at Mark-9/1 and 9/2. The deceased met with an accident on 29/05/2019. The identities of the involved vehicles are established from the contents of the F.I.R. and panchnama. As per say of the claimants, the deceased sustained injuries due to the alleged accident and succumbed to the same as per post mortem report produced at Mark-23/3.
- 4] The opponent No.1 & 2 – owners of Motor Car No.GJ-25J-0541 has filed written statement-cum-objections at Exh.20 & Exh.19 respectively, wherein they have denied each and every averment made in the claim petition as well as application filed u/s.140 of the M.V.Act.
- 5] The opponent No.3 - Insurance Company has filed written objections at Exh.22, wherein it has denied each and every averment made in the claim petition as well as application filed

u/s.140 of the M.V.Act.

6] ***In New India Assurance Co. Ltd. V/s. Kalabhai Maganbhai Koli & Ors. (First Appeal No. 2103/05)*** Hon'ble Gujarat High Court has propounded the ratio u/s.140 as under:

(i) At the stage of proceedings under Section 140 of the M.V. Act, the Claims Tribunal has to only verify that:

[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 Motor vehicle involved in the accident.

7] It has been further laid down in the said case that, the Tribunal has to give findings, if any, as regards the dispute taken by the insurer of the above stated three aspects and it has been further held that, no other defences including those referred to in Sec.149(2) of the M.V. Act would be available to the Insurance Co. at the stage of application u/s.140 of the M V. Act.

8] The involvement of the Motor Car No.GJ-25J-0541 and Motor Cycle No.GJ-25K-2937 in the alleged accident and the death of the deceased vide post mortem report Mark-23/3 are established and the ingredients of Section 140 of the M. V. Act are proved by the claimants, and therefore, this Tribunal is of the opinion that the claimants are entitled to get interim amount

of compensation.

- 9] In the case of ***Dhirubhai Karsanbhai Chau V. Karmanbhai Harjibhai Pipaliya and others decided by Hon'ble High Court of Gujarat reported in 2015 ACJ 1464***, the Hon'ble High Court has observed that the object behind the enactment of Section 140 of the Act is to provide immediate succour to the victim or to the heirs of the deceased. Considering the nominal amount involved, it is 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 Section 140 of the Act. In consonance with the above mentioned observation of the Hon'ble High Court, the following order is passed.

// ORDER //

- [1] This application is allowed.
- [2] Opponents are hereby ordered to pay jointly and severally to the claimants, the amount of Rs.50,000/- (Rupees Fifty Thousand Only) along with interest @ 9% p. a. from the date of filing of petition till the payment is made.
- [3] The opponents are ordered to deposit the aforesaid amount in the Tribunal, within 30 days from the date of this order.
- [4] Out of the deposited amount, claimant No.1 shall get 80% and claimant Nos.2 & 3 each shall get 10% amount.
- [5] The amounts coming to the share of claimant Nos.1 to 3 be

paid to them by individual/separate crossed account payee cheques, after due verification and identification.

Signed and Pronounced in open Court today on this 12th day of November, 2021.

Place : Rajkot.
Date : 12.11.2021

(UTKARSH THAKORBHAI DESAI)
Chairman,
M.A.C.Tribunal (Main)
R A J K O T.
Code No.GJ-01314.

EA.MNG.