ORDER BELOW EXH.4 IN M. A. C. PETITION NO.333 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-6/1 to 6/15 and 14/1. In the present application, opponent No.1 is the owner (as per R.C.Book), opponent No.2 is the owner (as per insurance Policy) and opponent No.3 is the insurance company of the Motor Cycle No.GJ-3CG-0081 involved in the accident.

3] The opponent No.3 Insurance Company has filed written objections at Exh.17, wherein it has denied each and every averments made in the application filed u/s.140 of the M.V.Act.

4] Perused the F.I.R. and panchnama of the place of accident at Mark-6/1 and 6/3. The claimant met with an accident on 16/10/2018. The identity of the involved vehicle is established from the contents of F.I.R. and panchnama. As per say of the claimant, he had sustained severe injuries because of accident, resulting into permanent disablement. The injury and disability certificates produced at Mark- 6/9 & 14/1 respectively prima-facie establishes the fact about accidental injuries and permanent disablement.

5] Ld. Adv. Mr.S. H. Modha, for the opponent No.3 - Insurance Co. has submitted that, the driver of Motor Car No.GJ-3CG-0081 was not holding valid and effective driving licence at the time of accident and had thus committed breach of the terms and conditions of the insurance policy as well as the provisions of the M.V. Act. Mr.Modha has further submitted that, purchaser has committed breach of Sec.157(2) by not transferring the policy of insurance in his name within stipulated time. Hence, the insurance company should not be held liable to pay interim compensation.

6] Per contra, Ld. Adv. Mr.V. M. Vadher for the claimant has submitted that, the defences raised on behalf of opponent No.3 about the driver of Motor Cycle was not holding valid and effective driving licence at the time of accident and breach of Sec.157(2) of the M.V.Act, cannot be decided at this interim stage. He has submitted that, at the stage of deciding application u/s.140 of the M.V.Act, the Claims Tribunal has to only decide the issue of involvement of the vehicles. He, therefore, has requested to allow the application filed u/s.140 of the M.V. Act.

7] ***In New India Assurance Co. Ltd. V/s. Kalabhai Maganbhai Koli & Or****s. (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.

8] 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.

9] Therefore, considering the above mentioned ratio laid down by the Hon'ble High Court of Gujarat, the disputes about the driver of Motor Cycle No.GJ-3CG-0081 not holding valid and effective driving licence at the time of accident and breach of Sec.157(2) of the M. V. Act, raised by the opponent No.3, cannot be decided without recording evidence. Thus, at this juncture, the Tribunal considers that the objections raised by the insurance company would not be maintainable at the stage of Section 140 of the M. V. Act, 1988.

10] Thus, the involvement of the Motor Cycle No.GJ-3CG-0081 in the alleged accident with injury and disability certificates produced at Mark- 6/9 & 14/1 respectively are established, and the ingredients of Section 140 of the M. V. Act are proved by the claimant, and therefore, this Tribunal is of the opinion that the claimant is entitled to get interim amount of compensation.

11] 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.

// O R D E R //

[1] This application is allowed.

[2] Opponents are hereby ordered to pay the claimant, the amount of Rs.25,000/- (Rupees Twenty Five thousand only) along with interest @ 9% p. a. from the date of filing of petition till the payment is made.

[3] The opponents are hereby ordered to deposit jointly and severally the aforesaid amount in the Tribunal within a period of 30 days from the date of this order.

[4] The aforesaid amount be paid to the applicant by crossed account payee cheque after due verification and identification.

[5] The Insurance Company shall deposit the amount in **Account Name : "MACT & District Judge, Rajkot",**

Account No.30937452665, IFSC Code : SBIN0060292 through NEFT or RTGS and on such deposits being made, the insurance company shall submit a letter to the Registry of District Court enclosing a copy of the said bank advice, in prescribed format as above, as per which the deposit was made to the bank account of the Claims Tribunal.

Signed and Pronounced in open Court today on this 28th day of March, 2022.

Place : Rajkot.
Date : 28.03.2022.

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

EA.MNG.