ORDER BELOW EXH.7 IN M. A. C. PETITION NO.1102 OF 2008

1. The applicant has filed Claim Petition under Section 166 of Motor Vehicles Act for the compensation of Rs.11,00,000/-.

2. Along with the said petition, the applicant has also filed this application under section 140 of the Act for getting interim relief of compensation of Rs.25,000/- for permanent disablement caused to him on account of injuries sustained by him in vehicular accident. The opponent No.1 is owner of Truck No.GJ-8U-1648 involved in the accident and opponent No.2 is Insurance Company of the said vehicle. The opponents No.3 and 4 are driver and owner of Truck No.GJ-10W-6237 involved in the accident and opponent No.5 is Insurance Company of the said vehicle. The opponents No.6 and 7 are driver and owner of Eicher Tempo No.GJ-17X-4922 involved in the accident and opponent No.8 is Insurance Company of the said vehicle.

3. The opponents are duly served with the notices. The opponent No.2 has filed its objections vide Exh.34 and denied all the facts stated by the applicant in his application. It is further contended by the said opponent No.2 that the opponent No.1 owner of the vehicle has committed breach of the terms and conditions of the insurance

policy, and therefore, Insurance Company is not liable to satisfy the award. It is further contended that applicant is not entitled to get amount of interim compensation from opponent No.2 - Insurance Company.

4. The opponent No.3 – driver of truck No.GJ-10W-6237 has filed his objections vide Exh.39 and denied all the facts stated by the applicant in his application. It is further contended that there was no negligence on the part of driver of truck No.GJ-10W-6237. It is further contended that the present accident has taken place due to rash and negligent driving on the part of applicant and driver of truck No.GJ-17X-4922, and therefore, there was no negligence on the part of opponent No.3. Hence, present application is liable to be dismissed against opponent No.3.

5. The opponent No.5 has filed its objections vide Exh.56 and denied all the facts stated by the applicant in his application. It is further contended by the said opponent No.5 that the opponent No.4 owner of the vehicle has committed breach of the terms and conditions of the insurance policy, and therefore, Insurance Company is not liable to satisfy the award. It is further contended that the claimant and insured have fabricated the story that claimant was sleeping on back side driver seat and driver Talab Abdulbhai

was driving the truck. It is submitted that the story put forth by claimant cannot be believed considering the documentary evidence on record. It is further contended that at the time of accident Cleaner Iqubal Abdulbhai was driving the Truck No.GJ-10W-6237 and as he was not having valid and effective driving licence at the time of accident, and thereby the driver Iqubal Abdulbhai and owner have committed breach of the terms and conditions of the policy of insurance, and therefore, Insurance Company is not liable to satisfy the award.

6. The opponent No.8 has filed its objections vide Exh.17 and denied all the facts stated by the applicant in his application. It is further contended by the said opponent No.8 that the opponent No.7 owner of the vehicle has committed breach of the terms and conditions of the insurance policy, and therefore, Insurance Company is not liable to satisfy the award. It is further contended that the driver of Eicher vehicle was not holding valid and effective driving licence at the time of accident, and thereby the owner has committed breach of the terms and conditions of the policy of insurance, and therefore, Opponent No.8 - Insurance Company is not liable to satisfy the award.

7. Heard learned advocates for the parties. Read application and written objections filed by the other side. Perused the documentary evidence produced in support of application in forms of F.I.R., Panchnama, R.C. Book of Eicher Tempo No.GJ-17X-4922, Medical Bills, Discharge Certificate issued by Akshar Orthopaedic Hospital, Vadodara, Driving licence of driver of truck No.GJ-10W-6237, R.C. Book of truck No.GJ-10W-6237, Letter written by opponent No.4 to Opponent No.5 – Insurance Company for information about the accident, Letter written by opponent No.4 to Opponent No.5 – Insurance Company regarding details of the accident and claim from, Injury Certificate issued by Akshar Orthopaedic Hospital, Vadodara, Letter sent by R.T.O., Rajkot to Advocate for applicant regarding details of owner of vehicle No.GJ-8U-1648, Sale agreement of truck No.GJ-8U-1648, Disability Certificate, Police statement of Ikbalbhai Abdulbhai, Police statement of Talabbhai Abdulbhai, copy of judgment delivered by Jamnagar District Consumer Redressal Forum dated 6-11-2009 in Complaint No.4/09, Copy of affidavit of Jayeshbhai Ramjibhai Patel, Notice sent by Advocate Mr.P.R. Desai for opponent No.8 to opponent No.6 and 7 for production of driving licence and permit, Registered A.D. Receipts, Acknowledgment slips, Police statement of applicant –

Rameshbhai Gordhanbhai, Driving licence of driver of Eicher Tempo No.GJ-17X-4922, coupled with Insurance Policies of truck No.GJ-8U-1648, Truck No.GJ-10W-6237, Eicher Tempo No.GJ-17X-4922 etc..

8. Mr.G.A. Suraiya, learned Advocate for the applicant argued that this is an application under Section 140 of the Motor Vehicles Act. He has referred Section 140(1) to 140(4) and also referred Section 142(b) and argued that the liability of Insurance Company is co-extensive, and therefore, at the instance of liability of owner, Insurance Company is also liable to pay and adjudicate the award. It is further argued by Mr.Suraiya that Section 140 stands on the principle of 'No fault liability', and therefore, at this stage, only certain aspects whether in the incident any vehicular is involved ? whether any death or injuries, resulted into the permanent disability, causes to any person or not are required to ascertain.

9. Ms.B.R. Oza, learned Advocate for the Opponent No.2 in her written arguments at Exh.62 submits that one Chhaganbhai Ramjibhai Patel was an owner of the said truck No.GJ-8U-1648 and he sold the said truck to the applicant before the accident and therefore, the applicant was an owner & driver of the said truck, he was not third party, and he cannot claim compensation from his own

insurance company, and therefore, opponent No.2 is not liable to pay any amount of compensation to the applicant. .

10. Mr.S.H. Modha, learned Advocate for the Opponent No.5 - Insurance Company in his written arguments at Exh.60 submits that at the time of accident vehicle truck No.GJ-10W-6237 insured with the opponent No.5, was driven by the Cleaner, according to the police papers, and therefore, it was a breach of contract between the parties, and therefore, the Insurance company is not liable. He has further argued that the driver of truck was not holding valid and effective driving licence at the time of accident, hence, the driver and owner of the truck has committed breach of the terms and conditions of the insurance policy as well as provisions of M.V. Act and G.M.V. Rules. Hence, at this stage award against Opponent No.5 - Insurance Company cannot be passed.

11. Mr.P.R. Desai, learned Advocate for the Opponent No.8 - Insurance Company in his written arguments at Exh.65 submits that this application deserves to be dismissed on the ground of non joinder of necessary party. He has further argued that opponent No.7 has committed breach of various terms and conditions of the Policy, and therefore, the opponent No.8 is not liable to indemnify. He has further argued that driver of Eicher Tempo No.GJ-17X-4922

was not holding valid and effective driving licence at the time of accident, Hence, at this stage award against Opponent No.8 - Insurance Company cannot be passed.

12. This is an application under Section 140 of Motor Vehicles Act. The scope and object of the said Section is to speed up payment of compensation on no fault principle. The victims of accident are under these beneficial provisions, entitled to get the minimum statutory relief expeditiously. Speed for expeditious disposal and payment of compensation is the essence. Otherwise, injustice and breach of legislative intent is the consequence. Section 140 is a piece of legislation intended to provide immediate relief to the victim(s). This provision is clearly a departure from the usual common law principle that claimant should establish negligence on the part of the owner or driver of the motor vehicle before claiming compensation for the death or permanent disablement caused on account of the use of a motor vehicle.

13. The real question before this Court is that at this stage, whether Insurance Companies are entitled to raise a defence or dispute available to the Insurance Company under Section 149(2).

14. Sub-clause (2) of Section 140 deals with principle of 'no fault liability'. Claimant is not required to plead and establish any

wrongful act, neglect or default of the person in respect of whom death or permanent disablement.

15. Under sub-clause (4) of Section 140, claim for compensation is not to be defeated by any wrongful act, neglect or default of the person in respect of whose death or permanent disablement. Sub-clause (5) of Section 140 is a non-obstacle provision. It reads as under :-

> (5) Notwithstanding anything contained in sub-section (2) regarding death or bodily injury to any person, for which the owner of the vehicle is liable to give compensation for relief, he is also liable to pay compensation under any other law for the time being in force :
>
> Provided that the amount of such compensation to be given under any other law shall be reduced from the amount of compensation payable under this section or under section 163-A.

Along with above two provisions, if we read Section 140(1) conjointly along with Section 144, it becomes clear that the said section provides compensation in case of no fault liability. It is independent Section.

16. In a case between United India Insurance Company and Kadviben Udabhai Rathwa and another, reported in A.I.R. 2006

Gujarat, page 120, Hon'ble Full Bench of our High Court has held that the Insurance Company is not entitled to seek trial on merit of any legal defences available to it under Section 149(2) of the Act. Remedy of Insurance Company is against the owner of the vehicle invoking defences available to it, but not against the claimant.

17. In a case between Eshwarappa and another and C.S. Gurushanthppa and another, reported in 2010 A.C.J. page 2444, Hon'ble Division Bench of Hon'ble Apex Court observed that on a plain reading of the provisions, it is evident that all that is required to attract the liability under Section 140 is an accident arising out of the use of a motor vehicle(s) leads to the death or permanent disablement of any person. The said Section is indeed intended to provide immediate succour to the injured or the heirs or the legal representatives of the deceased. It is also observed by the Hon'ble Judges that the provisions of Chapter X together with Section 146 and 147 would appear to be in furtherance of the public policy that in case of death or permanent disablement of any person resulting from a motor accident a minimum amount must be paid to the injured or the heirs of the deceased, as the case may be, without any questions being asked and independently of the compensation on the principle of fault.

18. In a case of Reliance General Insurance Company Limited V/s. Dineshbhai Narsibhai Ajadia & 3, in First Appeal No.3879 of 2014 decided on 17-12-2014, deceased was travelling in a rickshaw and Insurance Company took the dispute that the driver of rickshaw was not holding valid and effective driving licence at the time of accident. Hon'ble Gujarat High Court has held that if it is assumed that deceased boy was a third party in the accident, even then, the Insurance Company cannot escape from it liability. Once it is established that the Courts are functioning within four corners of law, microscope scrutiny of every judicial action cannot be permitted. These provisions are meant for welfare of the human being and mathematical precision while dealing with them cannot be applied. From any angle, Insurance Company cannot be absolved from its liability to pay the compensation.

19. In the case of New India Assurance Company Ltd. V/s. Kalabhai Maganbhai Koli & two, in First Appeal No.2103 of 2005 decided on 17-11-2014, Hon'ble Division Bench of Gujarat High Court has held that the application under Section 140 of Motor Vehicles Act has to be decided by the Tribunal expeditiously and in a summary manner. At that stage, all that the Tribunal has to examine is whether such liability arises irrespective of the fact

whether there was any negligence on part of the driver or owner of the motor vehicles. The Tribunal while deciding the application has to verify only following three aspects namely (I) the accident has arisen out of use of motor vehicle, (ii) the said accident resulted in permanent disablement of a person filing the claim or in case of death his legal representatives (iii) the claim is made against the owner and the insurer of the motor vehicle involved in the accident. It was further held by Hon'ble Gujarat High Court that no other inquiry is envisaged or permissible. The defences of the insurance company available under Section 149(2) of the M.V. Act, would not be allowed to be raised. Correspondingly, it would not be necessary for the Claims Tribunal to decide the same even if raised.

20. Considering the above all provisions of law and judgments of Hon'ble High Court and Hon'ble Supreme Court, I am of the opinion that a petition under Section 140 is a summary trial and evidence is not required to be led. The object and scope of the said Section appears to provide immediate financial relief to the injured person or the heirs of the deceased. Considering the above all materials on record and contents of Section 140, applicant has to prove that he has sustained injury due to accident. The applicant has to prima facie put the material on record that motor vehicle is involved in the

accident and it is also required to show prima facie that he sustained a partial disability.

21. This is an application under Section 140 of Motor Vehicles Act summary trial and evidence is not required to be led. The disputes raised by the Insurance Companies are required to be proved by adducing evidence, and therefore, at this stage, defence raised by the Insurance Companies are not acceptable. I agree with the principles laid down in the authorities cited by all the Insurance Companies. But, as this application is filed under Section 140 of M.V. Act and it is pending since long for the above-stated reasons, this application requires to be allowed.

In our case, on perusing record, it appears that the applicant has sustained serious injuries out of motor vehicular accident. It is also prima facie on record that the said vehicles were duly insured with the Insurance Companies on the date of accident. It is also on record that applicant has sustained serious injuries, which resulted into partial disability. Therefore, I allow this application and pass the following order.

: O R D E R :

The application is allowed.

The opponents are jointly and severally liable to pay the applicant an amount of Rs.25,000/- (in words, Rupees Twenty Five Thousand Only) with 9% p. a. interest thereon from the date of the application till realization. The opponents are directed to deposit the said amount within one month from the date of this order.

On depositing the awarded amount, after deducting deficit Court fees, if any, the remaining amount be paid to the applicant by Account payee cheque as per the Judgment reported in 2014 (3) G.L.R. page 2692 in the case of Dhirubhai Karshanbhai V/s. Karmanbhai Harjibhai Pipalia.

Pronounced in the open court today, on this 11th day of April, 2016.

Date : 11-04-2016.

[ASHOK MANEKLAL DAVE]
MOTOR ACCIDENT CLAIMS TRIBUNAL
(MAIN), RAJKOT.
CODE NO.GJ00103

Place : RAJKOT.