

ORDER BELOW EXH.7 IN M. A. C. PETITION NO.929 OF 2017

1. The applicants have preferred the claim petition under Section 166 of the M. V. Act for getting compensation, as deceased sustained vehicular injuries and succumbed to the said injuries. Along with the claim petition, the present application has been filed by the applicants, who are legal heirs and representatives of deceased under Section 140 of the M. V. Act for getting the interim compensation of Rs.50,000/- under 'No Fault Liability' along with interest from the opponents.
2. Heard Learned Advocates for the respective parties and perused the record.
3. The applicants have produced documentary evidence which consist of; F.I.R., panchnama of the place of accident, aadhar card of applicant No.1, post mortem report, inquest panchnama, R. C. book of tanker No.GJ-2-Z-3658, R. C. book of rickshaw No.GJ-7-TT-1632, as well as insurance particulars of the vehicle tanker and rickshaw involved in this accident
4. The opponents No.1 and No.3 have not appeared.
5. The opponent No.2 and No.4 appeared through their Learned Advocates and filed written objection at Exh.25 and Exh.27 respectively. The same have been considered by this Tribunal.
6. The Learned Advocate for the opponent No.4-insurance company

has submitted that more persons were travelling in the vehicle than the seating capacity and thereby there is breach of terms and conditions of policy of insurance as well as provisions of the M. V. Act and, therefore, insurance company is required to be exonerated. The submission of the Learned Advocate for the opponent No.4 is considered, however, the said submission is not required to be considered at this stage.

7. The Hon'ble High Court of Gujarat has held in First Appeal No.2103/05 with other allied matters in the case of New India Assurance Co. Ltd. V/s. Kalabhai Maganbhai Koli that the proceedings under Section 140 of the M. V. Act are summary in nature and detailed inquiry is not envisaged at that stage. The Tribunal, while deciding the application has to verify only 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, and (iii) the claim is made against the owner and the insurer of the motor vehicle involved in the accident. It is also held by the Hon'ble High Court of Gujarat that no such inquiry is envisaged or permissible. The defenses of the Insurance Company available under Section 149(2) of the M. V. Act are not required to be raised and even if the same are raised, it would not be necessary for the

Tribunal to decide the same.

8. I have considered the documents produced from which all the above three ingredients and requirements of Section 140 have been established. Hence, the opponents are jointly and severally liable to pay interim compensation to the applicants together with interest at the rate of 9% p. a. from the date of application till payment. The Learned Advocate for the applicants has relied on the decision reported in 2014(3) G.L.R. p.2692 in the case of Dhirubhai Karshanbhai Chau V/s. Karamanbhai Harjibhai Pipaliya and prayed for the entire amount in cash. I have considered the submission of Learned Advocate for the applicants and considering the facts and circumstances of the case as well as the object of Section 140 of the M. V. Act to give immediate relief to the victims of road accident, the same is ordered to be paid in cash. Hence I pass the following order.

ORDER

1. The present application is hereby allowed.
2. The applicants do recover from the opponents jointly and severally, sum of Rs.50,000/- with interest at the rate of 9% p. a. from the date of application till realization.
3. The opponents shall deposit the aforesaid amount before this Tribunal within 30 days from the date of this order.

4. Out of the deposited amount, the applicant No.1 shall get 20% amount and the applicant No.2 shall get 80% amount.
5. The amount coming to the share of both the applicants be paid to them in cash by way of account payee cheque after due verification.

Pronounced in open Tribunal on today, the 10th day of May, 2018 at Rajkot.

R A J K O T

Date : 10-05-2018

[Rajesh Karmarsinh Desai]
M. A. C. TRIBUNAL (MAIN)
R A J K O T
CODE NO.GJ00912