

ORDER BELOW EXH. 4 (Application u/s. 140 of M.V.Act)

IN

MACP NO 1443 OF 2018

- 1] Heard the Ld. Advocates of the parties.
- 2] The present application has been filed by the applicant for the interim relief of Rs.50,000/- under Section 140 of Motor Vehicle Act. (M.V. Act) under the principle of "No Fault Liability".
- 3] The Opponent No. 1 is the owner of the Car number **GJ-10-CG-3657**. Opponent No. 2 is the insurance company of the said vehicle.
- 4] The opponent No. 2 has filed Objections to the application under 140 of MV Act vide Exhibit-15 & Written Statement at Ex.14 and denied the facts averred in the petition and in the present application.
- 5] Ld. Advocate for claimant submitted that accident had happened on **01-05-2018**, because of rash and negligent driving on the part of driver of Motor car number **GJ-10-CG-3657**. in which **Hasubha Raghubha Gohil** lost his life.
- 6] Per contra, Ld. advocate of insurance company -opponent no.2, vehemently opposed the application in accordance with the facts stated in the reply.
- 7] I have gone through the documentary evidence available in the documentary lists at exhibit **6** in the shape of FIR, Panchnama, RC and insurance policy, PM Note etc. produced by the applicant and no counter to these papers has been produced at this stage.

In the case of **New India Assurance Co. Ltd. V/s. Kalabhai Maganbhai Koli, Civil First Appeal No. 2103 of 2005, dated 17-11-2014)** Hon. Gujarat High Court held that at the time of deciding the application under Section 140 of The M. V. Act, the Tribunal has to verify only the 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 insurer of the motor vehicle involved in the accident;
- 8] Considering the facts and circumstances, the present application deserves to be allowed. Hence, the following order is being passed :

ORDER

The present application, Ex. 7, is hereby allowed.

All the opponents are ordered to pay a sum of Rs.50,000/- (Rupees Twenty Five Thousand Only) to the claimant as interim compensation with running interest at the rate of 9% per annum from the date of filing of the present application till the realization.

The opponents are jointly and severally liable to pay the amount of compensation with interest payable on it. The opponents are also directed to deposit the aforesaid amount before this Tribunal within one month from the date of this order.

On depositing the above amount, the same be disbursed to the applicants by account payee cheque after due verification as per judgment passed by Hon. High Court of Gujarat in case titled as **Dhirubhai Karsanbhai V/s Karmanbhai Harjibhai pipalia and others, reported in 2014(3) - G.L.R. - 2692.**

Further more it is ordered that 60 % of the amount shall be disbursed to the claimant number-1 each and remaing forty percent shall be disbursed to claimant number-2 & 3 in equal proportion i.e., 20 % each.

Signed and Pronounced in open Court on 05th day of July, 2019.

DATE : 05-07-2019
PLACE : RAJKOT

(PARVEEN KUMAR SATISH KUMAR)
MOTOR ACCIDENT CLAIMS TRIBUNAL
(SPECIAL), RAJKOT
CODE No. GJ 01511