

**Order below Exh. 27 in M.A.C.P. No. 140/2020**

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- [1] The applicants have preferred the Claim Petition u/s. 166 of the M. V. Act to recover compensation as the deceased sustained vehicular accidental injuries and succumbed to the same. Along with the Claim Petition, the legal heirs and representatives of the deceased have filed present application u/s. 140 of the M. V. Act for getting interim compensation of Rs. 50,000/- under 'No Fault Liability' along with interest from the opponents.
- [2] The applicants have produced documentary evidence vide list Exh. 5, which consists the copies of FIR, panchnama of place of accident, inquest panchnama, Registration Certificate and insurance policy of the offending vehicle truck, and also produced the copy of P. M. Note of the deceased.
- [3] On service of the notices, the opponent Nos. 1, 2 and 3 have appeared through their Advocates and filed their written statements at Exh. 20, 21 and Exh. 12 respectively, *inter alia*, denying the averments and allegations canvassing the claim petition and have also denied that the accident took place at the time, place and in the manner in which it is alleged. The opponents have contended that the present applicants are not entitled for the amount of Rs. 50,000/- towards interim compensation and have prayed to reject this application. The

opponent No. 1 has produced the copy of his driving license vide list Exh. 22, whereas opponent No. 2 has produced certain documents vide list Exh. 23, which contains the copies of R. C. Book, Insurance policy, fitness certificate and PUC certificate of the offending vehicle truck and has also produced the copy of driving licence of the driver.

[4] At this juncture, it would be apt to mention here that as per the provisions of Section 140 of the M. V. Act and propositions of law expounded by the Hon'ble Apex Court and Hon'ble Gujarat High Court in catena of judgments, the following factors are required to be ascertained.

1. Whether the accident was caused by the alleged vehicle?
2. Whether the applicant suffered permanent disability due to the injury caused in the alleged accident?
3. Whether the opponents are liable as owner and/or insurer of the alleged vehicle?

[5] Further, the Hon'ble Gujarat High Court in the case of *New India Assurance Co. Ltd. vs. Kalabhai Maganbhai Koli* reported in 2016 (1) GLH 68, has held as under:

*"In the context of questions referred, we summarise our answer as under:*

- i) *At the stage of proceedings under section 140 of the MV Act, the Claims Tribunal has to verify only following three aspects:*
  - 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 insurer of the motor vehicle involved in the accident.*
- ii) *if the insurance company has raised dispute with any of these aspects, the Claims Tribunal would give its findings through a summary inquiry.*
- iii) *if the insurance company has not raised any dispute with respect to any of these aspects or if raised, is decided against the insurance company by the Claims Tribunal, the same would bind the insurance company at the later stage of deciding the Claim Petition under section 166 of the MV Act.*
- iv) *No other defences including those referred to in section 149(2) of the MV Act would be available to the insurance company at the stage of application under section 140 of the MV Act. It would therefore, not be necessary, in fact, not permissible for the insurance company to raise such defences at this stage and if raised the Tribunal shall not decide the same at that stage. There would therefore, be no question of any res judicata with respect to such issues at the stage when the Claims Tribunal*

*proceeds to decide the Claim Petition under section 166 of the MV Act."*

[6] Heard the Ld. Advocates for the respective parties and perused the documents produced on record. Considering the provisions of Section 140 of the M. V. Act as well as the principles laid down by the Hon'ble Gujarat High Court in the case of *New India Assurance Co. Ltd. vs. Kalabhai Maganbhai Koli* (Supra), all the above ingredients and the requirements of Section 140 have been established on behalf of the claimants by producing documentary evidence. Hence, the opponents are 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. Further, considering the object of Section 140 of M. V. Act and the principle laid down by the Hon'ble Gujarat High Court in the case of *Dhirubhai Karshanbhai Chau Vs. Karmanbhai Harjibhai Pipaliya and others reported in 2015 ACJ 1464*, to provide immediate succour to the victim or to the heirs of the deceased as well as considering the nominal amount involved, it would be just and proper to disburse the amount of interim compensation to the applicants as and when the same is deposited with the Tribunal. Hence, the following order is passed.

**:: ORDER ::**

[1] The present application is hereby allowed.

- [2] The applicants do recover from the opponents, jointly and severally, Rs. 50,000/- (Rupees Fifty Thousand Only) with interest at the rate of 9% p.a. from the date of application till realization.
- [3] The opponent shall deposit the aforesaid amount before this Tribunal within 30 days from the date of this Order.
- [4] The amount of compensation shall be apportioned amongst the claimants as under.:
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|----------------|---|-----|
| Claimant No. 1 | - | 80% |
| Claimant No. 2 | - | 10% |
| Claimant No. 3 | - | 10% |
- [5] The amount coming to the shares of the applicant No. 1 be paid to him in cash by way of account payee cheque after due verification.
- [6] The entire amount payable to the minor applicant Nos. 2 & 3 shall be invested in FDR in any Nationalized Bank with the joint name of their guardian applicant No. 1 for a period of FIVE YEARS or till the minor applicants attain the age of majority, whichever is later. The concerned Bank is directed not to grant any loan, advances or withdrawal against the

said FDR without obtaining prior permission of this Tribunal.

Pronounced in open Court today on this 18<sup>th</sup> day of April, 2023.

Date : 18.04.2023  
Place : Surat.

**(Vimal Kanaiyalal Vyas)**  
Chairman  
M. A. C. Tribunal (Main),  
Surat.  
CODE - **GJ00383.**