

Order below Exh. 6 in M.A.C.P. No. 340/2018.

1. The applicants have preferred the Claim Petition u/s. 166 of the M. V. Act for getting compensation, as deceased sustained vehicular 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 the 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, P. M. Note, death certificate of the deceased, R. C. Book of the car and insurance policy of the car. The claimants have also produced the copy of RTO certificate of the dumper and insurance policy of the dumper vide list Exh. 19.
3. Opponent No. 1, 3, 4 and 5 have not filed their written statements. Opponent No. 2 insurance company has filed its reply at Exh. 17, which is considered by this Tribunal.
4. Heard the Ld. Advocates for the respective parties and perused the record. Ld. Advocate of the opponent No. 2 insurance company has submitted that the owner of the car is Girishbhai Harkishanbhai Mistry, who died in the accident and on his behalf, his brother is joined as opponent, who is not the owner of the car. He has further submitted that the brother cannot be considered to be the legal heir and when the owner or his legal heirs are not joined as party, the insurance company is not liable to indemnify the owner. The said submission of the Ld. Advocate of the insurance company is

not accepted as the owner himself has died in the accident and legal heirs have filed M.A.C.P. No. 358/2018, in which the compensation u/s. 140 of the M. V. Act has already been awarded by this Tribunal. In the present case, the deceased was the occupant of the car and the claimant No. 2 and 3 are the grant daughter and grand son and therefore, they cannot be denied the compensation on such technical ground.

5. It has been held by 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 that, the proceedings u/s. 140 of 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 has been 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.
6. 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. Considering the facts and

circumstances of the case as well as the object of Section 140 of 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.

:: O R D E R ::

- [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 applicants shall get the amount as under:
 - Applicant No. 1 : 20%
 - Applicant No. 2 : 40%
 - Applicant No. 3 : 40%
- [5] The amount coming to the share of the applicant No. 1 be paid to her in cash by way of account payee cheque after due verification.
- [6] The entire amount payable to the minor applicants No. 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 17th day of May, 2019.

Date : 17.05.2019
Place : Surat.

(Rajesh Karmarsinh Desai)
Chairman
M. A. C. Tribunal (Main),
Surat.
CODE - **GJ00912.**