

**Order below Exh. 18 in M.A.C.P. No. 377/2020**

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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 offence, Inquest Panchnama, P. M. Note, charge-sheet, R. C. Book and insurance policy of the offending vehicle.
3. On service of the notices, the opponent No. 1 and 2 have not appeared, whereas opponent No. 3 insurance company has appeared through its Advocate and filed written statement at Exh. 16, inter alia, denying the averments and allegations canvassing the claim petition. It has been further denied the accident took place at the time, place and in the manner in which it is alleged. The insurance company has contended that the present applicants are not entitled for the amount of Rs. 50,000/- towards interim compensation and has prayed to reject this application.

4. As per the provisions of Sec. 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 need 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. Having heard the Ld. Advocates for the respective parties and considering the documents produced on record, it reveals that all the above ingredients and the requirements of Section 140 have been established. 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 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 opponents 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:

Claimant No. 1	-	60%
Claimant No. 2	-	10%
Claimant No. 3	-	10%
Claimant No. 3	-	20%

- [5] The amount payable to the applicant No. 1, 3 and 4 be paid to them in cash by way of account payee cheque after due verification.
- [6] The entire amount payable to the minor applicant No. 2 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 applicant attains 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 8<sup>th</sup> day of December, 2022.

Date : 08.12.2022  
Place : Surat.

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