

GJVD220003442020



IN THE MOTOR ACCIDENT CLAIMS TRIBUNAL(AUX.),

DABHOI

M.A.C. PETITION NO.213 OF 2020

Applicants:(1) Ritaben Satishbhai Vasava,
(2) Minor Dhawl Satishbhai Vasava,
(3) Ajaykumar Ghanshyambhai Vasava,
(4) Bhavnaben Ghanshyambhai Vasava,

Versus

Opponents: Sukabhai Ukabhai Bariya & Others

Appearance:

Mr. M.S. Shaikh, Ld. Advocate for the applicants.

The opponents are not represented by anybody.

ORDER BELOW APPLICATION EXH.6

1. The present application has been preferred by the applicants, under Section 140 of Motor Vehicles Act ('the M.V. Act' for the sake of clarity) for interim compensation under the head of "NO FAULT LIABILITY".
2. Mr.M.S.Shaikh, Learned Advocate has appeared on behalf of the applicants.
3. I have heard Learned Advocate appearing on behalf of the applicants and perused the record.
4. Considering the law prevailing at the relevant time and in light

of scope under No Fault Liability, at this juncture, the Tribunal has to verify only three aspects viz. whether the accident occurred due to use of motor vehicle as stated in the petition; that the said accident resulted into death and heirs of the deceased/legal representatives are claiming against the driver and owner of the errant vehicle involved in the accident. Definitely, upto some extent defence is available to the Insc. Co. and in this case the defence raised by the Insc. Co. relying upon case-law of Sarjirao vs. United India Insc. Co. Ltd. and Yallwaa and others v/s. National Insc. Co. Ltd. submitted that if final liability does not arise than the liability u/s. 140 of MV Act also does not arise and NFL application is required to be dismissed as at that stage also as defenses are available to the opponent.

5. In support of the case, the applicant has produced various documents *vide* list Exh.5, out of total documents, some of them are mentioned here viz. a copy of the complaint, Panchnama of the place of accident, Inquest panchnama of the dead-body, P.M. Report of decd. etc.

6. Above documents are sufficient to establish that the accident arose out of use of motor vehicle as stated in the petition and the deceased died in the same.

7. Further, in the case of ***Eshwarappa @ Maheshwara V Gurushanthappa***, reported in ***2010(3) GLR (NOC-43) SC***, wherein the Hon'ble Supreme Court has held that while deciding application under section 140, only factor to be considered is, whether the accident has arisen out of the use of the motor vehicle, resulting into death or permanent disability and no other question regarding fault, liability, etc. could be gone into for deciding application under section 140 of the M.V.

Act. Therefore, the defense raised by Ld. Advocate for the Insc. Co. does not find favour with this Tribunal.

8. Hence, the benevolent provisions as contained in section 140 of the M.V. Act, 1988 cannot be allowed to be frustrated by the Court at the hands of the Insurance Company, only on technical pleas. The purpose of the said provisions, is to provide immediate financial help to the applicants in the case of death or injured in the case of injury. Moreover, the Hon'ble High Court of Gujarat, in the case of ***The New India Assurance Co. Ltd. Vs. Kalabhai M. Koli and Ors.***, in ***F.A. No.2103 of 2015***, laid down that issue of negligence cannot be decided at the stage of deciding application preferred under section 140 of the M.V. Act.

9. Hence, in the present case, the applicants have proved the pre-requisites of section 140 of the M.V. Act. Moreover, it is not necessary at this stage to prove as to who was negligent and who was liable and to what extent for this accident. However, the actual involvement of the vehicle will be decided at the time of final hearing. As the applicants have claimed compensation on the basis of No Fault Liability, in this event, without ascertaining the negligence of driver, it is desirable to decide this application without looking into the issue of negligence. Therefore, I pass the following order:-

ORDER

1. The present application at Exh.6 is hereby allowed.
2. The opponents are hereby ordered to pay a sum of Rs.50,000/- (Rupees Fifty Thousand Only) jointly and severally to the applicants, with interest at the rate of 9% *per annum*.

3. In view of the directions issued by the Hon'ble Supreme Court, in the case of ***Bajaj Allianz General Insurance Company Private Limited Vs. Union of India and Others***, the opponents have to deposit the awarded amount as directed hereinabove, in the bank account maintained by this Tribunal, by RTGS or NEFT mode, within thirty days. The details of the bank account of M.A.C. Tribunal, Dabhoi, are as follows:

Account holder name – Motor Accident Claim Tribunal (Auxiliary), Dabhoi.

Current account No.- 40752006361

IFSC Code - SBIN0000352

Branch Code – 352.

4. After depositing the aforesaid amount of compensation, as observed hereinabove, the Nazir of this Court is directed to pay the amount of compensation to the applicant, only after proper verification and identification and after following other directions issued by the Hon'ble Apex Court, in this regard.

Signed and Pronounced today on this 10th day of October, 2023.

Date : 10.10.2023

Place: Dabhoi.

Sd/-

[HARISHCHANDRASINH GULABSINH VAGHELA]

M.A.C. Tribunal (Auxiliary) &

2nd Addl. District Judge,

Vadodara @ Dabhoi.

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