

MACP No. 227/2021
Sangita Surnar & Ors
V/s. Kailas Garje & Ors.

Order Below Exh.5 :

(Delivered on 28th September 2022)

- 1) The main petition is instituted under section 166 of Motor Vehicle Act-1986. The present application is preferred under section 140 for compensation under no fault liability.
- 2) The applicant alleged that on 16.10.2020 at about 11.00 p.m. on Panvel to Mumbra Highway, Near Food Land Signal, in the vicinity of Rodpali, Kalamboli, Tal. Panvel, Dist. Raigad, the deceased Santosh Jayram Surnar was proceeding with one Mohammad Shahnawaz Hussein on Yamaha ZR Scooty bearing no. MH-46-BC-2640 towards their house. The said Moped was driven by Mohammad Hussein and Deceased Santosh was pillion rider. At that time one Ashok Leyland Container bearing No. MH-46-BB-9595 came from backside in high excessive speed and gave severe dash to the motorcycle resulting in death of Santosh Surnar. In the said accident, Santosh Surnar sustained grievous injury to his left and right hip joint and right elbow joint, left femur, pelvic and parts below waist. He was admitted in the Hospital but during the treatment he died.
- 3) The applicant submitted that respondent no.1 was driver of the vehicle & respondent no. 2 was owner. Respondent no.3 had insured the vehicle. Against respondent no.1 the offence was registered in Kalamboli Police Station, Navi Mumbai bearing Crime No. I-218/ 2020. As such they are seeking interim compensation of Rs.50,000/- under no fault liability.
- 4) The respondent no. 1 & 2 opposed the application by filing

Written statement at Exh.18 and denied all the contention of application and alleged that respondent no.3 have insured vehicle and the policy was in existence. That the driver of the motorcycle came to wrong side of the road, resulting into an accident. There was negligence on the part of driver of motorcycle. Therefore application may be rejected.

5) The respondent no.3 appeared and submitted their written statement at Exh.20, denying that the vehicle insured by them was at all involved in the accident. Further it was alleged that the deceased was traveling on the moped without wearing the helmet. The compensation claimed is exaggerated and hence deserves to be rejected.

6) I have heard both parties. I have framed following points for my determination :

Sr.No.	Points	Findings
1	Whether the applicants are entitled to compensation under section 140 of Motor Vehicle Act-1986 ?	Yes
2	What order ?	As per Final Order

REASONS

7) **AS TO POINT NO.1 & 2** :- The applicants have submitted the documents below Exh.3 which includes FIR dated 17.10.2020, which shows that accident occurred on 16.10.2020, the same was registered by driver of motorcycle named Mohammad Hussein for the offence punishable under section 279, 304-A, 338, of IPC & u/s 184, 134 (a) (b) / 177 of Motor Vehicles Act. Copies of spot panchanama, inquest panchanama, Postmortem report of deceased Santosh, police statements of witnesses, R.C. Book of offending vehicle, insurance certificate,

permit and pollution certificate of offending vehicle and driving license were tendered.

8) The postmortem report shows that the death occurred due to head injury with polytraumma, blood preserved for chemical analysis due to alleged road traffic accident. The certificate of registration of the offending motorcycle is in the name of respondent no.2. The driving license of respondent no.1 Kailas Garje shows that it was valid till 14.09.2031 and the insurance policy shows that the policy was valid from 28.11.2019 to 27.11.2020. The accident occurred on 16.10.2020 within the said period. The container vehicle registration number MH-46-BB-9595 is mentioned in policy document. The registration documents also shows the same vehicle .

9) From the documents submitted on record it appears that the vehicle had been cause of the accidental death of Santosh. Therefore without considering the fact that who was at fault, the interim compensation needs to be allowed. The rate of interest is fixed as the death of a young earning member has occurred. The rate of interest is fixed in view of current financial situation, at the rate of 09% p.a. subject to following condition. Hence point no.1 is determined accordingly. For the purpose of point no.2 following order is passed :-

ORDER

1	Application is allowed against the respondent no.1 to 3 jointly and severally, with costs.
2	The respondent no.1 to 3 shall pay an amount Rs.50,000/- (Rs. Fifty Thousand) with interest at the rate of 09% p.a. from the date of application till its realization.
3	All applicants shall be entitled to equal proportion of the compensation. It shall be transferred to their separate

	notified Bank Account by RTGS/ NEFT/ crossed account payee cheques, subject to condition that they shall submit their PAN cards for the payments. The share of minors like applicant no.2, & 3 shall be kept in Fixed Deposit till they attains majority.
4	The payments shall be made on proper verification of the claimants.
5	The above mentioned amount shall be adjusted in the final compensation at the end of trial.

Date : 28.09.2022

(N.R. Naikwade)
Member, MACT,
Ahmednagar.