

ORDER BELOW EXHIBIT No.6.

[Passed on 15.04.2019]

1] Heard, learned counsel appearing for the claimants, as well as learned counsel appearing for Respondent Nos.1 & 2, at length.

2] The Claimants 1 & 2 parents of deceased Pratik Prakash Gayaki have filed present application under section 140 of the Motor Vehicle Act,1988 and prayed for interim compensation for no-fault-liability on account of vehicular accident occurred on 16.04.2018 at about 7.20 PM, in front of Birla Gate, Bara-kholi, Gaigaon Road, Akola, within the jurisdiction of Dabki Road Police Station, Akola.

3] According to the claimants their son Pratik Prakash Gayaki, was proceeding on motorcycle bearing registration No. MH-30-Y-2039 ridden Tulshidas Ramdas Gayaki from Akola to Kadoshi via Gaigaon for visiting his house, and when their motorcycle reached in front of Birla Gate, Bara-kholi, Gaigaon Road one Mahindra Maximo bearing registration No. MH-30/AF-6725 driven by Respondent No.2 came from opposite direction i.e. from Gaigaon to Akola side in rash and negligent manner and gave a severe dash to the motorcycle ridden by Tulshidas Ramdas Gayaki, due to which deceased Pratik Prakash Gayaki sustained severe multiple injuries, due to which he succumbed on the spot. Said Mahindra Maximo

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owned by Respondent No.1 and driven by Respondent No.2.

4] The claimants further contended that, accident occurred due to sole negligence on the part of driver of Mahindra Maximo i.e. Respondent No.2, who driven vehicle under influence of liquor. Therefore, necessary FIR lodged with Dabki Road Police Station, Akola, against the Respondent No.2 on which basis Crime No.138/2018 registered against the Respondent No.2 Dipak Mukundrao Sawale for the offence punishable under S.279, 337, 338, 304-A of Indian Penal Code and S.185 of Motor Vehicle Act. The dead body of Pratik Prakash Gayaki referred for autopsy, after drawing inquest panchnama and spot panchnama. During course of postmortem the Medical Officer found external and internal injuries mentioned in Paras 17 & 19 of postmortem Report. The Medical Officer opined that, the probable cause of death of Shri Pratik Prakash Gayaki due to multiple head injuries due to road traffic accident. The injuries described in postmortem Report occurred due to the vehicular accident and the Mahindra Maximo No.MH-20/DE-4924, hence, Respondents 1 & 2 jointly and severally liable to pay compensation on no-fault-liability basis.

5] The Respondent Nos.1 & 2 owner and driver of the Mahindra Maximo appeared and filed their written statement -cum- reply vide Exh.15 and denied claim of

the claimants. They further contended that, the driver i.e. Respondent No.2 possessing valid driving license and driving his Mahindra Maximo was in moderate speed. The Respondent Nos.1 & 2 denied about driving of vehicle under influence of liquor. They further contended that, the deceased Tulshidas Ramdas Gayaki was riding his motorcycle bearing No.MH-30-Y-2039 in very rash and negligent manner, under influence of liquor and responsible for the accident. Therefore, prayed for dismissal of the claim.

5] Section 140 of the Motor Vehicle Act provides liability of payment of compensation towards no fault in case of death or permanent disability resulted on account of vehicular accident.

8] In case of S. Kaushnuma Begum .v. New India Assurance Co. Ltd., AIR 2001 S.C.485, wherein it has been held that-

“The compensation amount is fixed and is payable even if any one of the exceptions to the rule can be applied. It is a statutory liability created without which the claimant should not get any amount under that count. Compensation on account of accident arising from the use of motor vehicles can be claimed under the common law even without the aid of a statute. The provisions of the Motor Vehicle Act permits that compensation paid under “no fault liability” can be deducted from the final amount awarded by the Tribunal. Therefore, these two are resting on two different premises. Therefore, even apart from S. 140 of the Motor

Vehicle Act, a victim in an accident which occurred while using a motor vehicle, is entitled to get compensation from a Tribunal unless any one of the exceptions would apply.”

9] In case in hand it prima-facie appears that, on 16.04.2018 at about 7.20 PM, due to vehicular accident Pratik Prakash Gayaki, succumbed due to injuries on spot and the Claimants are deprived from enjoyment of the company of the deceased and his income. It is submitted that, while dealing with an application under S.140 of Motor Vehicle Act, merit of matter not required for consideration. Therefore, considering nature of claim and the offending vehicle bearing Mahindra Maximo No.MH-20/DE-4924 being driven by Respondent No.2 and Respondent No.1 being owner are jointly & severally liable to pay amount of interim compensation of ₹.50,000/- under section 140 of the Motor Vehicle Act to the claimants 1 & 2 being legal representatives and dependent on the income of the deceased. In view of above discussion, I am inclined to allow the application and proceed to pass the following order-

ORDER

i] Exhibit-6, Application under section 140 of Motor Vehicle Act, is hereby allowed.

ii] The respondent Nos.1 & 2, jointly & severally directed to pay interim compensation under section 140 of the Motor Vehicle Act to the tune of ₹.50,000/- jointly and equally to the claimants 1 & 2 or to deposit the same amount before this Court within a period of two months from today with interest at the rate of 9% per

annum from the date of presentation of present claim petition i.e. 24.09.2018.

iii] After deposit of amount of ₹.50,000/- amount of ₹.25,000/- equally be paid to claimant Nos.1 & 2 by cross account payee cheque, after due verification.

iv] No order as to costs.

Date: 15.04.2019

**[Y.G.Khobragade]
Chairman, M.A.C.T., Akola
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Certificate

**I hereby certify that the contents of this PDF
file are same word for word as per original order:**

Name of Steno : Shailesh R Allap
Court's Name : Principal District & Sessions
Judge, Akola
Date : 15.04.2019
Signed by P.O. on: 15.04.2019
Uploaded on : 04.06.2019