

ORDER BELOW EXH. 5

1. Present application is filed by claimants for compensation to the tune of Rs.50,000/- under Section 140 of Motor Vehicle Act.

2. Claimant State like this :-

On 16.03.2018 Someshwar s/o Vitthal Pandit was appointed as labour on Tractor bearing No. MH-21-AD-2377 and trolley bearing No. MH-21-N-1047 for loading the Murum by respondent No.1 to 3. On 16.3.2018 at about 1.00 PM the deceased was proceeding by said tractor, at that time respondent No.3 was driving the said tractor in rash and negligent manner and when tractor reached in the vicinity of village Gulaj on Umapur Pandan road, near Kedar Raut field, respondent No.3 lost his control and tractor trolley turn turtled and deceased fell down and sustained grievous injuries on his person and died on the spot. Thereafter, deceased was shifted to Civil Hospital Umapur where he was declared dead.

3. The crime bearing Cr. No.40/2018 for offence punishable under Section 304-A,279 of I.P.C. was registered against driver of the Tractor trolley i.e. respondent No.3. The investigation was set in motion. Investigating officer visited the spot and drew spot panchanama. He recorded statements of necessary witnesses, collected the relevant documents and after finding substance in the matter charge sheet came to be filed in the Court for due trial.

4. Respondent no.1 to 3 are the owners and driver of the Tractor Trolley involved in the accident.

5. Respondent No.1 has filed say vide Ex. 14 and resisted the application. According to respondent he has not engaged the

deceased as a labour. He has further contended that before this incident respondent No. 1 has given the tractor trolley on hire basis to the respondent No.2 under agreement for his business and the respondent No.2 admitted all the terms and conditions of the said agreement and he has done his business for his gain and profit. Hence respondent No.1 has no concern with the said accident. With these grounds respondent prayed to reject the application.

6. Respondent No. 2 and 3 have appeared and resisted the application by filing say on Ex. 17. It is their contention that on 16.3.2018 respondent No.3 was not driver on the tractor No. MH-21-AD-2377 therefore no question arose about tractor turning turtled because of his fault. Hence, respondent No. 2 and 3 are not liable to pay compensation to the claimants.

7. Heard Ld. advocate for the claimant and Ld. advocate for respondent No.1 to 3 . As both the Counsels argued in accordance with their contention, the arguments are not reproduced.

8. Points arise for determination of this application are as under.

Sr.No	Points	Findings
1.	Is there a prima facie evidence of involvement of offending vehicle in the accident ?	Yes.
2.	Is there evidence to show death of labour namely Someshwar s/o Vitthal Pandit ?	Yes
3.	Is claimant entitled to compensation of Rs.50,000/- on 'no fault liability' basis ?	Yes
4.	What order ?	As below

:: REASONS ::

Points no. 1 to 4 :-

09. All these points are interconnected and based on the same set of, facts and evidence, hence I propose to club them together.

10. What is expected to be seen by Motor Accident Claims Tribunal while entertaining the interim application for compensation under no fault basis could be studied from reported decision of Hon'ble Bombay High Court in **Smt. Rammurti w/o Ramprakash Mishra Vs. Rudresh B. Tiwari [2015(6) Mh. L. J. 305]**. It is held that- “

4. “Chapter 10 with Sections 140 to 144 provides for interim compensation on 'No Fault' basis. According to this provision, Rs. 50,000/- is to be given to the kith and kin of the deceased and Rs.25,000/- to the grievously injured victim. The compensation under Section 140 is made payable if prima facie evidence of following is available;

(i) Accident by the offending vehicle;

(ii) Offending vehicle being insured;

(iii) Death or grievous injuries have been caused.

5. Unlike the main claim petition, negligence is not required to be proved under Section 140 of the Act and this interim compensation is not refundable even if negligence is not proved in the main claim application. Under Chapter 10, for interim award, insurer is not even permitted to raise any defence relating to negligence of applicant or permitted under Section 149 of Motor Vehicle Act. But, if ultimately it is held that insurer is not liable to pay compensation to the victim, then the insurer company can receive or recover the compensation already paid by it from owner and /

or driver of the offending motor vehicle concerned...”

11. Thus, considering the guidelines given in the citation supra and points for determination firstly, it is necessary to see whether the vehicle was involved in the accident. For that purpose, I have gone through F.I.R. produced vide Ex.4/2. After perusal of this F.I.R. it reveals that the first informant i.e. Nilesh Dnyaneshwar Pandit, relative of deceased has informed about the accident. The FIR specifically mentions the involvement of tractor in an accident. The spot panchanama vide Ex. 4/3 also enlightes about the accident and the involvement of said vehicle. The compo form AA produced vide Ex. 4/1 shows involvement of tractor in an accident. Even though respondent No. 2 and 3 have denied that respondent No.3 was not driving the tractor . They have not denied the involvement of tractor.So also the said pleadings are yet not proved. So can not be looked into at this juncture. Hence, I hold that the tractor trolly was involved in an accident. Hence the first ingredient of section 140 of M.V. Act gets satisfied.

12. It is the contention of respondent No.1 that there was agreement of rent between respondent No.1 and 2 on 3.3.2018 and in view of execution of this rent agreement respondent No.2 took tractor No. MH 21 AD 2377 from respondent No.1 for the purpose of doing his business . So he is not at all responsible for the accident. It is his further contention that in view of the agreement it was agreed between the parties that respondent No.1 will not remain responsible for any accident or crime registered against respondent No.2. Therefore he is not liable. But the said contention can not be looked into for the simple reason that except pleadings to that effect there is

nothing on record at least prima facie to believe on the said pleadings. Hence, the said pleadings can not be looked into.

13. Now, the question arose about death of deceased due to accident. From PM notes produced vide Ex. 4/4, it reveals that due to accident deceased succumbed to injuries. Hence, 3rd ingredient of sec. 140 of M.V. Act also can said to be proved.

14. Thus, considering this prima facie evidence it can be said that claimants are entitled to get relief as claimed. Needless to say that present application is under 'no fault liability'. So, tribunal has to consider prima facie evidence. The defences raised by respondent No.1 can't be taken into consideration at this stage. From aforesaid mentioned record placed before the Court, it seems that the claimants have proved ingredients of Section 140 of Motor Vehicle Act. Resulting effect is.

ORDER

1. Application (Ex.. 5) is allowed.
2. Respondents No.1 to 3 shall jointly and severally deposit interim compensation of Rs. 50,000/(Rs. Fifty Thousands only) on no fault basis in this Tribunal within one month from the date of order failing which said sum would carry interest @ 9% pa from the date of order till realization thereof.
3. After deposit of the amount, it be paid to claimant by A/C payee cheque after due verification and identification.

Dt.27.03.2019.
Place : Beed

Sd/-
(Sanika S. Joshi)
District Judge-8
Beed.