

BEFORE MEMBER, MOTOR ACCIDENT CLAIMS
TRIBUNAL, AMBAJOGAI, DIST. BEED.

CLAIM PETITION NO.50/2021

Anusayabai w/o. Sunil Udawant and others

Vs

Mahesh s/o. Jiwanrao Munde and others

ORDLER BELOW EXH.5

1] Perused application under Section 140(1) of The Motor Vehicles Act, 1988 and reply filed by respondent No.2 and 3. Heard learned Advocates Mr. A.D.Sherekar for the claimants and learned advocate Shri.V.S.Solanke for respondents No.2, Shri. D.V.Choudhari for respondent No.3.

2] Sec. 140 (1) of The Motor Vehicles Act 1988 provides and the case of **Eeshwarappa Vs. C.S.Gurushanthappa AIR 2010 S.C.2967** guides that to attract the liability u/s 140(1) of The M.V. Act, all that is required are (i) an accident arising out of the use of motor vehicles (ii) leading to death/permanent disability (iii) of any person.

3] Perusal of petition shows that on 04.04.2021 the deceased Sunil Udawant and his friend Umesh Tak were proceeding to Parli from Gangakhed by motorcycle baring No.MH-44-E-7607. Deceased was riding the motorcycle and Umesh was pillion rider. Their motorcycle was driven in moderate speed and by following traffic rules and he was having valid and effective driving licence. When their motorcycle came at the spot of incident i.e. infront of the Thermal gate No.2 Parli, a

motorcycle bearing No.MH-23-L-4480 came from opposite side in rash and negligent manner. He gave dash to the motorcycle of deceased. In said accident, the deceased fell down on the road and the pillion rider Umesh Tak thrown aside the road. Suddenly a tanker bearing No.MH-44-8609 came from the backside of the motorcycle of deceased. It was in very high speed and driven in negligent manner. Said tanker passed from the body of deceased Sunil and due to which his body was crushed. He died on the spot. Thereafter, he was taken to District Hospital Parli, where the post mortem was conducted.

4] Record shows that, such report was filed by the motorcycle rider Umesh Tak on 05.04.2021 at Sambahji nagar Parli police station and thereon crime No.57/2021 for the offences punishable under sections 279, 337, 338, 304-A, of IPC and section 134, 177 and 184 of the Motor Vehicle Act, was registered. The Form Comp – AA supports the contention of Claimants and shows the involvement of respondent No.1 as owner, respondent No.4 as driver and respondent No.2 as insurer of tanker.

5] Here it is necessary to mention that the respondent No.3 and 5 are the owner and driver of motorcycle which had given dash to the motorcycle of deceased Sunil Udawant, whereas respondent No.1 and 4 are the owner and driver of tanker which had passed from the body of deceased and respondent No.2 is the insurer of said tanker.

6] Here, respondent No.3 the owner of motorcycle filed its written statement and denied to have driven it in rash and negligent manner by its driver. He submitted that the motorcycle rider of deceased himself driven it in rash and negligent manner and dashed to

their motorcycle and therefore, he has no concern to pay any compensation.

7] Respondent No.2 the insurance company filed its reply to the claim petition and raised several defences such as rash and negligent driving of motorcycle by its rider, non joinder of necessary party to the owner and driver of said motorcycle, breach of terms and conditions of the policy by the owner of tanker, etc. It has submitted that respondent No.5 is at fault and liable to pay compensation. The driver i.e. respondent No.4 has driven the said tanker in moderate speed and he was not driving it in rash or negligent manner. Therefore, the insurance company is not liable to pay compensation.

8] Respondents Nos.1 and 4 find to be owner and driver of said offending vehicle tanker bearing No.MH-44-8609 and same is not denied by respondent No.2. It is also an admitted fact that the tanker was insured with respondent No.2, the policy was in force and it is filed on record. Form Comp AA also supports the version of claimant that the offending tanker is involved in the accident and its driver is negligent and the insurance policy is in force. In such circumstances, respondents Nos.1, 2 and 4 find to be liable to pay no fault liability compensation under Section 140(2) of the Motor Vehicles Act.

9] Here the respondent No.2 raised an objection that there is a breach of terms and conditions of the policy and therefore, the insurance company is not liable to pay the compensation. Court observes that the present application is only for no fault liability and that there is no document filed by respondent/insurance company on record which would show clear breach of terms and conditions of the

policy. Therefore, at this stage, it is proper to keep said objection to be decided at the final hearing, and to direct the respondent No.2 Insurance Company to contribute in the no fault liability compensation.

10] At the same time, it appears that initially it was the accident between motorcycles of the deceased and the respondent No.3 and 5. The FIR is also filed against the tanker driver as well as motorcycle rider of offending motorcycle. Therefore, the respondents No.3 and 5 are also liable to compensate the claimants.

11] Coming to the payment, it is to be Rs.50,000/- for no fault liability. In fact the payment should be made within two weeks as per Rule 281(3) of the Motor Vehicles Rules, 1989. However, since this is the Moffusal area, there happens to be communication gap between the advocate and the head office of insurance company. Therefore, court feels it proper to give more time to insurance company to comply the order. Hence, following order.

Order

1] Application stands allowed.

2] Respondent Nos.1 to 5 are ordered to pay jointly and severally no fault liability compensation of Rs.50,000/ (Rs. Fifty Thousand only) to claimants within two months by transferring it in the account of claimant No.1 Anusayabai w/o. Sunil Udawant for herself and for other claimants preferably in Bank of Baroda Br. Ambajogai or in any nationalized Bank by RTGS mode.

3] On failure to pay the amount within time, respondents should pay

interest @7.5% p.a. on said amount from the date of order till the date of recovery.

4] The claimants would pay deficit Court fee stamp, if any, prior to withdrawal of this amount.

Date :- 05.12.2024.

Sd/-
[Deepak D. Khoche]
Ex-Officio Member of the Motor Accident
Tribunal & District Judge-1,
Ambajogai.

CERTIFICATE

"I affirm that all the contents of this PDF file are word to word as per original judgment/order".

Dictated on : 05.12.2024

Transcribed on : 05.12.2024

Checked & Signed on : 06.12.2024

Date : 06.12.2024

A.S.PANHALE
STENOGRAPHER GR-1