

M. A. C. P. No. 69/2018

(MHBI04-000852-2018)

Kiran w/o. Rajesh Bharadiya and three others

Vs.

Srikishan s/o. Shivaji Nikam and two others

ORDER BELOW EXH. 05.

01. This is an application for getting amount of no fault liability.

02. The claimant No.1 is wife of deceased, claimant No.2 and 3 are their children and claimant No.4 is mother of deceased. The respondent No.1 is the driver and respondent No.2 is owner of offending vehicle i.e. bearing No.MH-44--8644. The respondent No.3 is the insurance company of offending vehicle.

03. The claimant has produced below list Exh.4 the copies of the police papers. At Sr.No.1 there is a FIR which is lodged by the brother of deceased namely Motilal Bharadiya. After perusal of the FIR it is seen that, on 09.01.2018 at about 11.00 p.m. the deceased was coming towards house from Rajiv Gandhi Chowk and Chhtrapati Chowk by his motorcycle. When he was turning towards house from Chhtrapati Chowk, one unknown vehicle came

from Yeshwantrao Chowk in high speed. He drove the said vehicle in rash and negligent manner and gave dash to his brother. His friend Manoj Kaliya was present in the Chowk. He saw the accident and took his friend injured Rajesh Bharadiya to SRTR Hospital Ambajoigai where doctor examined him and declared as dead.

04. It appears that on the basis of FIR lodged by the brother of deceased, offence bearing No. 25/2018 has been registered in Ambajogai City police station under section 279, 304-A of I.P.C.

05. Thereafter his supplementary statement was recorded on 13.01.2018 wherein he has stated that, the tipper bearing No.MH-44-8644 dashed to the motorcycle bearing No.MH-12-BF-7958 of his brother and the tipper driver is responsible for the said accident.

06. The copy of R.C.Book reveals that, the offending tipper is standing in the name of respondent No.2 as its registered owner. The copy of insurance policy reveals that, the tipper bearing No.MH-44-8644 is insured with respondent No.3. The policy was issued for the period 22.11.2017 till 21.11.2018. The incident has occurred on 09.01.2018. It means that, at the time of incident the said policy was in existence. Considering all these facts, it is

necessary to direct respondent No.1 to 3 to pay the amount of no fault of liability to claimants.

07. The learned advocate for insurance company Shri. L.B.Jagtap submitted that, the legal heir of original claimant no.5 namely, Motilal who is now deceased is not brought on record. He further submitted that, the informant Dinesh is the son of Motilal and it is necessary to bring him on record as the legal heir of claimant No.5. The learned advocate for claimant submitted that, Dinesh is the brother of deceased and is not dependent upon him and as such is not brought on record. According to him at this juncture this point cannot be consider and it is a mater of merits. It is very much true that, at this juncture the objection raised by the insurance company cannot be considered and what will be the effect of non joinder of Dinesh is the matter to be decided on merits.

08. Hence, order.

ORDER

- A. The Respondents No.1 to 3, shall jointly and severally pay an amount of Rs.50,000/- (Rupees Fifty Thousand only) to the Claimants, within a period of 30 days from today, by depositing it, in this Tribunal, failing which the amount shall carry interest

@ 12% per annum from date of filing of petition i.e. 05.07.2018 till it is deposited in the Tribunal.

B. Costs in cause.

C. Interim award be drawn accordingly.

Date :- 14.10.2021. Sd/-
[Sau. S. S. Sapatnekar]
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 : 14.10.2021

Transcribed on : 14.10.2021

Checked & Signed on : 20.10.2021

Date : 20.10.2021

A.S.PANHALE
STENOGRAPHER GR-1