ORDER BELOW EXH.5, IN MACP NO.95/2014

1. It is the case of claimant-injured that he sustained permanent disablement in vehicular accident dated 30-3-2014. He prayed for grant of 'No Fault Liability' amount under section 140 of the M.V.Act. According to him, he was going to his home on motorcycle bearing registration No. MH-28-AF-1611 from Deulgaon-Ghube. He reached in front of Sahara Park on Deulgaon-Raja – Chikhli road. The injured felt necessity to attend nature's call and thereupon he stopped the motorcycle at the extremely left side of the road. After finishing nature's called, he was about to sit on the motorcycle and one TATA 407 bearing registration No.MH-23-2188 was coming from opposite side and its driver was driven the same in rash and negligent manner due to which ghastly accident took place. The claimant sustained fracture injury on his right knee, fracture right hand finger and other multiple injuries. The claimant has produced copy of FIR, which shows that the police have registered offence against the driver of offending vehicle. The copy of spot panchanama and plenty of documents are related to his treatment – discharge card, hospital bills and bills of the medicines during the relevant period of accident.

2. Opponent no. 1, after receiving the notice, appeared in the claim petition, but failed to resist the claim of claimant. No W.S. Order came to be passed against the opponent no. 1. The opponent no. 2 has seriously challenged and resisted the claim by filing W.S. Exh. 18. The defence has been taken that driver of offending vehicle was not holding a valid and effective driving license at the time of alleged accident and similary was not qualified for holding or obtaining such driving license as per the requirements of Rule No. 3 of the Central Motor Vehicles Act, 1989. On these grounds, the opponent no. 2 has prayed for dismissal of the application under section 140 of M.V.Act.

3. I have heard the oral submission of leaarned counsel for the claimant and learned counsel for the Insurance Company has filed written synopsis at exh. 21. It is argued that the driving license of driver of offending vehicle is valid for the period of 8-12-2009 to 7-12-2012. The driver of offending vehicle could not obtain the renewal of license. The accident has taken place on 30-3-2014, which is sufficiently shows that opponent no. 1 has committed fundamental breach of conditions of the policy. Hence, opponent no. 2 is not liable to pay compensation amount during the interim stage of claim petition. In support of contentions, the learned counsel for the opponent no. 2 has also referred the case of Smt. Yallawwa and others Vs. National Insurance Company Limited and another, decided by Hon'ble Supreme Court of India, New Delhi on 16-5-2007. The learned counsel has drawn my attention to the para no. 11 of the case law that one of defences available to the insurer is breach of conditions specified in the policy. When a such defence is raised, the Tribunal is required to go into the said question. Section 140 of the Act does not contemplate that an insurance company shall also be liable to deposit the amount while it has no fault whatsoever in terms of sub section 2 of Sectin 147 of the Act.

4. On deep perusal of aforesaid legal position as well as the simple documents filed by the claimant about his license valid up to 7-12-2012, no clue can be drawn that driver did not possess the valid and effective license at the time of accident. The burden of proving the same lies on the Insurance Company. Mere filing of copy of license that too by claimant does not automatically prove the defence of Insurance Company. In my opinion, the case is cited of the year 2007, thereafter, the subsequent development and now burden lies upon the Insurance Company to lead the evidence. At this juncture, it is difficult to arrive to conclusion that opponent no. 1 has committed fundamental

breach of conditions of policy. Hence, I do not find any substance in the argument of learned counsel for the insurance company. Basically, the claimant has prima facie proved the requirement of payment of policy on the date of accident as well as use of vehicle involved in the present claim peitition. The rest of the law point will be considered at the time of final hearing of petition. I am inclined to hold that the application for grant of 'NFL' deserves to be allowed. In the result, I proceed to pass following order.

ORDER

(1) The petition under section 140 of the Motor Vehicles Act, is hereby allowed.

(2) Opponent no. 1 and 2 do pay jointly and severally the sum of Rs. 25,000/- (Rs. Twenty-five Thousand only) towards interim compensation amount as “No Fault” liability, within one month from the date of order, failing which the amount shall carry interest at the rate of 8% per annum from the date of default, till the realization of entire amount.

(3) On deposite of amount, the Tribunal shall disburse the entire amount to the claimant by issuing separate account payee cheques in his name.

(4) Application is disposed of accordingly.

Sd/-

Dt. 09-04-2015

(Mrs. A.D. Sawant),
Member,
M.A.C.T., Buldana.

I affirm that the contents of this PDF order are same word for word as per original.
Name of Court : M.A.C.T., Buldana.
Name of Steno : T.K. Dekhane.