

ORDER PASSED BELOW EXH.5 IN M.A.C.P.No.276/2019.

1. On behalf of applicant No.2, present application filed by applicant No.1, being a wife of him U/Sec.140 of the Motor Vehicles Act, for awarding compensation to the tune of Rs.25,000/- on account of sustaining grievous injuries with permanent disability due to the incident of accident involving motorcycle bearing No.MH-18/AL-8478, **(here-in-after referred as offending motorcycle)** ridden, owned and insured by the respondent No.1 and 2 respectively.

2. **Averments in the application are as under :**

It is contention of applicant that, on 14.01.2018 at about 01.00 p.m., he was pillion rider on the offending motorcycle for proceeding towards Vadjai from Dhule. When the said motorcycle reached in front of the Muslim Kabrasthan, near to D.P., it ridden by respondent No.1 in rash and negligent manner, in high speed and while overtaking to the ahead vehicle, dashed to the motorcycle bearing No.MH-18/P-5118. Due to dash, he sustained grievous injuries over his head. Initially, he was under treatment at Civil Hospital, Dhule, thereafter shifted at Seva Hospital. He was in coma. Surgery was performed over him, at present he is bed-ridden. Permanent disability caused to him. About the accident in question, C.R.No.03/2018, registered with the Mohadinagar police station. Offending motorcycle ridden, owned and insured by the respondent No.1 and 2 respectively, due to same they both are jointly and severally liable to pay compensation as prayed. By contending so, she requested for allowing application in question.

3. In spite of service of notice vide postal acknowledgment Exh.16, respondent No.1 failed to appear in the proceeding. Hence, in view of order passed below Exh.1 dated 03.02.2022, petition is

directed to proceed exparte against him.

4. Respondent No.2 resisted vide Exh.14. It has denied almost all contentions raised in application in toto, but impliedly admitted that offending motorcycle was under the insurance coverage with it. It is contention of it that there is a delay in lodging F.I.R., no explanation about the same. It has denied the involvement of offending motorcycle in the incident of accident occurred with applicant No.2. It is contention of it that there is a breach of policy at the hands of respondent No.1. There is a contributory negligence on the part of applicant No.2. It has also denied the nature of injuries sustained to the applicant No.2 and nature of permanent disability as pleaded. By contending so, it requested for its dismissal.

5. Read the application and say. Perused the documents attached with the proceeding. The learned counsel for the applicant absent when called. Application is pending since April – 2019. Period exceeding three years is already over. Considering the nature of application under consideration, I have no alternate except to proceed further on the basis of material placed on record. Heard the learned advocate Shri.D.N.Pingale for the respondent No.2.

6. According to applicant, incident of accident occurred with him involving offending motorcycle, in which he sustained grievous injuries with the permanent disability. To constitute the relief claimed under application, it is for applicant to establish first in prima facie manner that because of incident of accident involving offending motorcycle, permanent disability caused to him. But, on perusal of whole proceeding, as such, no documentary evidence in the nature of permanent disability certificate placed on record. Vide application Exh.8, adjournment seems to be sought by applicant for the same. But, thereafter, no efforts seems to be taken. In absence of disability

certificate, no case is made out in favour of applicant for awarding compensation as prayed. Afterall, amount awarded under the principles of N.F.L. liable to deduct from computed amount of compensation if petitioner succeeds in principal claim application. In such a circumstances, if at present application Exh.5 disposed off, no prejudice will cause to applicant. To the contrary, it will became helpful to adjudicate principal claim petition of applicant in expedite manner. With this, I proceed to pass the following order :

: ORDER :

1. Application Exh.5 stands dismissed.
2. On today itself issues vide Exh.19 are framed. Applicant is directed to tender his evidence if any on next date positively.
3. Both parties and their advocates are hereby directed to take note of this order.

Dated : 08.12.2022.

(M.G.Chavan)
Member, M.A.C.T., Dhule.

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CERTIFICATE

I certify that the contents of this P.D.F. File are word to word as per Original Judgment/Order.

Name of the Stenographer : J.S.Jain.
Name of the Court : Member, M.A.C.T., Dhule.
P.D.F. Uploading Date : 08.12.2022.

Sd/- xxx

Stenographer (Grade-I)