

ORDER PASSED BELOW EXH.5 IN M.A.C.P.No.357/2021.

1. This is an application filed by applicant for seeking compensation to the tune of Rs.25,000/- under the principles of N.F.L. on account of sustaining grievous injuries/permanent disability due to incident of accident involving car bearing No.MH-39/D-2189 **(here-in-after referred as offending car)** driven, owned and insured by respondent No.1 to 3 respectively.

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

It is contention of applicant that, on 08.12.2020 at about 05.00 p.m., he himself and his friend Sandip were on separate motorcycle in unrunning condition towards the side of road near to Dhamangaon Fata. At the same time, offending car came from Shirud square in rash and negligent manner and by overtaking dashed to the motorcycle of him and Sandip. Due to dash, he sustained grievous injuries over his person. He was under treatment at Siddheshwar Hospital. Permanent disability caused to him. About the accident in question, C.R.No.424/2020 registered at Dhule Taluka police station. Offending car driven, owned and insured by respondent no.1 to 3 respectively, due to same all respondents are jointly and severally liable to pay compensation as prayed. By contending so, they requested for allowing application in question.

3. Respondent No.1 resisted vide Exh.19. He has denied almost all contentions raised in the application in toto. It is contention of him that at the relevant time of accident offending car was in moderate speed, friend of applicant namely Sandip loses control over his motorcycle and dashed to the motorcycle of applicant bearing No.MH-18/BN-1294 from backside. There was no negligence on the part of him. Rider of both motorcycles are responsible for

accident. He was possessing effective driving licence at the relevant time. Offending car was owned and insured by respondent No.2 and 3. According to him, liability of paying compensation is fastenable on the shoulder of respondent No.3. By contending so, he requested for its dismissal to the extent of him.

4. Respondent No.2 resisted vide Exh.20. He has also denied almost all contentions raised in application in toto. It is the contention of him that at the relevant time of accident offending car was in the moderate speed, friend of applicant namely Sandip looses control over his motorcycle and dashed to the motorcycle of applicant bearing No.MH-18/BN-1294 from backside. There was no negligence on the part of respondent No.1. Rider of both motorcycles are responsible for accident. Respondent No.1 was possessing the effective driving licence at the relevant time. Offending car was insured by respondent No.3. According to him, liability of paying compensation is fastenable on the shoulder of respondent No.3. By contending so, he requested for its dismissal to the extent of him.

5. As per record, it reveals that vide bailiff report Exh.13, notice was duly served on the respondent No.3 on 09.08.2021. Thereafter, appearance of respondent No.3 came on record vide V.P. Exh.21 dated 08.03.2022. In spite of appearance, respondent No.3 failed to file its say and W.S. in stipulated period. Hence, in view of order passed below Exh.1 dated 08.04.2022, petition is directed to proceed without say and W.S. of respondent No.3.

6. Read application and say. Perused the documents attached with the proceeding. Heard learned advocate Shri.B.D.Patil for applicants. Respondent No.1 to 3 and their advocate absent when called repeatedly. Application is pending since June – 2021. Considering the nature of application under consideration, I have no alternate

except to proceed further on the basis of material placed on record.

7. According to applicant, incident of accident occurred with applicant involving offending car and rash and negligent driving of respondent No.1 resulted for sustaining grievous injuries with permanent disability to him. For seeking the relief under the principles of N.F.L., it is for applicant to establish first in prima facie manner that, in the incident of accident he sustained grievous injuries and that to the extent of causing permanent disability. On perusal of whole proceeding, as such, no disability certificate placed on record by applicant. Vide application Exh.8 adjournment seems to be sought by applicant for the same. But, thereafter, no steps seems to be taken for the same. In absence of prima facie evidence about sustaining permanent disability, at this juncture, no case is made out in favour of applicant for seeking compensation as claimed under application. In the result, I proceed to pass the following order :

: ORDER :

1. Application Exh.5 stands dismissed.
2. No order as to costs.

Dated : 08.04.2022.

(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 : 08.04.2022.

Sd/- xxx
Stenographer (Grade-I)