

ORDER PASSED BELOW EXH.5 IN M.A.C.P.No.648/2021.

1. Present application filed by the applicant U/Sec.140 of the Motor Vehicles Act, for awarding 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 the incident of accident involving truck bearing No.CG-04/JC-9544 (**here-in-after referred as offending truck**) 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 09.05.2021 she was pillion rider on motorcycle bearing No.MH-39/S-5283 for proceeding towards Shahada from Nandarkheda. When said motorcycle reached near to Lambuda to Karjai village, offending truck driven by respondent No.1 from Shahada side in high speed, rash and negligent manner and by using wrong side dashed to the abovesaid motorcycle. Due to dash, she herself, her husband and daughter thrown away from the motorcycle, grievous injuries sustained to her over head. She was under treatment at Sarthak Hospital, where surgery was performed over her. Permanent disability caused to her. About the accident in question, C.R.No.498/2021 registered at Shahada police station. Offending truck driven, owned and insured by respondent No.1 to 3 respectively, due to same they all 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 Exh.15, respondent No.1 failed to appear in the proceeding. Hence, in view of the order passed below Exh.1 dated 27.09.2022, petition is directed to proceed exparte against him.

4. Respondent No.2 resisted vide Exh.19. It has denied almost all contentions raised in application in toto. It is contention of him that the rider of motorcycle loses control over the motorcycle, no concern of offending truck in the incident of accident occurred with the applicant. Offending truck was under the insurance coverage with respondent No.3, if applicant found entitled to get compensation then liability is fastenable on the shoulder of respondent No.3. By contending so, he requested for its dismissal to the extent of him.

5. Respondent No.3 resisted to application vide Exh.16. It has denied almost all contentions raised in application in toto, but impliedly admitted that offending truck was under the insurance coverage with it at the relevant time of accident. It is contention of it that offending truck came to be driven without having effective driving licence, there is a breach of police at the hands of respondent No.2. It has denied the rash and negligent driving on the part of respondent No.1. In the alternative, it is contention of it that there is a contributory negligence on the part of rider of the motorcycle. By contending so, it requested for its dismissal.

6. Read the application and say. Perused the documents attached with the proceeding. Both parties and their advocate absent when called repeatedly. Application is pending since September - 2021. Period exceeding one year 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.

7. According to applicant, incident of accident occurred with her because of rash and negligent driving of offending truck, in which she sustained grievous injuries with 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 truck, permanent disability caused to her. 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 become 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.20 are framed.
Applicant is directed to tender her evidence if any on next date positively.
3. Both parties and their advocates are hereby directed to take note of this order.

Dated : 27.09.2022.

(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 : 27.09.2022.

Sd/- xxx

Stenographer (Grade-I)