

MHKO010020082018



ORDER BELOW EXH. 5 IN M.A.C. PETITION NO. 253/2018

1. This is an application for compensation towards “No Fault Liability” filed U/s. 140 of the Motor Vehicles Act.
2. Perused the application and say filed by opponent Nos. 1 to 3. Copies of police papers. Heard Counsel for applicants and opponents.
3. According to the applicants, on 2.5.2016 the deceased Sandip was riding motor cycle along with pillion rider Vinayak Chavan when they reached at Talsande Bus stop, the opponent No.1 driven the tempo No.Mh-04-DD-0384 in rash & negligent manner, thereby given dash to the motor cycle of deceased wherein deceased Sandip sustained serious injuries which resulted death of him. Opponent No.1 is the driver of tempo, opponent No.2 is the owner of tempo. Tempo is insured with opponent No.3.
4. Opponent nos. 1 & 2 placed written statement at Exh.22. They denied all adverse averments putforth by applicant. They denied the rash & negligent act of opponent No.1. According to them, the tempo in question is not involved in the accident. The deceased himself ride the motor cycle in rash and negligent manner and thereby given dash to the

tempo. Accordingly, crime was registered against the deceased. The vehicle is insured with opponent no.3, they are not liable to pay the compensation, hence prayed for rejection of the application.

5. Opponent no. 3-insurance company filed its written statement vide Exh.20. Opponent No. 3 denied almost all averments put forth by claimant. It denied the involvement of tempo in the accident and rash & negligent act of opponent No.1. According to it, accident took place due to rash & negligent act of deceased Sandip, so crime was registered against him and after completion of investigation, being deceased was died, 'A' Summary was filed. So, Insurance company is not liable to pay the compensation. Accordingly, prayed for rejection of application.

6. After perusal of documents on record viz. Vardi Jabab, Spot panchnama, inquest panchnama, cause of death certificate, which indicates that, death of deceased was resulted from an accident arising out of the use of vehicle tempo. The record indicates that offence is registered against the deceased Sandip.

7. Learned Advocate for the opponent No. 1 & 2 as well as opponent No.3 submits that, the FIR clear-cut indicates that due to rash & negligent act of deceased Sandip, accident in question took place, so applicants being the legal representatives of Sandip are not entitled to get compensation. On the other hand, Learned Advocate for the applicants submits

that, there is no rash & negligent act of deceased Sandip, so applicants are entitled for compensation.

8. It is to be noted that, though F.I.R indicates the registration of crime against Sandip, however at the stage of consideration of application u/s. 140 of the M.V.Act, which is based on the principle that liability to pay compensation on the principle of 'No Fault'. Further it provides that, application for compensation u/s. 140 of the M.V.Act shall not be defeated by reasons of any wrongful act of the person in respect of whose death the claim has been made. Thus, registration of crime against deceased Sandip does not debar the applicants to get compensation under the principle of No Fault.

9. Thus defences raised by opponents would be considered during the course of trial. So, at this stage as there is involvement of tempo. Opponent No.2 is the owner of tempo, opponent No.1 is the driver of tempo. Tempo is insured with opponent No.3. Thus, opponent Nos. 1 to 3 are jointly and severally to pay compensation towards No Fault Liability to claimant being the heirs and dependent on deceased. In the result, I pass the following order.

ORDER

1. Application Exh. 5 is allowed.
2. Opponent Nos. 1 to 3 jointly and severally to pay Rs.50,000/- (Rs. Fifty Thousands only) towards 'No Fault Liability' within two months from the date of this order failing which, interest at the rate of 7 % p.a. will be applied on said amount from the date of application.

3. On depositing the amount with the Tribunal, out of it, Rs. 14,000/- each be paid to applicant No. 1 to 3. The same shall be paid to the applicant No.1 by drawing account payee cheque or similar modes. Amount pertaining to the share of applicant No. 2 & 3, being minor be deposited in the Nationalized bank till they attains the age of majority. Remaining amount be distributed equally in between applicant No. 4 & 5 by drawing account payee cheque or similar modes .
4. Interim award be drawn accordingly.

Dt. 04.02.2019
Kolhapur.

sd/-
(S.U.Wadgaonkar)
Member, M.A.C.T.Kolhapur.

I affirm that the contents of this P.D.F. file order are same, word to word, as per the original order.

Name of the Stenographer	Sou.S.R.Tambvekar
Name of Court	Shri.S.U.Wadgaonkar Member, MACT,Kolhapur
Date of Dictation	4.2.2019
Order signed by the P.O. on	5.2.2019
Order uploaded on	5.2.2019