

MHKO010042182019

M.A.C.P. No. 428/2019Before the Member, Motor Accident Claims Tribunal, KolhapurSmt. Rupali Sanjay Khot & 4 Ors. .. **Petitioners****Vs.**Shri. Vinayak Tukaram Balugade and 2 Ors. .. **Opponents****Order below application Exh. 5**

1] This is an application filed under the provisions of Section 140 of the Motor Vehicles Act, 1988 (For short, "M.V.Act") claiming interim compensation of Rs.50,000/- from the opponents as per the principle of "No Fault Liability".

2] In short, the case of petitioners is as under:

I) That, on 24/05/2019, the deceased Sanjay Baburao Khot, husband of petitioner No. 1, father of petitioner Nos. 2 and 3 and son of petitioner Nos. 4 and 5 was returning from Murgud to Koor at his village by riding as a pillion rider on bullet motorcycle bearing registration No. MH-09/ES-6604. At that time, the opponent No. 3 was riding the said motorcycle in a high speed and in rash and negligent manner without observing traffic rules and road regulations. When the said bullet motorcycle reached at the spot of accident i.e. on Murgud-Mudaltitta road near stream at

Waghapur phata within village limits of Aadmapur at 11.30 p.m., at that time the rider of the said motorcycle i.e. the opponent No. 3 was riding the same in high speed and all of a sudden applied the incorrect brake of the motorcycle, due to which the motorcycle skidded on the road and pillion rider Sanjay Khot forcefully thrown away on the tar road and sustained grievous head and chest injury together with other bodily injuries and he became unconscious. After the accident, Sanjay Khot was immediately admitted in City Hospital, Kolhapur for medical treatment. He was unconscious on account of grievous head injury. He was also treated in Surya Hospital at Kolhapur. The deceased was under medical treatment for continuous period of about one and half month since the date of accident i.e. from 24/05/2019. The treating doctor tried their level best to survive the life of Sanjay, but he succumbed to accidental injuries on 05/07/2019.

II) The opponent No. 1 is the owner, the opponent No. 3 is the rider; whereas opponent No. 2 is insurer of the accidental vehicle. It is contended that the accident occurred due to rash and negligent driving by the opponent No. 3. Therefore, the dependents of deceased filed main petition under Section 166 of M.V. Act claiming compensation of Rs.1,00,00,000/- with interest from the opponents. In the main petition, the instant application claiming interim compensation is filed.

3] In spite of service of notice vide Exh. 9 and 11, opponent Nos. 1 and 3 failed to appear. Hence, the petition proceeded *ex parte* against them. On getting the notice, the opponent No. 2 - Insurance

Company marked its appearance and filed written statement at Exh. 17. All adverse contentions made in the petition are denied. It is denied that accidental vehicle was involved in the accident. It is denied that the opponent No. 3 rode the accidental vehicle in rash and negligent manner and therefore, the accident occurred. The opponent No. 2 specifically contended that at the relevant time the opponent No. 3 was not possessing valid driving licence, hence, insured committed breach of terms and conditions of insurance policy and therefore, the opponent No. 2 is not liable to pay any compensation. Ultimately, the opponent No. 2 sought rejection of the application.

4] I have heard learned advocate Shri. M.M. Mahajan for petitioners and learned advocate Smt. N.D. Joshi for opponent No. 2 – Insurance Company. Perused record.

5] Learned advocate Shri. M.M. Mahajan for petitioners submitted that police papers on record including complaint, spot panchanama and charge-sheet prove the involvement of accidental vehicle and occurrence of accident. According to his submission, though in police statement dated 25/05/2019, nephew of the deceased namely, Prasad Shamrao Patil stated that his maternal uncle i.e. deceased Sanjay Baburao Khot sustained injuries due to skidding of the motorcycle, the said Prasad Shamrao Patil has nowhere stated in the said statement that deceased himself was riding the accidental motorcycle. Moreover, he submitted that said Prasad Patil is not eye-witness to the incident. Hence, according to his submission, at this stage FIR is to be believed for considering

involvement of accidental vehicle in the accident.

6] On the other hand, learned advocate Smt. N.D. Joshi for the opponent No. 2 – Insurance Company strenuously submitted that in the police statement dated 25/05/2019 Prasad Shamrao Patil stated that deceased was riding the accidental motorcycle. Thus, according to her submission, later on while lodging the complaint, he falsely stated that the deceased was riding pillion. Hence, according to her submission, false case is put forth by petitioners. Therefore, she submitted that interim compensation be not granted.

7] I have considered submissions of both sides. It is well settled that for considering application under Section 140 of M.V. Act, Tribunal has not to make detailed inquiry. It is only to be seen whether the motor vehicle in question was involved and whether *prima facie* there is proof of death in motor vehicular accident. In the present case, though in police statement dated 25/05/2019 nephew of deceased stated that deceased sustained injuries due to skidding of motorcycle, the fact remains that said witness was not present at the spot of incident when accident occurred. Similarly, in the said statement nephew of the deceased had nowhere stated that deceased was riding the accidental motorcycle. Therefore, at this stage case of petitioners that deceased was pillion rider cannot be discarded. At the time of inquiry of the main petition, the said point can be decided after evidence is led by the parties. At this stage, only *prima facie* material is to be seen. Police papers on record are found sufficient to *prima facie* conclude that accidental

vehicle was involved in the accident and deceased was the pillion rider.

8] Similarly, along with list Exh. 3, police papers including inquest panchanama and postmortem report are filed by the petitioners. Inquest panchanama and postmortem report show death of Sanjay Baburao Khot in the said accident. Certificate of registration shows that accidental motorcycle is owned by the opponent No. 1. Likewise, police papers show that the opponent No. 3 was the rider of the accidental motorcycle. Similarly, insurance policy on record shows that it was in force at the relevant time. Section 140(3) of M.V. Act itself lays down that the petitioner is not required to prove the fault of opponent in occurrence of the accident. The available material on record is found sufficient to grant interim compensation under Section 140 of M.V. Act. Hence, I pass the following order.

### O R D E R

1. Application Exh. 5 is allowed.
2. Opponent Nos. 1 to 3 shall jointly and severally pay interim compensation of Rs.50,000/- (Rupees fifty thousand only) to petitioners as per Section 140 of M.V.Act, 1988 under "No Fault Liability" within one month from the date of order, failing which amount shall carry interest @7% p.a. from the date of order till realisation of entire amount.
3. On realisation of compensation and after collecting deficit court fees, if any, from petitioners, the amount shall be paid to petitioners equally by account payee cheques or by on-line transfer in their bank accounts by RTGS or NEFT as per rules.

6

M.A.C.P.No.428/2019 (O.Exh.5)

4. There shall be no order as to costs.

Kolhapur  
Date : 16/11/2021

**Sd/-**  
**( P.S. Vithalani )**  
District Judge-6 &  
Member, M.A.C.T.  
Kolhapur.