

CNR No. MHKO010048682018



Smt. Bharati Salokhe etc. 4 Vs. Pratap Gurav

Order below Exhibit 5 in M.A.C.P. No. 578 / 2018

1. Applicants in the above mentioned application took out the application for compensation on principle of ' *No Fault Liability* ' as per provisions of Section 140 of the M.V. Act, 1988. Since the applicants claimed to be dependents of deceased Nandkumar Salokhe, who met with motor accident and sustained injury and later on scummed to it. The facts of the application, in short, are as under :

2. According to the applicants, they were dependents on the deceased Nandkumar Salokhe who met with motor accident on 27.6.2018 and sustained injury. Later on 29.6.2018, he scummed to those injuries. The manner in which the incident took place is as under :

3. That on, 27.6.2018, at about 7.30 p.m. while deceased was proceeding towards his house from Gargoti side on foot with correct side of road and while he reached near spot of accident, at that time, one motorcycle No. MH-09/DE-5905 came from behind in high speed, rash and negligent manner and gave dash to deceased. Hence, applicants moved this application for compensation on ' NFL ' principle against opponent being the owner and rider of the motorcycle.

4. Opponent opposed the application on a ground that though he was riding the motorcycle on relevant day but he is not liable to pay the compensation on following grounds :

(1) There is no proximity of the incident of accident with the death of deceased. (2) On the day of alleged accident, there was heavy rain. Due to the vehicles, there was mud at the strips of road. When opponent reached at the spot, he saw one person fell down on side of road. The injured was shifted to hospital

however, he died thereafter. The opponent was not responsible for the accident and death of the deceased. There is no nexus to death of deceased and the vehicle of the opponent. Hence, application be rejected.

5. Heard both the sides.

6. Applicants in order to show prima facie case filed on record copy of FIR, spot panchnama, inquest panchnama, P.M. notes, and other documents vide Exhibit 6. It is seen that, the concerned police have registered the crime against the opponent for rash and negligent riding of the motorcycle and thereby giving dash to the deceased. As per FIR, it is also seen that after accident the opponent run away from the spot.

7. On perusal of these documents, it appears that deceased met with motor vehicular accident and in that he sustained injury to which he scummed later on. It is also seen that the incident in question occurred because of negligent act of the rider of the motorcycle. Thus, considering the scope of Section 140 of M.V. Act, in my opinion, the opponent is liable to pay the compensation in respect of such death.

8. So far as objections taken by the opponent as mentioned earlier, it is pertinent to note here that such objections cannot be taken into consideration at this stage because of very object of Section 140 of M.V. Act which speaks that the claimants shall not required to establish death or permanent disability in respect of such claim due to any wrong act, neglect or default of the owner of the vehicle. Therefore, such claim cannot be defeated because of wrongful act, neglect in respect of whose death or permanent disability claim has been made. Therefore, in my opinion, there is no substance in the objection of the opponent at least at this stage.

9. Now, the only point which requires to be considered is, whether all the applicants can claim compensation. The applicants claim to be dependents of deceased. To show so, they filed on record affidavit of applicant No.1 below Exhibit 1 on behalf of applicants No.2 to 4. From this, it can prima facie held that

applicants were dependents on the deceased and particularly in view of detail averments made to that effect.

10. Thus, in short, the applicants are entitled for compensation under Sec. 140 of M.V. Act i.e. ' No Fault Liability '. Hence, I proceed to pass order in following terms.

Order

1. Application is allowed.
2. Opponent is liable to pay compensation to the applicants.
3. He shall deposit a sum of Rs.50,000/- (Rs. Fifty thousand) with this Tribunal within a period of one month from the date of order failing which compensation amount shall carry interest @ 7% p.a. from the date of application.
4. On deposit of amount, an amount of Rs.35,000/- (Rs. Thirty five thousand) be paid to the applicant No.1 by account payee cheque on due identification.
5. Further, remaining amount of Rs.15,000/- (Rs. Fifteen thousand) be paid to applicants No.2 to 4 by account payee cheque equally on their due identification.
6. Interim award be drawn accordingly.

Date: 17-10-2019.

(D.K. Gudadhe)
Member, M.A.C.T. Kolhapur

