

Order below Exh.5

1) The present application is filed U/Sec.140 of Motor Vehicle Act, 1988 praying thereby to award an amount of Rs.50,000/- jointly and severally against respondent Nos.1 to 3 on account of his no fault liability. The applicant is son of one Kamalbai w/o Babu Aabarbande who died in vehicular accident which occurred on 19/11/2019 at about 06.00 p.m. on Samsapur Highway Road, Samsapur Pati, Renapur.

2) It is alleged that, on 19/11/2019 deceased Kamalbai w/o Babu Aabarbande was travelling in Auto Rickshaw bearing No.MH-24/AT-3176 after completion of her labour work and proceeding towards her house situated at Renapur. Respondent No.1 was driving the said auto rickshaw rashly and negligently and in a high speed. When said auto rickshaw reached on Samsapur Highway at that time suddenly the respondent No.1 applied full breaks of said auto due to which said auto turned turtle and skidded, in which deceased and other labour has sustained grievous injuries. Other co-worker namely Sushailabai Landge died on the spot and Kamalbai has sustained serious injury. They were lifted and shifted to Government Hospital, Latur where the post-mortem over the dead body of Sushilabai has been conducted. On 22/12/2019 one Savita Balaji Acharya filed a complaint in Police Station, Renapur regarding the accidental death of her mother namely Sushilabai and co-worker namely Kamalbai.

3) Deceased Kamalbai was doing agricultural labour work in the field of different agriculturists of the vicinity and earning daily Rs.300/- and used to pay the amount to the claimant as he was/is not feeling well. It is alleged that respondent No.1 is driver and respondent No.2 was owner of said Auto Rickshaw bearing No.MH-24/AT-3176 and the said vehicle is insured by respondent No.3 and therefore, all the respondents are liable to pay the compensation and the present application came to be filed against them. The applicant has filed on record various documents including copies of FIR registered against respondent No.1, spot panchanama, MLC letter, inquest panchanama and post-mortem report, RC Book etc. which shows that deceased died in vehicular accident.

4) Respondent Nos.1 and 2 failed to file their say.

5) Respondent No.3 denied the claim alleging that incident is dated 19/11/2019, FIR is lodged on 20/12/2019 and spot panchanama is conducted on 03/12/2019 and nothing was found on the spot, it shatters the authenticity of the said accident. The reasons for such huge delay in FIR not explained by the petitioner. The alleged accident is strictly denied by this respondent. The auto rickshaw bearing No.MH-24/AT-3176 is falsely involved in the alleged accident to grab the compensation amount from insurance company. This respondent denied the involvement of said vehicle in alleged accident. The application is further objected alleging that there is inordinance delay in lodging FIR as FIR was filed on

20/12/2019 in respect of the alleged incident dated 19/11/2019. It is submitted that initially accidental death case was registered and panchanama was drawn on 03/12/2019 and later-on false FIR was lodged on 20/12/2019 in collusion with the owner of vehicle and thus this respondent is not liable to pay compensation. This respondent denied that the deceased Kamalbai was aged about 50 years and was doing agricultural labour work and earning Rs.300/- per day. It is submitted that, the driver of said vehicle was not having valid and effective driving licence at the time of accident and further was not qualified for holding or obtaining such driving licence. The respondent No.2 has handed over the possession of the vehicle to the said driver and therefore contravened the provisions of M. V. Act and the rules framed thereunder and have committed the breach of the terms and conditions of the policy. It is also contended that at the time of accident, the said vehicle was playing on road without holding valid and effective permit and fitness certificate which amounts to breach of policy condition and also against the traffic rules and therefore, present respondent insurance is not liable to pay any compensation to the claimants. These respondents further submitted that the owner has committed the breach of policy and thus prayed to reject the application.

6) Heard both sides. Both advocates have argued in accordance with their respective submission as above. The learned advocate for applicant in addition to his submission has relied upon the case of *Ravi -v/s- Badrinarayan and*

Others reported in **2011 (1) TAC 867 (SC)**. In this case the Hon'ble Supreme Court has observed that, delay in lodging FIR cannot be a ground to deny justice to victim in certain circumstances. Whether that circumstance exists or not is a question to be decided during the trial only and thus, I found no substance in said objection at this stage of proceeding.

7) I have gone through the application, say and the documents placed on record. Admittedly, after investigation the charge sheet was filed against respondent No.1 for causing death of deceased Kamalbai w/o Babu Aabarbande by driving the Auto Rickshaw bearing No.MH-24/AT-3176 in rash and negligent manner. It is also not disputed that the vehicle is insured with respondent No.3. As per provisions of Sec.140 (4) of the Motor Vehicle Act, the claim for compensation under this section shall not be defeated by reasons of any wrongful act, negligence or defect of the person in respect of whose claim, the claim has been made. So also the claimants are not supposed to plead and establish that the death is caused due to any wrongful act, negligent or defect of the owner and in view of this, I do not find any substance in the objection raised by respondents. The claimants being the legal heirs of deceased Kamalbai w/o Babu Aabarbande who died in the accident as referred above are thus appears to be entitled for compensation U/sec.140 of the Motor Vehicle Act, 1988 and the respondent Nos.1 to 3 are jointly and severally liable to pay the same. The application thus deserves to be allowed and hence, order.

O r d e r

1. Application is hereby allowed.
2. The respondent Nos.1 to 3 jointly and severally shall pay compensation of Rs.50,000/- (Rs. Fifty Thousands Only) towards no fault liability to the applicant within the period of one month from the date of this order, failing which, it shall carry interest @ 9% per annum from the date of order till realization.
3. Preliminary award be drawn accordingly.

Date :- 24/11/2021.

(K. S. Totla)
Ex-Officio Member,
Motor Accident Claims Tribunal,
Latur.

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