

MH LA010029492018

M.A.C.P.NO.244/2018

(Ranubai and Aother V/s. Amol and others)

ORDER BELOW EXHIBIT-5

1] The claimants have preferred this claim application on account of death of Kishan s/o Bhaskar Gutte, for compensation under section 166 of the Motor Vehicles Act, 1994, for an amount of Rs.1,00,000/-.

2] By way of this application, the applicants have claimed interim compensation under Section 140 of the Motor Vehicles Act, 1994,(for the sake of brevity referred to as "M.V.Act").

3] The Opponent Nos. 1 and 2 have been served with notices, and have appeared before this Court. They have filed their written statement/say vide Exh.26, denying negligence of Opponent No.1-driver of the Tanker bearing registration No.MH-12-EQ-8421 (Hereinafter referred to as "the said Tanker") and their liability.

4] The Opponent No.3-The United India Insurance Co. Ltd. by filing its written statement vide Exh.11 has strongly objected this application challenging the negligence of driver of the said Tanker, and its liability.

5] Heard both the sides.

6] It is pleaded and submitted by the applicants that the deceased-Kishan Bhaskar Gutte was proceeding with his friend namely- Vilas Pandurang Munde by Motorcycle bearing registration No.MH-12-LE-9081 (Hereinafter referred to as "the said motorcycle") towards their house after completion of working hours. The deceased-Kishan was driving the said motorcycle and the said motorcycle was in moderate speed and accident occurred as the Opponent no.1 who was driving the said Tanker in negligent manner and gave forceful dash to the said motorcycle from back side.

7] Thus, from these pleadings, it appears that deceased-Kishan was driver of the said motor cycle. However, the F.I.R. filed along with this claim application shows that the deceased-Kishan was pillion rider and his friend- Vilas Pandurang Munde was the driver of the said motorcycle bearing registration No.MH-12-LE-9081 against whom the F.I.R. is lodged.

8] On this background, it is submission of the Opponent No.3 that in connecting claim application No.245/2018 filed by the legal heirs/representatives of deceased-Vilas Pandurang Munde, there are pleadings that Vilas Pandurang Munde was pillion rider and the deceased-Kishan was driving the said motorcycle bearing registration No.MH-12-LE-9081. It goes to show that Vilas Munde was proceeding with Kishan as a Pillion

rider. However, the F.I.R. filed in support of the claim petition shows that Vilas Munde was driving the said motorcycle and due to his negligence the accident occurred.

9] Considering the pleadings in the present matter and pleadings in connected claim application No.245/2018 and the documents, it goes to show that, there is some ambiguity regarding, manner of the accident, which requires evidence.

10] Though it is submission of learned Advocate for applicants that, they have tried to bring into notice the manner of accident into the Higher Police Authority and requested to reinvestigate the matter, as on today, no correspondence to that effect is on record. Hence to know the manner of accident, it is necessary to have the evidence on record.

11] Though from the inquest panchanama and postmortem report, it appears that death of deceased-Kishan is occurred due to accident, it does not prima facie appear, how the accident occurred and how the involvement of Tanker in question. Hence, this application is requires to be rejected. Hence, I proceed to pass the following order.

ORDER

(a) Application Exh.5, is hereby rejected.

- (b) Applicants are at liberty to lead evidence on the point of involvement of Tanker bearing registration No. MH-12-EQ-8421 at the time of final hearing of this claim petition.
- (c) An Interim award be drawn up accordingly.

Sd/-

(Smt.S.S.Kosamkar)

Latur.

Date:18.07.2022.

Principal District Judge, and
Member, Motor Accident Claims Tribunal
Latur.