

CNR No.MHLA01-003125-2016

Order below Ex.5 in M.A.C.P. No.299/2016.

Present application is filed by the claimant under Section 140 of the Motor Vehicle Act for interim compensation of Rs.25,000/- towards no fault liability in an injury claim.

2. Facts in short of present application are as follows :

It is alleged that on 23.11.2015 claimant had boarded in luxury bus bearing no.MH-06-S-7431(hereinafter referred to as "offending vehicle") for proceeding to Pune. Respondent no.1 was driving the said offending vehicle in high and excessive speed, rashly and negligently. At about 1.30 a.m. on 24.11.2015 when the bus reached on Hyderabad – Solapur high way near Dahiphule spinning mill. The respondent no.1 tried to overtake truck bearing no.KA-32-B-9415 which was proceeding in same direction, in that attempt respondent no.1 gave dash to the truck, due to which claimant and other passengers travelling in the said bus sustained injuries.

3. It is alleged that claimant has sustained fracture injury. He was shifted to General hospital, Solapur. Thereafter he has been shifted in Siddhi Trauma and Orthopedic Care

center, Latur. He was hospitalised from 25.11.2015 to 14.12.2015. Crime has been registered against the respondent no.1 in Solapur taluka police station. Claimant has claimed interim compensation of Rs.25,000/-.

4. Respondent no.1 & 2 have contested the application by filing written statement exh.23. They have denied almost all the allegations made by the claimant but admitted that respondent no.1 was driving the offending vehicle and said offending vehicle is owned by respondent no.2. He is having valid and effective driving license. It is contended that the accident is caused between two vehicles, therefore, offending vehicle is a truck, hence the liability of respondent no.1 & 2 deserves to be discharged. For all these reasons respondent no.1 & 2 prayed for dismissal of the application.

5. Respondent no.3 resisted the application by filing their written statement at exh.16. All the averments are totally denied. It is denied that claimant was travelling in offending bus. It is denied that the driver of offending vehicle was driving the bus rashly, negligently and in high speed. It is denied that the offending vehicle gave dash to the truck. It is denied that claimant sustained fracture injury and he was admitted in Siddhi Orthopedic hospital, Latur.

6. It is contended that one Bhaskar filed a consumer complaint bearing no.141/2016 and claimed damages for offending vehicle. The complainant Bhaskar has purchased the offending vehicle from respondent no.2. Possession has also been given to him on 9.3.2015. The agreement to sale has been executed in the name of Omsai Travels. The respondent no.2 has transferred the ownership of the offending vehicle. The respondent no.2 ceases to be the owner of the offending vehicle. As per the provisions of Section 157 of the M.V. Act intimation has not been given, therefore, the respondent is not liable to pay any compensation. It is also contended that the passenger in luxury bus cannot be said a third party, therefore, the claimant is not entitled to get compensation.

7. The respondent no.1 was not holding valid and effective driving license and the offending vehicle was being plied on the road without permit, as such there is breach of terms and conditions of the policy. For all these reasons respondent no.3 prayed for dismissal of the application.

8. Respondent no.6 resisted the application by filing their written statement at exh.26. All the averments are totally denied. It is contended that the driver of offending vehicle was rash and negligent and he gave dash to the truck, therefore, respondent no.6 is not liable to pay any compensation. For all

these reasons respondent no.6 prayed for dismissal of the application.

9. Learned advocate for the claimants in his arguments invited my attention towards the policy and submitted that though the offending vehicle has been transferred. Still it is in the name of respondent no.2, therefore, insurance company respondent no.3 is liable to pay compensation. Claimant was travelling in a passenger bus, therefore, he is entitled to get compensation. He further submitted that the owner has paid additional premium and covered the risk of passenger. He submitted that at the stage of hearing of application filed u/sec.140 of the M.V. Act it is not necessary to go into the details, therefore, according to him the application be allowed.

10. Learned advocate for the respondent no.3 submitted that the claimant is a passenger in luxury bus. He cannot be said to be a third party. He further submitted that respondent no.2 has transferred the offending vehicle to Omsai Travels, therefore, the insurance company is not liable to pay any compensation. He invited my attention towards the documents i.e. complaint and agreement to sale filed in the consumer forum and submitted that the claimant is not entitled to get any compensation. He relied on following case laws-

1. Smt. Yallwwa Vs. National Insurance Co. Ltd.2007(4) ALL MR 822;
2. United India Insurance Co. Ltd. Shimla Vs. Tilak Singh, 2006(3) ALL MR (SC) 188;
3. New India Assurance Co. Ltd. Vs. Babasaheb Anna Mali, 2002(3) BCR 682;
4. United India Insurance Co. Ltd. Vs. Anubai Gopichand Thakare, 2008(1) Mh.L.J. 73;
5. Divisional Manager, Oriental Insurance Co. Ltd. Vs. Aarti Mishra, 2011 ACJ 196;
6. HDFC Bank Ltd. Vs. Kumari Reshma 2014 AIR SC2 6673;
7. M/s. Road Transport Co. Vs. Bhan Singh, AIR 1998 SC 248.

11. In this case claimant has filed complaint on 24.11.2015 i.e. immediately after the accident in which he has stated that accident is occurred due to rash and negligence of the offending vehicle. On the basis of said complaint spot panchanama has been prepared. The claimant has produced medico legal certificate, from it appears that the claimant has sustained grievous injury. It also appears that the charge-sheet has been submitted against the respondent no.1.

12. Learned advocate for respondent no.3 submitted that the respondent no.2 has transferred the offending vehicle. He has produced complaint filed before Consumer Forum. He has produced copy of agreement to sale. He also produced the judgment delivered by the Consumer Forum and purchase receipts. Upon perusal of the receipts produced it appears that

the respondent no.2 has transferred the offending vehicle to Omsai Travels on 2.4.2015. But it also appears from the RC book that the name of respondent no.2 is shown as a registered owner of the offending vehicle. Even upon perusal of the certificate of insurance it appears that the vehicle has been insured with respondent no.3. It also appears that the policy has been taken on 2.11.2015 i.e. after transfer of the said vehicle in the name of Omsai travels. The insured name is shown as Amol Borate. Even after transfer of the offending vehicle the vehicle has been insured in the name of Amol Borate. No doubt, intimation has not been given to the respondent no.3 but the name of respondent no.2 is still appearing as a registered owner and the policy has also been taken in his name, therefore, I do not find any substance in the arguments advanced by learned advocate for respondent no.3 that the offending vehicle has been transferred, therefore, insurance company is not liable to pay any compensation to the claimant.

13. The next objection of learned advocate for respondent no.3 is that the claimant is not a third party. He was travelling in the said offending vehicle. For that purpose he has relied on number of case laws. It appears from the case law reported in 1998 SC 2487 that additional premium paid by the insured for passenger risk covers only statutory liability and did not make liability in respect of the passengers

unlimited. Upon perusal of the certificate of insurance in the column of Schedule of premium the insured has paid additional premium of Rs.33,032/- towards compulsory PA covered for owner, driver, LL to paid driver, legal liability to passenger. Respondent no.2 has paid additional premium which covers the statutory liability of the passengers travelling in the offending vehicle. Therefore, it covers the statutory liability. Hence, in my opinion, the submission advanced by learned advocate for respondent no.3 does not appear to be believable.

14. From the police papers i.e. FIR, spot panchanama and charge-sheet it appears that the accident has occurred in between the offending vehicle and truck. Further, the claimant has produced injury certificate and disability certificate which shows that claimant is permanently disabled. Further, the offending vehicle has been insured with respondent no.3. The name of respondent no.2 still appears in the column of registered owner. Therefore, all the ingredients of Section 140 of the M.V. Act have been satisfied, hence, the claimant is entitled to interim compensation of Rs.25,000/- and the application deserves to be allowed. In the result, I pass following order.

ORDER

1. Application (Exh.5) is hereby allowed.

2. Respondent Nos.1 to 3 jointly and severally do pay interim compensation of Rs.25,000/- (Rupees Twenty Five thousand only) towards no fault liability to the claimant within the period of one month from the date of this order, failing which it shall carry interest @ 6% p.a. from the date of this application till realization.

3. Preliminary award be drawn accordingly.

(S.M.Takalikar)
District Judge-3/Ex-officio
Member of M.A.C.T., Latur.

Dated : 15.12.2018.