

**ORDER BELOW EX.2 IN APPLICATION NO.107 OF 2021**

1. The present application has been filed for claiming compensation U/s.140 of the Motor Vehicle Act 1988 on no fault basis on account of death of deceased Noor Mohammed, who died in the accident dated 31.12.2020, involving Motor Dumper No.MH-05-AM-5444.

2. The Opposite Party is absent. The Insurance company i.e. Opposite party No.2 has filed its Written Statement and Reply (Ex.14) and thereby denied the claim on the ground that the premium cheque issued towards the premium of policy was dishonoured and hence, on the time and date of the alleged accident, the policy was void ab-initio and therefore, the Opposite party No.2 was not liable to indemnify the Opposite party No.1, as per provisions of law and also not liable to pay compensation to the applicant. It is further contended that the driver of the Motor Dumper was not holding a valid and effective driving license, permit and fitness at the time of the accident. It is further contended that the claim is bad for non-joinder of driver of vehicle as a party to the proceeding.

3. Perused the documents filed on record like certified copies of FIR along with Statements, Spot Panchnama, Inquest Panchnama, Arrest/Court Surrender Form, Postmortem Report, Insurance Policy, Certificate of Registration of the Motor Dumper, Pollution Under Control Certificate and the Certificate of Fitness along with List Ex.9.

4. Heard learned advocates for the applicants and Insurer. Section 140 of Motor Vehicles Act lies in very limited sphere. While deciding application U/s.140 of the Act, it is not necessary to ascertain as to who is at fault for the said accident. The prime requirement is that whether the accident has arisen out of use of a

motor vehicle or not. Once it has been established prima facie, the claimant is entitled for compensation as contemplated U/s.140 of the Act.

5. In the present case, the documents available on record indicate the involvement of offending vehicle in the accident. The defences taken by the Insurance company in the written statement is a matter to be decided on the merit of the case, but *prima facie*, it appears from the Insurance policy filed on record that this vehicle was insured with the Insurer at the relevant time. So, this implies that NFL amount can be granted in this case.

6. Bearing in mind, the aforesaid principles and relying on the documents available on record, I find no difficulty holding that applicants are entitled for the compensation of Rs.50,000/- on no fault basis for the death of the deceased caused in an accident. Accordingly, I pass the following order :

### O R D E R

1} Application is allowed.

2} The Opposite Party and Insurer do pay jointly and severally Rs.50,000/- (Rupees Fifty Thousand Only) to the applicants within one month from today, failing which the interim compensation shall carry interest @7% p.a. from the date of order till realization.

3} The Opposite Party or the Insurer is directed to deposit the awarded amount to the credit of the below stated bank account of this Tribunal directly by NEFT/RTGS :-

Account Name	MOTOR ACCIDENT CLAIMS TRIBUNAL MUMBAI
Account No.	00000040777482356
IFS Code.	SBIN0030002
MICR Code.	400002273

4} **Apportionment order is as under:-**

- Out of the aforesaid amount, Rs.5,000/- each shall be invested in the names of minor applicant Nos.2, 3, 4 and 5 children of the deceased in a Fixed Deposit in any Nationalized Bank under the guardianship of their mother i.e. applicant No.1, till they attain their age of majority. On maturity, it be paid to the said applicants by NEFT/RTGS.
- Amount of Rs.5,000/- be paid to the applicant No.6- mother of the deceased.
- Remaining balance amount be paid to the applicant No.1- widow of the deceased by NEFT/RTGS.

5} On deposit of the amount, it be disbursed to the applicants by NEFT/RTGS on submitting their bank account passbook photocopies duly verified by their banker and against proper identification by following the usual office procedure.

6} The applicants shall pay deficit court fees, if any.

Date : 01.02.2023

(Dr. Srishty Neelkanth)  
Member, C.R. No.3  
MACT, Mumbai