

ORDER BELOW EX.2 IN M.A.C.P. NO.1093 OF 2017

The applicant who sustained injuries in an accident arising out of the use of Motor Vehicle claims interim compensation U/s.140 of the M.V. Act.

2. The applicant alleged that on 13.2.2017 at 11:30 p.m. she was travelling as a pillion rider on scooter No.MH-02-DF-1883 driven by her husband. When the scooter had reached on North Lane, Vakola (East), Bandra, Mumbai, Motor Car No.KA-51-D-9471 came in high speed and dashed to the scooter. As a result of that she sustained injuries.

3. She alleged that she was taken to Kirit Nursing Home, Vile Parle. From there she was shifted to Kokilaben Dhirubhai Ambani Hospital where she received treatment as an indoor patient from 14.2.2017 to 21.2.2017.

4. She alleged that the accident was reported to police and Cr.No.36/17 came to be registered against the driver of the car at Kherwadi Police station.

5. She alleged that the Motor Car was owned by the Opposite party and it was insured with New India Assurance Company Ltd. As such both the opponents are jointly or severally liable to pay an amount of Rs.25,000/- to her on account of no fault liability.

6. On service of notice the Opposite party appeared through its learned counsel, Mr. R.S. Yadav on 3.10.2017 vide his Vakalatnama Ex.9 and filed reply Ex.12 contending that the car was insured with the New India Insurance Company Ltd. As per the FIR lodged in respect of the accident, a case is pending before Metropolitan

Magistrate at Bandra, Mumbai. Thus, it has prayed to drop it from this proceeding.

7. On service of notice the insurer appeared and filed reply and written statement Ex.14 opposing the claim for the reasons mentioned it.

8. Heard at length the learned counsel representing both the sides. Perused the documents.

9. The Learned Counsel for applicant argued that with the help of copies of police papers produced with list Ex.7, the applicant has prima facie established that she sustained injuries during the course of accident on 13.2.2017. He also argued that the copies of injury certificate and the medical treatment papers prima facie go to show that the applicant had sustained injuries during the course of said accident. He also argued that the original disability certificate produced with list Ex.15 shows that Dr. Naresh Khanna examined the applicant on 20.9.2018 and assessed her permanent partial disability to the extent of 42%. Thus, she has established the requirements as contemplated U/s.140 of Motor vehicles Act and she is justified in getting an amount of Rs.25,000/- on account of no fault liability.

10. On the other hand, the learned counsel for the Opposite party and Insurer strongly opposed these arguments. The learned counsel for the Insurer argued that unless it is established that the Motor Car was involved in the said accident, it's insurer cannot be directed to pay even interim compensation of Rs.25,000/- as contemplated U/s.140 of M.V. Act on account of no fault liability. Hence, according to her the application is liable to be dismissed.

11. A plain reading of the copies of police papers produced with list Ex.7 certainly demonstrated prima facie that accident occurred as alleged. So also it appears from the medical papers produced on record as well as the disability certificate that for the purposes of limited inquiry contemplated U/s.140 of the M.V. Act, the applicant has proved the requirements of Sec.140 of the Motor Vehicles Act. As such the Learned Counsel for applicant is perfectly justified in making the submissions that the applicant has established the requirement as contemplated U/s.140 of the Motor Vehicles Act and because of that she is justified in getting the amount of Rs.25,000/- on account of no fault liability. Therefore, the Opposite party and Insurer are jointly or severally liable to pay Rs.25,000/- to the applicant on account of no fault liability. With these observations, following order is passed:

ORDER

- 1) Application is allowed.
- 2) Opposite Party and the Insurer shall pay jointly or severally a sum of Rs.25,000/- (Rupees Twenty-Five Thousand only) to the applicant on account of NFL, within a period of one month from the date of this order, failing which they shall pay interest on the said amount @ 7.5% p.a. from the date of order, till realization.
- 3) The A/c payee cheque amounting to Rs.25,000/- as above drawn in the name of applicant shall be deposited in the office of Motor Accident Claims Tribunal, Mumbai. On receiving the cheque, Accounts Officer shall handover the same to the applicant on due identification and on recovery of deficit court fees, if any.

Dated:11/10/2018

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(A.G. Bilolikar)
Member, C.R.No.3
MACT, Mumbai

