

ORDER BELOW EX.2 IN APPLICATION NO.782 OF 2020

1. By this application under Section 140 of the M.V. Act, 1988, the minor applicant has claimed compensation through his next friend under no fault liability for the injuries sustained by him in a vehicular accident on 14.09.2020 involving Motor Scooter No.MH-01-BN-7895.

2. The Opposite Party is absent. Insurance company has filed its Written Statement (Ex.13) and thereby denied all the averments made by the applicant in the application. It is contended that the driver of the motor vehicle was not holding a valid driving license and permit at the time of the accident. It is further contended that the insurance policy filed by the applicant was wrong/fake/out of policy period at the time of the accident and hence, the applicant has violated the terms and condition of the policy as mandated. However, the learned Advocate for the Insurance company has confirmed the insurance policy on Ex.2 for passing NFL order.

3. Perused the documents filed on record like certified copies of Station Diary Entry, Insurance Policy, Medical Papers and original Disability Certificate along with List Exs.8 and 14. The doctor has recommended 48% permanent partial disability.

4. Heard learned advocates for the applicant and Insurer. Section 140 of Motor Vehicles Act lies in very limited sphere. While deciding application U/s.140 of the Act one has to ascertain ;

- i) Whether the accident has arisen out of use of motor vehicle.
- ii) Whether the said accident has resulted in permanent disablement of the person who is making the claim, or death of the person whose legal representatives are making the claim, and
- iii) Whether the claim is made against the owner and Insurer of the motor vehicle involved in the accident.

Once these factors are established prima facie, the claimant is entitled to succeed in an application 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 defence 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 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 in the documents available on record, I find no difficulty holding that the applicant is entitled for the compensation of Rs.25,000/- on no fault basis for the injuries sustained to the applicant in the accident. Accordingly, I pass the following order :

ORDER

1. Application is allowed.
2. The Opposite Party and Insurance Company do pay jointly and 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 of the amount.
3. Out of the interim compensation amount Rs.10,000/- be paid to the next friend of the minor applicant and Rs.15,000/- be invested in the name of minor applicant in a Fixed Deposit in any Nationalized Bank under the guardianship of his father till he attains the age of majority.
4. The Opposite Party and the Insurer are directed to make the payment to the next friend of the minor applicant by A/c payee crossed cheque in his name and issue A/c payee cheque drawn in the name of the Account Officer for investment in the name of the minor applicant as above by depositing the same in the Tribunal.
5. The applicant shall pay deficit court fees, if any.

Date : 04.02.2022
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(Dr. Srishty Neelkanth)
Member, C.R. No.3
MACT, Mumbai