

Order below Exh-No.05 in M.A.C.P. No.17/2017.

(Bandu Whavale Vs. Shaikh Babu and anr.)

1- This is an application/ petition under Section 140 of the Motor Vehicles Act for grant of compensation to the tune of Rs.25,000/- under no fault liability.

2- Petitioners' case is that, on 28.02.2017 at about 8:00 a.m. he was travelling in a auto-rickshaw bearing No. MH-22/H-3975 (here-in-after referred as offending vehicle) from Shendga Pati and proceeding towards Parli Hospital. The driver of offending vehicle was driving it in rash and negligent manner. When the offending vehicle reached near field of Uday Opade in Ukkadgaon Shivar on Gangakhed-Parli road, gave dash to the babool tree and accident occurred. In the said accident he sustained severe injuries including fracture on left side tibia troximal 1/3, fracture on fibula segmental left side, fracture on left sided fifth metatarsal, crush injury lower 1/3 leg, foot left side, crush injury lower one third leg with foot left sided. Therefore, initially he was admitted at S.R.T.R. Medical College and Hospital, Ambejogai. Thereafter, looking to the serious condition, he was shifted to Fulabai Bhausahab Bansode Hospital, Latur where he was indoor patient till 02.03.2017 during which he under gone major operation and his leg was amputated. Thereafter, he has taken treatment at Shrikurshna Accident Hospital, Parli. Thus the petitioner sustained permanent disablement. Accident was outcome of rash and negligence of driver of

offending vehicle and hence crime No.34/2017 came to be registered against him at police station Sonpeth. Respondent No.1 is the owner of offending vehicle which was insured with respondent No.2 at the time of accident. Therefore, respondents are liable to pay compensation to the petitioners.

3- Respondent No.1 filed his written statement and say at Exh-14 and thereby denied the contentions of the petitioners. This respondent admitted ownership of offending vehicle with him and its insurance with respondent No.2 at the relevant time of accident. He though admitted the involved of offending vehicle in the acciden, however, denied that the accident caused due to rash and negligence of his driver. Hence, lastly prayed for rejection of application against him.

4- Respondent No.2 resisted the claim petition by filing written statement and say at Exh-12. This respondent denied the mode and manner of accident, injuries and permanent disablement to petitioner, so also denied the involvement of the offending vehicle in the accident. He submits that, in collusion, the delaid report is lodged against the driver of offending vehicle. Without admitting the involvement, this respondent further submitted that the driver of offending vehicle was not having valid and effective licence, therefore, there is breach of terms and conditions of policy. He further submitted that, the petitioner was fair paying passenger, the policy is act policy

and the risk of petitioner is not cover in the policy as he was occupant in the offending vehicle. Hence, prayed to reject the application.

5- Heard learned counsel for parties. Perused the record.

6- To substantiate the claim, petitioners have filed on record below list Exh-04 copy of report, printed F.I.R., spot panchanama, copy of M.L.C. issued by SRTR Hospital, insurance policy, R.C. book, copy of discharge cards of Fulabai Bansode Hospital and Shrikrishna Hospital, etc.. and below list Exh-16 copy of disability certificate issued by Handicap Board, Orthopedic Hospital, Parbhani. The copy of report shows and printed F.I.R. shows that accident took place on 28.02.2017 at about 8:00 a.m. near field of Uday Opade in the Ukkadgaon Shivar on Gangakhed-Parali road wherein the offending vehicle was involved with the allegation that the accident occurred due to rash and negligence of offending vehicle. From the M.L.C and discharge cards it reveals that in the said accident petitioner sustain fracture left side tibia proximal 1/3rd, fracture fibula segmental left side, fracture left side 5th metatarsal and amputation below knee lt. Disability certificate shows that due to said injury petitioner sustain 60% permanent disability. Respondent No.1 admitted the ownership of offending vehicle with him at the time of accident so also certificate of registration shows that respondent No.1 was its owner at the time of accident. Period for which the vehicle was insured with respondent No.2 covers the date of

accident. The advocate for respondent No.2 urged that, the policy is Act policy and the risk of petitioner is not covered, therefore, the respondent is not liable to pay compensation. Admittedly, the offending vehicle is public carrying vehicle. The respondent though urged that the risk of petitioner is not cover, however, upon perusal of the copy of policy, it appears that the respondent has accepted premium of unknown passenger in the vehicle, therefore, I am not agree with the submission of the advocate for respondent No.2. In the circumstances, respondents cannot escape from its liability.

7- The defence of respondent No.2 can not be considered at this stage, he is at liberty to prove its defence on merit by leading evidence. At this stage the petitioners have satisfied the requirement of Section 140 of M.V. Act. Therefore, the application deserves accord. Hence, the following order.

ORDER

- 1- Application is allowed.
- 2- Respondents are jointly and severally liable to pay the amount of Rs.25,000/- (Rs. Twenty five thousand only) to the petitioner within two weeks from the date of this order, failing which the amount shall carry interest @ 9% per annum from the date of this order till realization.
- 3- The respondents are further directed to pay the above-said amount by account payee cheque/ D.D in the name of petitioner.

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4- On depositing the cheque/ D.D, Assistant
Superintendent (Cash and Finance) to recover deficit
court-fees, if any, before delivering the cheque.

(Amol D. Harne)
Member, M.A.C.T/ District Judge-1,
Gangakhed.

Date : 20.02.2018.