

ORDER BELOW EXH. 5. IN M.A.C.P. NO.25/2019
CNR No.MHPA10000434-2019

Smt. Shaikh Hina Shakil & Others

.. Claimants

Vs.

Sajikumar s/o Keshav Naik & Ors.

.. Respondents

The claimants have taken out the present application under Section 140 of the Motor Vehicles Act, 1988 seeking compensation on the principle of 'no-fault', on account of the death of Shaikh Shakil Shaikh Budhan resulted from an accident occurred out of the use of a motor vehicle bearing registration No.MH-20-DE-1929 (in short offending vehicle).

2. The brief facts leading to the present application may be delineated as follows :

The claimants are claiming to be the heirs and legal representatives of the deceased Shaikh Shakil Shaikh Budhan(in short 'the deceased'). Claimant No.01 is the widow, claimant Nos.02 to 04 are minor children and claimant Nos.05 and 06 are the parents of the deceased. Claimants asserted that on 15.06.2019 the deceased was riding on a motorcycle bearing No. MH-22-AQ-9689 from the farm of one Bhimrao Kande towards village Ukkadgaon (Makta). At that time, the offending vehicle came from backside in a rash and negligent manner and dashed the deceased. In said accident, the deceased sustained severe injuries and consequently died. The father of the deceased i.e. claimant No.06 reported the incident to Sonpeth Police Station, District- Parbhani regarding the said accident.

3. Respondent No.2-Insurance Company opposed the application by filing its say at Exh.21. It is contended that the driver of offending vehicle was not holding a valid and effective driving licence at the time of accident. It is contended that the requirements of Rule-3 of the Central Motor Vehicles Rules were not followed. It is contended that there is breach of terms and conditions of the insurance policy. Hence, respondent No.2 prayed for rejection of the application.

4. Respondent No.03 also filed his written-statement-cum-say at Exh.23. He denied all the adverse contentions made against him. It is contended that respondent No.03 is falsely involved in the Crime registered in respect of the accident in question. It is contended that deliberately and with intention to grab the money, the claimants lodged the report against respondent No.03. It is submitted that respondent No.03 is not liable to pay any compensation. He, therefore, prayed for rejection of the application.

5. Respondent No.01 failed to file his say.

6. Heard the learned advocates for the claimants and respondent No.03. Perused the documents filed on record. The said documents are: copy of F.I.R, copy of spot panchanama, provisional cause of death certificate, copy of certificate of registration of offending vehicle, postmortem report, copy of driving licence, inquest panchanama, copies of Aadhar Card of claimant Nos.01, 05 and 06 as well as copy of Aadhar Card of the deceased.

7. It reveals from the said documents that the accident occurred on 15.06.2019 at about 08.00 a.m. on Parali to Gangakhed road, due to rash and negligent driving of offending vehicle, in which

the deceased sustained severe injuries and resultantly died. It further reveals that police registered the crime vide Cr.No.144/2019 against the driver of the offending vehicle for the offence under Section 304-A of the I.P.C.

8. It reveals from a copy of insurance policy that the offending vehicle was duly insured with respondent No.2 at the relevant time. The said policy was valid at the time of accident. It further reveals that respondent No.1 is the owner of the offending vehicle and insured with respondent No.2. It seems that respondent No.03 was a driver of the offending vehicle at the time of accident.

9. It is well settled that so far as the claim under section 140 of the Motor Vehicles Act is concerned, the claimants are not required to plead and establish that the death in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner of the offending vehicle. Further, the claim shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death the claim has been made. So, the claimants have made out the *prima-facie* case regarding involvement of the offending vehicle in the accident. In this view of the matter, the present application deserve to be allowed. Hence, the following order is passed :

O R D E R

1. Application is allowed.
2. Respondent Nos. 1 and 2 do pay to the petitioners jointly and severally a sum of Rs. 50,000/- (Rs. Fifty Thousand only) towards compensation on the basis of 'no fault liability', within one month from the date of order, in default of which the claimants shall be entitled to interest on the said amount at the rate of 7% per annum from the date of order.

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3. The said amount be paid to the claimants by way of account payee cheque, after due identification of the claimants or the same may be directly deposited in the account of claimants.
4. Out of the said amount, Rs.10,000/- (Rupees Ten Thousand only) be kept in fixed deposit with any Nationalized Bank in the names of minor claimant Nos.02 to 04 each. The amount of Rs.10,000/- be given to claimant No.01 and balance amount of Rs.10,000/- (Rupees Ten Thousand) be given jointly to claimant Nos.05 and 06.

Dated :18.12.2021.

(L.D. Gaikwad)
Member, M.A.C. Tribunal,
Gangakhed, Dist. Parbhani.