

CNR No. MHRT130008592020

MACP No. 57/2020**Suresh Sakharam Tambe****Claimant****Vs.****Venubhai Yashwant Shejwal etc. 4****Respondents.****Order below Exh. 25.**

1. The petitioners have moved the present application under Section 140 of the Motor Vehicles Act for grant of compensation under No Fault Liability.

2. The petitioner No.1 is the father and the petitioner No.2 is the widow of deceased Vinayak Suresh Tambe who died on 04.05.2018 on account of road accident which occurred on 01.05.2018 near village Boraj, Mumbai-Goa National Highway, Tal. Khed. According to the petitioners, on 01.05.2018 the deceased was travelling along with their other relatives in Tata Venture vehicle No. MH-04-ET-8772 from Mumbai towards Malan. At about 06.00 a.m. when the said vehicle reached near village Boraj on Mumbai Goa National Highway, one Tata 407 Tempo No. MH-10-AQ-9878 came from opposite side in wrong direction in a rash and negligent manner and gave dash to the vehicle of the deceased. In the said accident, the deceased Vinayak and other passengers were seriously injured. The deceased was taken to Life Care Hospital for treatment and finally he succumbed to his injuries on 04.05.2018. The death of the deceased was caused due to accidental injury. He was sole earning member of his family and the petitioners were depending

upon his income only. After the accident, Crime No. 99/2018 came to be registered against the driver of Tata Venture No. MH-04-ET-8772 instead of the driver of offending Tata 407 Tempo No. MH-10-AQ-9878 for the offence punishable under Section 279, 337, 338, 304A of the Indian Penal Code and Section 184 of the Motor Vehicles Act by Khed Police Station. There was no fault of the driver of aforesaid Tata Venture. The respondent No.1 is the owner of the offending Tata 407 Tempo No. MH-10-AQ-9878 and respondent No.2 is its driver. The respondent No. 3 is its insurer whereas the respondent No.4 is the insurer of the Tata Venture vehicle. Therefore, the respondent Nos. 1 to 4 are jointly liable to pay compensation to them. Hence, this application.

3. The respondent No. 1 resisted the application by filing her say vide Exh. 12 and respondent No. 2 has adopted the say of respondent No. 1 by filing pursis Exh. 17 wherein they denied all the allegations made against them. They admitted that the aforesaid Tata 407 Tempo is insured with the respondent No.3. It is the specific case of both the respondents that the alleged accident has occurred due to rash and negligence of the driver of Tata Venture No. MH-04-ET-8772 and even the police has filed case against the said driver and so they are not liable to pay any compensation to the petitioner. They further submitted that if this court comes to conclusion that they are liable then the offending vehicle was insured with respondent No.3 and the respondent No.3 is liable to pay the said compensation. On these ground, they prayed that the application be rejected.

4. Respondent No.3 resisted the application by filing reply vide Exh. 18 wherein he denied the entire theory as put forth by the petitioner. It is further contended that this is a case of contributory negligence. It is the case of respondent No.3 that the alleged incident has occurred due to rash and negligence of driver of Tata Venture and the police has also chargesheeted said vehicle and therefore, the respondent No.3 is not liable to pay any compensation to the petitioner. It is further submitted that there is also non-joinder of necessary parties and there is breach of terms of policy by the respondent No.1 and on said count also, they are not liable to pay any compensation. On these grounds, it is prayed that the application be rejected with costs.

5. In spite of service of notice, the respondent No.4 failed to appear and contest this application. Hence, this application proceeded ex parte against the respondent No. 4 vide order passed below Exh.1.

6. Perused the application, say and the documents on record. Heard Ld. advocate for both sides at length. On perusal of the documents on record, it reveals that at the time of accident, the deceased was traveling along with his other relatives in Tata Venture vehicle No. MH-04-ET-8772 from Mumbai towards Malan and when the said vehicle reached near village Boraj on Mumbai Goa National Highway, its driver tried to overtake a truck in a rash and negligent manner and in the said attempt dashed one Tata 407 Tempo No. MH-10-AQ-9878 which was coming from opposite side. In the said accident, the deceased Vinayak and other passengers were seriously injured and the

deceased was taken to Life Care hospital for treatment and finally he succumbed to his injuries on 04.05.2018. Copy of FIR shows that on the basis of report lodged by Machindra Mahadeo Nachare, a traveller in said Tata Tempo, an offence came to be registered by Khed police station bearing Crime No. 99/2018 against the driver of offending Tata Venture Vehicle. Copy of Spot Panchnama shows the manner of occurrence of the accident. There is head on head collision between both the vehicles. Although the police has registered crime only against the driver of Tata Venture but there is involvement of both the vehicles in said crime. All these facts and documents prima-facie show the involvement of the aforesaid both vehicles in the said accident.

7. Copy of postmortem report shows that the deceased died due to head injuries (intracranial bleeding) caused in the said accident. Insurance policy and R.C. Book of Tata 407 Tempo No. MH-10-AQ-9878 placed on record shows that the respondent No.1 is the owner of said vehicle and the respondent No.2 is its driver whereas respondent No. 3 is the insurer of the said Tata 407 Tempo No. MH-10-AQ-9878 for the period from 21.02.2018 to 20.02.2019. Respondent No.4 is the insurer of the aforesaid Tata Venture vehicle No. MH-04-ET-8772 for the period from 06.07.2017 to 05.07.2018. The accident took place on 01.05.2018. Prima facie, it reveals that the deceased Vinayak died in the accident on 04.05.2018 and the aforesaid both the vehicles at the relevant time were insured with respondent No.3 and 4 respectively. All the documents are sufficient for holding that the petitioners have made out prima facie case for establishing their claim under Section 140 of the Motor Vehicles Act. So far all the

objection of respondent Nos. 1 to 3 are concerned, they can be considered at the time of deciding the main petition. Therefore, the petitioners are entitled for grant of interim compensation under Section 140 of the Motor Vehicles Act. Accordingly, the respondent Nos. 1 to 3 on one hand and respondent No.4 on the other hand are proportionally liable to pay NFL amount to the petitioners. Therefore, this application deserves to be allowed. Resultantly the following order.

ORDER

1 Application Exh. 25 is allowed.

2. Respondent Nos. 1 to 4 shall pay interim compensation amount of Rs. 50,000/- (Rs. Fifty Thousand only) to the petitioners towards No Fault Liability within a period of one month from the date of this order failing which they shall be liable to pay interest at the rate of 9% per annum on it from the date of this order till its realization.

3. Out of Rs. 50,000/- an amount of Rs. 25,000/- shall be paid jointly and severally by respondent Nos. 1 to 3 and remaining amount of Rs.25,000/- shall be paid by respondent No.4.

4. Out of Rs.50,000/-, the petitioner Nos. 1 and 2 are entitled to Rs. 25,000/- (Rupees Twenty Five Thousand only) each.

(N.S.Momin)

Date :- 13/10/2021.

Ex-Officio Member of M.A.C.T,
Chiplun.

I affirm that the contents of this P.D.F. file order are same, word to word, as per the original order.

Case Number		MACP No. 57/2020 Order below Exh. 25 (NFL)
Name of Stenographer	:-	Sou. P. S. Lad
Name of Court	:-	Member of MACT, Chiplun
Date of Decision	:-	13.10.2021
Order signed by the P.O. on	:-	13.10.2021
Order uploaded on	:-	14.10.2021