

M.A.C.P. NO. 91/2019

CNR No.MHST-04-001249-2019
Krishna Ramchandra Shelar & 1 other
Vs.
Akshay Rajendra Shinde & 1 other.

ORDER BELOW EXH.6 IN M.A.C.P. NO. 91/2019

(Passed on : 23/10/2021)

1] This is an application under Section 140 of the Motor Vehicles Act, 1988 claiming compensation on the principle of 'no fault liability' for the accidental death of deceased Sou.Ranjana Krishna Shelar in the accident arising out of use of Bajaj KTM Motorcycle bearing No. MH-12-TC/787 and Splendor Motorcycle bearing No. MH-11-CC/6808, on 20/09/2018. Deceased Ranjana was the wife of applicant No.1 and mother of applicant No.2.

2] It is the contention of applicants that, on 20/09/2018 at about 12.30 p.m. the son of applicant No.1 and brother of applicant No.2 Sagar was riding Splendor Motorcycle bearing No. MH-11-CC/6808 on Medha to Mahabaleshwar road within the limits of village Gavadi, Tal-Jaoli, Dist.Satara and deceased Ranjana was the pillion rider. At that time, one Bajaj KTM Motorcycle bearing No.MH-12-TC/787 came from opposite direction with high speed in a rash and negligent manner and by coming on its wrong side, gave dash to the motorcycle of deceased Sagar. Because of dash, the deceased Ranjana and Sagar thrown on the road and received head injury and other injuries and succumbed to the injuries on same day while on the way to Hospital at Medha.

3] According to the applicants, the accident took place because of rash and negligent driving on the part of KTM Motorcycle-rider opponent No.1, as he was riding it in high and excessive speed and came

on its wrong side and gave dash to the motorcycle of the deceased Sagar. The opponent No.1 is the owner and rider of KTM Motorcycle bearing No.MH-12-TC/787, which was insured with opponent No.2 Insurance Company, hence, both are jointly and severally liable to pay the compensation. Applicant prayed that, application may be allowed.

4] The record shows, the applicant has filed an application Exh.15 under Section 155 of Motor Vehicles Act. This Court has disposed of the said application holding that, no doubt right to sue against the Respondent No.2 will survive, but result would be the claim against the Respondent No.1 will be get abated.

5] The Opponent No.2 resisted the application by filing say as per Exh.17. It is contended that, the opponent No.1, who is the owner and rider of KTM Motorcycle bearing No.MH-12-TC/787 had died on 09/10/2018, however the applicant has not made party to the legal heirs of opponent No.1 in the petition. FIR reveals, both the motorcycle-riders were attempting to overtake, hence it is not liable to pay any compensation to the applicant.

6] Heard Ld.Advocate for applicant and opponent No.2.

7] The factors to be considered at the stage of hearing under section 140 of the Act are that the accident took place due to involvement of the vehicle or vehicles which resulted into permanent disablement or death of a person and the claim is made against the owner and insurer of the vehicle. The point of negligence does not assume importance at this stage.

8] In the present case, police papers shows that, on the basis of the accident report filed by Maruti Kisan Dhanawade offence is registered against opponent No.1 Akshay Rajendra Shinde and unknown motorcycle-rider of Pulsar Motorcycle No.MH12-HJ/9464 at Medha Police Station for offences p/u/ss.279, 304A, 337 & 338 of Indian Penal Code and u/ss. 183, 184 & 189 of the Motor Vehicles Act.

9] The fact that the Sagar Krishna Shelar died in the accident, is evident from the documents filed on record. The bailiff report Exh.10 reveals, opponent No.1 Akshay Rajendra Shinde died. In view of observations of Hon'ble Delhi High Court in **Oriental Insurance Co. Ltd. vs. Biro Devi and others, 2015 ACJ 340**, right to sue against the respondent No.2 will survive, but the result would be the claim against the respondent No.1 will get abated. Hence, opponent No.2 Insurance Company is liable to pay the interim compensation to the applicant.

10] On the basis of all the above facts and the record, it can be safely held that the basic criteria or parameters laid down for an application under section 140 of the Motor Vehicles Act have been fulfilled. Therefore, I hold that the opponent No.2 is liable to pay compensation to the applicant. Hence, the order.

ORDER

1. The application Exh.6 is allowed.
2. Opponent No.2 is held liable to pay the compensation amount of Rs.50,000/- to the applicants equally and it shall pay the same within two months from the date of this order, failing which, it shall be liable to pay interest at the rate of 8% per annum on the said amount from the date of order till actual realization of the entire amount.

3. The amount be paid to the applicants by account payee cheque.
4. Interim Award be drawn accordingly.

Satara
Dt. 23/10/2021

(N. L. More)
Member, Motor Accident Claims
Tribunal, Satara.