

ORDER BELOW EXH. 5 IN M.A.C.P. NO. 11/2017.

(Ramesh + 1 .v. Santosh + 1)

[Dated 7th March, 2019]

- 1) Read. Heard. Perused.
- 2) Heard Mr.R.D. Chandnani, the Ld. advocate for the claimants and Mr. M.D. Girdekar, the Ld. advocate for respondent No. 2 insurance company. Mr. P.V. Phatak the Ld. Advocate for respondent no.1 and respondent No.1 owner called but absent. Appraised entire material on record.
- 3) Mr. Chandnani submitted for N.F.L on the ground that claimants have made out prima facie case and at this juncture details are not gone into.
- 4) Mr. Girdekar taking through the written notes of argument at Exh.20 on N.F.L submitted that late Sandip was riding the motorcycle and the policy of the said motorcycle is Act policy i.e. liability only policy and risk of rider is not covered. Mr. Girdekar submitted late Sandip did not possess valid and effective driving licence. Mr. Girdekar submitted claimants are the parents of late Sandip and the dash was given by late Sandip to the stationed tractor but the owner, driver and insurance company of the tractor is not impleaded and thereby sought rejection.
- 5) Having regard to the submissions advanced at bar and after appraisal of the entire material on record, I find merit in the submission of Mr.Girdekar and demerit in the submission of Mr.Chandnani for more than one additional reason stated and discussed herein below and accordingly I record my findings

against each point as under for following reasons.

S.No.	Points	Findings
1	Whether claimants have made out a case of NFL ?	In the negative
2	What order ?	Application is rejected.

REASONS

7) **Point no.1:** Averment in the claim clearly reveal that claimants are parents of late Sandip. At the relevant time claimant no.2 Manda mother of late Sandip was registered owner of the motorcycle. Averment are crystal clear to display that late Sandip was riding motorcycle and gave dash to the stationed tractor on the road. FIR is against late Sandip. Meaning thereby late Sandip was wrong doer and has contributed the accident.

8) Insurance policy clearly reveal that it is in the nature of Act policy i.e. liability only policy and the risk of rider is not covered. On the face of record late Sandip is not third party. Wrong doer cannot get the benefit of his own wrong. Thus on the face of record claimant failed to make out case of NFL against the respondents including respondent no. 2 company.

9) It is true at this juncture material is not required to be scrutinized in detail. But the case is crystal clear on the face of record that the liability of rider of motorcycle is not covered. Above all, owner, insurer and driver of the stationed tractor are not impleaded. In result NFL case is not made out.

10) In view of discussion above application is devoid of merit and liable to be rejected. Accordingly I proceed to pass the following order.

ORDER

- 1) Application is rejected.
- 2) P. & D. in the open Court.

Sd/-

(R. V. Jatale)

Chairman, M.A.C.T., Washim.

Date: 07.03.2019