

**BEFORE THE MEMBER, MOTOR ACCIDENT CLAIM
TRIBUNAL, YAVATMAL.**

M.A.C.P. 227/2018

Priyanka+3 -Vs- Sk. Moosa+2

CNR NO.MHYA010026632018.

Order passed below Exh. 02

(Passed on 14th June, 2022)

This is an application for seeking compensation on the principle of no fault liability under section 140 of the Motor Vehicle Act (hereinafter referred to as “The Act” for the sake of brevity).

2. The abridge contention of the applicants is that they are legal representatives of the deceased victim. On 08.12.2018 the deceased was commuting in Tata Magic No. MH-29/T-8582 (Kali-Pili) as a fare paying passenger alongwith other labours from Koparna to Wani. When they reached on Tambadi to Heti road at around 9.00 p.m., one Truck bearing No. MH-29/T-1683 approached from opposite direction rashly and negligently. In high speed it gave a violent dash to the Tata Magic. This caused the commuters of the Tata Magic including the deceased to sustain fatal injuries to which he ultimately succumbed. The matter got reported at Police Station Koparana and crime no.403/2018 came to be registered under section 279, 337, 304-A and 427 of Indian Penal Code alongwith other sections against N.A. No.1. Subsequently, claim petition was filed. Pending its decision this application is filed for relief laid *supra*.

3. N.A. Nos.1 and 2 have resisted petition (Exh.1) and application (Exh.2) vide common reply Exh.21. Negligence of N.A. No.1-driver, involvement of Truck bearing No. MH-29/T-1631, occurrence of accident and consequent death of the deceased therein are specifically denied. Ownership of N.A. No.2 over the Truck and it being insured with N.A. No.3 company is admitted. It is contended that considering the documents and police investigation no liability of N.A. Nos.1 and 2 arises. Alternatively, it is added that if any liability does arise it needs to be met by N.A. No.3 company. It is submitted that in due of contributory negligence of deceased liability of owner and Insurance Company of Tata Magic arises.

4. Non-applicant No.3-company has resisted petition (Exh.1) and application (Exh.2) vide reply (Exh.22). Negligence of non-applicant No.1, earning capacity of deceased and spot of incident amongst other averments of petition are specifically denied. Alleged offending Truck being insured with them is admitted. It is contended that from petition of applicants itself it is apparent that the accident occurred due to negligence of driver of Tata Magic and hence blame against non-applicants Nos.1 to 3 is misplaced. It is added that Insurance Company is not liable to indemnify for the death unless terms and conditions of Insurance Policy are met by N.A. No.2. It is contended that due to non-joinder of owner and insurance company of Tata Magic the petition is not

tenable.

5. Heard counsels for applicants and non-applicant Nos.1 to 3. They reiterated their averments contained in their rival pleading.

6. True copies of F.I.R., crime details form invigorate that the accident had arisen out of the use of motor vehicle. Moreover, above documents coupled with registration certificate, goods carriage permit of the truck, fitness certificate, driving license of non-applicant No.1 and 'AA' form indicate that the offending Truck was driven by non-applicant No.1 and is owned by N.A. No.2-company. Inquest panchanama and PM report of deceased makes robust the factum of him having been injured and succumbed to death with cause of the same.

7. Policy Schedule cum certificate of insurance ratifies that the offending Truck was a subject matter of insurance with N.A. No.3 Company. Cumulative consideration of entire documents apparently demonstrates, that death of deceased has resulted from an accident arising out of the use of a motor vehicle i.e. the Truck involved in the petition which is owned by N.A. No.2-company and is insured with non-applicant No.3. Copies of Aadhar Card of the deceased and applicant Nos.2 and 3 enlighten their relationship *inter-se*.

8. Elements which are requisite to entitle the applicants for compensation under no fault liability are

extant. The application deserves countenance. The applicants include the wife, one minor child and parents of the deceased. Thus, the amount needs to be distributed accordingly. Hence, I ordain as follows.

ORDER

1. The application is allowed against Non-applicant Nos.2 and 3 vide section 140 of the Motor Vehicle Act.

2. Non-applicant Nos.2 & 3 are hereby directed to pay compensation of Rs.50,000/- as NFL amount to the applicants within 45 days from the date of this order, failing which interest @ 7% per annum will carry on award from the date of order till realization of amount.

3. Non-applicant Nos.2 & 3 are hereby directed only to deposit award amount including interest if any through NEFT/RTGS in A/C No. 40214590500 (MOD Bal : 0.00)- IFSC : No.SBIN0000506 which is Account Number of the MACT, Yavatmal.

4. After Non-applicant Nos.2 & 3 have deposited the amount in the Tribunal, an amount of Rs.25,000/- to applicant No.1 and Rs.7,500/- each to applicant Nos.3 and 4 respectively be deposited, in their account through NEFT/RTGS on due identification by their advocate and recovering deficit Court Fee, if any.

5. An amount of Rs.10,000/- be kept in fixed

deposit in the name of minor applicant No.2 in any Nationalized Bank in his name through his natural guardian i.e. mother (applicant No.1) till he attains majority.

Place:Yavatmal
Date: 14.06.2022

(S.R.Sharma)
Member, M.A.C.T.
Yavatmal.