

**BEFORE MEMBER, MOTOR ACCIDENT CLAIMS TRIBUNAL,**

**KELAPUR, DIST. YAVATMAL**

(Presided over by P. B. Naikwad)

**M.A.C.P.No.49/2017**

(CNR No.: MHYA080011392016)

**APPLICANTS** : 1) Sau. Nirmala Waghu Atram,  
2) Waghu Fulu Atram,  
Both R/o. Pandawihir, Post : Jalka,  
Taq. Maregaon, Dist. Yavatmal,

**- V E R S U S -**

**OPPONENTS** : 1) Yunus Sheikh Hafiz Qureshi,  
R/o. Umari Road, Taq. Kelapur,  
2) Tata AIG General Insurance Company  
Ltd., Through : Branch Manager,  
Kingsway, Sadar, Nagpur,

**O R D E R Below Exh.2**

(Passed on 8<sup>th</sup> October 2020)

1] Perused the application and the written statement and say filed by opponent No.2 vide Exh.20. The matter proceeded without say of opponent No.1. Heard both learned counsels.

2] Applicants have filed the present application as per provisions of section 140 of the Motor Vehicles Act, 1988 for interim compensation of Rs.50,000/-, on account of death of their son namely Husen Waghu Atram, in a vehicular accident.

3] Applicants have filed on record certified copy of chargesheet, spot panchanama, inquest panchanama, postmortem

report, copy of insurance policy, registration certificate. Opponent No.2 – Insurance Company has also admitted that, the vehicle i.e motorcycle bearing registration No.MH-29-BA-2038 was insured with it and the insurance was valid for the period 20-03-2017 to 19-03-2018. The accident in question took place on 26-10-2017, on which the vehicle was duly insured.

4] Learned counsel for Insurer Shri Tijare also submitted that, vehicle No.MH-29-BA-2038 was insured with opponent No.2. However there is dispute about valid driving license of the rider. Therefore there is breach of policy condition. Whereas learned counsel for applicants argued that, from the panchanama and postmortem report, it is clear that, Husen Waghu Atram, died in a vehicular accident and applicants are his legal heirs. Opponent No.1 is owner-cum-driver of the offending vehicle, involved in the accident. Moreover, as the application is for interim compensation, therefore at this stage the claim of breach of policy condition cannot be considered. She also placed her reliance on the authority in the case of **Ravi -Vs- Badri Narayan and Ors.**, reported in **I (2011) ACC 704 (SC)** and **National Insurance Company Ltd. -Vs- Smt. Raja Bala and Ors.** reported in **2008 (3) TAC 197 (Del.)** and submitted that, delay in lodging report is not vital to the case of petitioners. Therefore application be allowed.

5] Having regard to the submissions made by both learned counsels and after going through the say so also police papers and the documents filed on record, I found that, there is no dispute about involvement of the vehicle motorcycle in the present accident and also death of Husen Atram in the vehicular accident. Insurer also admitted that, insurance was valid on the day of incident.

6] Therefore, considering the documents on record and the submissions made so also authorities cited supra, as death of Husen in vehicular accident is not disputed, therefore at this stage the argument advanced that, there is breach of policy condition, cannot be considered. Therefore applicants are entitled for interim compensation as per the provisions of section 140 of the Motor Vehicles Act and the opponents are jointly and severally liable to pay the same, to applicants. Hence, I pass the following order.

**ORDER**

- 1) Application is allowed.
- 2) Opponents shall jointly and severally deposit the amount of Rs.50,000/- with Tribunal towards the claim of 'No Fault Liability', within two month from the date of this order.
- 3) If opponents failed to deposit the said amount, within stipulated period, then applicants are entitled to recover the same alongwith simple interest @ 9% per annum, from the date of order, till its realization.
- 4) Applicant No.1 is entitled to receive Rs.35,000/- for herself and applicant No.2 is entitled to receive Rs.15,000/- out of the said amount.
- 5) Opponents shall deposit separate cheques in the name of applicants with Tribunal.
- 6) Pre-award be drawn up accordingly.

Date : 08-10-2019.

(P. B. Naikwad)  
Member, M.A.C.T.,  
Kelapur, Dist. Yavatmal.