

MHND010011562021 	<u>MACP No.127/2021</u> <u>Nanda and others Vs.</u> <u>Vinayakand others</u>
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ORDER BELOW APPLICATION (EXH.05)
UNDER SECTION 140 OF M. V. ACT

1- The Petitioner no. 1 has filed this application for herself her daughter, son and mother in law i.e. petitioner Nos. 2 to 4 under section 140 of the Motor Vehicles Act for grant of interim compensation of the principle of (no fault liability). The petitioners have pleaded that, on 30-10-2020 deceased was going towards his house from the office of Samaj Kalyan on motor cycle bearing registration No. MH-26-BA-0231. When he reached near Anand Nagar Chowk, near Biyani Developers office at that time one motor cycle bearing registration No. MH-26-BR-6987 came from behind in rash, negligent manner and in high speed and dashed to the vehicle of deceased from back side. Due to it, accident occurred. In the said accident deceased sustained severe and grievous injuries to his head. After the accident deceased was immediately admitted in Government Hospital, Vishnupuri, Nanded but, during the course of treatment the deceased succumbed to injuries. Then brother of deceased reported to Shivaji Nagar police station Dist. Nanded on which Crime No.408/2020 against the driver of unknown vehicle was registered under Section 279, 304-A of IPC. During investigation police traced out offending motor cycle bearing No.MH-26-BR-6987 and charge-sheet filed against it. The

involved vehicle bearing No. MH-26-BR-6987 ensured with the respondent No. 2 ICICI Lombard General Insurance Company Ltd. under a valid policy for the period of 27-10-2019 to 26-10-2024. Hence, this application.

2- The respondent no. 1 is appeared and filed written statement at Exh.17. He denied all the contentions and submitted that, the petition is bad for non-joinder of necessary parties and admitted that, respondent NO.1 is owner and his vehicle was insured with respondent NO.2. Lastly, respondent No.1 prayed to dismiss the petition with costs. The respondent no. 2 is appeared and filed its WS at exh. 26 and resisted the application during his argument. Respondent No.2 denied that said vehicle involved in this accident and submitted that the respondent company is not liable to pay any compensation to the present petitioners. The offending vehicle committed breach of policy therefore insurance company is not liable to pay any compensation. Respondent No.2 further submitted that, the petition is bad for non-joinder of necessary parties and said vehicle was falsely implicated in the accident with a view to grab compensation. On these grounds the respondent No. 2 have submitted that present application may kindly be rejected.

3- In view of rival pleadings of the parties, following points arise for my determination, to which findings are recorded with reasons as follows:-

Sr. No.	Points	Findings
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1.	Whether the application under section 140 of Motor Vehicles Act is liable to be allowed ?	In the affirmative
2.	What order ?	As per order

REASONS

4- Shri. Swarnsingh Kamthekar the learned counsel on behalf of the petitioners has submitted that on 30-10-2020 deceased was going towards his house from the office of Samaj Kalyan on motor cycle bearing registration No. MH-26-BA-0231. When he reached near Anand Nagar Chowk, near Biyani Developers office at that time one motor cycle bearing registration No. MH-26-BR-6987 came from behind in rash, negligent manner and in high speed and dashed to the vehicle of deceased from back side. Due to it, accident occurred. After the accident deceased was immediately admitted in Government Hospital, Vishnupuri, Nanded but, during the course of treatment the deceased succumbed to injuries. Then brother of deceased reported to Shivaji Nagar police station Dist. Nanded on which Crime No.408/2020 against the driver of unknown vehicle was registered under Section 279, 304-A of IPC. During investigation police traced out offending motor cycle bearing No.MH-26-BR-6987 and charge-sheet filed against it. The involved vehicle bearing No. MH-26-BR-6987 ensured with the respondent No. 2 ICICI Lombard General Insurance Company Ltd. under a valid policy for the period of 27-10-2019 to 26-10-2024. Hence, this application. In support of oral contention the petitioners have filed documents under list

vide Exh. 04.

5- Per contra, the learned counsel for the respondent no. 2 has submitted that, there is no fault on the part of the offending vehicle and submitted that, the owner of said motor cycle committed breach of the insurance policy. The petitioners have lodged false FIR against the driver of the said offending vehicle. On these grounds the learned counsel for the respondent no. 2 has submitted that the present application of the petitioners may kindly be rejected.

6- Section 140 of Motor Vehicles Act, 1998 provides that:
Where death or permanent disablement of any person has resulted from an accident arising out of the use of the motor vehicles, then the owner of the motor vehicle shall, liable to pay the compensation, in respect of such death or disablement in accordance with the provisions of this section.

Sub Clause-2 provides that-

The amount of compensation shall be fixed sum of Rs. 50,000/- in case of death and a sum of Rs. 25000/- in case of permanent disablement.

Sub Clause-4 of section 140 provides that:

The claim of the compensation shall not be defeated by reason of any wrongful act, neglect or default of the

person in respect of whose death or permanent disablement claim has been made.

Section 142 of the Motor Vehicles Act defined 'permanent disablement' as under:-

- a) Permanent privation of the sight of either eye or the hearing of either ear or privation of any member or joint or;
- b) destruction or permanent impairing of the powers of any member joint or,
- c) Permanent disfiguration of the head or face.

7- Having heard both the sides, I have gone through the entire record, FIR shows that, on 30-10-2020 the deceased Pravin Gangadhar Dhembre who is husband of the petitioner no. 1 and father and son of the petitioner no. 2 to 4 have met an accident and due to dashed given by involved vehicle motor cycle bearing No. MH-26-BR-6987, he is dead on the spot itself. It further appears to me that, the involved vehicle was owned by the respondent no. 1 and the said vehicle was insured with the respondent no. 2 ICICI Lombard General Insurance Company Ltd. and the said insurance policy was for the period of 27-10-2019 to 26-10-2024.

8- Considering the defence of respondent no. 2 it will decide at the time of final hearing that whether driver of the alleged vehicle broke the terms and conditions of the insurance and without possessing the license. Considering the material prima-facie case, it is held that the alleged vehicle was involved in the accident.

Admittedly, deceased Pravin Gangadhar Dhembre who is husband of the petitioner no. 1, father and son of the petitioner no. 2 to 4 is dead in the said accident.

9- Considering the above factual position, it appears that the petitioners are entitled for interim compensation of Rs.50,000/-due to death of Pravin Gangadhar Dhembre on the principle of (no fault liabilities). Hence, point no. 1 is recorded in affirmative and to answer point no. 2, following order is passed -

ORDER

1-	The application under section 140 of Motor Vehicles Act (Exh. 5) is allowed.
2-	Respondents no. 1 and 2 are directed to pay jointly and severally Rs. 50,000/- (Fifty Thousand) towards interim compensation on 'no fault liability' to the petitioners with interest at the rate of 6% per annum from date of filling this petition till it's realization.
3-	Interim award under section 140 of Motor Vehicles Act be drawn.

Date: 17-12-2024

(R. V. Kokare)
Extra Jt. District Judge-1, &
Member of MACT, Nanded

CERTIFICATE

I, affirm that the contents of this PDF file/order are same word to word , as per the original Order.

Name of Stenographer : Balkrishna Kulkarni
: Stenographer (Grade-1)

Court name. :Extra Joint DJ, ASJ,Nanded.

Date: : 17-12-2024

Judgment signed by : 18-12-2024
Presiding Officer.

Order uploaded on : 18-12-2024