

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

FIRST APPEAL NO. 1261 OF 2013

- 1] Salman Usman Shaikh
- 2] Usman s/o Hussain Pandekar

VERSUS

- 1] Chaya Shashikant Badadhe
- 2] Kum.Tejashree Shashikant Badadhe
- 3] Chetan Shashikant Badadhe
- 4] Smt.Shantabai Chagdev Badadhe

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Advocate for Appellants : Shaikh Mazhar A. Jahagirdar
Advocate for Respondents : K F Shingare For R/1 & 4

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CORAM : S.V.GANGAPURWALA,J.

DATED : 7TH OCTOBER, 2015

ORDER :-

The award passed under Section 140 of the Motor Vehicles Act is assailed.

2] Mr.Jahagirdar, learned counsel for the appellants submits that the appellant is the owner and driver of the vehicle. The Court while passing order u/s 140 of the Motor Vehicles Act, has failed to consider even prima facie case. Post mortem report shows that the death was due to Cardio Respiratory Arrest, as such the death was not result of the alleged accident. At the most, considering best case for the claimants,it can be an injury claim.

3] Mr.Shingare, learned counsel for respondents supports the

order.

4] At the time of deciding application under Section 140 of the Motor Vehicles Act, prima facie case would be required to be considered. Section 140 of the Motor Vehicles Act is a succor for the claimants. Prima facie the proof of accident has been put forth before the Court. Deceased has died after the accident. Whether accident is the proximate cause of death or not would be considered only after parties adduce their evidence. Naturally, Tribunal would consider the same while deciding application under Section 166 of the Motor Vehicles Act. At this prima facie stage, the such long drawn enquiry would not be necessary.

5] In view of above, I am not inclined to entertain the present appeal. The present appeal is disposed of with the observation that the parties may put forth their case upon merits while deciding application under Section 166 of Motor Vehicles Act. The Tribunal shall pass orders with regard to the adjustment of the amount deposited vide order passed on an application under Section 140 of the Motor Vehicles Act after the judgment is delivered in an application u/s 166 of Motor Vehicles Act and in tune with the said judgment.

6] The parties are entitled to put forth the respective stand while deciding application. In light of above, First Appeal is disposed of. No costs.

[S.V.GANGAPURWALA,J.]

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