

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,**

**BENCH AT AURANGABAD**

**FIRST APPEAL NO. 504 OF 2019**

1. Rinku Jaising Jadhav,  
Age; 24 years, Occ; Household,
2. Riya Jaising Jadhav,  
Age; 7 years, Occ; Education,
3. Shourya Jaising Jadhav,  
Age; 6 years, Occ; Education,

Appellant Nos. 2 and 3 are minors  
Through their natural guardian  
mother i.e. appellant No. 1.

4. Battishibai Babu Jadhav,  
Age; 65 years, Occ; Household,

All resident of Krushnapuri Tanda,  
Tq. Chalisgaon, Dist.Jalgaon. ...**APPELLANTS**  
(Original Claimants)

**VERSUS**

1. Jagdish Jaising Jadhav,  
Age; 25 years, Occ; Driver,
2. Bhima Sunu Pawar,  
Age; 47 years, Occ; Business,  
Owner of Ape Rickshaw,

Both resident of Nagpur  
(Vardhane),  
Tq. Sakri, Dist; Dhule.

3. The Oriental Insurance Co.Ltd.  
Branch Office, Dhule,  
Through its Branch Manager. ..**RESPONDENTS**  
(Original Respondents)

.....  
Shri. A.D. Pawar, Advocate for Appellants  
Shri.Patil Yogesh M, Advocate for Respondent  
Nos. 1 & 2  
Respondent No. 3 served  
.....

**CORAM : SMT. VIBHA KANKANWADI, J.**

**Date of Judgment : 02.07.2019.**

**JUDGMENT :**

The present appeal has been filed by original claimants, challenging the order below Exh. 5, in Motor Accident Claim Petition No. 903 of 2016, passed by the learned Member, Motor Accident Claims Tribunal, Dhule (hereinafter referred to as the 'Tribunal') on 14.12.2017, whereby, the application filed by the present appellants for getting No Fault Liability compensation under Section 140 of the Motor Vehicles Act, 1988 came to be rejected.

2. The present appellants/original claimants have come with the case that they are the legal representatives of one Jaising Babu Jadhav. Said

Jaisingh was travelling as a pillion rider on motorcycle bearing No. MH-18-AV-2156 driven by one Shantaram Popat Rathod. They were proceeding towards village Petle, Tq. Chalisgon, Dist. Dhule. On 18.9.2016, around 9.00 a.m., when the aforesaid motorcycle reached at Shivajinagar Phata on Sakri Nandurbar Road, respondent No. 1, who was driving Ape Rickshaw No. MH-18-AJ-7064 came from behind the motorcycle very rashly and negligently and gave forceful dash to the motorcycle. As a result of which, both occupants of the motorcycle fell down and sustained injuries. They were taken to a hospital. However, Jaisingh was declared dead. It is stated that the said accident took place due to negligence on the part of respondent No.1. Respondent No. 2 is the owner of Ape Rickshaw and the said Ape Rickshaw was insured with respondent No. 3 on the date of the accident. Applicants are claiming compensation of Rs. 40,00,000/- from all the respondents jointly and severally. They had filed application Exh. 5 under Section 140 of Motor Vehicles Act.

3. Pursuant to the summons all the

respondents appeared and filed their Written Statement. Respondent Nos. 1 and 2 have filed their joint Written Statement after the decision of the application Exh. 5. The fact of accident has been admitted by them, It is also admitted that respondent No. 1 was driving the said Ape Rickshaw on 18.9.2016 at the relevant time. Allegations in respect of rashness and negligence against respondent No. 1 have been denied and it is stated that he was carefully driving his vehicle, however the motorcycle driver was rash and negligent and was driving his vehicle from the middle of the road. It was stated that they were not wearing helmet. It has been admitted that respondent No. 1 has been prosecuted by police for the said accident. It is stated that since respondent No. 1 was not responsible for the accident, they are not liable to pay compensation. They have also contended that respondent No. 1 was having valid and effective driving license to drive the vehicle on the date of accident, so also the vehicle Ape Rickshaw was insured with respondent No. 3.

4. Respondent No. 3 appears to have taken statutory defence.

5. Taking into consideration the submissions made by both the sides and the documents, which have been produced on record by applicants, the learned Member of the Motor Accident Claims Tribunal, Dhule, has rejected said application (Exh.5) on two grounds, one is belated F.I.R. and the second is the involvement of the Ape Rickshaw is suspicious. The said rejection is challenged in this appeal.

6. Heard Shri. A.D. Pawar, learned counsel for Appellants and Shri. Patil Yogesh M, learned counsel for Respondent Nos. 1 & 2.

7. Though, respondent No. 3 was served, failed to appear in the matter. Taking into consideration the facts of the appeal and involvement of the short point, so also, rejection of the application for compensation on account of

'No Fault Liability', the appeal has been heard finally, at the stage of admission itself.

8. Taking into consideration the submissions, following points arise for determination for the reasons as follows :

| Sr.No | POINTS                                                                                                                                                                         | FINDINGS            |
|-------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------|
| 1)    | Whether the applicants have prima-facie show that deceased Jaising died in vehicular accident on 18.9.2016 at Shivaji Phata near Sakri Nandurbar Road, Tq. Sakri Dist. Dhule ? | In the affirmative. |
| 2)    | Whether the applicants are entitled to get compensation under Section 140 of the Motor Vehicles Act ?                                                                          | In the affirmative. |

### **REASONS**

#### **As to point Nos. 1 & 2 :-**

9. It has been submitted on behalf of the appellants that on the date of accident i.e. on 18.9.2016, the Ward Boy with the Rural Hospital, Sakri gave information about the accident to

police, in which it was specifically stated that Jaisingh was declared dead after his admission and it was revealed to Ward Boy that the said accident had taken place near Shivaji Nagar, on Raipur to Nandurbar road. Thereafter on 3.10.2016 a detailed FIR was lodged by the driver of the motorcycle giving number of the Ape Rickshaw and making allegations against the driver. No doubt, there is delay in lodging the FIR, however, the circumstances ought to have been considered for the delay. The informant himself had sustained injuries in the accident and the person who had informed accident could not get the details. Said fact ought not to have been considered negatively by the learned Tribunal. So also only on the point of delay, the involvement of the vehicle ought not to have been viewed with suspicion.

10. Per contra, learned counsel appearing for respondent Nos. 1 and 2 supported the reasons given by the learned Tribunal.

11. The first and foremost facts required to

be considered are that the case has to be considered 'prima-facie' and the point of negligence cannot be considered at the stage application under Section 140 of the Motor Vehicles Act. It appears that when the application was heard by the learned Member of the Motor Accident Claims Tribunal, Dhule, the Advocate representing respondent Nos. 1 & 2 was absent. Only the Advocates for the petitioner as well as Opponent No. 3 were heard. However, appellant had filed necessary police papers on record. It appears that the learned Member has not taken into consideration those papers in proper perspective. Merely, because there is delay of 15 days in lodging the FIR, an inference cannot be drawn that whatever the story has been given by the appellants is false or concocted. It is expected that any such conclusion or finding, which requires thorough assessment of evidence should be avoided. Only involvement prima-facie, whether the vehicle was insured or not, and whether in that accident any death is occurred, were the only points, those were required to be considered.

Here from the police papers, it was very much clear that Jaising expired in the accident. However, the fact which was brought on record was that at that stage, respondent No. 1 was prosecuted by police.

12. The insurance certificate/policy schedule was on record, which showed that on the date of the accident, the Ape Rickshaw was insured with Opponent/respondent No. 3. These points were sufficient to award the compensation under 'No Fault Liability'. In fact, in para No. 9, of the impugned order, reasons have not been assigned by the learned Tribunal as to which were the circumstances showing room for suspicion regarding alleged non involvement of the Ape Rickshaw. A very cryptic order has been passed, which is not expected.

13. Now, after filing of this appeal the record and proceedings is called and it shows that the matter was proceeded ex-parte against Opponent Nos. 1 & 2 when the impugned order was passed. By

getting that order set aside, Opponent Nos. 1 and 2 have appeared and they have produced the Written Statement on record, which has been accepted by the Tribunal. Under such circumstances, there is no hurdle in considering the say of respondent Nos. 1 and 2 having accepted the fact of accident. That means the involvement of the Ape Rickshaw owned by respondent No. 2 and it was insured with respondent No. 3 in the said accident has been accepted by them. Deceased Jaising was pillion rider. Under such circumstances, he could not have been in any way contributed to the accident. In other words, there was no fault on the part of Jaising in the said accident, therefore, the said application deserves to be allowed by setting aside the order passed by the learned Tribunal, therefore, points are answered accordingly. Hence the following order :

**ORDER.**

- 1) Appeal is hereby allowed.
- 2) The order below Exh. 5 in MACP No. 903 of 2016 passed by the learned Member of Motor Accident Claims Tribunal, Dhule, dated 14.12.2017 is

hereby set aside.

- 3) Application Exh. 5 stands allowed.
- 4) Respondent Nos. 1 to 3 are hereby directed to pay jointly and severally amount of Rs. 50,000/- (Rs.Fifty Thousand Only) towards No Fault Liability under Section 140 of the Motor vehicles Act, 1988 to the applicants, within the period of two months from today. In case, of failure on the part of the respondents to pay that amount within the aforesaid stipulated period, the amount shall carry interest @ 7.5% p.a. from the date of application till actual realization of entire amount.
- 5) After amount is deposited, the amount of Rs. 7,000/- (Rs. Seven Thousand Only) each, be kept in the name of applicant/appellant Nos. 2 and 3, in fixed deposit in any Nationalized Bank, till the attainment of their respective majority by showing appellant/ applicant No. 1 as their guardian by her choice.
- 6) After the attainment of majority by appellant Nos. 2 and 3, the amount under fixed deposit together with interest be paid to them, without further reference to any Court.
- 7) From rest of the amount, an amount of Rs. 10,000/- (Rs. Ten Thousand Only) be given to appellant No. 4.
- 8) Rest of the entire amount be given to applicant No. 1.

- 9) Award be drawn up accordingly.
- 10) The record and proceeding be sent back to the concerned court.

**( SMT. VIBHA KANKANWADI )**  
**JUDGE**

mahajansb/