

Motor Vehicle Accident Claims Tribunal, Jhansi

Presiding: Chandrodaya Kumar, H.J.S.

Date of Institution: Date of Judgement:

04/03/17

07/12/20

Age:

3 Y, 9 M, 3 D

M.A.C.P. Number 108⁶ of 2014

Amit Kumar Kerketta S/o Sylvester Kelketta, Resident of 245, Sara People Main Road Ranjhi, Jabalpur, Madhya Pradesh; Present Resident of Siddheshwar Colony, Near ITI College, Police Station Cipri Bazar Jhansi, District Jhansi (Age 30 years)

----- Petitioner

Versus

1. Ajaykant S/o Radhelal, Resident Village Dikouli, Police Station Erach, District Jhansi

..... Owner Vehicle No. U.P. 93 AJ 7924

2. The National Insurance Company Ltd. through Branch Manager Elite Chouraha Civil Lines, Jhansi

..... Insurance Company Motor Cycle No. MP. 20 MD 5400

----- Opponents

Advocate for the petitioner- Mr. Sudhir Kumar Srivastava

Advocate for OP No. 1- Mr. Kartar Singh Yadav (ex parte)

Advocate for OP No. 2- Shri B.K. Mishra

Judgment

This claim petition has been instituted by the petitioner against the opposite parties for compensation of ₹ 11,25,000 due to injuries sustained in the alleged motor vehicle accident under section 140 and 166 of the Motor Vehicle Act.

2. In short, the case is that on ~~07.04~~^{04.08}.2015, when the petitioner was coming back from his bank Punjab National Bank Branch Bamour Tehsil Moth, Jhansi after finishing his duty by his motor cycle No. MP 20 MD 5400 to his side at a slow speed and as soon as he reached near Siddhu Hotel Erach Road, Poonchh, a motorcycle No. U.P. 93 AJ 7924 coming from the front, whose driver was driving the motor cycle very rash and negligently and waving drunkenly and came from the wrong side, hit petitioner's motorcycle with a heavy bump, causing grievous injuries to the petitioner and the face of the petitioner was deformed due to the injuries and got a fracture under the eye on the left. Since driver of motorcycle No. U.P. 93 AJ 7924 was intoxicated and did not wear a helmet, so he died and the petitioner fainted on the spot. The first information report of the said accident given by the son of the deceased driver of the motorcycle coming from the front was registered, but the report of petitioner's brother was not recorded due to political pressure of deceased being Yadav caste.

3. Vakalatnama on behalf of OP No. 1 Ajaykant, registered owner of the motor cycle No. U.P. 93 AJ 7924 has been filed on the record but no Written Statement has been filed, hence ending the opportunity to file a W.S., the order of ex parte proceeding against him was passed by the Tribunal on date 15.11.2017 and the driver of the said vehicle was also ordered to be made a party but petitioner did not make.

4. OP No. 2 National Insurance Company Limited in response to the claim has filed W.S. in which he has denied the pleadings of the petition.

5. On the basis of the pleadings of the parties, following points have been set out on 09.03.2016: -

1. Whether on date ~~07.04~~^{04.08}.2015 at about 7⁴.30 PM when petitioner Amit Kumar Kerketta was returning from his

motorcycle to his home, then the driver of motor cycle No. U.P. 93AJ 7924, while driving the said motorcycle rashly and negligently, hit the motor cycle of the petitioner causing grievous injuries to the petitioner?

2. Whether the driver motorcycle in question No. U.P. 93AJ 7924 had a valid and effective driving license to drive aape at the date and time of the accident?

3. Whether the motorcycle number in question No. U.P. 93 AJ 7924 was insured with OP No. 2 National Insurance Company Ltd. on the date and time of the accident?

4. Whether the accident occurred due to contributory negligence of both vehicles?

5. Whether the petitioner is entitled to get any compensation, if so how much and from which opposite party?

6. The following documentary and oral evidences have been presented from the parties:

From the petitioner side

Documentary evidence-

1. From list of evidence 4C1 – Paper No. 6C1/1 to 13C1, in which photocopies of the FIR, the application submitted in the Court of Judicial Magistrate, Jhansi, under the Section 156(3) Cr.P.C.; photocopies of application given to Senior Superintendent of Police, Jhansi, it's postal receipts and medical papers etc. are included.

2. From list of evidence 22C1 – Paper No. 23C1/1 to 23C1/37 which include original receipts, bills, medical papers and certified true copies of FIR, final report, site map and photocopies of technical test report, registration certificate etc..

3. From list of evidence 28C1 - 29C1/1 to 29C1/30 petitioner Amit Karketta's original hospital admission record of Jamdar Hospital Pvt. Ltd. Jabalpur, M.P..

Oral evidence-

PW.1 Amit Kerketta Petitioner himself, PW.2 Devanand MRD. staff Jamdar Hospital, Jabalpur Original Record Presenter

4. Case record of MACP No. 369 of 2015 Vidya Devi v. Anil Kumar Kerketta has been summoned by the tribunal.

7. I have heard the arguments of the learned counsels of the petitioner and insurance company in virtual court and perused the record carefully. No one came from the OP No.1.

Findings

8. Disposal of Issue No. 1 and 4:

These issues are related to negligence and contributory negligence of two motorcyclists collided with each other. From the perusal of record of MACP No. 369 of 2015 Vidya Devi v. Anil Kumar Kerketta it transpires that these issues have been decided by this Tribunal in MACP No. 369 of 2015 by Judgment dated 18.09.2019 in which it is found that this accident happened due to the sole negligence of driver of motorcycle No. MP 20 MD 5400 Amit Kumar Kerketta and driver of motorcycle No. U.P. 93 AJ 7924 did no fault. In that MACP Amit Kumar Kerketta was opposite party as driver of motor cycle No. MP 20 MD 5400.

9. In the case of Dilipsinh Bhaisaheb Jhala vs. Juma Ali Sumra and Ors. (12.06.2015 - GUJHC) : MANU/GJ/1285/2015 it is held that-

“In MANU/SC/0021/1979 : AIR 1979 SC 551 - Ishwardas v. The State of Madhya Pradesh & Ors. It has been emphasized that all that is necessary is that the issue should be between the same parties or between the parties under whom they or any of them claimed. Further, once the questions at the issue are the same,

and the same material has lead to the decision in earlier proceeding, would certainly be covered as a res judicata or had on analogous principles. Therefore, even if strictly speaking, it may not be a res judicata nevertheless it would be a decision on the same set of facts with regard to the same accident or the incident and therefore the Tribunal was justified in accepting the findings given earlier by the Tribunal.

14. A useful reference can be also be made to the judgment of the Hon'ble Apex Court reported in MANU/SC/2484/2008 : 2008 (13) SCC 198 - Machindranath Kernath Kasar v. D.S. Mylarappa and Ors. There also referring to the background of the facts, though it is not focused on the res judicata but it has considered the similar circumstances while deciding about the aspect of opportunity of hearing and therefore it cannot be said that the Tribunal has committed any error while finding the conclusion with regard to the accident on the aspect of negligence in the present case."

10. In the case of Moinuddin Khan vs. Sundarui and Ors. (01.05.2019 - ALLHC) : MANU/UP/4248/2019 it is held that-

"Thus, in respect of the same accident, where in a claim petition bearing No. 90/2000, the finding regarding the contributory negligence having not been established and the said finding has not been assailed by the appellant, therefore, the aforesaid finding operates as res judicata against the appellant as it shall not be open for him to assail the said finding in the present appeals on the said ground."

Considering all the facts of both petitions, there is no doubt that this petition is barred by the principles of res judicata/estoppel. Accordingly issue no. 1 and 2 are being decided.

11. Disposal of Issue No. 2:

There is nothing on record to establish that who was driver of motorcycle No. U.P. 93AJ 7924, hence this issue is decided negative.

12. Disposal of Issue No. 3:

Admittedly the National Insurance Company Ltd. is insurer of the motor cycle no. MP 20 MD 5400 which belongs to the petitioner. There is nothing on record to show that the National Insurance Company Ltd. is insurer of the motor cycle no. U.P. 93AJ 7924, hence this issue is decided negative.

13. Disposal of Issue No. 4:

Since all the issues have been decided in negative hence petitioner is not entitled to get any compensation. The petition is liable to be rejected.

ORDER

The Claim petition is rejected.

Date:07.12.2020

(Chandroday kumar)
Presiding Officer

Motor Accident Claim Tribunal, Jhansi

The Jugement signed, dated and pronounced in open court today.

Date:07.12.2020

(Chandroday kumar)
Presiding Officer

Motor Accident Claim Tribunal, Jhansi

*MACP No. and date & time of accident
corrected vide order dated
28.12.2020.*

PO, MACT JHANSI