

Motor Accident Claim Tribunal, Jhansi

MACP No. 111 of 2017

Date of Institution:	Date of Judgement:	Age:
10/03/17	07/09/20	3 Y, 5 M, 28 D
MM/DD/YY	MM/DD/YY	

Present: Chandroday Kumar, H.J.S.

Rajveer alias Raj Sen age 14 years, minor, guardian / father
Raju Sen son of Late Sri Tulsidas resident of Simraha Police
Station Sadar Bazar District Jhansi

----- Petitioner

Vs.

1. Jagmohan Singh son of Sri Ramswaroop Yadav resident of
Shivaji Nagar Jhansi

..... Driver & Owner Motorcycle No. UP 93Q 7253

2. National Insurance Co. Ltd., 98 Civil Line Jhansi

..... Insurer Motorcycle No. UP 93Q 7253

----- Opponents

Counsel of the petitioner - Sri Pramod Shivhare Advocate

Counsel of the OP No. 1 - Sri Chandrabhan Adim Advocate

Counsel of the OP No. 2 - Sri V.K. Mishra Advocate

JUDGMENT

The petition has been instituted by the petitioner against the opposite parties for the compensation of ₹ 15,00,000 with 12% interest due to the injuries caused to the petitioner Rajveer aka Raj Sen in the alleged motor vehicle accident under section 166 and 140 of the Motor Vehicle Accident Act.

2. In brief, the fact of the petition is that on 13.03.2016 at 13:00 the petitioner was going to his residence Simaraha as a pillion rider on motorcycle number UP 93AB 8244 from Trinity Company Transport Jhansi. The motorcycle was being driven by Sushil Kumar. As soon as the motorcycle reached Talpura intersection, the driver of motorcycle number UP 93Q 7253 coming from the front dashed the front, driving rashly and negligently, causing the motorcycle to fall. The petitioner suffered severe head and chest injuries. The injured was admitted to the medical college Jhansi by the police. Sushil Kumar informed the incident to petitioners father, then the petitioner's father came to the Medical College Jhansi where after treatment petitioner was referred to Gwalior. Petitioner was admitted in Ayushman Hospital Neuro Trauma Center Gwalior from 14.11.16 to 04.12.16 and treatment is going on even today. Due to non-writing of the FIR by the police, a complaint case was filed before the Chief Judicial Magistrate Jhansi.

3. Opposite Party No. 1 the driver and registered owner of the Motorcycle No. UP 93Q 7253 denied the pleading of the petition of rash and negligent driving but accepted the accident and have pleaded that the accident took place due to the fault of the driver of motorcycle number UP 93AB 8244.

4. Opposite Party No. 2 National Insurance Co. Ltd., the insurer of the Motorcycle No. UP 93Q 7253, has filed its reply of the petition in which it has denied the pleadings of the petition, mainly stating that the alleged accident has not happened and

the insurance company has the right to take all the defenses available u/s 147 and 149 of the M V Act. The insurance company does not have any responsibility. The responsibility of the insurance company is as per the terms of the insurance policy.

5. After exchange of the pleadings of the parties, the following issues have been framed:

1. Whether on date 13.11.2016 at about 11 PM when the petitioner was going to his residence Simaraha as a pillion rider on motorcycle number UP 93AB 8244 from Trinity Company Transport Jhansi and the motorcycle was being driven by Sushil Kumar, as soon as the motorcycle reached Talpura intersection, the driver of motorcycle number UP 93Q 7253 driving rashly and negligently and coming from the front dashed the front causing the motorcycle to fall. The petitioner suffered severe head and chest injuries?
2. Whether the driver of the motorcycle number UP 93Q 7253 in question had a valid and effective driving license on the date and time of the accident?
3. Whether the motorcycle number UP 93Q 7253 in question was insured with OP No. 3 National Insurance Co. Ltd. at the date and time of the accident?
4. Whether this accident took place due to contributory negligence of the driver of both motorcycle?
5. Whether the petitioner is entitled to receive compensation, if so, then how much and from which opponent?

6. In order to prove facts of the petition, the **petitioner** adduced following oral as well as documentary evidence-

ORAL

PW1 Rajveer aka Raj Sen, petitioner,

PW2 Sushil Kumar, driver of the Mot.cycle No. UP 93AB 8244,

PW3 Raju Sen, father of the petitioner,

DOCUMENTARY

Photocopies of the following documents through list 7C1-

Application given to Senior Superintendent of Police, Jhasi, Complaint Copy of the case no. 453/2014, Slip of Maharani Laxmibai Medical College Jhansi, Discharge slip of the Ayushman Hospital, Gwalior, Aadhaar Card – Paper Nos. 8C1 to 11C1.

Originals of the following documents through list 26C1-

Discharge certificate, receipts and cash memos, x-ray plates - Paper Numbers 27C1 to 70C1

Certified copy of following documents through list 77C1-

Complaint application of case no. 453/2017 u/s 279,337,338,427 IPC - Paper Number 78C1

Following photocopies have been produced by the **OP No. 1** through list 16C1-

RC, Insurance Policy and DL of Motorcycle No. UP 93Q 7253 - Paper Number 17C1/1 to 17C1/3

7. Due to the prevalence of COVID-19, I have heard the parties in the virtual court and carefully scrutinized the case records.

8. Disposal of Issue No. 1 and 4

These issues relates to the negligence and contributory negligence of the drivers of two motorcycles hence for sake of convenience both are being decided together. In this case, no first information report has been registered nor any investigation has been conducted by the police. There is no charge sheet against OP No. 1. PW 3 has stated that he had gone to the police station to write the report but the report was not written. This contention is not tenable as there is nothing on the record to show that why the police refused to write report while it is said that police was present on the spot. The accused has not even been summoned in the complaint case filed by the father of the petitioner. A unilateral complaint before CJM does not prove anything. Now the question arises how the number of offending vehicle came in the knowledge of witness. PW1 and PW3 have said that they came to know from PW 2. PW2 has stated on the one hand that the offending vehicle had run away after hitting the motorcycle, while on the other hand he said that both the vehicle had fallen on the road after the accident. In both the situations, there was no opportunity to see the number of the offending vehicle in the night at 11 PM. PW1 stated that he fainted after the accident and came to consciousness two days later. PW2 said that he and the police had lifted Rajveer and he and police carried injured to Medical college by taxi. If the police were present there, why could not the rider of the offending vehicle be caught and if he had escaped, how did PW2 read the number of the motorcycle while he and the pillion had fallen. No any police witness alleged to be present there has been examined. On the one hand PW1 states that PW2 is the son of his father's sister while on the other hand PW2 states that PW1 is his friend. There is a difference of 22 years in the age of both. PW2 has stated that Rajveer was an accountant in the Trimurti Transport Company. How can a 13 year old boy be an accountant? PW2 has said that he admitted Rajveer to the medical college and wrote Rajveer's father's name in the file. Why he did so while he admitted injured is unexplained. The presence of PW2 is highly improbable. Admittedly motorcycle on which injured is said to be pillion belongs to father of injured. How did this motorcycle go into the hands of PW2 has not been satisfactorily explained. Most importantly, PW1 says that PW2 did not sustain injury in this accident while PW2 says that he too got injured in this accident. Every thing seems to be unnatural. Under these circumstances, I find much force in the suggestion that the PW1 fell down from the motorcycle and got injured and a false story has been cooked up in order to get compensation. The pleadings of OP No. 1 favorable to the petition does not have any bearing without examination of OP No. 1 as only then OP No. 2 would have had an opportunity to

show any collusion between the petitioner and OP No. 1. After considering all the evidence produced before the Tribunal, I find that, though it may be a case of road side accident but the petitioner failed to prove that accident occurred due to the rash and negligent driving of the OP No. 1 and that the accident took place due to collision of motorcycle no. UP 93Q 7253. The issue no. 1 and 4 is decided accordingly.

9. DISPOSAL OF ISSUE NO. 2

This issue pertains to the driving license of the driver of the motorcycle no. UP 93Q 7253. Petitioner has posed OP No. 1 as the driver of the motorcycle, but during disposal of issue no. 1 and 4, involvement of OP No. 1 and motorcycle UP 93Q 7253 is found not correct. However, DL produced by the OP No. 1 (paper no. 17C1/3) is not rebutted by the insurance company hence it is found that D L produced was valid and effective (From 08.08.2020 to 07.08.2020) at the time of alleged accident. This issue is decided accordingly.

10. DISPOSAL OF ISSUE NO. 3

This issue has been framed in order to ascertain the insurance of the motorcycle no. UP 93Q 7253. OP number 1 has filed a photocopy of the Insurance Policy (National Insurance Co. Ltd.) of the motorcycle no. UP 93Q 7253 which is Paper Number 17C1/2. This policy is effective from 10.03.2016 to the midnight of 10.03.2017. Nothing in rebuttal from OP No. 2 is placed before the Tribunal, hence it is proved that insurance of the motorcycle no. UP 93Q 7253 was valid and effective and the motorcycle was insured from OP No. 2 on the date of the accident. The issue No. 3 is being decided accordingly.

11. DISPOSAL OF ISSUE NO. 5

This issue relates to the amount of compensation and liability of the parties to pay. Since issues No. 1 is decided against the petitioner hence petition deserves to be rejected.

ORDER

The Claim Petition is rejected.

07.09.2020

(Chandroday Kumar)
Presiding Officer
Motor Accident Claim Tribunal
Jhansi

This judgment is signed, dated and pronounced in open Virtual Court today.

Records be consigned.

07.09.2020

(Chandroday Kumar)
Presiding Officer
Motor Accident Claim Tribunal
Jhansi