

## Motor Accident Claim Tribunal Jhansi

Present: Chandroday Kumar HJS <b>MACT No. 132 of 2016<sup>8</sup></b> 1. Hariram Raikwar, 52, Late Sri Dhaniram Raikwar, 2. Smt. Manju Raikwar, 46, W/o Sri. Hariram Raikwar, 3. Monika Raikwar, 23, D/o Sri. Hariram Raikwar, 4. Km. Shiwani Raikwar, 20, D/o Sri. Hariram Raikwar, 5. Km. Swati Raikwar, 16, D/o Sri. Hariram Raikwar, All Present R/o — Baudhnagar Kalsi ka Bagicha, Cipari Bazar, P/s — Cipari Bazar Tahsil and District — Jhansi	Date of Institution: 10/04/18      Date of Judgement: 17/07/20      Age: 2 Y, 3 M, 7 D -----Pititioners Vs. 1. Kuldeep Singh S/o Badam Singh R/o— 163 Paratari Chirgaon Teh. and District— Jhansi .....Owner Bolero No. UP 53 AR 5389 2. Arjun Singh S/o Tek Bahadur R/o — New Raiganj Colony Type — 1-C-16 Cipari Bazar Teh. and District— Jhansi .....Driver Bolero No. UP 53 AR 5389 -----Opposite Parties 3. National Insurance Co. Ltd., Civil Line Teh. and District— Jhansi .....Insurer Bolero No. UP 53 AR 5389 Advocate for the Petitioners Sri. Omsharan Singh Kushwaha Advocate for the OP 1 & 2 Sri. C. B. Jaiswal and Sri Rajtilak Saxena Advocate for the OP 3 Mr. V. K. Mishra
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**JUDGEMENT**

This Claim Petition has been instituted by the petitioners under section 166 and 140 of the Motor Vehicles Act 1988 for the compensation of Rs. 1,22,20,500 on the death of their son and brother Rahul Raikwar in a motor vehicle accident.

2. In brief, the facts of the case are that on Jan 19, 2016, the son of the petitioner number 1 and 2 and brother of the petitioner number 3 and 5, Rahul Raikwar was going by the cycle to study in the ITI Jhansi from his home in Adarsh Nagar Jhansi. As soon as Rahul Kumar reached in front of New Raiganj Government Colony Quarter Block C-19, the driver of the Bolero vehicle number UP 53 AR 5389 coming from the back, driving rashly and negligently hit him rear vigorously and trampling and crushing him, broke the boundary wall of the government colony and entered in it. After the accident, Rahul Raikwar was rushed to the Medical College Jhansi where he was declared dead. The petitioner No. 1 was informed about the incident on the mobile number 9452576029 when he was on his duty. Prabhu Singh Parihar, Omkar, Ravindra and many passers-by witnessed the accident. The post-mortem was conducted in the post-mortem house of the Maharani Laxmi Bai Medical College Jhansi same day. The F.I.R. was lodged by the deceased's father petitioner number 1 Hari Ram Raikwar in police station Sipri Bazar District, Jhansi, in respect of which a criminal case was registered under sections 279, 304A IPC at Police Station Sipri Bazar Jhansi. The deceased was a graduate and had obtained a Computer Diploma from Universal Computer Institute Jhansi and also a Computer Certificate from National Institute of Electronics and Information Technology and was an institutional student of ITI Electronics Trade. He was very promising in his studies and was preparing for engineering. Rahul used to teach tuition to high school and intermediate students and was earning Rs. 20,000 per month. From the income earned, he used to arrange for the maintenance of the petitioners and while discharging his obligation towards the petitioner number 2 to 5, spent a sum of money on their studies. The deceased was the only son of the petitioner number 1 and 2.

3. Opposite Party No. 1, the owner of the offending vehicle, has filed reply of the petition in which he has said that the deceased Rahul Raikwar was not well aware of cycling. He fell down after huddling at Horn's sound. There is no fault of driver Arjun Singh in this case. He has further pleaded that vehicle was insured from OP No. 3 National

Insurance Co. Ltd. with the policy number 450505/31/17/6100006229 and the vehicle was being driven by Arjun singh, OP No. 2, who have valid and effective driving licence number 9312008580. Rest pleadings including pleading of rash and negligent driving of the petition have been denied.

4. Opposite Party No. 2, the driver of the offending vehicle, has filed reply of the petition in which he has denied the pleadings of the petition in general. He has stated in his additional statement that this accident took place due to haggling of cyclist in which he has no fault. He further states that he has a valid and effective driving license number UP 9312008580 which is effective from 30.06.2012 to 29.06.2032. He has further stated that the vehicle was insured from OP No. 2 National Insurance Co. Ltd. of which policy number was 450505/31/17/6100006229 and validity was from 13.06.2017 to 12.06.2018.

5. OP No. 3 has submitted the reply to the claim petition in which he has denied the pleadings of the petition and have taken various defences including probable violation of terms and conditions of the policy. OP No. 3 further pleaded for contributory negligence.

6. On the basis of the pleadings, following issues were framed–

1. *Whether on the date 19.01.2018, when deceased Rahul Raikwar was cycling from his home Adarsh Nagar to study at ITI and as soon as Rahul reached in front of New Raiganj Government Colony Quarter Block C–19, the driver of the Bolero vehicle number UP 53 AR 5389 hit him vigorously from behind driving the vehicle rashly and negligently caused greivous injuries and death of Rahul Raikwar?*
2. *Whether the driver of vehicle Bolero No. UP 53 A.R.–5389 had a valid and effective **driving license** at the date and time of the accident?*
3. *Whether vehicle Bolero no. UP 53 A.R.–5389 was **insured** from OP number 3 National Insurance Co. Ltd. at the date and time of accident?*
4. *Whether the petitioners are entitled to receive **compensation**, if so, how much and from which opposite party?*

7. Petitioner adduced following oral as well as documentary evidence in support of the petition–

#### ORAL EVIDENCE

- PW1 Hariram Raikwar, father of the deceased Rahul Raikwar,
- PW2 Ravindra, an eye–witness,

#### DOCUMENTARY EVIDENCE

- Certified copies of the following documents–
- FIR – Paper Numbers 39C1/2 to 39C1/3
- Charge Sheet – Paper Numbers 40C1/2 to 40C1/2
- Site Map – Paper Number 41C1/2
- Vehicle Accident Inspection Report – Paper Number 42C1/2
- Post–Mortem Report – Paper Numbers 43C1/2 to 43C1/8
- Vehicle Release Application & Order– Paper Nos. 44C1/2 and 45C1/2
- Bail Application, order & P/s report– Paper Nos. 46C1/2, 47C1/2 & 48C1/2
- Photocopies of Eduation Papers of Rahul Raikwar up to BA, NIELIT, ADIT and ITI– Paper Nos. 51C1 to 54C1
- Photocopy of Ration Card– 55C1

OP Number 1 adduced following oral as well as documentary evidence–

#### ORAL EVIDENCE

- DW1 Kuldeep Singh– OP No.1
- DW4 Pradeep Kumar– Accountant Ex. En. Jhansi

#### DOCUMENTARY EVIDENCE

- Notary Certified copy of RC (UP 53 AR 5389) Paper No. 35C1
- Notary Certified copy of Insurance Policy (UP 53 AR 5389) Paper No. 36C1

OP Number 2 adduced following documentary evidence–

- Notary Certified copy of RC (UP 53 AR 5389) Paper No. 24C1
- Notary Certified copy of Insurance Policy (UP 53 AR 5389) Paper No. 25C1



Vehicle Accident Inspection Report – Paper Number 42C1/2 also suggests that left headlight side of Bolero have collided with cycle. Postmortem report confirms death due to the multiple antimortem injuries on the body. FIR has been lodged by the father of the deceased after 4 days delay but this delay is not material. In the case of [Ravi vs. Badrinarayan & Ors. \(18.02.2011 – SC\): MANU / SC / 0133/2011](#) Honourable Apex Court has held that *in a claim for compensation of Motor accident lodging of F.I.R. certainly proves factum of accident so that the victim is able to lodge a case for compensation but delay in doing so cannot be the main ground for rejecting the claim—Cumulative effect of events are to be judged.* [Para--20 and 21]

In the case of [Archit Saini and Ors. vs. The Oriental Insurance Company Ltd. and Ors. \(09.02.2018 – SC\)MANU/SC/0105/2018](#) Honourable Apex Court has held that *it is well settled that the nature of proof required in cases concerning accident claims is qualitatively different from the one in criminal cases, which must be beyond any reasonable doubts.*

Police has charge-sheeted OP No. 2, Bolero driver, under sections 279 and 304-A of the IPC after investigation. It is evident from paper no. 46C1/2, 47C1/2 & 48C1/2 that offending vehicle Bolero has been released and its driver has been bailed out by the order of the ACJM Jhansi. After considering all the evidences produced and relevant case laws, I find that Petitioner has been able to prove the issue no. 1. Thus the issue no. 1 is decided in affirmative.

#### **12. DISPOSAL OF ISSUE NO. 2**

This issue pertains to the driving licence of the driver of the Bolero No. UP 53 AR 5389. Police have charge-sheeted OP No. 2 Arjun Singh as driver of the Bolero No. UP 53 AR 5389. Owner and driver both have accepted this fact. Nothing in rebuttal of this fact is produced by the OP No. 3. Photocopy of DL of OP No. 2 Arjun Singh 26C1 to 27C1 has been produced by the OP No. 2. According to this DL (No: 93 12008580 issued by the RTO Jhansi), Arjun Singh is authorised to drive non transport vehicles from 30.06.2012 to 29.06.2032. Nothing has been produced in rebuttal of this DL by OP No. 3. In the case of [S. Iyyapan vs. United India Insurance Company Ltd. and Ors. \(01.07.2013 – SC\) : MANU/SC/0632/2013](#) Hon'ble Apex Court has held that *insurance company cannot disown its liability on ground that driver of vehicle although duly licensed to drive light motor vehicle but there was no endorsement in licence to drive light motor vehicle used as commercial vehicle.* Hence, it is proved that at the time of accident the driver of the the Bolero No. UP 53 AR 5389 Arjun Singh possessed a valid and effective driving license. This issue is decided accordingly.

#### **13. DISPOSAL OF ISSUE NO. 3**

This issue is framed to ascertain the insurance of Bolero No. UP 53 AR 5389. OP number 1 and 2 have filed notary certified copy of the Insurance Policy (National Insurance Co. Ltd.) of UP 53 AR 5389 which are paper numbers 36C1 and 25C1. This policy is effective from 13/06/2017 to the midnight of 12/06/2018. Nothing in rebuttal from OP No. 3 is placed before the record, hence, it is proved that Bolero No. UP 53 AR 5389 was insured from OP No. 3 validly and was effective on the date of the accident. The issue No. 3 is being decided accordingly.

#### **14. DISPOSAL OF ISSUE NO. 4**

This issue relates to the amount of compensation and liability of the parties to pay. Since, it has been established during disposal of issue No. 1 that the accident in question took place due to the negligent driving of the driver of the Bolero No. UP 53 AR 5389, hence, the driver OP No. 2 and the owner OP No. 1 are liable jointly and severally.

**15.** The main point of contention between the Bolero driver, owner and the insurance company is that the Bolero vehicle was being used in the commercial while the insurance policy was not for commercial use and the Bolero was being used in breach of the policy. It has been argued on behalf of the Bolero vehicle's driver and owner that the Bolero was not being used as a commercial on the day the accident occurred. Commercial contract had expired 1 day before the accident. In this regard OP NO. 3 produced his investigation

report and examined investigator Brajmohan Udainiya DW2 who has stated that vehicle UP 53 AR 5389 was rented to Laghu Sichae Vibhag on Rs. 17,900 per month. He has stipulated the papers given by the Laghu Sichae Vibhag with his investigation report. I perused these papers. These papers includes reply of the Assistant Engineer, Laghu Sichae Vibhag, under RTI Act and payment of the bill for the month Jan 2018 recieved by the owner of the vehicle. Reply of the RTI states that the vehicle was engaged by the Laghu Sichae Vibhag from 13.09.2016 on the rent of Rs. 17,900 per month. Though owner of the Bolero has denied this fact in his cross examination and examined DW4 but papers produced by the investigator could not be rebutted by the owner. DW4 simply stated that engagement letter of the vehicle UP 53 AR 5389 was cancelled on 19.01.2018. In this regard Counsel of OP No. 3 rightly argued that cancellation was result of the accident and seizure of the vehicle. DW3 stated that use of private vehicle for commercial purpose is breach of policy conditions. Hence, I find that owner of the vehicle breached the terms and conditions of the insurance policy but whether this breach is so fundamental so that liability may be fixed on the owner?

16. In the case of [The Oriental Insurance Company Limited vs. Meena Variyal and Ors. \(02.04.2007 – SC\)](#) : [MANU/SC/7265/2007](#) Honourable Apex Court has held–

*The insurance company to avoid liability, must not only establish the available defence raised in the concerned proceeding but must also establish breach on the part of the owner of the vehicle for which the burden of proof would rest with the insurance company. Whether such a burden had been discharged, would depend upon the facts and circumstances of each case. Even when the insurer, is able to prove breach on the part of the insured concerning a policy condition, the insurer would not be allowed to avoid its liability towards the insured unless the said **breach of condition is so fundamental as to be found to have contributed to the cause of the accident.***

In the case in hand, there is no doubt that the vehicle owner breached the insurance condition but the fact that the cause of the accident was commercial use of the vehicle is not proved. In fact there is no causa causans relation between breach of the condition and accident. Since it has been established during disposal of the issue No. 1 that accident was **caused due to the rash and negligent driving of the driver which resulted in the death of third party**, that the driver had a valid and effective driving license in the issue No. 2 and that the insurance was valid and effective at the time of the accident, the OP No. 3 has to indemnify. The next question which arises is the amount of the compensation.

#### 17. **Calculation of compensation**

PW1 Hariram Raikwar father of the deceased Rahul Raikwar has given uncontroverted evidence of dependency of 5 members family i.e. mother, father and 3 sisters. His only son has died in the accident. He has also stated the income of the deceased ₹ 20,000 per month from tuition but in this regard neither any independent witness has been examined nor has any documentary evidence of the deceased's coaching been produced. Education papers of the deceased reveals that he was graduate with computer knowledge and was studying ITI. In future he would be a technician or atleast skilled labourer.

In the case of [Kajal vs. Jagdish Chand and Ors. \(05.02.2020 – SC\)](#) : [MANU/SC/0126/2020](#) Honorable Apex Court has held that–

*The assessment of damages in personal injury cases raises great difficulties. It is not easy to convert the physical and mental loss into monetary terms. There has to be a measure of calculated guess work and conjecture. An assessment, as best as can, in the circumstances, should be made.*

Taking cognizance of whole circumstances, Notional Income for skilled labourer will be justified in calculating the amount of the compensation. In the case of [Sunita Tokas and Ors. vs. New India Insurance Co. Ltd. and Ors \(16.08.2019 – SC\)](#) : [MANU/SC/1105/2019](#), Honorable Apex Court has deemed the notional income of the deceased @Rs. 12,000/– p.m. i.e ₹ 400 per day of skilled labourer to be proper.

18. It is noteworthy that in India, unorganized sector personnel are not employed all the year. In fact, the income earned is a guess based on time, place and circumstances. There is a possibility of not getting four–five days work in the month. In this way, notional income of the deceased in this area is being fixed as ₹ 275 per day. P.W. 1 has stated the age of the deceased as 26 years, education papers reveals 26 years 7 month and 7 days and the postmortem report also states 26. There is nothing in the rebuttal of 26 years hence the age of the deceased on the date of the accident is determined as 26 years 7 months and 7 days. As per [National Insurance Company Limited Vs. Pranay Sethi and Ors. \(31.10.2017 – SC\): MANU/SC/1366/2017](#), multiplier of 17, deceased being unmarried deduction of 1/2 part on own expenses, addition of 40% in future prospects, addition of ₹ 15,000 for loss of estate and addition of ₹ 15,000 for funeral expenses are being determined.

INCOME-DAILY x DAYS OF MONTH x MONTHS OF YEAR	275	30	12	99000
FUTURE PROSPECTS IN %			40	39600
PART OF SELF EXPENSE			2	69300
AFTER DEDUCTION OF PART OF SELF EXPENSE (MULTIPLICAND)				69300
MULTIPLIER			17	1178100
LOSS OF CONSORTIUM			0	1178100
LOSS OF ESTATE			15000	1193100
FUNERAL EXPENSE			15000	1208100
TOTAL COMPENSATION				1208100

Thus the petitioners are entitled to receive ₹12,08,100 as compensation.

19. In the light of case law [National Insurance Company Ltd. Vs. Mannat Johal and Ors. \(23.04.2019– SC\): MANU/SC/0589/2019](#), 7.5% simple interest from date of submission of petition to date of actual recovery shall be justifiable. [Jai Prakash vs. National Insurance Co. Ltd. and Ors. \(17.12.2009 – SC\): MANU/SC/1949/2009](#), it would be justifiable to fix deposit 75% of compensation and make a plan to receive the annuity.

ORDER

The Motor Accident Claim Petition 132 of 2016<sup>8</sup> Hariram Raikwar & others Vs. Kuldeep Singh & others. is partly allowed for the compensation amount ₹12,08,100 (Twelve Lac Eight Thousand and One Hundred Only) against OP No. 1 and 2 jointly and severally. This amount has to be indemnified by the OP No. 3 National Insurance Company Limited with 7.5% simple annual interest from the date of institution of petition till actual deposit. Out of this amount Petitioner Nos. 1 and 2 shall share 25% each. Remaining Petitioners shall share equally. Ammount of 75% of the shares of the Petitioners shall be deposited in fixed accounts for 5 years, interest of which shall be transferred in their bank accounts in the form of annuity and 25% shall be transferred through RTGS/NEFT in their bank accounts. Insurance company is directed to deposit the compensation amount with interest within 60 days from today in the Syndicate Bank Account of MACT JHANSI No. 92352010008560, IFSC–SYNB0009235 through NEFT/RTGS. Awards be prepared accordingly.

17.07.2020

(Chandroday Kumar)  
Motor Accident Claim Tribunal Jhansi

This judgement sign dated and pronounced in open Virtual Court today.  
Records be consigned.

17.07.2020

(Chandroday Kumar)  
Motor Accident Claim Tribunal Jhansi