

Motor Accident Claim Tribunal Jhansi

Present: Chandroday Kumar HJS
MACT No. 136 of 2018

Date of Institution: 11/04/18
 Date of Judgement: 04/08/20
 Age: 2 Y, 3 M, 24 D
 MM/DD/YY MM/DD/YY

1. Smt. Saroj Devi, 39, W/o Late Sri Balram Ahirwar
 2. Km. Khushbu Gautam, 17, D/o Late Sri Balram Ahirwar
 3. Alok Singh, 13, S/o Late Sri Balram Ahirwar
 4. Dayaram, 64, S/o Sri Ramju
 5. Smt. Ladaitee, 62, S/o Sri Dayaram
- All R/o Village – Segwan, PO – Siya Kharka Tahsil – Garotha P/s Kakarbai District – Jhansi, Present Address Dadiyapura P/s – Kotwali Jhansi Distt. Jhansi

miners through guardian
 Smt. Saroj Devi

-----Pititioners/Claimants

Vs.

1. Manoj Kumar Yadav S/o Sri Narendra R/o- 18, Sakrecha Kathecha Dhandhara Sant Kabir Nagar Distt. Sant Kabir Nagar, Present Address 18 Mudghat Gandhi Nagar Basti Distt. Basti U.P.
-Owner Truck No. UP 51 AT 1573
2. Santosh Yadav S/o Sri. Narendra Yadav R/o Sanischayra Bazar Muthli Kala P/s - Dhandhara Distt. Sant Kabir Nagar U.P.
- Driver Truck No. UP 51 AT 1573
3. The New India Insurance Co. Ltd. Branch Gorakhpur Through Regional Manager The New India Insurance Co. Ltd. Civil Lines Near Kutchehary Chouraha Jhansi.

-----Opposite Parties

Advocate for the Petitioners Sri. Indrapal Singh
 Advocate for the OP 1 & 2 Sri. Dinesh Kumar Yadav
 Advocate for the OP 2 Mr. VK Mishra

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. 95,00,000 on the death of their husband, father and son Sri Balram Ahirwar in a motor vehicle accident.

2. In brief, the facts of the case are that on the unfortunate day of March 11, 2018, at around 7 p.m. petitioners' husband, father and son Balram Ahirwar was coming from chirgaon to Jhansi along with his relative Premshiv by the Scooty Number UP 93AN 6046. As soon as they reached near Dhanaram petrol pump and after parking the Scooty in his side they were answering nature's call, then a Truck Number UP 51AT 1573, whose driver was driving rashly and negligently without giving any horn bumped into Balram Ahirwar and Premshiv and the parked scooty. Due to this collision, the Scooty was damaged and Balram Ahirwar and Premshiv suffered grievous injuries. The said incident was witnessed by the people present on the spot and they helped in taking the victim to Medical College Jhansi for treatment where the doctors after checking both of them declared them dead. The said incident occurred due to the sole rash and negligent driving of the truck driver. Balram Ahirwar, healthy and laborious, 43 years old, constable in Railway Protection Force Jhansi was the sole bread earner of the family and he was earning ₹ 49,405 salary per month. He has to live for 80 years if would had not been untimely died. The accident was reported by Ajay Pal on 14.03.2018 at Police Station Baragaon District Jhansi U. P. against the driver of the Truck whose criminal case is pending U/s 279, 338, 304A, & 427 IPC on Crime No. 47/18.

3. Opposite Party No. 1 and 2, the owner and the driver of the offending vehicle, have filed their reply on the petition in which they have denied all the pleadings of the petition. It is also stated that the petition has been filed on false grounds. However, they have pleaded that vehicle was insured from OP No. 3 The New India Insurance Co. Ltd. and vehicle was being driven by Santosh Yadav, OP No. 2. All the papers of the vehicle were valid and the insurance of the vehicle was valid from 10.03.2018 to 10.03.2019.

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

5. After exchange of pleadings, following issues were framed-

1. *Whether on the date 11.03.2018 at around 07:30 pm, when petitioners' husband, father and son Balaram Ahirwar was coming from Chirgaon to by the Scooty number UP AN 6046 with his relative Prem Singh and after parking Scooty near the Dhanaram parked petrol pump and started urinating, then the Truck Number UP*

51AT 1573 driven by its driver rashly and negligently without blowing horn from the opposite direction Jhansi dashed Balram and Scooty hard causing grievous injuries to the Balram who died in Medical College during treatment ?

2. *Whether Truck Number UP 51AT 1573 was insured from OP number 3 The New India Insurance Company at the time of the accident ?*
3. *Whether, the driver of the Truck Number UP 51AT 1573 had a valid and effective driving license at the time of the accident ?*
4. *Whether the petitioners are entitled to receive any compensation from the opposite parties, if so, how much and from which opposite party?*

6. **Petitioner** adduced following oral as well as documentary evidence in support of the petition-

1. **PW1** Saroj Devi, wife of the deceased Balram Ahirwar - the petitioner No. 1,
2. **PW2** Kailash Narayan, an eye-witness,
3. **PW3** Head Constable Indal Singh, Office of Senior Regional Security Commissioner Jhansi.
4. Certified copies of the following documents-
FIR - Paper Numbers 28C1/2 to 28C1/3
Charge Sheet - Paper Numbers 28C1/5 to 28C1/7
Site Map - Paper Number 28C1/9
Post-Mortem Report - Paper Numbers 28C1/12 to 28C1/16
5. Original copy of the **Pay Slip** of Balram Ahirwar for the month February-2018 issued by North Central Railways - Paper Number 28C1/18
6. Photocopies of the following documents-
 Adhar Card of Balram Ahirwar - Paper Number 28C1/17
 Succession Certificate of Balram Ahirwar issued by the SDM Garautha Jhansi - Paper Number 30C1/1
 Salary Certificate of Balram Raikwar - Paper Number 30C1/2
 Adhar Card of SMT. Saroj Devi - Paper Number 30C1/3
 DL of the Balram Ahirwar - Paper Number 30C1/4
 PAN Card of the Balram Ahirwar - Paper Number 30C1/5
 Adhar Card of Km. Khushbu - Paper Number 10C1/2
 Adhar Card of Km. Alok Singh - Paper Number 10C1/3
 Adhar Card of Km. Dayaram - Paper Number 10C1/4
 Adhar Card of Km. Ladaitee - Paper Number 10C1/5
7. **OP Number 1 and 2** produced photocopies of the following-
 RC of the Truck UP 51 AT 1573 - Paper Number 32C1/1
Insurance Policy of the Truck UP 51 AT 1573 - Paper Number 32C1/2
 National Permit of the Truck UP 51 AT 1573 - Paper Number 32C1/3
 Authorization Certificate of National Permit of the Truck UP 51 AT 1573 - Paper Number 32C1/4
 Fitness Certificate of the Truck UP 51 AT 1573 - Paper Number 32C1/5
 Tax Certificate of the Truck UP 51 AT 1573 - Paper Number 32C1/6
 Pollution Certificate of the Truck UP 51 AT 1573 - Paper Number 32C1/7
 Driving License of Santosh Kumar - Paper Number 32C1/8
 Registration Certificate of the Tavera UP 93 AM 5737 - Paper Number 23C1
Driving License of OP number 2 - Paper Number 24C1

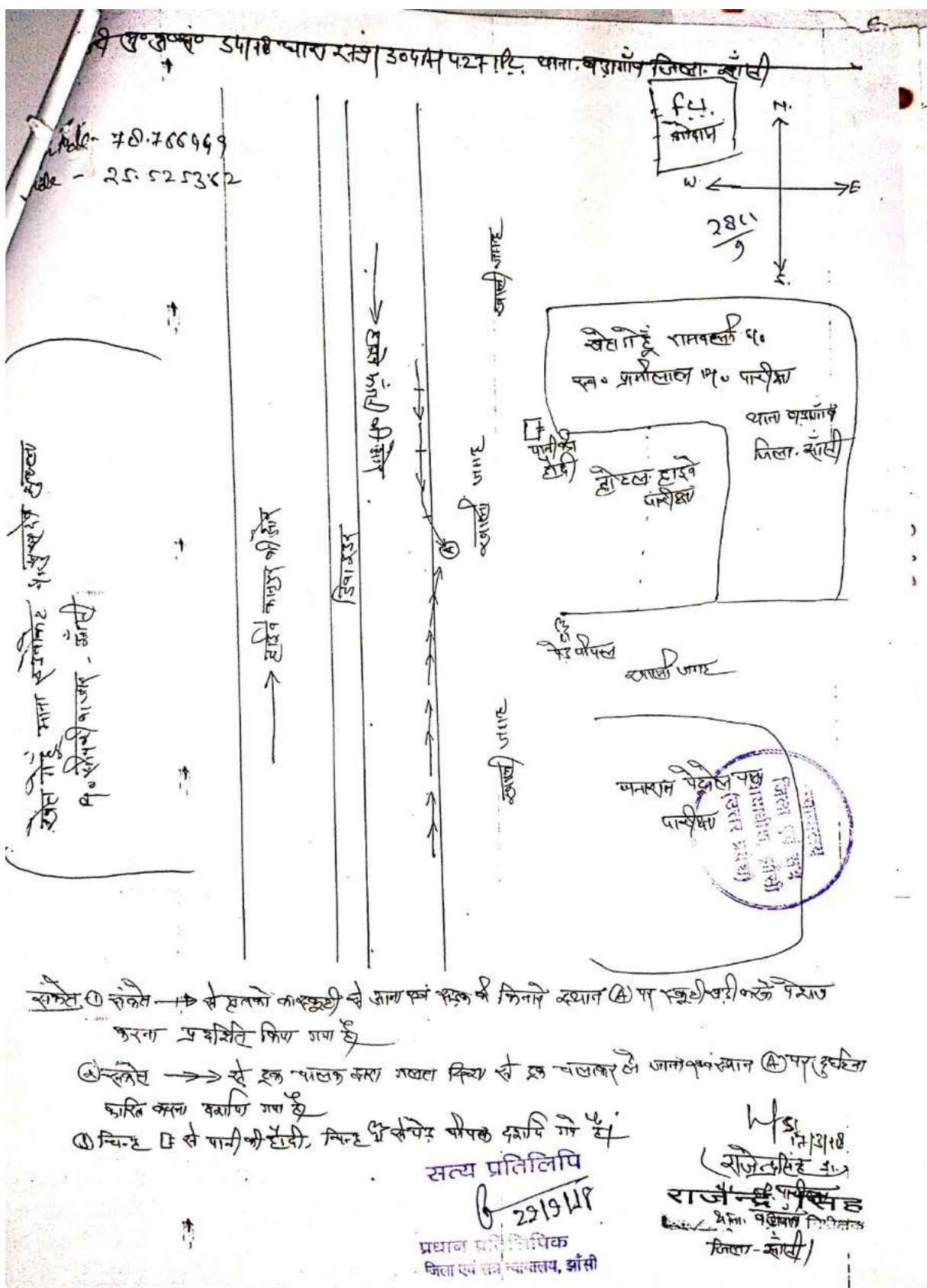
7. No other evidence is produced by the Opposite Parties.

8. Due to the COVID-19 lockdown, I have heard the parties in Virtual Court and perused the record carefully.

9. **DISPOSAL OF ISSUE NO. 1**

This issue has been framed in order to ascertain the factum of the accident and negligence of the offending vehicle. The burden of proof lies on the petitioners. In this regard PW 2 Head Constable Kailash Narayan is an eye witness and his testimony will have material impact on the case. He has stated that the accident happened on 11.03.2018 at about 7:00 pm. At that time, he was having dinner on Dhaba near the Dhanaram Petrol Pump. Balram and Premshiv was coming from Chirgaon side. They parked their Scooty near Dhaba and started urinating. A truck having No. UP 51 AT 1573 from Jhansi side came rashly and negligently on this side of the divider and dashed Balram and Premshiv near parked Scooty resulting in damage to Scooty and grievous injuries to both. He rushed the spot, saw the injured and informed the police on phone. Till then the truck had fled from the spot. He with others brought both injured to the Medical College Jhansi where they were declared dead. Nothing material has been revealed from the cross-examination of this witness which may discredit his testimony.

10. Site map also recreates the actual seen of accident-



This site map is in consonance of the testimony of PW1. Site map clearly shows that the truck was on his wrong side. Charge-sheet against the driver of Truck corroborates sole negligence of the driver of the Truck. Postmortem report confirms death due to antimortem injuries. 3 days delay in F.I.R. is not material in the facts and circumstances of the case. In the matter of Ravi vs Badrinarayan & Ors (18.02.2011 – SC): MANU / SC / 0133/2011 Honb’le Apex Court hs held-

"20. It is well-settled that delay in lodging FIR cannot be a ground to doubt the claimant's case. Knowing the Indian conditions as they are, we cannot expect a common man to first rush to the Police Station immediately after an accident. Human nature and family responsibilities occupy the mind of kith and kin to such an extent that they give more importance to get the victim treated rather than to rush to the Police Station. Under such circumstances, they are not expected to act mechanically with promptitude in lodging the FIR with the Police. Delay in lodging the FIR thus, cannot be the ground to deny justice to the victim. In cases of delay, the courts are required to examine the evidence with a closer scrutiny and in doing so;

the contents of the FIR should also be scrutinized more carefully. If court finds that there is no indication of fabrication or it has not been concocted or engineered to implicate innocent persons then, even if there is a delay in lodging the FIR, the claim case cannot be dismissed merely on that ground."

No investigation report has been produced by the insurance company to negate the case of the petitioners. I find that petitioners has been able to prove this issue positively. The Issues No. 1 is being decided accordingly.

11. DISPOSAL OF ISSUE NO. 2

This issue has been framed in order to ascertain the insurance of the Truck UP 51 AT 1573. OP number 1 has filed photo copy of the Insurance Policy (The New India Insurance Co. Ltd.) of the Truck UP 51 AT 1573 which is Paper Number 32C1/2. This commercial package policy is effective from 11.03.2018 to the midnight of 10.03.2019. RC, Fitness, Permit and Pollution of the truck were valid at the time of the accident. Nothing in rebuttal from OP No. 3 is placed before the Tribunal, hence it is proved that all papers including insurance of the Truck No. UP 51 AT 1573 were valid and the truck was insured from OP No. 3 validly and was effective on the date of the accident. The issue No. 3 is being decided accordingly.

12. DISPOSAL OF ISSUE NO. 3

This issue pertains to the driving licence of the driver of the Truck No. UP 51 AT 1573. Police have charge-sheeted OP No. 2 Santosh Kumar as driver of the Truck No. UP 51 AT 1573. Photocopy of the DL of OP No. 2 Santosh Kumar S/o Narendra Dev 24C1 has been produced by the OP No. 1 & 2. According to this DL (No: UP53 20000001529), Santosh Kumar is authorized to drive non transport vehicles from 15.10.2000 to 28.04.2020. OP No. 3 could not be able to rebut this fact as nothing in rebuttal has been produced by the OP No. 3. Hence it is proved that at the time of accident the driver of the Truck No. UP 51 AT 1573 Santosh Kumar had a valid and effective driving license. This issue is decided accordingly.

13. 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 sole negligence of the driver of the Truck No. UP 51 AT 1573, hence, driver OP No. 2 and owner OP No. 1 are liable jointly and severally for damages. Since it has been established during disposal of issues Nos. 2 and 3 that the insurance was valid and effective and the driver had a valid and effective driving license at the time of the accident, hence the OP No. 3 has to indemnify. The next question which arises is the amount of the compensation.

14. Calculation of compensation

PW1 Saroj Devi W/o deceased Balram Ahirwar has stated dependency of family of 5 persons that is herself, two children, father in law and mother in law which is uncontroverted. She has also stated the income of the deceased ₹ 49,405 per month from salary. In this regard original Pay Slip of the deceased Balram Ahirwar Paper No. 28C1/18 has been produced as documentary evidence which supports statement of P.W. 1. Since this salary is in taxable range hence actual salary less tax would be 49405-5737=43668. PW1 has further stated that her husband was posted at Jhansi as constable in Railway Protection Force. In her cross examination she has stated that she has received funds and she is getting pension Rs. 18,000. No investigation report has been produced by the insurance company to negate the statement of PW3. P.W. 1 has stated the age of the deceased as 43 years and the postmortem report also states 43. Though postmortem report is not conclusive on the point of age but Pay Slip and Adhar Card shows date of birth of Balram Ahirwar as 15.12.1975 hence the age of the deceased on the date of the accident is determined as 42 years 2 months and 24 days. In the light of [National Insurance Company Limited Vs. Pranay Sethi and Ors. \(31.10.2017 - SC\): MANU/SC/1366/2017](#), Multiplier of 14, deduction of 1/4 part on own expenses, addition of ₹ 40,000 for loss of consortium, addition of ₹ 15,000 for loss of estate and addition of ₹ 15,000 for funeral expenses are being determined.

INCOME-MONTHLY x MONTHS OF THE YEAR	43668	12	524016
FUTURE PROSPECTS IN %		25	131004
PART OF SELF EXPENSE		4	163755
AFTER DEDUCTION OF PART OF SELF EXPENSE (MULTIPLICAND)			491265
MULTIPLIER		14	6877710
LOSS OF CONSORTIUM		40000	6917710
LOSS OF ESTATE		15000	6932710
FUNERAL EXPENSE		15000	6947710
Liability of Insurance Co. in %	100		6947710
TOTAL COMPENSATION			6947710

Thus the petitioners are entitled to receive ₹ 69,47,710 as compensation.

15. 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. Since petitioners are wife, 2 minor children, father and mother of the deceased, they will share 30, 20, 20, 15 and 15%. [Jai Prakash vs. National Insurance Co. Ltd. and Ors. \(17.12.2009 - SC\): MANU/SC/1949/2009](#) and [M.R. Krishna Murthi vs. The New India Assurance Co. Ltd. and Ors. \(05.03.2019 - SC\) : MANU/SC/0321/2019](#) it would be justifiable to fix deposit some part of compensation and make a plan to receive the annuity.

ORDER

The Petition is partly allowed for the compensation amount ₹ **69,47,710** (Sixty Nine Lac Forty Seven Thousand Seven Hundred Ten) against OP No. 1 and 2 jointly and severally. This amount has to be indemnified by the OP No. 3 The India Insurance Company Limited with 7.5% simple annual interest from the date of institution of the petition till actual recovery. Out of this amount Petitioner Nos. 1, 2, 3, 4 and 5 shall share in the ratio of 30, 25, 25, 10 and 10 respectively. 75% of the share of the Petitioner No. 1, 3, 4 and 5 shall be fixed deposited in any nationalized bank carrying maximum interest for 5, 5, 3 and 3 years respectively and 25% shall be transferred through RTGS/NEFT in their bank accounts. Petitioner Nos. 1, 3, 4 and 5 shall get annual interest of the fixed deposits in their bank accounts. The share amount of Petitioner No. 2 shall be fixed deposited in any nationalized bank carrying maximum interest up to his majority. The New India Insurance Company Limited is ordered to deposit the compensation amount with interest within 60 days from today in the Tribunal's Syndicate Bank Account No. 92352010008560 IFSC- SYNB0009235 through RTGS/NEFT. Awards be prepared accordingly.

04.08.2020

(Chandroday Kumar)
Presiding Officer
Motor Accident Claim Tribunal
Jhansi

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

04.08.2020

(Chandroday Kumar)
Presiding Officer
Motor Accident Claim Tribunal
Jhansi