

Motor Accident Claim Tribunal, Jhansi

Date of Institution:	Date of Judgement:	Age:
24/02/11	01/12/2020	9 Y, 9 M, 7 D

MACP No. 136 of 2011

Present: Chandroday Kumar, H.J.S.

1. Smt. Seema W/o Late Dinesh age 25 years, deceased during trial
 2. Km. Anushka, age about 8 years, D/o Late Dinesh, minor through grand mother Shyama
 3. Ashish, age about two and half years, D/o Late Dinesh, minor through grand mother Shyama
 4. Prabhudayal, age about 50 years
 5. Shyama, age about 50, W/o Sri Prabhudayal
- All resident of village Budha Police Station Sipari Bazar District Jhansi

----- Petitioners

Vs.

1. Brajbhan son of Sri Asharam resident of Village Hastinapur Police Station Sipari Bazar District Jhansi
 Registered Owner Motorcycle No. UP 93P 6039
2. The National Insurance Co. Ltd. through Branch Manager behind Elite Talkies Civil Line Jhansi
 Insurer Motorcycle No. UP 93P 6039

----- Opponents

Counsel of the petitioner - Sri Baveer Pali Advocate

Counsel of the OP No. 1 - Sri Mahendra Kumar Advocate

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

JUDGMENT

The petition has been instituted by the petitioner under section 166 and 140 of the Motor Vehicle Accident Act against the opposite parties for the compensation of ₹ 65,75,000 with 15% interest due to the death of the father and son of the petitioners Sri Dinesh in the alleged motor vehicle accident.

2. In brief, the facts of the petition are that on 17.01.2011 while Dinesh was coming to his residence from village Athodana and as soon as he reached near Ansal Colony at 8:00AM, the driver of motorcycle number UP 93P 6039 hit hard the motorcycle of the petitioner going on his side resulting in death of Sri Dinesh. The FIR of the incident was lodged by the brother of the deceased Dinesh. Police registered it against unknown in connivance of owner of the vehicle, then applicant Seema lodged report against correct vehicle owner by registered post to SSP Jhansi. Deceased was earning ₹ 8,000 per month by dairy and ₹ 1,00,000 per year by agriculture work. The deceased was bread earner of the petitioners.

3. Opposite Party No. 1 the registered owner of the Motorcycle No. UP 93P 6039 in his reply has admitted the accident but he narrated the incident otherwise. He has pleaded that his friend after standing motorcycle in a side was talking and son of the petitioner get collided and get injured and he died in which he or his motorcycle has no fault. He has

further pleaded that amount claimed is excessive and his motorcycle was insured with National Insurance Company.

4. Opposite Party No. 3 National Insurance Co. Ltd., the insurer of the Motorcycle No. UP 93P 6039, 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, 149 and 170 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 8 AM near Ansal Colony, driver of motorcycle number UP 93P 6039 driving rashly and negligently collided Dinesh, going by motorcycle in his side, resulting injuries to him and his death?

2. Whether accident in question took place due to contributory negligence of the driver Dinesh and driver of motorcycle no. UP 93P6039?

3. Whether on the date and time of the accident in question, the driver of the motorcycle number UP 93P 6039 had a valid and effective driving license?

4. Whether on the date and time of the accident in question, the motorcycle number UP 93P 6039 was insured with OP No. 2?

5. Whether the petitioners are entitled to get compensation, if so, then how much and from whom?

6. In order to prove the petition, the petitioners adduced following oral as well as documentary evidence-

ORAL

PW1 Shyama

PW2 Hakim Singh

DOCUMENTARY

Photocopy of FIR - Paper No. 7C1/1 and Original Copy of Application to SSP Paper No. 7C1/2 through list 7C1.

Following oral as well as documentary evidence have been produced by the OP No. 2-

ORAL

DW1 Prakash Mohan Upadhyay

DW2 Rajnish Kumar Srivastav

DOCUMENTARY

Investigation report - Paper No. 49C1/1 to 49C1/12 through list 48C1

7. It is oldest case pending since 2011. The case is being fixed for final arguments since 09.12.2019. Despite granting the last opportunity, the petitioners' counsel requested for adjournments on the last three dates. For the last time, he sought time to submit FIR, Charge, PM report, but neither any such papers have been submitted nor the lawyer or the petitioner are appearing in the Court on the due dates. Order

sheet transpires that OP No. 1 and his Ld. Counsel also have not been appearing for a long time. In these circumstances, I have heard the counsel for OP No. 2 in the Virtual Court and scrutinized the case records carefully.

8. Disposal of Issue No. 1 and 2

These issues relate to rival claims of negligence and contributory negligence of drivers of two motorcycles, so both are being decided together for convenience. In the case of this accident, the first information report is registered in unknown and according to the investigation report submitted by the insurance company to the tribunal which has been proved by the DW2 investigator, the police have submitted the FR on that basis and found no one guilty. In order to establish the involvement of motorcycle number UP 93P 6039 in the said accident, no record of proceedings before the Judicial Magistrate in the criminal case has been presented before the Tribunal. Unilateral application to the SSP for naming motorcycle after delay of 35 days proves nothing. Even to prove the cause of death, neither the investigation report nor the postmortem report have been submitted.

9. The entire story of the petitioners is based on a so-called eye witness PW2 Hakim Singh. PW2 has stated before this tribunal in his examination in-chief that he himself witnessed the accident and that the accident occurred due to the rash and negligent driving of driver of motorcycle no. UP 93 P 6039. PW2 has further stated that after a few days he stated the number of the offending vehicle. So, a question naturally arises whether he had the opportunity to see the number of the offending vehicle? On the one hand he has deposed that the offending motorcycle stopped a bit and seeing an opportunity he ran away after accident, while on the other hand he has said that offending vehicle also fell on the road and both the motorcycles were laid on the road. He has also stated that he did not catch the driver. If he did not catch driver if the offending vehicle had fallen, there is a big question on the conduct of this relative witness and if the offending motorcycle was lying on the road and the driver only ran then why was the FIR lodged in the unknown by the real brother of the deceased? PW2 has admitted that he is distant relative of petitioner Shyama and has come to testify on behest of Shyama. If driver fled with motorcycle and PW2 had seen the number of offending vehicles on the spot, then despite being a relative of the petitioner, why did he not tell the petitioner immediately is an unanswered million dollar question. Non explanation of this question establishes that the whole story is afterthought cooked up story involving motorcycle no. UP 93P 6039 as offending vehicle. Considering contradictions in the testimony of PW2, I find force in suggestions to this witness regarding favor.

10. Admission of accident by the owner in pleading has no sanctity without his examination before the Tribunal. Even owner of the offending vehicle did not produce any driving

license. In these circumstances, I find that petitioners have not been able to prove their case up to the mark of preponderance of probability and mere pleading without evidence is not sufficient to prove contributory negligence. Hence, these issues are decided accordingly.

11. DISPOSAL OF ISSUE NO. 2

This issue pertains to the driving license of the driver of the alleged motorcycle no. UP 93P 6039. There is nothing on record to show that who was driver of so called offending vehicle. No DL has been produced. Hence, this issue is decided in negative.

12. DISPOSAL OF ISSUE NO. 3

This issue has been framed in order to ascertain the insurance of the motorcycle no. UP 93P 6039. No paper of insurance has been filed by either side but according to the investigation report of Insurance Company offending vehicle was insured but there is no mention that from which insurance company offending vehicle was insured. Hence, this issue is decided in negative.

13. 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 petitioners hence petition deserves to be rejected.

ORDER

The Claim Petition is rejected.

01.12.2020

(Chandroday Kumar)
Presiding Officer
Motor Accident Claim Tribunal
Jhansi

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

Records be consigned.

01.12.2020

(Chandroday Kumar)
Presiding Officer
Motor Accident Claim Tribunal
Jhansi