

Motor Vehicle Accident Claims Tribunal, Jhansi

Present: Chandroday Kumar H.J.S. M.A.C.P. No. 191 year 2018	Date of Institution: 05/16/18 MM/DD/YY	Date of Judgement: 03/10/21 MM/DD/YY	Age: 2 Y, 9 M, 22 D
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1. Smt. Shabnam Bano age 29 years wife of Late Shri Halim Mohmmad
2. Savej Mansoori (Minor) age 11 years son of Late Shri Halim Mohmmad
3. Km. Sana Mansoori (Minor) age 9 years daughter of Late Shri Halim Mohmmad
4. Jishan Mansoori (Minor) age 7 years son of Late Shri Halim Mohmmad
5. Lallu Khan age 68 years son of Ramjani

All Resident of Village- Amrokh, Police Station- Poonchh, District- Jhansi

----- Petitioners

Versus

1. Shakir son of Mehdi Shri Govind Das Resident of – Poonchh, Police Station – Poonchh, District- Jhansi
..... Owner Vehicle No. UP 93P 0614
2. United India Insurance Company, through Regional Manager Nandanpura, above Allahabad Bank, Jhansi
..... Insurer Vehicle No. UP 93P 0614
3. Amjad Khan son of Shakur Resident of – Bhadarwara Bujurg, Police Station - Erach, District - Jhansi
..... Driver Vehicle No. UP 93P 0614

----- Opposite Parties

Advocate of the petitioner- Shri Sanjay Singh Yadav

Advocate of the opposite party No. 2 - Shri Suparva Sharan

Advocate of the opposite party No. 1 & 3 – Shri Sanket Miyadaad

A W A R D

This Claim Petition has been instituted by the petitioners under section 166 and 140 of the Motor Vehicles Act for the compensation of ₹40,00,000 with 10% interest on account of death of their husband, father and son Halim Mohmmad in motor vehicle accident.

2. The brief facts of the case are that on 06.04.2018 while Halim Mohmmad having valid driving license was riding his friend's Motorcycle No. UP 93AP 8594 from Samthar to Moth and as soon as he reached ahead village Basovai at around 1:30 O'Clock, the driver of the Vehicle No. UP 93P 0614 driving it rashly and negligently coming from Moth hit motorcyclist on left hand side. As a result thereof, Halim Mohmmad suffered grievous injuries and eventually he succumbed to their injuries on 06.04.2018 while undergoing treatment in Medidical College Jhansi. Umesh son of Braj Kishore and Mhd. Shakir son of Muneer Khan were rushed on the spot and while they were trying to handle injured, Scorpio driver stayed a while and thereafter fled away with vehicle. The information about the said incident was given by the wife of the deceased to the police station Samthar on 16.04.2018 but her FIR was registered on 20.04.2018. Petitioner lost his wife Neha in the accident. Halim Mohmmad was working at Sales and Marketing Department of Sri Ram City Jhansi as Product Executive and he used to earn ₹9200 per month salary.

3. Denying accident a Joint written statement has been filed by O.P. No. 1 & 3 stating in respect of the accident that OP No. 1 is

registered owner of Scorpio No. UP 93P 0614 and the vehicle was insured under unlimited liability from Opposite Party Number 2 from 18.03.2018 to 17.03.2019. Valid license holder driver was driving the vehicle carefully and was going from Samthar to Moth on date 06.04.2019 for vehicle owner's personal work. On the way an injured was laying on the road. The people present there asked OP No. 3 to take injured for treatment but on refusal, a false report was lodged against his vehicle for the purpose of obtaining compensation.

4. A written statement has been filed by Insurance Company O.P. No. 2 in which accident as well as any liability has been denied for violation of terms and conditions of insurance policy. Insurance Company has also pleaded for contributory negligence and exaggerated demand of compensation.

5. It is found that though evidence has been taken by the predecessor but issues were not framed, so, on the basis of pleadings, following issues are being framed:

1. Whether on 06.04.2018 while Halim Mohammad having valid driving license was riding his friend's Motorcycle No. UP 93AP 8594 from Samthar to Moth and as soon as he reached ahead village Basovai at around 1:30 O'Clock, the driver of the Vehicle No. UP 93P 0614 driving it rashly and negligently coming from Moth hit motorcyclist on left hand side as a result thereof, Halim Mohammad suffered grievous injuries and eventually he succumbed to their injuries on 06.04.2018 while undergoing treatment in Medidical College Jhansi ?

2. Whether deceased motorcyclist too contributed to the accident, if so, what was his percentage of fault ?

3. Whether the driver of vehicle Scorpio No. UP 93P 0614 Amjad Khan OP No. 3 had a valid and effective driving license to drive the vehicle at the date and time of the accident ?

4. Whether Vehicle No. UP 93P 0614 was insured from O.P. No. 2 United India Insurance Company at the date and time of the accident ?

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

6. The following documentary and oral evidence have been produced by the parties: -

By the petitioners

Documentary

1. Through List 7C1 photocopies of F.I.R. 8C1/1-8C1/2, Postmortem Report of deceased Halim Mohammad 9C1/1-9C1/7, R.C. of Vehicle No. UP 93P 0614- 10C1, Insurance Policy of Vehicle No. UP 93P 0614- 10C1/2, Parivaar Register 11C1, Aadhaar Card of Shabnam Bano 12C1, Aadhaar Card of Savej Mansoori 12C1/2, Aadhaar Card of Sana Mansoori 12C1/3, Aadhaar Card of Jishan Mansoori 12C1/4 and Voter Card of Lallu Khan 12C1/5.

2. Through List 27C1 photocopies of ID Card of Halim Mohammad 28C1, Pay-Slip of Halim Mohammad 29C1, DL of Halim Mohammad 30C1, High School Certificate of Halim Mohammad 31C1, Intermediate Certificate of Halim Mohammad 31C1/2, B.A. (Part III) Marks-Sheet of Halim Mohammad 31C1/3, B.A. (Part II) Marks-Sheet of Halim Mohammad 31C1/4, B.A. (Part I) Marks-Sheet of Halim Mohammad 31C1/5, R.C. of Vehicle No. UP 93AP 8594- 32C1, Insurance Policy of Vehicle No. UP 93AP 8594- 33C1, Bhulekh 34C1/1-34C1/2, Certified copies of Charge-Sheet 35C1/2-35C/3,

Site-Map 35C1/5 and Postmortem Report of deceased Halim Mohmmad 35C1/7-9C1/13.

3. Through List 38C1 Pay-Slip of Halim Mohmmad 39C1 and of ID Card of Halim Mohmmad 40C1.

4. Through List 50C1 Original Copy of Pay Certificate of Halim Mohmmad 51C1.

Oral

PW1 Smt. Sabnam Bano (Petitioner), PW2 Umesh Kumar (Eye Witness) and PW3 Anil Verma (Accountant of Sri Ram City Union Finance Ltd. Jhansi).

By the OP No. 1 & 3

Documentary

1. Through List 17C1 photocopies of R.C. of Vehicle No. UP 93P 0614- 18C1, Fitness Certificate 19C1, Insurance Policy of Vehicle No. UP 93P 0614- 20C1/2, Adhaar Card of Sakir Khan 21C1 and DL of Amjad Khan 22C1.

No other oral or documentary evidence has been given by either side.

7. I have heard the arguments of the learned advocates of the both side and perused the paper and evaluated the evidence available carefully.

FINDINGS

8. Disposal of Issues No. – 1 & 2

learned Advocate of the insurance company argued that it is hit and run case and vehicle number UP 93P 0614 is falsely implicated when driver denied to carry injured to hospital. In alternative, since it is head-on collision, motorcyclist also contributed in happening of accident. On the other hand, Learned Advocate of the petitioners has argued that petitioners have proved their case while opposite parties led no evidence.

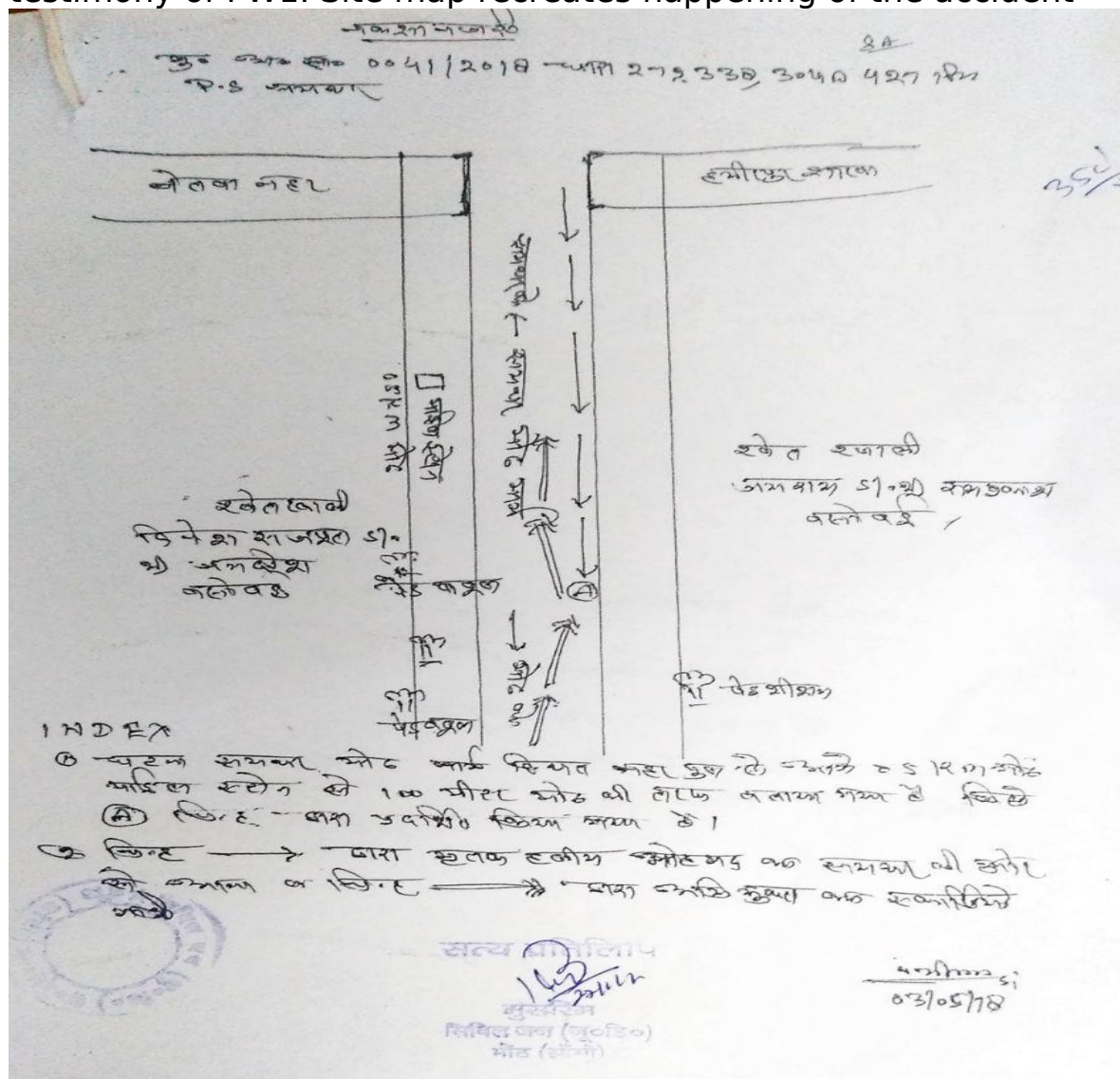
9. PW 2 Umesh Kumar (Eye Witness) has stated in his examination-in-chief that he is resident of village of Halim. He is working in Sri Ram Finance City since 2014. Its office is situated in Jhansi in front of B.K.D. near Babulal workshop. Halim too was working in Sri Ram Finance City since 2017. On date 06.04.2018, Halim was riding from Samthar to Moth on his friend's motorcycle No. UP 93AP 8594. As soon as he reached ahead village Basovai at around 1:30 O'Clock, the driver of the Vehicle No. UP 93P 0614 driving it rashly and negligently coming from Moth hit motorcyclist on his wrong side. As a result thereof, Halim Mohmmad suffered grievous injuries and motorcycle get damaged. He was coming behind Halim at the time of accident. Sakir was also with him. They rushed on the spot and while they were trying to handle injured, Scorpio driver stayed a while and then fled. They took Halim by ambulance to Moth where he was referred to Medical College. He informed family members of Halim about accident. In his Cross-examination he has stated that he has no idea about width of the road where accident took place. He was 20-30-40-45 steps behind Halim. He got Halim admitted in Medical College but he did not get his name written at the time of admission. He was friend of Halim.

10. In my view, mere being friend of victim, mere not giving his name on admission papers of Medical College and mere being not able to tell width of the road, credibility of this witness does not shake. Witness and deceased were resident of same village and were working in same company so naturally they could be friends and naturally they could be coming together at the time of accident. Insurance Company has not submitted any investigation

report which can show that PW2 was not working with Halim in Sri Ram Finance Co. or that this case is hit and run case. Name of this witness finds place in Charge-Sheet. Delay in lodging F.I.R. is well explained by the informant PW1. PW1 wife of the deceased has stated before this Tribunal that due to death of her her husband she could not go to police station. When she went to police station with her brother on 14.06.2018, police men were busy in Chief Minister's visit so F.I.R. was on 20.06.2018. In my opinion, this type of explanation is acceptable for motor accident cases. In the case of [Ravi vs. Badrinarayan and Ors. \(18.02.2011 - SC\) : MANU/SC/0133/2011](#) Hon'ble 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]

Charge-Sheet, Postmortem report and Site-Map corroborates testimony of PW1. Site map recreates happening of the accident-



During arguments parties have bargained plea of contributory negligence of motorcyclist @ 5% on the account of head on collision and not wearing helmet. In my view plea bargain on contributory negligence should be allowed. In this way, I find that this accident in which Halim died took place due to 95% negligence of Scorpio driver and 5% of deceased motorcyclist. Issues No. 1 & 2 decided accordingly.

11. Disposal Issue No. - 3

Charge-Sheet (Paper No. 35C1/2-35C1/3) against driver of offending vehicle UP 93P 0614 Amjad Khan under sections 279, 338, 304-A & 427 has been filed and Court concerned has taken cognizance. A photocopy of Amjad Khan's driving license (Paper

No. 22C1 has been filed on the record as per which Amjad Khan is authorized to drive non transport vehicles from 25.08.2007 to 23.06.2033 and transport vehicle from 14.10.2009 to 23.06.2019. This license could not be disproved by the insurance company. The accident happened on 06.04.2018. Therefore, it is proved that at the time of accident, the driver of Scorpio No. UP 93P 0164 Amjad Khan had a valid and effective driving license. Hence, issue no. 3 is decided in affirmative.

12. **Disposal Issue No. - 4**

Registered owner the offending vehicle No. UP 93P 0164 has filed paper no. 20C1 photocopy of insurance policy number 0822823117P118129141, according to which the vehicle No. UP 93P 0164 name- MR SAKIR was insured from date 18.03.2018 to 17.03.2019 under private car liability policy. It is clear from registration certificate 18C1 that registered owner of above mentioned Scorpio No. UP 93P 0164 is Sri Sakir. Fitness 19C1 of this vehicle is valid from 19.05.2017 to 18.05.2018. The accident occurred on date 06.04.2018. This insurance policy could not be rebutted by the insurance company. Hence, issue no. 3 is decided in affirmative.

13. **Disposal Issue No. - 5**

Since the accident took place due to 95% negligence of the driver of offending vehicle UP 93 BT 0143 hence, the vehicle owner and driver are jointly and severally liable for 95% compensation. Since the vehicle was insured by opposite party number 2 at the time of the accident, the liability for reimbursement of compensation rests with opposite party number 2.

14. **Computation of compensation -**

PW 1 wife of deceased has deposed that her husband was working in Sri Ram Finance Co. was earnings ₹9,200 per month as salary. PW3 who is accountant in Sri Ram Finance Co. has proved the salary-slip of deceased (Paper No. 39C1). This salary-slip discloses salary ₹9,200. This amount do not fall under income tax. Insurance, Provident Fund and City Compensatory Allowance fall under earning hence are not deductible for the purpose of compensation. High School Certificate of deceased discloses date of birth 10.04.1981. So, at the time of accident age of deceased comes around 37 years. There is no any proof that service of deceased with Sri Ram Finance Co. Ltd. was permanent. Insurance Company has not been able to rebut these facts. In these facts and circumstances, in the light of [National Insurance Company Limited Vs. Pranay Sethi and Ors. \(31.10.2017 - SC\)](#): MANU/SC/1366/2017, Multiplier of 15, deduction of 1/4 part on own expenses, addition of 40% as future prospects, 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.

ANNUAL INCOME- MONTHLY INCOME x MONTHS OF YEAR	9200	12	110400
FUTURE PROSPECTS IN %		40	44160
PART OF SELF EXPENSE		4	38640
AFTER DEDUCTION OF PART OF SELF EXPENSE (MULTIPLICAND)			115920
MULTIPLIER		15	1738800
LOSS OF CONSORTIUM		40000	1778800
LOSS OF ESTATE		15000	1793800
FUNERAL EXPENSE		15000	1808800
NEGLIGENCE OF MOTORCYCLIST			90440
NEGLIGENCE OF SCORPIO DRIVER			1718360
COMPENSATION			1718360

Thus the petitioners are entitled to receive ₹17,18,360 as compensation.

15. In the light of ruling [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. In the light of ruling [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 invest some part of compensation in annuity.

ORDER

The Claim Petition is partially allowed for compensation ₹17,18,360 (Rupees Seventeen Lakh Eighteen Thousand Three Hundred and Sixty) with 7.5% simple annual interest from the date of institution of the petition till the date of deposition/recovery. Opposite Party No. 2 United India Insurance Company Limited is ordered to deposit the amount of compensation with interest in tribunal's Punjab National Bank Account Number 3671000101192489 IFSC- PUNB0367100 through RTGS/ NEFT within 45 days from the date of the order and submit UTR/Referencce/Transaction number in the office of this Tribunal.

Petitioners No. 1, 2, 3, 4, and 5 shall share 35, 20, 20, 20 and 5 percent of total compensation. Out of total compensation 75% of Petitioner No. 1 shall be invested in annuity in any Nationalized Bank for 5 years, 75% of Petitioner No. 5 shall be invested in annuity in any Nationalized Bank for 3 years and 100% of Petitioners No. 2, 3, 4 shall be invested in annuity in any Nationalized Bank for 10 years through Natural Guardian mother Petitioner No.1. Petitioners No. 1 and 5 shall get rest 25% amount in their Bank Accounts through RTGS/NEFT. ATM Cards may be issued in order to get monthly proceeds of annuties.

The FO be prepared accordingly. Record be consigned.

Date 10.03.2021

(Chandrodaya Kumar)
Motor Accident Claim Tribunal,
Jhansi

This award signed, dated and pronounced by me in open court today.

Date 10.03.2021

(Chandrodaya Kumar)
Motor Accident Claim Tribunal,
Jhansi