

Motor Accident Claim Tribunal Jhansi

Present: Chandroday Kumar HJS

Date of Institution: Date of Judgement:

17/05/18
MM/DD/YY03/08/20
MM/DD/YYAge:
2 Y, 2 M, 17 D**MACT No. 193 of 2018**

1. Ekta, 25, W/o Late Sri Arvind Kumar alias Tahlul D/o Matadeen
2. Km. Khwahis, 3, minor, D/o Late Sri Arvind Kumar alias Tahlul
3. Km. Abha, 1, minor, D/o Late Sri Arvind Kumar alias Tahlul

Minors through Guardian Mother Smt. Ekta

All permanent R/o Village — Chataini, PO — Kulsari PS — Kalingar Tahsil
— Naraini, District — Banda Present R/o — Unnao Gate Bahar Nagoji ka
Kuan Jhansi Distt. Jhansi

-----Pititioners/Applicants

Vs.

1. The New India Insurance Co. Ltd. Through Regional Manager The New
India Insurance Co. Ltd. Regional office Kutchehary Chouraha Jhansi.

-----OP

2. Smt Shakuntala W/o Late Lalji R/o Village — Chataini, PO — Kulsari PS
— Kalingar Tahsil — Naraini, District — Banda -----Proforma OP
Counsel for the Petitioners Sri. Dinesh Kumar Gupta
Counsel for the OP 1 Sri. Sunil Shukla

JUDGEMENT

This Claim Petition has been instituted by the petitioners under section 163A and 140 of the Motor Vehicles Act 1988 for the compensation of Rs. 71,00,000 with 15% interest on the death of their husband and father Arvind Kumar alias Tahlul arising out of use of motor vehicle.

2. In brief, the facts of the case are that on 03.12.2016, Arvind Kumar alias Tahlul, husband of the petitioner no. 1 and father of the petitioner no. 2, aged 35, went out of his rented house at Ramghat Kamadgiri Bhavan saying that he is going to be shaved his beard. At the same time, out of the house, Rajju alias Devsharan resident of Chhatauni District Banda did come and asked to go to Chhataini by taxi on which the deceased took his taxi car Indigo CS number UP 90T 4768 and started for Chhataini with Rajju alias Dev Sharan. On the way to Chhatauni, Pandey alias Baijnath Kushwaha a companion of Rajju alis Devsharan met at the place Badausa. He too agreed to go to Chhataini at the behest of Devsharan and sat in the taxi car of the deceased. Baijnath alias Pandey asked to take the car to the Bichchhu Baba temple. When deceased reached Bage river near Bichchhu Baba temple, Pandey alias Baijnath Kushwaha, who was in the car, with the intention of robbing the taxi car, shot the deceased with tamancha while driving causing Arvind Kumar to die on the spot. By driving a Bolero and an Indica as a taxi, the deceased was earning Rs 40,000 per month which would support the family.

3. Opposite Party No. 1, the insurance company of the vehicle involve in the accident, has filed its reply of the petition in which the pleadings of the petition have been denied and it has been specifically pleaded that the deceased was owner and not third party.

5. Despite service formal party No. 3 did not filed her reply hence tribunal proceeded exparte against her.

6. After exchange of pleadings, following issues were framed–

1. *Whether on the date 03.12.2016 near Bichchhu Baba temple, Pandey alias Baijnath Kushwaha, who was in the car Indigo CS No. UP 90T 4768, with the intention of robbing the taxi car, shot the husband/father of the petitioners Arvind Kumar Kushwaha alias tahlu with tamancha while driving causing husband/father of the petitioners Arvind Kumar to die?*
2. *Whether the driver of the car Indigo CS No. UP 90T 4768 had a valid and effective driving license on the date and time of the accident?*
3. *Whether car Indigo CS No. UP 90T 4768 was insured from OP number 1, The New India Insurance Co. Ltd., at the date and time of accident?*
4. *Whether the petitioners are entitled to receive any compensation, if so, how much and from which opposite party?*

7. The Petitioners adduced following oral as well as documentary evidence in support of their petition–

1. PW1 Smt. Ekta, wife of the deceased Arvind Kumar Kushwaha – the petitioner No. 1,
2. PW2 Matadeen, father of the PW1,
3. Certified copies of the following documents–
 FIR – Paper Numbers 27C1/2 to 27C1/4
 Inquest Report – 28C1/2 to 28C1/3
 Post–Mortem Report – Paper Numbers 30C1/2 to 30C1/3

4. Photocopies of the following documents–

Charge Sheet – Paper Numbers 29C1/2 to 29C1/08

Insurance Policy of the vehicle Indigo CS number UP 90T 4768 – Paper Number 9C1

Registration Certificate of the vehicle Indigo CS number UP 90T 4768 – Paper Number 10C1

Extract of **Driving License** of Deceased Arvind Kumar – Paper Number 11C1

Adhar Card of Ekta Kushwaha – Paper Number 14C1

Birth Certificate of Khwahis Kushwaha – Paper No. 14C1/2

Birth Certificate of Abha Kushwaha – Paper No. 14C1/3

Electors roll of 2015 – Paper Number 36C1

Parivar Register of the deceased – Paper Number 15C1

Death Certificate of Arvind Kumar – 31C1

Tourist Permit of the vehicle Indigo CS number UP 90T 4768 – Paper Number 32C1

PAN Card of Ekta Kushwaha – Paper No. 33C1

Case Diary of Crime No. 172/16 – Paper No. NIL

5. OP Number 1 adduced oral evidence of DW1 Smt Suneeta Agrawal Assistant Manager of the OP No. 1

8. No other evidence is produced by the opposite Parties.

9. Due to the spreading of the COVID-19, I have heard the parties in Virtual Court and perused the record carefully. I also perused written arguments submitted by the rival counsels.

10. DISPOSAL OF ISSUE NO. 1

This issue has been framed in order to ascertain the factum of the accidental murder. There is no direct evidence to prove that it was an “accidental murder” and not “murder simplicitor” as has been categorized by the Hon’ble Apex Court in the [Rita Devi and Ors. vs. New India Assurance Co. Ltd. and Ors. \(27.04.2000 – SC\) : MANU/SC/0312/2000](#). The case is based on circumstantial evidence only. Dead body of the Arvind Kumar Kushwaha was found near Bichchhu Baba temple which was identified by the PW1 as Arvind Kumar. The vehicle was found missing from the spot. PW1 and PW2 have stated that the Indigo CS number UP 90T 4768 was hired by one Rajju alias Devsharan as a taxi and Arvind Kumar was driver on it. They witnessed the last seen of deceased with accused. Car UP 90T 4768 and tamacha of .315 bore with two live cartridges of .315 bore were recovered by the Investigating Officer. Post Mortem report indicates two close gun shots to Arvind Kumar from behind. Charge sheet u/s 302 and 394 has been filed in the Court and cognizance thereon has been taken by the Special Judge (DAA) Banda 21.02.2017. No enmity between deceased and accused have been found. Nothing otherwise has been produced by the OP No. 1. In these circumstances, I find that it was an “accidental murder” in order to steal the car. The Issue No. 1 is being decided accordingly.

12. DISPOSAL OF ISSUE NO. 2

This issue pertains to the driving license of the driver of the vehicle Indigo CS number UP 90T 4768. PW1 and 2 have stated that Arvind Kumar was Owner-cum-driver of the Indigo CS number UP 90T 4768. Nothing in rebuttal of this fact is produced by the OP No. 2. Photocopy of extract of the DL of Arvind Kumar has been produced by the Petitioners. According to this DL (No: GJ05/2007/010515), Arvind Kumar was authorized to drive LMV from 31.01.2007 to 30.01.2027. Nothing has been produced in rebuttal of this DL by OP No. 2. Hence it is proved that at the time of the accidental murder the driver of the Indigo CS number UP 90T 4768 Arvind Kumar had 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 the vehicle No. UP 90T 4768. Petitioners have filed photocopies of Insurance Policy (The New India Insurance Co. Ltd.) of the vehicle No. UP 90T 4768 which is paper numbers 9C1. This policy is a Commercial Car Package Policy effective from 25.12.2015 to the midnight of 324.12.2016. According to the heading liability of the policy premium of Rs. 100 has been paid for ‘PA Cover For Owner Driver Of Rs. 2 Lakh (IMT-15)’. Driver clause of the policy states that ‘Any person including insured provided that a person driving holds an effective driving license at the time of the accident and is not disqualified from the holding or obtaining such a license.’ RC of the vehicle No. UP 90T 4768 is effective from 28 Jan. 2016 to 27 Jan. 2026 (Paper No. 10C1). Nothing in rebuttal from OP No. 2 is placed before the Tribunal, hence it is

proved that vehicle No. UP 90T 4768 was insured from OP No. 2 validly and was effective on the date of the accident. The issue No. 4 is being decided accordingly.

14. DISPOSAL OF ISSUE NO. 5

This issue relates to the amount of compensation and liability of the parties to pay.

The point of which is being highly contested is whether owner–cum–driver can get compensation u/s 163A of the M.V. Act ?

Ld. Counsel for Insurance Company argued that they cannot get compensation relying on [Ramkhiladi and Ors. vs. The United India Insurance Company and Ors. \(07.01.2020 – SC\) : MANU/SC/0008/2020](#) in which Honorable Apex Court has held as–

“that the liability Under Section 163A of the Act is on the owner of the vehicle as a person cannot be both, a claimant as also a recipient and, therefore, the heirs of the owner could not have maintained the claim in terms of Section 163A of the Act. It is further observed that, for the said purpose, only the terms of the contract of insurance could be taken recourse to. In the recent decision of this Court in the case of Ashalata Bhowmik (supra), it is specifically held by this Court that the parties shall be governed by the terms and conditions of the contract of insurance. Therefore, as per the contract of insurance, the insurance company shall be liable to pay the compensation to a third party and not to the owner, except to the extent of Rs. 1 lakh as observed herein above.”

On the other hand Ld. Counsel for the claimants has argued that they are entitled for compensation relying on Kamlesh Devi and Ors. vs. The New India Insurance Co. Ltd. (19.09.2016 – MPHC) : MANU/MP/0584/2016 in which Honorable MP High Court has held that –

“Thus, a person when behind the steering wheel will be driver irrespective of his position as a owner, passenger or a hirer of a vehicle.

“when the owner was driving his own vehicle which met with an accident, the question is whether the insurance policy covers the personal insurance of the driver or not. In this regard, cover note of the insurance policy has been filed before the Tribunal and it is apparent from the said insurance policy that any person including the insured was entitled to drive the vehicle. Under the heading liability I find that premium of Rs. 15/– was paid towards the legal liability to paid driver as per endorsement I.M.T. 19.”

At this juncture it will be pertinent to mention s. 163A of the M.V. Act which is as–

MOTOR VEHICLES ACT, 1988 Section 163A – Special provisions as to payment of compensation on structured formula basis

“(1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle of the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident

arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.

Explanation.—For the purposes of this sub-section, "permanent disability" shall have the same meaning and extent as in the Workmen's Compensation Act, 1923 (8 of 1923).

(2) In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.

(3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule."

After considering both case laws and provision of s. 163A, I find that owner-cum-driver is not entitled to get compensation on the structured formula basis u/s 163A but he may claim on the basis of the premium paid for owner driver.

In the present case DW1 has stated that insurance company has already paid Rs. 2,00,000 against premium paid for owner driver and this fact has been accepted by the PW1 in his cross examination. Hence the petition fails.

ORDER

The Claim Petition is rejected.

03.08.2020

(Chandroday Kumar)

Presiding Officer

Motor Accident Claim Tribunal Jhansi

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

Records be consigned.

03.08.2020

(Chandroday Kumar)

Presiding Officer

Motor Accident Claim Tribunal Jhansi