

Motor Vehicle Accident Claims Tribunal, Jhansi

Present: Chandroday Kumar H.J.S.
M.A.C.P. No. 214 year 2017
Manoj age about 32 years son of Shri Om Prakash Resident of
Village- Bijauli, Thana- Premnagar, District- Jhansi

Date of Institution: 05/19/17
Date of Judgement: 02/23/21
Age: 3 Y, 9 M, 4 D
MM/DD/YY MM/DD/YY

----- Petitioner

Versus

1. Mohar Singh son of Shri Govind Das Resident of 138, Village -
Bijauli, Thana - Prem Nagar, District - Jhansi

..... Owner Vehicle No. UP 93 B.T. 0143

2. Kailash Pal son of Shri Asaram Pal Resident of Village - Bijauli,
Police Station - Premnagar, District - Jhansi

..... Driver Vehicle No. UP 93 B.T. 0143

3. National Insurance Company Limited, through Branch Manager
National Insurance Company Limited, 98 Civil Line, Behind Elite
Cinema, Jhansi

..... Insurer Vehicle No. UP 93 B.T. 0143

----- Opposite Parties

Advocate of the petitioner- Shri. Pramod Kumar Mishra

Advocate of the opposite party No. 1 and 2 - Shri Avinash Shukla

Advocate of the opposite party No. 3 - Shri V. K. Mishra

A W A R D

This Claim Petition has been instituted by the petitioner under
section 166 and 140 of the Motor Vehicles Act for the
compensation of ₹16,80,000 with 12% annual interest on account
of death of his wife Neha in motor vehicle accident.

2. The brief facts of the case are that on 19.04.2017, at around
2:00 pm, injured Manoj (Petitioner) along with his mother Vimala
Devi, wife Neha and son Rudra was going in a Ape number UP 93
BT 0143, from Khailar to his house Bijauli. When they reached
Mahadev petrol pump, despite inhibiting, driver of the Ape drove
rashly and negligently and in order to save suddenly appeared
cattle suddenly took a turn, due to which, Ape get overturned. As a
result thereof, all the occupants get buried and suffered multiple
grievous injuries. Smt. Vimala, Smt. Neha and Rudra succumbed to
their injuries. The petitioner also suffered multiple injuries. The
information about the said incident was given by the owner in the
police station Premnagar. Petitioner lost his wife Neha in the
accident. Neha was housewife and she used to save ₹5000 per
month.

3. A Joint written statement has been filed by O.P. No. 1 & 2
stating in respect of the accident that the driver of the respondent
was driving the vehicle carefully and suddenly the vehicle was
exposed by the driver due to the animal coming. The vehicle
overturned due to no control of the vehicle due to turning. The
incident has occurred suddenly in which the respondents have no
fault. It has also been asserted that the vehicle was insured under
unlimited liability from opposite party number three at the time of
accident and opposite party number 2 had a valid and effective
driving license at the time of accident bearing number UP
93200600007.

4. A written statement has been filed by O.P. No. 3 in which
accident has been denied by the insurance company and any
liability has also been denied for violation of terms and conditions.

5. On the basis of pleadings, the following issues are framed:

1. Whether on 19.4.17 at around 2:00 pm when deceased was coming to his home in Bijauli from Khailar with his father Manoj, grandmother Vimala Devi and mother Neha in Ape number UP 93 BT 0143, then near Mahadev petrol pump Ape driver while driving rashly negligently, rapidly turned Ape when he suddenly came in front of the animal, which overturned Ape and Smt. Vimala, Smt. Neha and Rudra, who were sitting in the Ape, died due to get buried beneath Ape ?
2. Whether the driver of Ape number UP 93BT 0143 had a valid and effective driving license to drive the vehicle at the date and time of the accident ?
3. Whether Ape number UP 93 BT 0143 was insured from O.P. No. 3 National Insurance Company Limited at the date and time of the accident?
4. Whether the petitioner is entitled to compensation, if yes, how much and from whom?

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

By petitioner

Documentary

1. Through List 7C1 photocopies of G.D. 8C1/1, Postmortem Report of deceased Neha 9C1/1-9C1/9, R.C. of vehicle number UP 93 BT 0143- 10C1, fitness certificate of vehicle number UP 93 BT0143 10C1/2, permit of vehicle number UP 93 BT 0143- 10C1/3, driving license of Kailash Pal 10C1/4, Insurance Policy 10C1/5,
2. Through List 31C1 Certificate copy of postmortem report of deceased Neha 32C1/1-32C1/7
3. Through List 37C1 Notary Attested Copy of G.D. 38C1
3. RTA Injury Report of Manoj

Oral

P.W. 1 Manoj and P.W. 2 Pramod Kumar

By opposite parties 1 & 2

Documentary

Through List 19C1 photocopies of Registration Certificate of vehicle number UP 93 BT 0143- 20C1, fitness certificate of vehicle number UP 93 BT 0143- 21C1, permit of vehicle number UP 93 BT 0143 21C1, driving license of Kailash Pal 23C1/1 and insurance policy 24C1,

Oral

D.W.1 Kailash Pal D.W.2 Mohar Singh

No other oral or documentary evidence has been given by the opposite parties.

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

FINDINGS

8. Disposal of Issue No. – 1

It has been argued by the learned Advocate of the insurance company that this petition is not maintainable under Section 166 of the Motor Vehicles Act as the accident took place suddenly when cattle came on the road. Incidental cases will come under Section 163A. On the other hand, Learned Advocate of the petitioner has argued that driver should have run the Ape consciously and once it is proven that he was negligent then fault liability will apply. Section 163A does not apply in injury cases.

To test these arguments, I have to enter in to the evidence adduced by the parties.

9. P.W.1 Manoj has stated in his examination-in-chief that the accident occurred on date 19.4.14 at around 2:00 pm. He was coming from Khailar to his house at Bijauli with his wife Neha, son Rudra and mother Vimla Dewvi in Ape No. UP 93 BT 0143. The Ape driver was driving it rashly and negligently. When they reached near the Mahadev petrol pump, the Ape driver suddenly seeing the animal turned Ape with great speed and carelessness, which overturned Ape. They get buried below the Ape. In this accident his mother, wife and son died and he also suffered serious injuries. The incident was witnessed by Pramod and many people coming from behind after attending marriage ceremony. The incident was reported by the owner to Prem Nagar police station on wrong facts.

10. P.W.2, has stated in the examination-in-chief that accident took place on the date 19.4.17 at night around 2:00 pm. He was returning from Khailar to his house after attending the Dasthon ceremony solemnized at the place of Mevalal. Ahead him, Manoj with his mother Vimala, wife Neha and son Rudra were coming towards Bijauli sitting in the Ape number UP 93BT 0143. He was moving about 200 steps behind Ape. Ape driver was driving rashly, negligently and in wobbling manner. When he reached near the Mahadev Petrol Pump, then due to the sudden arrival of animals on the road, he quickly turned the Ape, due to which Ape overturned, so that the people sitting in Ape were get buried. He quickly rushed the spot and tried to rescue but could not. On reaching other people returning from dasthone and dial 100 police buried people rescued. Till then Vimala, Neha, and Rudra succumbed. In his cross examination, this witness has admitted that he does not remember the day of the incident and that Manoj is his relative and that they were returning from same program. He did not reported the accident to police station. This witness has denied the suggestion that he had not seen any accident, that the accident occurred due to the collision of an unknown vehicle and that being relative and fraternity of the petitioner he is giving false testimony to benefit the petitioner.

11. It is apparent that no material discrepancy has been surfaced out from cross examination of PW1 and PW2 which may discredit their testimony.

12. D.W. 1 Kailash Pal is the driver of the Ape. He has admitted the accident took place due to dis-balance of Ape on turning when a blue bull suddenly came but he has denied the fact that he was driving negligently. He has stated in his cross-examination that passengers were traveling on fare.

13. D.W. 2 Mohar Singh is owner of Ape and has admitted the fact that accident took place due to sudden coming of animal and that Kailash Pal was driver and that passengers were traveling on fare.

14. In the case of [Pushpabai Purshottam Udeshi and Ors. vs. Ranjit Ginning and Pressing Co. \(P\) Ltd. and Ors.](#) (25.03.1977 - SC) : MANU/SC/0249/1977 Hon'ble Apex Court has held that the normal rule is that it is for the plaintiff to prove negligence but as in some cases considerable hardship is caused to the plaintiff as the true cause of the accident is not known to him but is solely within the knowledge of the defendant who caused it, the plaintiff can prove the accident but cannot prove how it happened to establish negligence on the part of the defendant. This hardship is sought to be avoided by applying the principle of res ipsa loquitur. The general purport of the words res ipsa loquitur is that the accident "speaks for itself" or tells its own story. There are cases in which

the accident speaks for itself so that it is sufficient for the plaintiff to prove the accident and nothing more. It will then be for the defendant to establish that the accident happened due to some other cause than his own negligence. In this case Hon'ble Apex Court has also observed that we are unable to accept the plea for in a country road with a width of about 15 feet with fields on either side ordinary care requires that the car should be driven at a speed in which it could be controlled if some stray cattle happened to come into the road.

15. In the case [Oriental Insurance Co. Ltd. vs. Premlata Shukla and Ors.](#) (15.05.2007 - SC) : MANU/SC/7705/2007, it is also held by the Hon'ble Apex Court that proof of rashness and negligence on the part of the driver of the vehicle, is therefore sine qua non for maintaining of application under [Section 166](#) of the Act.

16. In the case of Archit Saini & Ors. Vs. The Oriental Insurance Company Ltd. & Others (09.02.18-SC): MANU / SC / 0105/2018, it has been determined by the Hon'ble Supreme Court that so much travel in cases related to motor accident Not required in a criminal trial. The court should take this difference into consideration. It is not possible for the claimants to prove the accident caused by a particular bus in a particular manner by hard evidence. The claimants were to establish their case only on the preponderance of the superfluity, a standard of proof beyond reasonable doubt.

17. In the case in hand it cannot be said that the driver of the Ape was not negligent at all. PW1 and PW2 has narrated rashness and negligence of the driver of Ape. Driver of Ape should have to be so cautious and he should have to drive the Ape in so controlled speed that if any cattle suddenly appears on the road in night, he may be able to stop his Ape safely. In my view, res ipsa loquitur shall also apply in this case. Injury report of injured Manoj shows that injuries are Road Traffic Accident injuries. Insurance Company has neither examined any witness to prove that the driver of the Ape was not negligent nor any investigation report has been filed by the Insurance Company hence principle of "fault liability" have to be applied to meet the ends of justice. Mere not lodging of F.I.R. by victim side is not sufficient to deny the case of petitioner under section 166 of the Motor Aehicle Act.

18. From the evidence adduced by the petitioner it is proved that on 19.4.17 at around 2:00 pm when injured was coming to his home Bijauli from Khailar with his mother Vimala Devi, wife Neha and son Rudra in Ape number UP 93 BT 0143, then near Mahadev petrol pump Ape driver while driving rashly negligently, rapidly turned Ape when he suddenly came in front of the animal, which overturned Ape and wife of the petitioner Neha, who was sitting in the Ape, died due to get buried below overturned Ape. This issue is decided accordingly.

19. **Disposal Issue No. - 2**

The vehicle owner has given the information at the police station that Kailash Pal was the driver of his vehicle Ape at the time of accident. The Owner and Driver of Ape have admitted this fact in their written statement. A photocopy of Kailash Pal's driving license paper number 23C1 has been filed on the record as per which Kailash Pal is authorized to drive non transport vehicles from 17.06.2007 to 26.05.2033 and transport vehicle from 17.07.2007 to 26.05.2019. This license could not be denied by the insurance company. The accident happened on 19.04.2017. Therefore, it is

proved that at the time of accident, the driver of Ape number UP 93 BT 0143 Kailas Pal had a valid and effective driving license. Hence, issue no. 2 is decided in affirmative.

20. Disposal Issue No. - 3

Vehicle owner has filed paper no. 24C1 and 24C1/2 photocopies of insurance policy number 450505/31/14/830000515, according to which the engine number 1633793 and chassis number A6A0967194 name- Mohar Singh's was insured from date 08.06.2016 to 07.06.2017 under comprehensive policy. It is clear from registration certificate that above mentioned engine number and chassis number was registered as UP 93BT 0143. It is clear from paper no. 22C1 that the permit in respect of this vehicle was effective from 16 June 2016 to 15 June 2020. It is clear from paper no. 20C1 that the fitness certificate was effective from June 14, 2016 to June 12, 2018. The accident occurred on date 19.04.2017. This insurance policy could not be rebutted by the insurance company. Hence, issue no. 3 is decided in affirmative.

21. Disposal Issue No. - 4

Since the accident took place due to negligence of the driver of offending vehicle UP 93 BT 0143 hence, the vehicle owner and driver are jointly and severally liable for compensation. Since the vehicle was insured by opposite party number 3 at the time of the accident, the liability for reimbursement of compensation rests with opposite party number 3.

22. Computation of compensation -

P.W. 1 has deposed that his wife was housewife and she was saving ₹5,000 from her household and she was hale and hearty. Postmortem report which shows age of deceased as 35 years Male. Sex Male is not reliable as deceased was female. It is an error on face of record. No other evidence is available on the record which can prove the age of the deceased hence I find the age of deceased as 35 years. Keeping in mind the age and health of deceased and in the light of observations of Apex Court in the case of [Rajendra Singh and Ors. vs. National Insurance Company Limited and Ors. \(18.06.2020 - SC\)](#) : MANU/SC/0486/2020, I am of the view that daily contribution towards her family should not be less than ₹165. In the case of [Kirti and Ors. vs. Oriental Insurance Co. Ltd. \(05.01.2021 - SC\)](#) : MANU/SC/0004/2021 it is held by the Hon'ble Apex Court that "When it comes to the second category of cases, relating to notional income for non-earning victims, the principle applies with equal vigor, particularly with respect to homemakers. Once notional income was determined, the effects of inflation would equally apply. Further, no one would ever say that the improvements in skills that come with experience did not take place in the domain of work within the household. It was worth noting that, although not extensively discussed, this Court had been granting future prospects even in cases pertaining to notional income. [41]" In the light of [National Insurance Company Limited Vs. Pranay Sethi and Ors. \(31.10.2017 - SC\)](#): MANU/SC/1366/2017, Multiplier of 11, deduction of 1/3 part on own expenses, addition of 10% 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.

| | | | | |
|---|-----|-----|-------|---------------|
| INCOME-MONTHLY x MONTHS OF THE YEAR | 165 | 30 | 12 | 59400 |
| FUTURE PROSPECTS IN % | | | 40 | 23760 |
| PART OF SELF EXPENSE | | | 3 | 27720 |
| AFTER DEDUCTION OF PART OF SELF EXPENSE (MULTIPLICAND) | | | | 55440 |
| MULTIPLIER | | | 16 | 887040 |
| LOSS OF CONSORTIUM | | | 40000 | 927040 |
| LOSS OF ESTATE | | | 15000 | 942040 |
| FUNERAL EXPENSE | | | 15000 | 957040 |
| Liability of Insurance Co. in % | | 100 | | 957040 |
| TOTAL COMPENSATION | | | | 957040 |

Thus the petitioners are entitled to receive ₹9,57,040 as compensation.

23. 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 husband, minor son, they will share 50-50%. In the light of case [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 ₹9,57,040 (Rupees Nine Lakh Fifty Seven Thousand Fourty) with 7.5% simple annual interest from the date of institution of the petition till the date of deposition/recovery. Opposite Party No. 3 National 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 30 days from the date of the order and submit UTR/Referencce/Transaction number in the office of this Tribunal.

Out of total compensation 75% shall be invested in annuity in any nationalized bank for 3 years. Petitioners will be able to receive rest 25% amount in their bank accounts through RTGS/NEFT.

The FO be prepared accordingly. Record be consigned.

Date 23.02.2021

(Chandrodaya Kumar)
Motor Accident Claim Tribunal,
Jhansi

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

Date 23.02.2021

(Chandrodaya Kumar)
Motor Accident Claim Tribunal,
Jhansi