

Motor Vehicle Accident Claims Tribunal, Jhansi

Presiding: Chandroday Kumar H.J.S. M.A.C.P. No. 215 of 2017 Manoj age about 32 yrs. S/o Sri Om Prakash Resident of Village- Bijauli, Thana- Premnagar, District- Jhansi	Date of Institution: 05/19/17 MM/DD/YY	Date of Judgement: 06/23/21 MM/DD/YY	Age: 4 Y, 1 M, 4 D
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----- Petitioner

Versus

1. Mohar Singh son of Shri Govind Das Resident of 138, Village - Bijauli, Thana - Prem Nagar, District - Jhansi
..... Owner Vehicle No. UP93BT0143
2. Kailash Pal son of Shri Asaram Pal Resident of Village - Bijauli, Police Station - Premnagar, District - Jhansi
..... Driver Vehicle No. UP93BT0143
3. National Insurance Company Limited, through Branch Manager National Insurance Company Limited, 98 Civil Line, Behind Elite Cinema, Jhansi
..... Insurer Vehicle No. UP93BT0143

----- 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 (Act No. 54 of 1994) for the compensation of ₹13,70,000 with 12% annual interest for death of Rudra aged about 8 months S/o Shri Manoj in a motor vehicle accident.

2. The brief facts of the case are that on 19.04.2017, at around 2:00 pm, injured Manoj (Petitioner) alongwith his mother Vimala Devi, wife Neha and son Rudra was going in a Ape number UP93BT0143, 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.

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 having 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 have been framed:

1. Whether on 19.4.17 at around 2:00 pm when deceased was coming to her home in Bijauli from Khailar with his father Manoj, grandmother Vimla Devi and mother Neha in Ape number UP93BT0143, 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 Mrs. Vimala, Mrs. Neha and Rudra, who were sitting in the Ape, died due to get buried?

2. Whether the driver of Ape number UP93BT0143 had a valid and effective driving license to drive the vehicle at the date and time of the accident?

3. Whether Ape number UP93BT0143 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 8C1/2 to 8C1/9, R.C. of vehicle number UP93BT0143 8C1/10, fitness certificate of vehicle number UP93BT0143 8C1/11, permit of vehicle number UP93BT0143 8C1/12, driving license of Kailash Pal 8C1/13, Insurance Policy 8C1/14,

2. Through List 30C1 attested copy of postmortem report

Oral

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

By opposite parties

Documentary

Through List 17C1 photocopies of Registration Certificate of vehicle number UP93BT0143, fitness certificate of vehicle number UP93BT0143, permit of vehicle number UP93BT0143, driving license of Kailash Pal and insurance policy,

Oral

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

7. I have heard the arguments of the learned advocates of the both side virtually and perused the record 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 fall 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. To test these arguments, I have to dwell upon the evidence adduced by the parties.

9. In this case P.W. 1, has stated in the examination-in-chief that accident took place on the date 19.4.17 at night around 2:00 pm. He, his mother Vimla Devi, son Rudra, wife Neha and grandson had gone to Khailar to attend the Marriage ceremony and after attending ceremony they were returning their home at Bijauli. Despite asking to go slow, Ape driver was driving Ape rashly and negligently. When he approached the Mahadev Petrol Pump Bijauli,

then due to the sudden arrival of animals on the road, he quickly turned the Ape, due to which Ape get overturned, so that the people sitting in Ape were get buried and due to which Vimala, Neha, and Rudra died on the spot and he suffered grievous injuries. The accident was witnessed by many people returning from marriage ceremony. Due to being busy in his treatment, his father could not immediately lodge the report of the accident. Meanwhile, the owner of the Ape colluded with the police and lodged a report as an incidental accident. When he went to report, his report was not lodged. Nothing material has come out from his cross-examination which may discredit his testimony.

10. P.W. 2 Pramod Kumar 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 coming back to his home from Khailar after attending Dastone Ceremony. Ahead him, sitting in auto number UP93BT0143, Manoj was coming towards Bijauli with his mother Vimala Devi and wife Neha and son Rudra. He was riding about 200 steps from Ape. The Ape driver was driving Ape rashly and negligently and wobblingly. When Ape reached near Mahadev Petrol Pump, then due to sudden seeing there animal, as soon as turned the Ape, due to rashness Ape overturned and people sitting in Ape were get buried. He quickly reached there and tried to rescue but he could not. Meanwhile, other people returning from Dastone Ceremony and Dial Hundred Police reached there and then buried people were rescued but till then Vimla, Neha and Rudra succumbed. The incident happened only due to the rashness and negligence of Ape UP93BT0143 driver. In his cross examination, this witness has admitted that he did not reported the accident to police and that people sitting in Ape were his relative and that they all were returning from same program. The police did not recorded his statement. He did not get summon from the Court for evidence. He does not remember the day of the incident. This witness has denied the suggestion that the accident occurred due to the collision of an unknown vehicle and that he had not seen any accident nor had he been present at the scene and 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 examinations 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 [Kusum Lata & Ors. vs. Satbir & Ors.](#) (02.03.2011), MANU/SC/0165/2011 : 2011 (2) RCR © 379 (SC) Hon'ble Apex Court has held that in a case relating to motor accident claims, the claimants are not required to prove the case as it is required to be done in a criminal trial. The Court must keep this distinction in mind. Strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability.

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 considered view, *res ipsa loquitur* shall also apply in this case. Postmortem report of Rudra states cause of death coma due to antimortem head injury. 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 Vehicle Act.

18. From the evidence adduced by the petitioner it is proved that on 19.4.17 at around 2:00 pm when deceased was coming to her home in Bijauli from Khailar with his father Manoj, mother Neha and grandmother Vimla in Ape number UP93BT0143, 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. In result, petitioner get injured and his wife and mother Vimla Devi and son Rudra who were 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. Kailash Pal and Owner of Ape have admitted this fact in their written statement and accordingly testified. A photocopy of Kailash Pal's driving license paper numbers 10C1/4 and 23C1 have

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 UP93BT0143 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 It is clear from paper no. 21C 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 he lost his 8 month old son, wife and mother in the accident. Petitioner has claimed ₹13,70,000. No doubt compensation must be fair and reasonable. Neither it should be misery not lottery.

23. Hon'ble Apex Court has held in [Kajal vs. Jagdish Chand and Ors. \(05.02.2020 - SC\)](#) : MANU/SC/0126/2020 that there has to be a measure of calculated guess work and conjecture. An assessment, as best as can, in the circumstances, should be made.

24. Hon'ble Apex Court has held in [Magma General Insurance Co. Ltd. vs. Nanu Ram and Ors. \(18.09.2018 - SC\)](#) : MANU/SC/1012/2018 that modern jurisdictions world-over have recognized that the value of a child's consortium far exceeds the economic value of the compensation awarded in the case of the death of a child. Most jurisdictions therefore permit parents to be awarded compensation under loss of consortium on the death of a child. The amount awarded to the parents is a compensation for loss of the love, affection, care and companionship of the deceased child. In the present case, deem it appropriate to award the father and the sister of the deceased, an amount for loss of Filial Consortium.

25. In 2009, Hon'ble Apex Court has observed in [R.K. Malik and Ors. vs. Kiran Pal and Ors. \(15.05.2009 - SC\)](#) : MANU/SC/0809/200928 that in Lata Wadhawa case (supra), wherein the accident took place on 03.03.1989, the multiplier method was referred to and adopted with approval. In cases of children between 5 to 10 years of age, compensation of Rs. 1.50 lakhs was awarded towards pecuniary compensation and in addition a sum of Rs. 50, 000/- was awarded towards ₹conventional

compensation". In the case of children between 10 to 18 years compensation of Rs. 4.10 lakhs was awarded including "conventional compensation". While doing so the Supreme Court held that contribution of each child towards family should be taken as Rs. 24,000/- per annum instead of Rs. 12,000/- per annum as recommended by Justice Y. V.Chandrachud Committee. This was in view of the fact that the company in question had an un-written rule that every employee can get one of his children employed in the said company.

26. In 2017, Division bench of Honb'le High Court of Judicature at Allahabad in [Nagma Bano vs. Harish Chandar and Others, 2017\(1\)AICC692](#) has fixed ₹5,00,000 in case of death of 3 years old child.

27. Keeping age and facts and circumstances of the case and in the light of observations of the superior Courts, I am of the considered view that in lump sum ₹4,00,000 would be just and reasonable compensation for death of Rudra. Thus the petitioner is entitled to receive ₹4,00,000 as compensation.

28. 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 annual interest from date of submission of petition to the date of actual recovery shall be justifiable. In the light of verdict 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 ₹4,00,000 (Rupees Four Lakh) with 7.5% simple annual interest from the date of institution of the petition till the date of actual 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.

70% of total compensation shall be invested in annuity for 3 years. Petitioner will be able to receive rest 30% amount in their bank accounts through RTGS / NEFT.

The FO be prepared accordingly. Record be consigned.

Date 23.06.2021

(Chandrodaya Kumar)
Motor Accident Claim Tribunal,
Jhansi

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

Date 23.06.2021

(Chandrodaya Kumar)
Motor Accident Claim Tribunal,
Jhansi