

Motor Vehicle Accident Claims Tribunal, Jhansi

Present: Chandroday Kumar H.J.S.

M.A.C.P. No. 216 year 2017

Manoj age about 32 years son of Shri Om Prakash Resident of Village- Bijauli, Thana- Premnagar, District- Jhansi

----- 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 ₹3,30,000 with 12% annual interest on account of grievous injuries to himself 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 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 was a hale and hearty man and he earned around ₹6,000 per month by wages, which he used to take care of himself and his family.

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 injured was coming to his home in 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 Mrs. Vimala, Mrs. Neha and Rudra, who were sitting in the Ape, died due to get buried and the petitioner suffered serious injuries ?

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, discharge ticket 9C1/1, R.C. of vehicle number UP 93 BT 0143 9C1/2, fitness certificate of vehicle number UP 93 BT0143 9C1/3, permit of vehicle number UP 93 BT 0143 9C1/4, driving license of Kailash Pal 9C1/5, Insurance Policy 9C1/6,

2. Through List 34C1 original copy of discharge ticket 35C1, original copy of injury form 36C2, photocopy of pathology report 37C1, original copy of treatment forms 38C1 to 38C1/4,

Oral

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

By opposite parties

Documentary

Through List 19C1 photocopies of Registration Certificate of vehicle number UP 93 BT 0143, fitness certificate of vehicle number UP 93 BT 0143, permit of vehicle number UP 93 BT 0143, driving license of Kailash Pal and insurance policy,

Oral

No oral 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. In this case P.W.1, has stated in the examination-in-chief that on the date 19.4.17 at night around 2:00 pm, accident took place near Mahadev Petrol Pump. He and Omprakash's family had gone

to Khailar to attend the Dasthon ceremony. After the ceremony, he left for Jhansi on his motorcycle. Accompanying him was the family of Omprakash in which his wife Vimala, Neha, son Manoj and grandson Rudra, sitting in the Ape number UP 93BT 0143, went ahead with him. He was to come to Jhansi so he was plying about 20 steps behind from the auto. Ape driver was driving 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 uncontrolled and overturned, so that the people sitting in him were get buried and due to which Vimala, Neha, and Rudra died on the spot and Manoj suffered a lot of injuries. With the help of he and others returning from the Dasthon ceremony, the injured was sent to the Medical College Jhansi and he called and informed the Dial Hundred Police and the dead were also taken to the Medical College. The incident happened only due to the rashness and negligence of Ape UP 93 BT 0143 driver. In his cross examination, this witness has admitted that Manoj is his relative, belongs to his society and that they all went to the program together. He did not reported the accident to police. He did not go to the hospital with all the injured as police arrived at the scene. The police did not recorded his statement. He does not know if the police had seized Ape. He does not remember the day of the incident. It was clearly visible from a distance that in the attempt to save the animal, the vehicle suddenly turned and the vehicle overturned. He could not even tell about those people who had come to the scene. This witness has denied the suggestion that the accident occurred due to the collision of an unknown vehicle, that Ape did not cause the accident 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.

10. P.W.2 Manoj has stated in his examination-in-chief that the accident occurred on date 19.4.14 at around 2:00 pm. He had gone to Khailar from Bijauli with his wife, son and mother in Ape No. UP 93 BT 0143. When they were coming back from Khailar from Dasthone ceremony, the Ape driver was driving it rashly and negligently. Many times they asked the Ape driver to run slowly but he did not pay heed. 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. 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. The incident was reported by the owner to Prem Nagar police station on wrong facts. In his cross examination, this witness has said that he does not remember the day of the accident but remembers the date. Ape driver was not from his home. At what speed he was driving Ape, he could not tell. Ape did not bump into anyone, it was overturned by the arrival of the animal. He did not report the accident. His statement was not taken by the police. This witness has denied the suggestion that he did not go to Khaliar from Bijauli on 19.4.17 by sitting in Ape number UP 93BT 0143.

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. 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.

13. 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.

14. 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.

15. 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.

16. 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 in 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 petitioner, who was sitting in the Ape, suffered serious injuries due to get buried below overturned Ape. This issue is decided accordingly.

17. Disposal dispute number - 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 22C1 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 Kailash Pal had a valid and effective driving license. Hence, issue no. 2 is decided in affirmative.

18. Disposal dispute number - 3

Vehicle owner has filed paper no. 23C1 and 23C1/2 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.

19. Disposal dispute number - 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.

20. Computation of compensation -

PW.2 has deposed that he worked as a laborer before the incident and earned around ₹6,000 per month. Due to the accident, he could not do any work for about 6 months. He claimed ₹6,30,000 in various heads under para 22 of his claim petition. He has presented papers related to the accident on case file but neither a document for filing income tax returns has been filed nor any other document to prove this income has been filed. Therefore, I am of the view that in calculating the compensation, it would be appropriate to take into consideration the income of the deceased as an unskilled laborer. It is noteworthy that unorganized unskilled laborers do not get full year employment. It is also noteworthy that unorganized agricultural laborers do not get employment throughout the year. Legal system Laxmi Devi and Ors. vs. Mohammad Tabbar and Ors. (25.03.2008 - SC): MANU / SC / 7368/2008 by Hon'ble Supreme Court for unskilled laborers 12 years back Rs. 100 per day wage is considered appropriate. Legal system Chandrawati Vs. Shushil Kumar and Ors. (01.08.2018 - ALLHC): MANU / UP / 2954/2018 by Hon'ble High Court Allahabad for unskilled laborers ₹200 per day wage is considered appropriate. In fact hypothetical income is an estimate based on time, place, and circumstances. It is noteworthy that unskilled laborers do not get employment throughout the year. There is a possibility of not

getting wages for four days in a month. Thus, notional income is ₹165 is determined.

21. PW2 has deposed that he was not hospitalized. He was treated. He has filed prescription for treatment. Now he has no bill. All are lost. Only those filed on the file are remained. He has not filed any paper related to his work and related to the loss.

22. Petitioner has filed medical bills of ₹1935 only. As per medical paper petitioner suffered spine injury and he has advised not to move more and and keep wearing waist belt. In these facts and circumstances, I am of the view that for the pain and suffering, treatment and loss of one month income lump sum ₹20,000 shall be awarded.

ORDER

The Claim Petition is partially allowed for compensation ₹20,000 (Rupees Twenty Thousand) 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.

The petitioner will be able to receive the amount in his bank account through RTGS / NEFT.

The FO be prepared accordingly. Record be consigned.

Date 16.02.2021

(Chandrodaya Kumar)
Motor Accident Claim Tribunal,
Jhansi

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

Date 16.02.2021

(Chandrodaya Kumar)
Motor Accident Claim Tribunal,
Jhansi