

Motor Accident Claim Tribunal, Jhansi

Date of Institution: 26/05/16 Date of Judgement: 21/12/20 Age: 4 Y, 6 M, 25 D

Presiding: Chandroday Kumar, H.J.S.

MACP No. 308 of 2016

1- Smt. Jamwati Prajapati, age- 25 years, wife of late Shri Jitendra Prajapati,

2- Nitin, age- 06 years, minor, son of late Shri Jitendra Prajapati,

3- Ku. Bhawna, age- 04 years, minor, daughter of late Shri Jitendra Prajapati,

4- Ku. Nisha, age- 02 years, minor, daughter of late Shri Jitendra Prajapati,

All minors through guardian mother Smt. Jamwati Prajapati

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5- Lalaram, age- 48 years, son of Shri Mangal,

6- Smt. Naina age- 46 years, wife of Shri Lalaram,

All residents of- Mohalla Makhadyau, Bhel Simravari, P/s- Babina, District- Jhansi

-----Petitioners

Versus

Naresh Kumar Gangwani son of Late Shri Nannumal, Resident of- 89/1, Mohalla Mintal, P/s- Kotwali, Jhansi Vehicle Owner **Hero Honda Chassis Number- MBLHA11ENC9G-15623, Engine Number- HA11E CC9G 21892** (Vehicle Owner)

-----Opposite Party

Advocate of the petitioners- Shri N. K. Gupta

Advocate of opposite party- Shri Indrapal Singh

J U D G E M E N T

The claim petition has been instituted by the petitioners against the opposite party for the compensation of ₹ 61,00,000 with interest @ 10% under section 166, and 140 of the Motor Vehicle Act.

2. In short, the facts of the petition are that on **20.04.2016**, Jitendra Prajapati, husband, father and son of the petitioners, was returning from his motor cycle number- UP93 AQ 0859 to his home village Simravari from Dinara. When he reached the Dagarwaha petrol pump before the toll plaza at around 8:30 pm, the driver of the Hero Honda coming from behind driving the vehicle rashly and negligently dashed the wrong side, causing Jitendra and pillion rider injured. Jitendra was brought to the medical college in an injured condition where he died on 20.04.2016 during treatment. **The first information report of the said incident was lodged on the basis of the number plate on the vehicle Hero Honda motorcycle at the time of the incident, but the number of the vehicle inscribed on the said number plate was someone else's vehicle due to which the present petition is based on the vehicle's engine and chassis number.** The deceased was a temporary employee of the Universal Multi State Credit Society at the time of the alleged incident, from which he received a salary of Rs 15,000 per month, which would support the family, but the family of the deceased suffered financial, mental and physical suffering due to untimely death. The petitioners have been deprived of the affection and love of their husband, father and son forever. The incident occurred only due to the rash and negligent driving of the driver of the vehicle Hero Honda Motorcycle, in which deceased did no any

fault. On the basis of the above assertion, the petitioners have claimed Rs 61,00,000 and 10% annual interest thereon from the opposite party.

3. Denying the pleadings of the petition opposite party Naresh Gangwani has filed reply 12A, in which it has been emphasized under additional statement that the petitioners have filed the present petition with the intention of seeking compensation only on the basis of false facts. Exaggerated amount of compensation has been claimed. The first information report of the alleged incident was lodged against the motorcycle number - UP93 Z 2041 while **he is the registered owner of motorcycle number- UP93 AE 3256, which was stolen from Teen Murti station on 09.06.2015**, which was reported on the same day at Thana-GRP, Jhansi. On the date of the alleged incident, the vehicle in question was not owned and occupied by him. In the month of June, the police of police station- Babina informed him that the stolen motorcycle was recovered and then only he came to know that his motorcycle has been recovered and **he applied for release on 20.06.2016 on which the said motorcycle was released to him**. Since the said motorcycle was not owned and occupied by him at the time of the alleged incident, the petitioners are not entitled to get any compensation from him. The alleged incident is said to have happened between two vehicles but the petitioners have not made the owner of the vehicle motorcycle number- UP93 AQ 0859 and its insurance company parties. Before theft he used to maintain his motorcycle well and during that time it was duly insured from **New India Insurance Company Limited from 20.09.2014 to 19.09.2015** and he only had to drive the said vehicle. He holds a valid driving license. Petitioners have not made a party to the person in possession of the motorcycle in question at the time of the alleged incident. Petitioners have not submitted first information report, charge sheet, site map, postmortem report, income, age and succession certificate etc. On the basis of above assertions, the petition is liable to be rejected with cost.

4- On the basis of pleadings of the parties following issues were framed-

1. Whether on date 20.04.2016 at the time around 8:30 pm, near petrol pump Dagarwaha before toll plaza under P/s- Raksa, District- Jhansi, the driver of motorcycle Hero Honda bearing Engine No.- HA11E CC9G 21892 and Chassis number- MBLHA11ENC9G -15623 driving the motorcycle rashly and negligently dashed the motorcycle number- UP93 AQ 0859 from behind, causing grievous injuries to its driver Jitendra Prajapati which resulted in his death while undergoing treatment ?
2. Whether the said accident occurred from vehicle number- UP93 Z 2041 and not from the OP's motorcycle number- UP93 AE 3256, which was stolen on 09.06.2015 and was not in the possession of the opposite party on the date of incident, as has been stated by OP Naresh Kumar Gangwani in his reply ?
3. The said accident occurred due to the contributory rashness and negligence of the driver of which vehicle ?
4. Whether the driver of the said Hero Honda Engine Number- HA11E CC9G 21892 and Chassis Number- MBLHA11ENC9G-15623 at the date and time of the alleged accident held a valid and effective driving license ?
5. Whether on the date and time of the alleged accident the said Hero Honda bearing Engine number- HA11E CC9G 21892 and Chassis number- MBLHA11ENC9G-15623 was duly insured at any insurance company ?
6. Whether the petitioners are entitled for compensation, if yes, how much and from whom?

5- In order to prove facts of the petition, the **petitioner** adduced following oral as well as documentary evidence-

ORAL

PW1 Smt. Jamwati, wife of the deceased,

PW2 Lala Ram, father of the deceased,

PW3 Kamal Lal, an eye-witness,

DOCUMENTARY

Photocopies of the following documents through list 7C1-

➤ FIR

➤ Post-Mortem Report

through list-

➤ Aadhar Cards of claimants

➤ Answers of RTI

Following oral evidence has been adduced by the **OP**

➤ DW1 Naresh Kumar Gangwani

Following certified copies have been produced by the **OP** through list 14C1-

➤ FIR of theft of motor cycle

➤ Release application

➤ Release order

➤ Photocopy of RC of stolen motor cycle UP93 AE 3256

➤ Insurance Policy of UP93 AE 3256

➤ D L of Naresh Kumar Gangwani

Report of ARTO Jhansi, paper numbers 52C1 to 52C1/5

No other evidence has been given by the parties.

6. Heard the Ld. Counsels appearing on behalf of both side and perused the record.

FINDINGS

7. Disposal of issues numbers 1, 2 and 3

Dispensing the burden of proof, the petitioners examined Kamal Lal PW-3, an eyewitness to the accident, who has stated that he was pillion rider with Jitendra Prajapati. The accident occurred on 20.04.2016 at 8:30 pm in front of Dagarwaha Petrol Pump. Driver of Hero Honda motorcycle bearing number plate of UP93 Z 2041 dashed in their motorcycle from behind. This accident occurred due to the sole rash and negligence of the driver of Hero Honda motorcycle bearing number plate of UP93 Z 2041. Jitendra Prajapati and he were injured in the accident. Jitendra Prajapati died on the second day. He has further stated that the FIR was lodged at the Raksha police station by Jitendra Prajapati's father. After four days he was called by the police for his statement. When he went for the statement, he saw that the motorcycle of the same number was parked there. The same number was written on the number plate of the motorcycle which he stated. He has said in his cross-examination that he could not see who was driving the offending vehicle. Ld. Counsel of OP has suggested that both bikers were drifting to and fro but there is nothing on record to show that both bikers were actually drifting to and fro or both bikers were friends. No material contradiction has come out of his cross-examination which can refute his testimony.

8. Lalaram PW2, father of the Jitendra Prajapati, has stated that his son severely injured in the accident on 20.04.2016 and died in medical college. He lodged the FIR on date 27.04.2017 against Hero Honda UP 93 Z 2041 on the information of PW1 and on the basis of number written on number plate of offending vehicle parked in police station. He came to know from RTO office that the vehicle UP 93 Z 2041 belongs to some other owner. He later finds out that the offending motorcycle was a stolen vehicle. Then he noted chassis number and engine number from that motorcycle parked in police station and find out owner. His son Brajesh searched owner of vehicle

from net on the basis of engine number and chassis number which he noted from police station. PW2 has satisfactorily explained delay of 8 days in lodging FIR in his FIR as he was engaged in the ritual after death. Jitendra Prajapati's postmortem examination was done on 21.04.2016 showing the cause of death as neurogenic shock on gallbladder, Urethra and perineum rupture.

9. The FIR of the accident (case crime number 100/16 under sections 279/337/338/304A/427/420 IPC, P/s Raksha), paper number 8C1/3, transpires that **both the vehicles, UP93 AQ 0859 and UP93 Z 2041, were parked in the police station** where the FIR was lodged at the time of FIR. Investigation into this case was handed over to SI Arvind Kumar Katiyar. The FIR of the motorcycle stolen (case crime number 472/15 under section 379 IPC, P/s GRP), paper number 15C1/2 transpires that motorcycle of Naresh Gangwani having registration number **UP93 AE 3256 was stolen on 09.06.2015** from Railway Station Jhansi. Registration Certificate paper number 17C1 shows that motorcycle having Hero Honda Engine No. MBLHA11ENC9G15623 and Chassis No. HA11ECC9G21892 is registered as UP93 AE 3256 in the ownership name of Naresh Kumar Gangwani. Release application of Naresh Gangwani paper number 16C1/2 transpires that Arvind Kumar SI Raksha police station has reported that **motorcycle number UP93 AE 3256 (wrong number UP93 Z 2041) is parked at police station in case crime number 100/16 under sections 279/337/338/304A/427/420 IPC.** MINISTRY OF ROAD TRANSPORT & HIGHWAYS' portal <https://parivahan.gov.in/rcdlstatus/> shows that vehicle UP93 Z 2041 is registered as Honda Activa, generally called as Scooty, in the name of Harmeet Singh Nanda. Paper numbers 17C2/2 release order and 58 answer to the RTI make it clear that FR has been submitted in both the case crimes.

10. From the above documentary and oral evidence it is very clear that on date 20.04.2016 at the time around 8:30 pm, near petrol pump Dagarwaha before toll plaza under P/s- Raksa, District- Jhansi, the driver of motorcycle Hero Honda **UP93 AE 3256** bearing Engine No.- HA11ECC9G21892 and Chassis number- MBLHA11ENC9G15623 driving the motorcycle rashly and negligently hit the motorcycle number- UP93 AQ 0859 from behind, causing grievous injuries to its driver Jitendra Prajapati which resulted in his death while undergoing treatment. The motorcycle Hero Honda **UP93 AE 3256** bearing Engine No.- HA11ECC9G21892 and Chassis number- MBLHA11ENC9G15623 was stolen by an unknown thief on 09.06.2015 and a fake number plate of UP93 Z 2041 was attached to it. There is nothing on record to show any contributory negligence of Jitendra Prajapati. Issues numbers 1, 2 and 3 are decided accordingly.

11. Disposal of issue number 4

The above analysis done for the disposal of issues number 1, 2 and 3 has made it clear that long before the accident, the offending motorcycle of opposite party was stolen from railway station, Jhansi by some unknown person. Offending motorcycle was recovered only after the accident. Neither the thief nor the driver of the stolen vehicle could be identified, so there is no question of a valid and effective driving license of the driver of the offending vehicle. Issue number 4 is decided accordingly .

12. Disposal of issue number 5

The above analysis done for the disposal of issues number 1, 2 and 3 has made it clear that Hero Honda motorcycle bearing Engine number- HA11E CC9G 21892 and Chassis number- MBLHA11ENC9G-15623 and registration number UP93 AE 3256 was stolen on 09.06.2015 and was recovered only after the accident. Insurance policy paper number 18C1 shows that vehicle Hero Honda UP93 AE

3256 was insured from 20.09.2014 to 19.09.2015 only. Parivahan portal <https://parivahan.gov.in/rcdlstatus/> is showing status of UP93 AE 3256 as blacklisted on 17.06.2015-

Vehicle Details Showing in Registering Authority

Registering Authority: JHANSIRTO, UTTAR PRADESH

Registration No:	UP93AE3256 (BLACKLISTED)	Registration Date:	11-Sep-2012
Chassis No:	MBLHA11ENC9GXXXX	Engine No:	HA11ECC9GXXXX
Owner Name:	NARESH KUMAR GANGWANI		
Vehicle Class:	M-CYCLE/SCOOTER (2WN)	Fuel Type:	PETROL
Maker / Model:	HERO HONDA MOTORS LTD / CD DLX		
Fitness Upto:	10-Sep-2027	Insurance Upto:	05-Sep-2013
Fuel Norms:	EURO 2	Road Tax Paid Upto:	07-Sep-2027
Blacklist Reason:	PARTICULAR SENT TO THE INSURANCE COMPANY (TO MR.BRIJ MOHAN UDAINIYA),BOUCHER IS IMPOUNDED IN THE FILE, ON DATED-17-JUN-2015		

Report regarding reason of blacklisting has been sought from ARTO Jhansi which states that the registration was blacklisted due to the information regarding vehicle was sought by investigator of Bajaj Allianz Insurance Company regarding an accident on 08.06.2015. In my view, on expiry of insurance after theft, owner was not required to insure his stolen vehicle. There is nothing on record to show that on the date and time of the accident the said Hero Honda bearing Engine number- HA11E CC9G 21892 and Chassis number-MBLHA11ENC9G-15623 was duly insured at any insurance company. No any insurance company has been made party to this petition. Issue number 4 is decided accordingly.

13. Disposal of issue number 6

MV Act recognizes two types of liability those are fault liability in which petitioner has to prove fault of the driver due to which accident occurred and no fault liability in which petitioner is not required to prove fault of the driver. The scale for measuring damage in both types of liabilities also differs. Under English Law of torts strict liability was imposed on owner on escape of some dangerous things subject to some exceptions but under absolute liability no exception has been recognized. Though motor vehicle is not hazardous or dangerous itself unless it goes in the hands of beginner or plied rashly and negligently. There are many case laws regarding accident by stolen vehicle which are as following-

1- In the case of [United India Insurance Company Ltd. vs. Leheru and Ors. \(28.02.2003 - SC\)](#) : MANU/SC/0219/2003, Hon'ble Apex Court illustrated that- Just to taken an example, suppose a vehicle is stolen. Whilst it is being driven by the thief there is an accident. The thief is caught and it is ascertained that he had not license. Can the Insurance Company disown liability? The answer has to be an emphatic "No". To hold otherwise would be negate the very purpose of compulsory insurance. The injured or relatives of person killed in the accident may find that the decree obtained by them is only a paper decree as the owner is a man of straw.

2- In the case of [National Insurance Co. Ltd. vs. Golana and Ors. \(30.08.2012 - ALLHC\)](#) : MANU/UP/1699/2012 Hon'ble High Court of Judicature at Allahabad held that-

"In present case it was not disputed that motor cycle belonged to Respondent No. 2. It was also not denied that he kept motor cycle was in safe custody of parking agent of office of Loco Railway Station from where motor cycle was stolen and recovered after accident and handed over to owner through process of Court. Respondent No. 2 also lodged FIR of this incident against parking agent. In said criminal case police submitted closer report because person causing accident as well as person who committed theft could not be traced out by police. Final Report was accepted. Stolen motor cycle was returned to Respondent No. 2. Therefore it could not be said that Respondent No. 2 was in exclusive knowledge of fact as to who was driving motor cycle at time of accident. It was well settled proposition of law that

person could not be compel to do which was not possible to be done. Appellant could not escape from its liability by mere pleadings of alleged breach of terms of policy of insurance."

3- In the case of [New India Assurance Co. Ltd. v. Selvarajamani & Ors.](#), MANU/TN/0937/1997 : 1998 ACJ 547, Division Bench of the High Court of Madras held that if the offending vehicle was not in custody and control of the owner, then the said owner cannot be held liable to pay the compensation.

4- In the case of [United India Insurance Co. Ltd. vs. Amaratta and Ors.](#) (04.04.2013 - DELHC) : MANU/DE/1679/2013 Hon'ble Delhi High Court has exempted owner on the ground of theft of his Santro and held liable 3 persons those are driver of stolen vehicle bearing fake number plate of a Zen on it and current owner and person who transferred stolen vehicle to current owner under subrogacy.

5- In the case of [Parvat vs. Sheikh Ejaj and Ors.](#) (13.01.2006 - MPHC) : MANU/MP/0765/2006 Hon'ble High Court of Madhya Pradesh fixed the liability on insurer of stolen offending vehicle on the ground that **no action was taken by owner for suspension of registration under Section 53 of Act. (MV ACT)**

14. In all above mentioned cases, except in case law at no. 3, compensation to innocent victims have been awarded either against insurance company or registered owner or thief. Owner DW1 has admitted that he did not informed RTO about theft of his vehicle. So, it is clear that registered ownership has not been suspended. Opposite Party remained registered owner throughout. The thief could not be caught. Vehicle was not ensured at the time of the accident. Facts of this case are very similar to the case [National Insurance Co. Ltd. vs. Golana and Ors.](#) (30.08.2012 - ALLHC) : MANU/UP/1699/2012. Since ruling of Hon'ble Allahabad High Court and even obiter dicta of the Apex Court is binding on this Tribunal and in view of the fact that owner did not keep his vehicle in safe custody and did not pay heed to suspend the registration after theft, hence I find Opposite Party liable to pay compensation to the innocent victim on the basis of strict liability.

15. Calculation of compensation

PW1 Suman W/o deceased Pushp Pal has stated dependency of family of 5 persons which is uncontroverted. She has also stated the income of the deceased ₹ 1,80,000 per year from farming but in this regard neither any independent witness has been examined nor has any documentary evidence of the deceased's agricultural land been produced. P.W. 1 has stated that her husband was earning ₹ 15,000 per month salary from a private insurance company. Supporting certificate of salary, Paper Numbers 48C1, issued by Universal Multi State Credit Co-operative Society Limited has been produced on record on 25.11.2020 which has not been admitted by the OP Counsel. This paper is private document and is not duly proved by the petitioners. Taking cognizance of these circumstances, Notional Income will be justified in calculating the amount of the compensation. In the case of [Laxmi Devi and Ors. vs. Mohammad Tabbar and Ors.](#) (25.03.2008-SC): MANU/SC/7368/2008, 12 years prior Honorable Apex Court has deemed ₹ 100 per day Notional Income of unskilled laborer fair. In the case of [Chandrawati vs. Shushil Kumar and Ors.](#) (01.08.2018 – ALLHC) : MANU/UP/2954/2018, 2 years prior Honorable High Court of Judicature at Allahabad has deemed ₹ 200 per day Notional Income of unskilled laborer fair. It is noteworthy that in India, unorganized sector personnel are not employed all year. In fact, the income earned is a guess based on time, place and circumstances. There is a possibility of not getting four days work in the month. In this way, notional income of the deceased is decided as ₹ 165 per day. The postmortem report states age of deceased approx 25. There is nothing in rebuttal

to this hence the age of the deceased is determined as 25 years on the date of the accident. In the light of [National Insurance Company Limited Vs. Pranay Sethi and Ors. \(31.10.2017 - SC\): MANU/SC/1366/2017](#) Multiplier of 18, deduction of 1/4 part on own expenses, 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			4	20790
AFTER DEDUCTION OF PART OF SELF EXPENSE (MULTIPLICAND)				62370
MULTIPLIER			18	1122660
LOSS OF CONSORTIUM			40000	1162660
LOSS OF ESTATE			15000	1177660
FUNERAL EXPENSE			15000	1192660
TOTAL COMPENSATION				1192660

Thus the petitioners are entitled to receive ₹11,92,660 as compensation.

16. 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 wife, a minor son, two minor daughters, father and mother of the deceased, they will share 25, 20, 20, 20, 5 and 10% respectively. In the light of [M.R. Krishna Murthi vs. The New India Assurance Co. Ltd. and Ors. \(05.03.2019 - SC\) : MANU/SC/0321/2019](#), in order to secure future of claimants, it would be justifiable to fix some part of compensation in annuity.

ORDER

The Claim Petition is allowed for the compensation amount ₹ 11,92,660 (Eleven Lac Ninety Two Thousand Six Hundred and Sixty Only) with 7.5% simple annual interest from the date of institution of the petition till actual recovery against Opposite Party. Out of this amount Petitioner Nos. 1, 2, 3, 4, 5 and 6 shall share in the ratio of 25, 20, 20, 20, 5 and 10 respectively. 75% of the share of the Petitioners No. 1, 5 and 6 shall be in annuity for 5 years and 25% shall be transferred through RTGS/NEFT in their bank accounts. The share amount of Petitioner Nos. 2, 3 and 4 shall be invested in annuity for 10 years through their guardian mother. Opposite Party is directed to deposit the compensation amount with interest within 60 days from today.

Awards be prepared accordingly.

26.12.2020

(Chandroday Kumar)
Motor Accident Claim Tribunal
Jhansi

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

Records be consigned.

26.12.2020

(Chandroday Kumar)
Motor Accident Claim Tribunal
Jhansi