

Motor Accident Claim Tribunal Jhansi

Present: Chandroday Kumar HJS

MACT No. 313 of 2015

1. Smt. Ramlata Singh, 56, W/o Late Sri Hakim Singh
 2. Harsh Singh Gurjer, 29, S/o Late Sri Hakim Singh
- All R/o Village – Sakin, P/s Samther District – Jhansi

Date of Institution:	Date of Judgement:	Age:
04/08/15	14/09/20	5 Y, 1 M, 10 D
MM/DD/YY	MM/DD/YY	

-----Pititioners/Claimants

Vs.

1. Anand Singh Solanki S/o Sri Rajendra Singh Solanki R/o- Thpak Bagh P/s- Kotwali District Jhansi
.....Owner and Driver Vehicle No. UP 70CY 5556 (Safari)
2. The New India Insurance Co. Ltd. through Regional Manager Kutchehary Chouraha Jhansi.

-----Opposite Parties

Advocate for the Petitioners Sri. Pramod Mishra

Advocate for the OP 1 Sri. Mh. Shamim Khan

Advocate for the OP 2 Sri Arun Srivastwa

JUDGEMENT

This Claim Petition has been instituted by the petitioners under section 166 and 140 of the Motor Vehicles Amended Act No. 54 of 1994 for the compensation of ₹ 89,50,000 with 12% annual interest on the death of their son and brother Sri Ram Pratap Singh in a motor vehicle accident.

2. In brief, the facts of the case are that on the unfortunate day of June 16, 2015, at around 9 pm petitioners' son and brother Ram Pratap Singh was going to Gazipur to attend a marriage ceremony along with his friends Rajesh Kumar Singh, Neeraj Namdev and Anand Singh by the Safari vehicle Number UP 70CY 5556. As soon as they reached near Jaorganj, then during overtake vehicle wobbled and overturned resulting in death of Ram Pratap Singh and Rajesh Kumar Singh on the spot. The said incident was witnessed by Neeraj Namdev and others present in the vehicle. The incident was reported to police station Saidpur District Gazipur. Before the incident, the deceased was working as a constable in the Uttar Pradesh Police Department, giving him a salary of around ₹ 25000 per month, which he used to take care of himself and his family. The deceased was perfectly healthy. The deceased was the only earning member of his family. And the whole family was dependent on the income of the deceased.

3. Opposite Party No. 1, the owner and driver of the offending vehicle, has filed his reply on the petition in which he has stated that accident took place due to the mechanical fault and he did no fault in driving. The vehicle was insured from OP No. 3 The New India Insurance Co. Ltd. He had a valid driving license. All the papers of the vehicle were valid and the insurance of the vehicle was valid. If any liability is fixed, it will be on insurance company.

4. OP No. 3 has submitted the reply to the claim petition in which he has denied the pleadings of the petition and have taken many defenses including probable violation of terms and conditions of the policy.

5. After exchange of pleadings, following issues were framed-

(I) Whether on 16.06.2015 at about 9:00 PM near Joharganj at Gazipur Road, within the circle of P.S.Saidpur, district Ghazipur, the driver of Safari Vehicle No. U.P.70 CY- 5556, by driving his vehicle rashly and negligently, got the vehicle upturned, as a result of which Ram Pratap Singh, sustained grievous injuries, resulting into his death ?

(II) Whether the driver of Safari Vehicle No. U.P.70 CY-5556 was holding valid and effective driving licence on the date and time of alleged accident ?

(III) Whether the Safari Vehicle No. U.P.70 CY-5556 was duly Insured by O.P.No.2, the New India Assurance Company Ltd. On the date and time of alleged accident ?

(iv) Whether the petitioners are entitled to get any amount of compensation ? If yes, how much and from which of the opposite parties ?

6. Petitioner adduced following evidence in support of the petition-

ORAL

1. **PW1** Smt.Ramlata Singh, wife of Late Sri Hakim Singh - the petitioner No. 1,
2. **PW2** Neeraj Namdev, an eye-witness,
3. **PW3** Vinay Singh Rathore, Constable, Office of SSP Allahabad,

DOCUMENTARY

4. Photocopies of the following documents through list – 7C1

GD extract - Paper Number 8C1

Post-Mortem Report - Paper Numbers 9C1 to 9C1/3

RC - Paper Number 10C1

DL - Paper Number 11C1

Insurance Policy - Paper Number 12C1

5. Certified copies of the following through list – 35C1

Pay Certificate of deceased Ram Pratap Singh – Paper No. 36C1

Inquest Report of deceased Ram Pratap Singh – Paper No. 37C1

GD extract - Paper Number 38C1

Post-Mortem Report - Paper Numbers 39C1 to 39C1/3

Photocopy of **Aadhar** or Ramlata - Paper Number 40C1

6. Following Original copies have been adduced by the Cons. Vijay Singh Rathore through list 49C1

Letter of SSP - Paper Number 50

Pay Record of deceased cons. Ram Pratap Singh - Paper Numbers 51C1/1 to 51C1/5

7. Following Original copy has been adduced through list – 76C1

Mark sheet of High School of deceased Ram Pratap Singh – Paper No. 77B through list 76C1

8. Notary attested copies of **Medical Papers** and **Show Cause Notices** through list 87C1 - Paper Nos. 88C1 to 90C1/1

9. **OP Number 1** adduced following evidence in support of the petition-

DW1 Anand Singh Solanki

Insurance Policy - Paper Number 24C1

RC of the Vehicle UP 70CY5556 - Paper Number 25C1

Insurance Policy of the Truck UP 51 AT 1573 - Paper Number 32C1/2

DL of Anand Singh Solanki - Paper Number 26C1

10. **OP Number 1** also produced photocopies of the following through list 68C1-

Affidavit of Anand Singh Solanki - Paper Numbers 69C1 to 69C1/2

RTI regarding **Insurance settlement** - Paper Numbers 70C1 to 71C1/4

7. Due to the COVID-19 lock-down, I have heard the parties in Virtual Court and perused the record carefully.

8. **DISPOSAL OF ISSUE NO. 1**

This issue has been framed in order to ascertain the factum of the accident and rash and negligent driving of the vehicle No. UP 70CY 5556. The burden of proof lies on the petitioners. The Petitioners have submitted **GD extract** - Paper Number 38C1 which shows that the haply occurred incident was reported to police station Saidpur district Ghazipur promptly after 30 minutes of the accident. In normal course, four wheelers like Safari do not wobble during overtake. The driver was a policeman, so probably the case may not have been investigated by the police, but PW2, who was in the car and was an eyewitness as his name find place in information recorded in GD, has truly narrated the accident. He has said that due to the rashness and negligence of the driver, the vehicle wobbled when the other vehicle arrived and crashed into the divider while overtaking. The driver's negligence is evident from the collision with the divider in course of overtaking. This type of accident is very common accident during overtake in night. It is evident from paper no. 89C1/5 and 88C1/2 that DW1 and PW1 too got injured in this accident but DW1 is wrong to say that the wheel of the Safari had gone out due to which the accident occurred. He has not mentioned wheel gone out theory in his information to the police. Nothing material is revealed from cross-examination of PW2 which may discredit his testimony. Inquest report corroborates accidental death. Postmortem report of Ram Pratap is also available on the record. In these circumstances, I find that petitioners have been able to prove the issue positively. The Issues No. 1 is being decided accordingly.

9. **DISPOSAL OF ISSUE NO. 2**

This issue pertains to the driving license of the driver of the vehicle No. UP 70CY 5556. The OP No. 1 Anand Singh Solanki as a driver himself has given information promptly to the police station which has been recorded in the GD. Photocopy of the DL of OP No. 1 has been produced by the OP No. 1 and petitionrs. According to this DL (No: UP70 201440012275), Anand Singh Solanki is authorized to drive non transport vehicles from 20.03.2014 to 19.03.2034. Insurance Company could not be able to rebut this fact as nothing in rebuttal has been produced by the OP No. 2. Hence, it is proved that at the time of accident the driver of the vehicle No. UP 70CY 5556 Anand Singh Solanki had a valid and effective driving license. This issue is decided accordingly.

10. **DISPOSAL OF ISSUE NO. 3**

This issue has been framed to ascertain the insurance of the vehicle No. UP 70CY 5556. OP number 1 has filed photo copy of the Insurance Policy (The New India Insurance Co. Ltd.) of the vehicle No. UP 70CY 5556 which is Paper Number 26C1. This package policy having chasis No. MAT617025FNE02426 and engine No. DUYJ05000 is effective from 30.05.2015 to the midnight of 29.05.2016. Engine

No. and chasis No. corresponds to the RC of the vehicle No. UP 70CY 5556. Nothing in rebuttal from OP No. 2 is placed before the Tribunal. Insurance Company's argument that there is no mention of vehicle number in GD is not tenable because it is not suggested to DW2 that he owns more than one Safari. Insurance company has given OD claim to the owner of the vehicle DW2, hence it is proved that at the time of accident vehicle No. UP 70CY 5556 was duly insured from OP No. 2. The issue No. 3 is being decided accordingly.

11. DISPOSAL OF ISSUE NO. 4

This issue relates to the amount of compensation and liability of the parties to pay. Since, it has been established during disposal of issue No. 1 that the accident in question took place due to the rash and negligent driving of driver of the Safari No. UP 70CY 5556, hence, driver-cum-owner OP No. 1 is liable for damages. Since it has been established during disposal of issues Nos. 3 and 2 that the insurance was valid and effective and the driver had a valid and effective driving license at the time of the accident, hence the OP No. 2 has to indemnify. In [Jagtar Singh vs. Sanjeev Kumar and Ors. \(22.12.2017 - SC\) : MANU/SC/1711/2017](#) Hon'ble Apex Court has observed that "comprehensive/package policy" would cover the liability of the insurer for payment of compensation for the gratuitous passenger/occupant in a car or pillion rider.

12. Calculation of compensation

PW1 Ram Lata Singh mother of the deceased has stated that after death of her son she is getting ₹ 7000 as pension and has applied for dying in harness.

13. In [United India Insurance Co. Ltd. and others v. Patricia Jean Mahajan and others, MANU/SC/0563/2002 : \(2002\) 6 SCC 281](#), Hon'ble the Apex Court while not deducting the sum received on account of family pension and social security had in its mind that these payments had no co-relation between, the compensation payable on account of accidental death and death on account of illness or otherwise.

14. In [Bhakra Beas Management Board vs. Kanta Aggarwal and Ors. \(07.07.2008 - SC\) : MANU/SC/7793/2008](#) Hon'ble Apex Court has held that the general rule in regard to the assessment of damages is that any benefit accruing to a dependent by reason of the relevant death must be taken into account.

15. In the State of [Haryana and Ors. vs. Jasbir Kaur and Ors. \(05.08.2003 - SC\) : MANU/SC/0549/2003](#) Hon'ble Apex Court has held that Section 168 is required to make an award determining the amount of compensation which is to be in the real sense "damages" which in turn appears to it to be 'just and reasonable'. The expression "just" denotes equitability, fairness and reasonableness, and non-arbitrary.

16. Ld. Counsel of both parties are agreed to reduce 10% of future prospects on account of inquiry which would have been conducted for leaving the duty without permission and for the pension which is being received by the mother of the deceased.

In the case of [Gangaraju Sowmini and Ors. vs. Alavala Sudhakar Reddy and Ors. \(01.02.2016 - HYHC\) : MANU/AP/0096/2016](#) it is observed that *"We should remember that in an Indian family, brothers, sisters and brothers' children and some times foster children live together and they are dependent upon the breadwinner of the family and if the breadwinner is killed on account of a motor vehicle accident, there is no justification to deny them compensation....."*

Claimants are mother and brother of the deceased. PW1 has stated dependency of family. She has also stated that her son was constable in police department and was earning about ₹ 25,000 as salary. In this regard original Pay Slip of the deceased Ram Pratap Singh Paper No. 36C1/1 and 51C1 have been produced as documentary evidence. Documentary evidence shows that deceased Ram Pratap Singh was getting ₹ 21,645 after deduction. Insurance company does not dispute this salary. As per paper no. 77B high school marks sheet of the deceased he was 26 years old. In the light of [National Insurance Company Limited Vs. Pranay Sethi and Ors. \(31.10.2017 - SC\): MANU/SC/1366/2017](#), Multiplier of 17, deduction of 1/2 part on own expenses as deceased was unmarried, addition of 50% future prospects as deceased had a permanent salaried job minus 10% as agreed by the parties, addition of ₹ 20,000 for loss of filial consortium as interpreted and followed by the Honorable Apex Court in [United India Insurance Co. Ltd. vs. Satinder Kaur and Ors. \(30.06.2020 - SC\) : MANU/SC/0500/2020](#), 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	21645	12	259740
FUTURE PROSPECTS IN %		40	103896
PART OF SELF EXPENSE		2	181818
AFTER DEDUCTION OF PART OF SELF EXPENSE (MULTIPLICAND)			181818
MULTIPLIER		17	3090906
LOSS OF CONSORTIUM		20000	3110906
LOSS OF ESTATE		15000	3125906
FUNERAL EXPENSE		15000	3140906
TOTAL COMPENSATION			3140906

Thus the petitioners are entitled to receive ₹ 31,40,906 as compensation.

15. 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 mother and son of the deceased, they will share 80 and 20%. In the light of [Jai Prakash vs. National Insurance Co. Ltd. and Ors. \(17.12.2009 - SC\): MANU/SC/1949/2009](#) and [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 make a plan to receive the annuity of compensation.

ORDER

The Petition is partly allowed for the compensation amount ₹ 31,40,906 (Thirty One Lac Forty Thousand Nine Hundred Six) against OP No. 1. This amount has to be indemnified by the OP No. ²~~3~~ ^{New} The India Insurance Company Limited with 7.5% simple annual interest from the date of institution of the petition till actual recovery. Out of this amount Petitioner Nos. 1 and 2 shall share in the ratio of 80 and 20 respectively. 75% of the shares of the Petitioners shall be disbursed in the form of annuity for 3 and 5 years respectively and 25% shall be transferred through RTGS/NEFT in their bank accounts. The New India Insurance Company Limited is ordered to deposit the compensation amount with interest within 30 days from today in the Tribunal's Punjab National Bank Account No. 3671000101192489 IFSC- PUNB0367100 through RTGS/NEFT. Awards be prepared accordingly.

14.09.2020

(Chandroday Kumar)
Presiding Officer
Motor Accident Claim Tribunal
Jhansi

This judgment signed, dated and pronounced in open Virtual Court today.
Records be consigned.

14.09.2020

(Chandroday Kumar)
Presiding Officer
Motor Accident Claim Tribunal
Jhansi

Third line of the operative order corrected vide order dated 23.11.2020

PO, MACT, Jhansi
23.11.2020