

Motor Accident Claim Tribunal Jhansi

Present: Chandroday Kumar HJS
MACT No. 316 of 2018

Date of Institution: 06/08/18 Date of Judgement: 28/09/20 Age: 2 Y, 1 M, 22 D
 MM/DD/YY MM/DD/YY

1. Than Singh, about 38, S/o Rajaram
2. Smt. Sangeeta, about 42, W/o Sri. Than Singh
 All R/o Village – Silori, Tahsil – Tahrauli, P/s – Tahrauli District – Jhansi
 -----Pititioners/Applicants

Vs.

1. Shahida Begum W/o Late Sri. Safiullah R/o- H.No.- 320 old and new
 661 outer Sainyar Gate P/s - Kotwali, District Jhansi
Owner Bus No. MP 36P 0167
2. Rajjab Khan S/o Sri. Sahadat Khan R/o – Town and P/s – Garaotha,
 District – Jhansi
Driver Bus No. MP 36P 0167
3. United India Insurance Co. Ltd. Above Nandanpura Culvert Allahabad
 Bank, Cipari Market, Jhansi through its Regional Manager
Insurer Bus No. MP 36P 0167
 -----Opposite Parties

Advocate of the Petitioners Sri. Indra Pal Singh
 Advocate of the OP 1 & 2 Sri. G. S. Tomar
 Advocate for the OP 3 Sri. Sunil Shukla

JUDGEMENT

This Claim Petition has been instituted by the petitioners under section 166 and 140 of the Motor Vehicles Act 1988 for the compensation of ₹ 50,00,000 with 18% interest and litigation cost on the death of their son, husband and brother Rohit Kumar in a motor vehicle accident.

2. In short, the facts of the case as per petition are that on 12.07.2016 at about 4 pm Shivam Patel was coming home from Gursarai with his friends Rohit Kumar, Ravindra etc. on motorcycle. As soon as they reached 100-150 meters ahead of the Aadi road towards Banka hill and after stopping the motorcycle all of them had come to urinate, the bus number MP 36P 0167 coming from the front, the driver of which driving in rash and negligent manner trampled down motorcycle and all its riders and ran away without helping them. All the three riders got injured severely and due to the injuries inflicted in the incident, Shivam died on the spot and Rohit died in the Community health Center Gurusara.

3. Opposite Party No. 1 and 2, owner and driver of the bus, have filed their joint reply of the petition denying the fact of accident by their bus on date, time and place of incidence as mentioned in the petition, have further stated that three boys on motorcycle number UP 93BC 1277 came from front doing stunt and driving motorcycle in rash and negligent manner and seeing the bus the driver of motorcycle hied and in result lost the control. They have further pleaded that the bus was insured from OP No. 3 The New India Insurance Co. Ltd. and vehicle was being driven by experienced driver Rajjab Khan, OP No. 2 efficiently, who had valid DL at the time and date of the alleged accident.

4. OP No. 3 has submitted the reply to the claim petition in which he has denied the pleadings of the petition and has taken many defenses including probable violation of terms and conditions of the policy. OP No. 3 further pleaded for contributory negligence non joinder of necessary party.

5. After exchange of pleadings, following issues were framed by the MACT/ Addl. District Judge (FTC) Jhansi on 26.11.2018 -

1. ***Whether on date 12.07.2016 at about 4 pm when petitioner was coming home from Gursarai from motorcycle number UP 93BC 1277 with his friends Shivam Patel and Rohit and as soon as they reached 100-150 meters ahead of the Aadi road towards Banka hill and after stopping the motorcycle all of them had come to urinate, the bus number MP 36P 0167 coming from the front, the driver of which driving in rash and negligent manner trampled down motorcycle and***

all its riders and ran away and due to the injuries inflicted in the incident, Shivam died on the spot ?

- 2. Whether the driver of the vehicle MP 36P 0167 had a valid and effective driving license on the date and time of accident?*
- 3. Whether motorcycle number bus number MP 36P 0167 was insured from OP number 3 at the date and time of accident?*
- 4. Whether the petitioners are entitled to receive any compensation, if so, how much and from which opposite party?*

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

ORAL

1. PW1 Than Singh - Petitioner No. 1
2. PW2 Ravindra Kumar - Injured

DOCUMENTARY

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

F.I.R. - Paper Numbers 8C1/1 to 8C1/2

Post-Mortem Report - Paper Numbers 9C1 to 9C1/7

Adhar Card of Than Singh - Paper Number 10C1

Adhar Card of Sangeeta Devi - Paper Number 10C1/2

5. Certified copies of following documents through list – 21C1

F.I.R. - Paper Numbers 22C1/2 to 22C1/3

Charge-sheet - Paper Numbers 23C1/2 to 23C1/4

Site map - Paper Number 24C1/2

Post-Mortem Report - Paper Numbers 25C1/2 to 25C1/8

6. **OP Number 1 & 2** adduced following evidence in support of the petition-

7. Photocopies of the following documents through list – 17C1

RC of the bus No. MP 36P 0167 - Paper Number 18C1

DL of Rajjab Khan - Paper Number 18C1/2

Insurance Policy of the bus No. MP 36P 0167 - Paper Number 18C1/3

Fitness certificate of the bus No. MP 36P 0167 - Paper Number 18C1/4

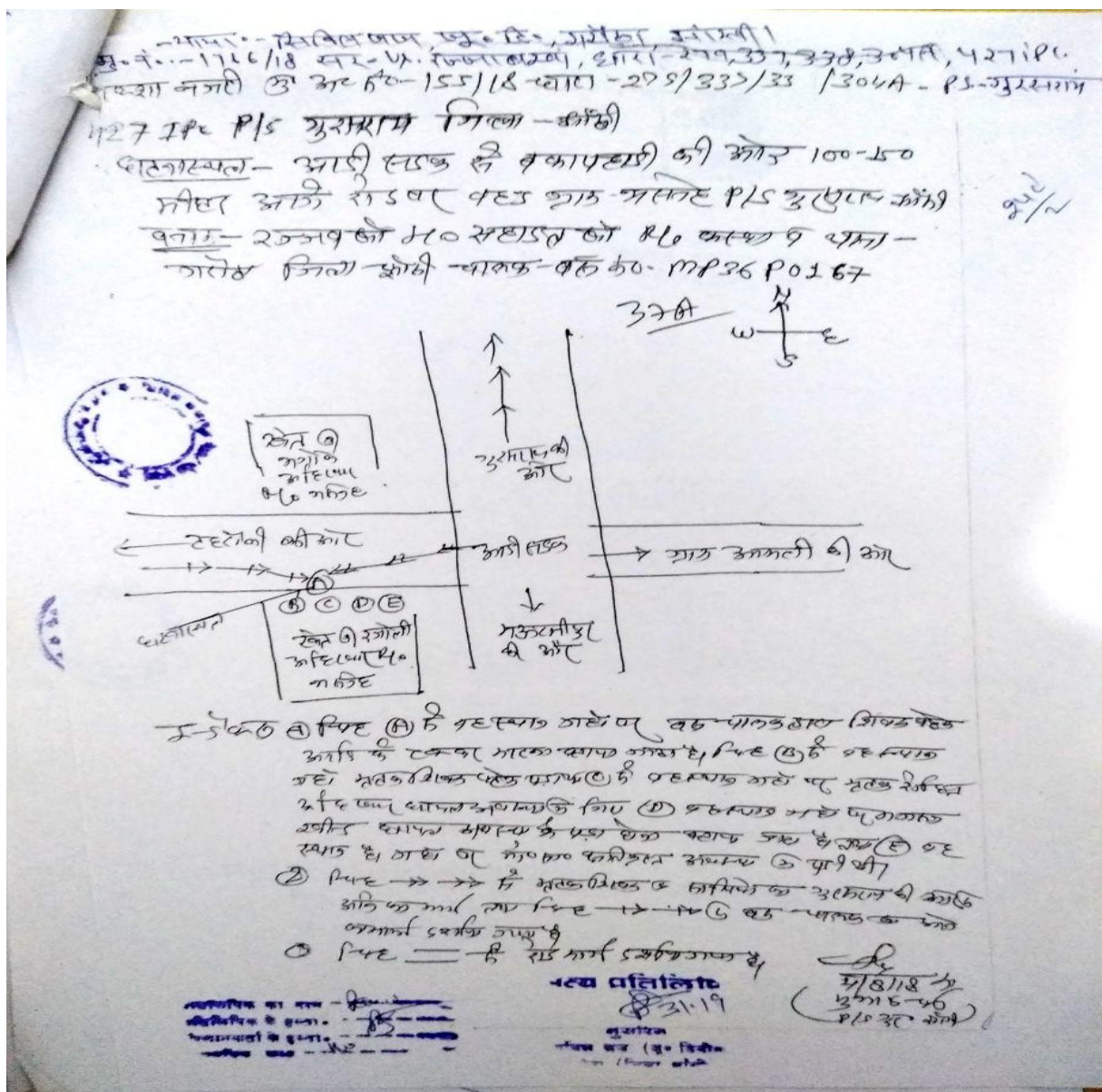
Route Permit - Paper Number 18C1/5

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

8. DISPOSAL OF ISSUE NO. 1

These issues have been framed in order to ascertain the factum of the accident and negligence of the bus driver and death of Shivam Kumar. Due to the copy paste error this issue has been type written as **petitioner was coming with Shivam and Rohit while it should be Shivam was coming with Rohit and Ravindra**. Hence this issue is being taken up accordingly.

9. In this case FIR has been lodged one day after the accident by the father of the deceased PW1. After investigation police have filed charge sheet against bus driver. Injured witness PW2 has supporting pleadings of the petition stated that this accident happened due to the sole negligence of the bus driver but surprisingly in many cases, it is often seen that when the motorcycle is parked on the side of the road for urination or to talk someone, then only another vehicle comes and hits it. Needless to say that such pleadings are prepared after legal advice so as to negate one's own fault. Ravindra Kumar PW2, who was injured in the accident, has stated in the cross examination that at the time of the accident, there were 3 persons including him on the motorcycle and the motorcycle was being driven by Shivam Patel. Thereafter this witness improved his statement and said that motorcycle was parked. It is suggested in cross examination that Shivam was doing stunt. Similar pleading has been made by the bus driver that the motorcyclists were doing stunts. Since driver of the bus has not examined himself before the tribunal hence his pleading regarding stunt is useless but keeping younger age, tripling and point of accident in mind, I am of the view that the motorcyclists were also at some degree of fault. According to PMR deceased has received injuries on anterior of the body. There is no injury on the posterior. This means that the deceased after accident has fallen from the front and is scrubbed on the road so it is not correct to say that the bus trampled down motorcycle. Site map also shows the way accident happened-



In my view, this accident happened due to the slight aberration of the bus towards the right side of the road and in course of turning the motorcycle coming from Gurusarai side highway to Tahrauli side subway suddenly seeing the bus in front and becoming unbalanced due to tripping. It is a head on collision. In the case of [Asha Devi and Ors. vs. Pahalwan Singh and Ors. \(28.02.2019 - ALLHC\) : MANU/UP/0680/2019](#) Hon'ble High Court Allahabad has held that the bigger vehicle has to be more careful. The liability of a bigger vehicle is more than a smaller vehicle. During arguments Ld. Counsels of petitioner and insurance company expressed their willingness to bargain the rival pleas of quantum of fault and they eventually arrived at consensus of 15% reduction in total compensation on account of fault of driver of the motorcycle Shivam. In my view, if a petition is not collusive, plea bargaining between parties on the quantum of fault should be permitted in order to speedier disposal of claim petitions. In this case the accident and consequently death of Rohit Kumar is not suspicious. There is no sign of collusion. Hence, this issue is decided accordingly.

10. DISPOSAL OF ISSUE NO. 2

This issue pertains to the driving license of the driver of the bus No. MP 36P 0167. Police have filed charge-sheet against OP No. 2 as driver of the bus No. MP 36P 0167. Nothing in rebuttal of this fact is produced by the OP No. 3. Photocopy of DL of OP No. 2 Rajjab Khan 18C1/2 has been produced by the OP No. 1 and 2. According to this DL (No: UP93 19950019394), Rajjab Khan is authorized to drive transport vehicles from 11.09.1995 to 08.06.2019. Nothing has been produced in rebuttal of this DL by OP No. 3. Hence it is proved that at the time of the accident the driver of the bus No. MP 36P 0167 Rajjab Khan had a valid and effective driving license. This issue is decided accordingly.

11. DISPOSAL OF ISSUE NO. 3

This issue is framed to ascertain the insurance of the bus No. MP 36P 0167. Owner and driver of the bus No. MP 36P 0167 have filed photocopy of

Insurance Policy (United India Insurance Co. Ltd.) of the bus No. MP 36P 0167 which is paper numbers 18C1/3. This policy was a package policy effective from 06/01/2018 to the midnight of 05/01/2019. Fitness of the bus No. MP 36P 0167 was effective from 07 Jul. 2017 to 12 Jul. 2018 (Paper No. 18C1/4). Nothing in rebuttal from OP No. 3 is placed before the Tribunal, hence it is proved that vehicle No. UP 92 T 6947 was insured from OP No. 3 validly and was effective on the date of the accident. The issue No. 3 is being decided accordingly.

12. DISPOSAL OF ISSUE NO. 4

This issue relates to the amount of compensation and liability of the parties to pay. In [Mrs. Helen C. Rebello and Ors. v. Maharashtra State Road Transport Corporation and Anr. MANU/SC/0621/1998](#) Hon'ble Apex Court has held that *the compensation should be just and reasonable. The word 'just', as its nomenclature, denotes equitability, fairness and reasonableness having large peripheral field. The largeness is, of course, not arbitrary; it is restricted by the conscience which is fair, reasonable and equitable, if it exceeds; it is termed as unfair, unreasonable, unequitable, not just. The field of wider discretion of the tribunal has to be within the said limitations. It is required to make an award determining the amount of compensation which in turn appears to be "just and reasonable", for compensation for loss of limbs or life can hardly be weighed in golden scales.* In the case in hands the accident has been proved successfully. Since, compensation has been bargained 85% and since DL of the driver of the bus No. MP 36P 0167 was valid and effective at the time of the accident and since the bus was insured from OP No. 3 hence OP No. 3 is liable to indemnify 85% of the total compensation. The next question which arises is the amount of the compensation.

13. Calculation of compensation

PW1 Than Singh F/o deceased Shivam has stated that deceased was 18 years old, hale and hearty, bachelor, student and he was his only son. Postmortem report also states the age of the deceased approx 18 years. These facts are uncontroverted. He has also said that the deceased used to help in agriculture, saving ₹ 6,000 per month but in this regard neither any independent witness has been examined nor has any documentary evidence regarding agricultural land been produced. 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. As per ruling of the Honb'le Apex Court [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, 40% future prospects, addition of ₹ 15,000 for loss of estate and addition of ₹ 15,000 for funeral expenses are being determined. As per ruling of the Honb'le Apex Court [Magma General Insurance Co. Limited v. Nanu Ram alias Chuhru Ram and Ors. MANU/SC/1012/2018](#) ₹ 40,000 is being fixed for the filial consortium.

INCOME-DAILY x DAYS OF MONTH x MONTHS OF YEAR	165	30	12	59400
FUTURE PROSPECTS IN %			40	23760
PART OF SELF EXPENSE			2	41580
AFTER DEDUCTION OF PART OF SELF EXPENSE (MULTIPLICAND)				41580
MULTIPLIER			18	748440
LOSS OF FILIAL CONSORTIUM			40000	788440
LOSS OF ESTATE			15000	803440
FUNERAL EXPENSE			15000	818440
Liability of Insurance Co. in %		85		695674
TOTAL COMPENSATION				695674

Thus the petitioners are entitled to receive **₹6,95,674** as compensation.

14. 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 father and mother, they will share 50-50. In the light of Honb'le Apex Court's ruling [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 fix some part of compensation and make a plan to receive the annuity.

ORDER

Claim Petition is partly allowed against OP No. 1 and 2 for the compensation amount **₹6,95,674 (Six Lac Ninety Five Thousand Six Hundred and Seventy Four)** jointly and severally. United India Insurance Company Limited shall indemnify the above amount with 7.5% simple annual interest from the date of institution of petition till actual recovery. Out of the total amount of the compensation ₹6,95,674, Petitioners shall share equally. 75% of the share of each Petitioner shall be invested in annuity for 5 years and 25% shall be transferred through RTGS/NEFT in their bank accounts. OP No. 3 United India Insurance Company Limited is directed to deposit the compensation amount with interest within 45 days from today in the Tribunal's Punjab National Bank Account No. 3671000101192489 IFSC- PUNB0367100 through RTGS/NEFT through Transaction number of the money transfer with MACP number shall be communicated by the Insurance company on email **po@mactjhansi.in** and **mactjhansi@gmail.com**
Award be prepared accordingly.

28.09.2020

(Chandroday Kumar)
Presiding Officer

Motor Accident Claim Tribunal Jhansi

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

28.09.2020

(Chandroday Kumar)
Presiding Officer

Motor Accident Claim Tribunal Jhansi