

Motor Accident Claim Tribunal Jhansi

Present: Chandroday Kumar HJS

MACT No. 317 of 2015

Date of Institution:	Date of Judgement:	Age:
05/08/15	15/09/20	5 Y, 1 M, 10 D
MM/DD/YY	MM/DD/YY	

1. Smt. Vineeta, 25, W/o Late Sri. Rajesh Kumar Singh
 2. Km. Aayushi, 05, S/o Late Sri. Rajesh Kumar Singh
 3. Suryansh, 02, S/o Late Sri Rajesh Kumar Singh
 4. Kishori Lal, 53, S/o Late Sri. Vishan
 5. Smt. Meera Devi, 24, W/o Sri. Kishori Lal
 6. Arvind, 24, S/o Sri. Kishori Lal
- } through guardian mother
Smt. Vineeta
- All R/o Village – Pali, P/s Raksha District – Jhansi

-----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. Mhd. 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 Rs. 92,50,000 with 12 % annual interest on the death of their husband, father, son and brother Sri. Rajesh Kumar 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 Rajesh Kumar Singh was going to Gazipur to attend a marriage ceremony along with his friends Ram Pratap 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, earning a salary of around ₹ 25,000 per month, which he used to take care of himself and his family. The deceased was hail and hearty. 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 Rajesh Kumar Singh, sustained grievous injuries, resulting into his spontaneous 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. Vineeta, wife of Late Sri Rajesh Kumar 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

Insurance Policy - Paper Number 10C1

RC - Paper Number 11C1

DL - Paper Number 12C1

5. Certified copies of the following through list – 28C1

Inquest Report of deceased Rajesh Kumar Singh – Paper Nos. 29C1 to 29C1/3

GD extract - Paper Number 30C1

Post-Mortem Report - Paper Numbers 31C1 to 31C1/3

Pay Certificate - Paper Number 31C1/4

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. Rajesh Kumar Singh - Paper Numbers 51C1 to 51C1/8

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

Mark sheet of High School of deceased Rajesh Kumar – Paper No. 77B through list 76C1

8. Notary attested copies of **Medical Papers** and **Show Cause Notices and Station Leave Permission** through list 87C1 - Paper Nos. 88C1 to 91C1/1

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

DW1 Anand Singh Solanki

10. Photocopies of the following documents through list – 23C1

Insurance Policy - Paper Number 24C1

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

DL of Anand Singh Solanki - Paper Number 26C1

11. **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 prevalence of COVID-19, 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 driver of vehicle No. UP 70CY 5556. The burden of proof lies on the petitioners. The Petitioners have submitted **GD extract** - Paper Number 30C1 which shows that the haply occurred incident was reported to the police station Saidpur district Ghazipur promptly after 30 minutes of the accident. In normal course, four wheeler 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 Rajesh Kumar 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. He has accepted that he was driving Safari at the time of accident. Photocopie of the DL of OP No. 1 have been produced by the OP No. 1 and petitioners which are paper Nos. 26C1 and 12C1 respectively. 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 chassis No. MAT617025FNE02426 and engine No. DUYJ05000 is effective from 30.05.2015 to the midnight of 29.05.2016. Engine No. and chassis 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 in question 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 Vineeta wife of the deceased has stated that after death of her husband she is getting ₹ 7600 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 Insurance company has submitted that 10% of future prospects on account of pension should be deducted on which petitioners Ld. Counsel has objected and has submitted that deceased had a good future. He had gone after taking leave. He had left many dependents including to minor children.

Paper No. 91C1 shows that deceased had taken permission to leave the station. PW1 has stated that her husband was on leave on the date of accident. Considering rival submissions, on the line of Patricia Jean Mahajan I am of the view that future prospects should not be reduced.

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 wife, minor daughter, minor son, mother, father and younger brother of the deceased. PW1 has stated dependency of the above family members. She has also stated that her husband was constable in police department and was earning about ₹ 22,000 as salary. In this regard original Pay Record of month May 2015 of the deceased Rajesh Singh has been produced as documentary evidence. Documentary evidence shows that deceased Rajesh Singh was getting ₹ 21,527 after deductions. Insurance company does not dispute this salary. As per paper no. 77B high school marks sheet of the deceased he was 29 years old. PW1 has stated in her cross examination that her father-in-law and brother-in-law did nothing. She has denied the suggestion that her father-in-law and brother-in-law did earn before and after the accident. Noting in rebuttal to this has been produced by the Insurance Company. 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 1/4 part on own expenses as deceased was unmarried, addition of 50% future prospects as deceased had a permanent salaried job, 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	21527	12	258324
FUTURE PROSPECTS IN %		50	129162
PART OF SELF EXPENSE		4	96871.5
AFTER DEDUCTION OF PART OF SELF EXPENSE (MULTIPLICAND)			290614.5
MULTIPLIER		17	4940446.5
LOSS OF CONSORTIUM		40000	4980446.5
LOSS OF ESTATE		15000	4995446.5
FUNERAL EXPENSE		15000	5010446.5
TOTAL COMPENSATION			5010446.5

Thus the petitioners are entitled to receive ₹ 50,10,447 in round figure 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 ₹ 50,10,447 (Fifty Lac Ten Thousand Four Hundred Forty Seven) against OP No. 1. This amount has to be indemnified by the OP No.28, The New India Insurance Company Limited, with 7.5% simple annual interest from the date of institution of the petition till actual payment/recovery. Out of this amount Petitioner Nos. 1, 2, 3, 4, 5 and 6 shall share in the ratio of 30, 20, 20, 10, 15, and 5 respectively. 75% of the shares of the Petitioners Nos. 1, 4, 5 and 6 shall be disbursed in the form of annuity for 5, 3, 3 and 5 years respectively and 25% shall be transferred through RTGS/NEFT in their bank accounts. Shares of minor petitioners No. 2 and 3 shall be invested in the Fix Deposit in any nationalized bank carrying highest interest up to their majority. The New India Insurance Company Limited is ordered to transfer 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. Transaction number with MACP number shall be communicated by the Insurance company on po@mactjhansi.in and mactjhansi@gmail.com

15.09.2020

(Chandroday Kumar)
Presiding Officer
Motor Accident Claim Tribunal
Jhansi

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

15.09.2020

(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