

Motor Accident Claim Tribunal Jhansi

MACP No. 327 of 2017

Presiding: Chandroday Kumar, H.J.S.

Date of Institution:	Date of Judgement:	Age:
08/01/17	08/12/20	3 Y, 0 M, 11 D
MM/DD/YY	MM/DD/YY	

1. Smt. Santoshi Devi, age-38 Years, W/o Late Shri Govind Singh,
 2. Kuldeep Rajput, age 17 years (minor) S/o Late Shri Govind Singh,
 3. Anand Rajput, age-16 years (minor) S/o Late Shri Govind Singh,
 4. Km. Sneha, age-12 years (minor) D/O Late Shri Govind Singh,
 5. Smt. Sushila Devi, age-61 years W/o Shri Jagat Singh,
 6. Jagat Singh, age-65 years S/o Late Shri Bhagirath,
- All R/o Village Kadura, Tehsil-Moth, Jhansi



-----Petitioners

Vs.

1. Senior Superintendent of Police, U.P. Police, Jhansi Area, Jhansi (Possession holder Owner Dial 100 Vehicle Number- UP32DG0392)
2. UP Government through District Magistrate, Jhansi (Owner Dial 100 Vehicle Number- UP32DG0392)
3. Kailash Nath Head Constable, through Senior Superintendent of Police, U.P. Police, Jhansi (Driver Dial 100 Vehicle No. UP32DG0392)

-----Opposit Parties

Counsel for the petitioners- Shri Arun Kumar Gupta Advocate

Counsel for the opposite parties- Shri Vivek Agrawal Advocate, A.D.G.C. (Civil)

AWARD

On behalf of the petitioners, this petition has been filed against the opposite parties, under Section 163A and 140 of M. V. Act, on account of death of Govind Singh in a motor vehicle accident claiming compensation ₹16,50,000 and interest at the rate of 12% per annum on it.

The facts of the petition in brief are that on 04.03.2017, the husband, father and son of the petitioners, Govind Singh had gone to Samthar Mandi and from there was coming back to the village driving the motor cycle number-UP93AH2663 carefully and as soon as he reached near the canal culvert at 7.00 pm, only then the police Dial 100 vehicle number- UP32DG0392 from the front, which his driver was driving very rashly and negligently and hit the motor cycle, due to which Govind Singh was severely injured. On the information of the incident, Govind was brought to the Medical College for treatment, but when his condition became serious, he was referred to Gwalior, where he died on 07.03.2017 during treatment. Efforts were made to register the report of the alleged incident, but the police did not write the report, rather, on 24.03.2017, a report of its own accord was made on GD. At the time of the alleged incident, the deceased was 42 years old hale and hearty man and used to earn income by doing agriculture and animal husbandry, which used to meet the expenses of the family, but due to the untimely death, the entire family of the petitioners is suffering mental, physical agony and the petitioner number-one has been deprived of her husband's love and affection and conjugal happiness forever and the other petitioners have been deprived of their father's and son's affectionate love forever. On the basis of the

above pleadings, the petitioners have claimed compensation of ₹16,50,000 and interest thereon at the rate of 12% per annum.

3. Written Statement has been filed by the opposite parties in which they have denied the facts of the alleged incident and have stated in their additional statement that the petitioners have made a fabricated story on the basis of false facts and have instituted the petition with the intention of getting compensation only. At the time of the alleged incident, while the incharge of Dial 100 vehicle number- UP32DG0392 Head Constable 65 Kailash Nath Chungi Naka Samthar was standing on the roadside at the time of the alleged incident, a person came driving the motor cycle number- UP93AH2663 rashly and negligently and hit hard the Dial 100 vehicle from behind so that the vehicle was damaged and the motorcyclist was injured. The deceased was not wearing a helmet at the time of the alleged incident. The report of this incidence was registered on 05.03.2017 by Head Constable 65 Kailash Nath, in-charge of Dial 100 vehicle, against the unknown driver of the alleged motor cycle on Crime No.-60/17 under section-279, 427 IPC. During investigation, the name of the motorcyclist came to the light as Govind Singh Prakash, who died during treatment at Ayushman Hospital, Gwalior, so the matter has been closed through FR No. 06 of 2017 dated 15.04.2017. The Government has suffered a loss of ₹30,222 due to the damage and repair of the police vehicle in the alleged incident, which the opposite parties are entitled to get from the petitioners. On the basis of the above pleadings, the opposite parties have prayed for the dismissal of the petition of the petitioners.

4. **Documentary and oral evidence by the petitioners-**

Through List of documents-7C, photocopies of GD report, death certificate, post-mortem report, aadhar card of petitioners etc. have been filed, and through from List of documents-27C, discharge bill issued by Ayushman Hospital and bills for medicines purchased have been filed;

PW-1 Smt. Santoshi petitioner No. 1 and PW-2 Ramadhar has been examined.

5. **Documentary and oral evidence by the opposite parties-**

Through List of documents-36C/1, color photo of vehicle number- UP32 DG0392, service quotation, first information report against motorcyclist unknown, general diary, site-map, mechanical test report Bullero number- UP32DG0392 And motor cycle number- UP93AH2663, copies of complete case diary, final report etc. have been filed.

No witness has been produced by the opposite parties.

6. I have heard in detail the arguments of learned counsel appearing on behalf of the parties and perused the record with due diligence and evaluated the evidence available on the file.

7. Without going in to evidence in detail, admittedly the accident between motor cycle number- UP93AH2663 and Dial 100 vehicle number- UP32DG0392 and in result death of Govind Singh are proved under no fault of the liability. Driver and owners are not in dispute. Although eye witness is not credible on the point of head-on collision and negligence of the driver of the police vehicle as technical reports of both the vehicles and the photograph of the police vehicle suggests rear-end collision in the police vehicle, even then there is no rebuttal of testimony of the eye witness that the police vehicle was not moving. It is well settled principle that a witness may be trustworthy and credible on one point while he may not on another. Entire testimony should not be discarded. No reason has been given as to why the police vehicle was parked at the time

the accident. Mere statement of the police vehicle was parked on the roadside in the FIR against the deceased is not sufficient to show that the vehicle was actually parked on the roadside. I find that the case of petitioners have been made out under section 163A of the M. V. Act.

8. there is nothing on record to show that police vehicle was insured. There is no rebuttal of dependency. There is no cogent proof of income hence keeping ₹180 per day as notional in mind, I find ₹40,00 per annum income of the deceased. As per Postmortem report age of deceased was 45 years. In the case of [Oriental Insurance Company Ltd. vs Maman Singh & Ors. on 6 November, 2017](#): MAC APPEAL 930/2011 Hon’ble High Court of Delhi has held that in the cases under section 163A of M.V. Act, future prospects and multiplier shall be applicable according to Pranay Sethi and Sarla Verma Case. In the light of Nattional Insurance Company Ltd. vs. Mannat Johal & ors. [\(23.4.19- SC\)](#): MANU/SC/0589/2019, 7.5% interest is also admissible.

Accordingly, compensation is being calculated as following-

ANNUAL INCOME		40000
FUTURE PROSPECTS IN %	25	10000
PART OF SELF EXPENSE	4	12500
AFTER DEDUCTION OF PART OF SELF EXPENSE (MULTIPLICAND)		37500
MULTIPLIER	14	525000
LOSS OF CONSORTIUM	40000	565000
LOSS OF ESTATE	15000	580000
FUNERAL EXPENSE	15000	595000
COMPENSATION		595000

Accordingly claim petition is liable to be allowed.

ORDER

Claim petition is partially allowed against opposite parties jointly and severely for compensation ₹5,95,000 with 7.5% simple annual interest from date of institution till realization. Opposite parties are ordered to pay compensation and interest to Motor Accident Claim Tribunal’s **Punjab National Bank Account No. 3671000101192489 IFSC- PUNB0367100 through RTGS/NEFT** within 30 days.

Petitioner No. 1, 2, 3, 4, 5 and 6 shall share 25%, 20%, 20%, 20%, 10% and 5% respectively. Out of total share of Petitioner No. 1, 2 and 3, 70% amount shall be invested in annuity for 5 years; entire share of Petitioner No. 4 shall be invested in annuity for 10 years and proceeds of which shall be given to natural guardian mother till she remains minor so that she may continue her studies and out of total share of Petitioner No. 4 and 5, 70% amount shall be invested in annuity for 3 years. Out of share amounts of Petitioner No. 1, 2, 3, 5 and 6, 30% amount shall be transferred in their bank accounts.

Date: 12.11.2021

(Chandroday Kumar)
Presiding Officer
Motor Accident Claim Tribunal, Jhansi

This Judgement signed dated and pronounced in open Court today.

Date: 12.11.2021

(Chandroday Kumar)
Presiding Officer
Motor Accident Claim Tribunal, Jhansi

Date corrected

PO
MACT Jhansi