

Motor Vehicle Accident Claims Tribunal, Jhansi

Present: Chandroday Kumar H.J.S. M.A.C.P. No. 33 of 2017	Date of Institution:	Date of Judgement:	Age:
	01/17/17	02/22/21	4 Y, 1 M, 5 D
	MM/DD/YY	MM/DD/YY	

1. Chhama Tiwari, age about 41 years, W/o Late Shri Vijay Kumar Tiwari, Occupation- Housewife
2. Yagyadutt Tiwari, age about 19 years, S/o Late Shri Vijay Kumar Tiwari, Occupation- Student
3. Mayank Tiwari, age about 16 years, S/o Late Shri Vijay Kumar Tiwari through mother Smt. Chhama Tiwari
All Resident of- Near Village Inter College, Rajgarh, Tehsil & District- Jhansi

----- Petitioners

Versus

1. Prakash Narhari Gajbhai, Resident of Taj Building Hardas Nagar, Teh- Kampati, District- Nagpur, Maharashtra
..... Owner Vehicle Truck No. MH 40 AK 7991
2. Mohammad Azhar S/o Shri Shaik Ahmad Resident of- Ismail Pura Nagar, Masjid Kampati, Teh- Kampati, District- Nagpur, Maharashtra
..... Driver Vehicle Truck No. MH 40 AK 7991
3. National Insurance Company Limited, Block No.- 102, IInd Floor Sri Sai Complex Balaghat Road, Gondia, Maharashtra
..... Insurer Vehicle Truck No. MH 40 AK 7991
4. The New India Insurance Company Limited, Regional Office W (16110) Sri Ganesh Chamber Laxmi Nagar Chowk Nagpur-440022
..... Insurer Vehicle Motorcycle No. MH 31 DX 3118

----- Opposite Parties

Advocate of the petitioner - Shri. R. B. Mishra, Rajeev Sharma
Advocate of the opposite party No. 3 - Shri V. K. Mishra
Advocate of the opposite party No. 4 - Shri Sunil Shukla

A W A R D

This Claim Petition has been instituted by the petitioners under section 166 and 140 of the Motor Vehicles Act for the compensation of ₹82,50,000 with 18% annual interest on death of Shri. Vijay Kumar in a motor vehicle accident.

2. The brief facts of the case are that on 05.10.2016, at around 12:15 pm, husband of Petitioner No. 1 and father of Petitioner No. 2 & 3 was going towards Nagpur from Hingda on public road. In Sut Girdi Vanda Dongari Nagpura, a Truck No. MH 40 AK 7991 driven by it's driver rashly and negligently and without blowing horn, hit the motorcycle of deceased behind so that deceased fell down on road and on receiving grievous injuries succumbed on the spot. Deceased was 47 years old and was doing private job and was earning ₹30,000 per month.

3. A written statement has been filed by O.P. No. 3 National Insurance Company in which accident has been denied by the insurance company and any liability has also been denied for violation of terms and conditions. In alternative, plea of contributory negligence has been taken

4. A written statement has been filed by O.P. No. 4 The New India Insurance Co. Ltd. in which accident has been denied by the insurance company and any liability has also been denied for violation of terms and conditions.

5. No one turned up for OP No. 1 & 2 hence Tribunal proceeded ex-parte against them.

6. On the basis of pleadings, the following issues are framed:

1. Whether on 05.10.2016 at 12:15 pm when husband and father of petitioners Vijay Kumar Tiwari was going to Sut Girdi Vanda Dongari Nagpura (Maharashtra) from Hingda by Motorcycle No. MH 31 DX 3118, then Truck No. MH 40AK 7991 of OP No. 1 driven rashly and negligently by OP No. 2 hit the motorcycle No. MH 31 DX 3118 of Vijay Kumar Tiwari behind so that on receiving grievous injuries he succumbed on the spot ?

2. Whether Accident in question occurred due to contributory negligence of drivers of both vehicle, if yes, then effect ?

3. Whether at the time of the accident drivers of the above both vehicles (Truck No. MH 40 AK 7991 and Motorcycle No. MH 31 DX 3118) had valid and effective driving licenses ?

4. Whether at the time of the accident above both vehicles (Motorcycle No. MH 31 DX 3118 and Motorcycle No. MH 31 DX 3118) were insured from O.P. No. 3 and 4 Insurance Companies legally ?

5. Whether the petitioners are entitled to get any compensation, if yes, then how much and from whom?

7. The following documentary and oral evidence have been produced by the parties: -

By petitioner

Documentary

1. Through List 7C1 photocopies of F.I.R. 8C1-8C1/2, Crime Detail Report 9C1-10C1, Inquest Report 11C1, Driving License of Mhd. Azhar 12C1, Insurance Policy 13C1, Vehicle Registration Certificate 14C1, Post Mortem Report 15C1/1-15C1/4, Service and salary Certificate of Vijay Tiwari issued by Pvt. Co. 16C1-16C1/2, Demise Notice 17C1 and Death Certificate 18C1.

2. Through List 28C1 photocopies of Driving License of Vinay Tiwari 29C1 and Insurance Policy of Motorcycle MH 31 DX 3118 30C1/1

2. Through List 33C1 photocopies of F.I.R., Charge Sheet 35C1/1-35C1/2, Crime Detail Report 36C1/1, Original Copy of Increment Letter 37C1/1-37C1/2, Original Copy of Current Salary Drawn 38C1, Original Copy of Service Certificate 39C1, Photocopy of Revision of Salary Package 40C1 and Statement of Account of a private organization 41C1-42C1

3. Verification report of Income Tax Return 56C1-56C1/5

Oral

P.W.1 Chhama Tiwari (Wife of the deceased and Petitioner) P.W.2 Girish Sudhakar Kameshwar, P.W.3 Duryodhan Shivaji Hadke and P.W.4 Kashyak Vinod Khoveragede

By Opposite Parties

No Oral or Documentary evidence is given.

8. I have heard the arguments of the learned advocates of the both side, perused the written arguments filed by the Ld. Counsel of Petitioner and Ld. Counsel of O.P. No. 3 and have gone through record and evaluated the available evidence carefully.

FINDINGS

9. **Disposal of Issue No. – 1 and 2**

It is argued by the Learned Advocate of the National Insurance company that there is no fault of the truck driver as the two motorcyclists collided with each other and fell in front of the moving truck leaving the truck driver no opportunity to stop it. On the other hand, Learned Advocate of the petitioner argues that driver should have run the Truck consciously and once it is proven

that he was negligent then fault liability will apply. He also argues that rule of last opportunity to save accident shall not apply.

10. To test these arguments, I have to dwell upon the evidence adduced by the parties. Before going into the evidence, it would be pertinent to mention here that Hon'ble Apex Court has held in the case of The Municipal Corporation of Greater Bombay vs. Laxman Iyer and Ors. (27.10.2003 - SC) : MANU/SC/0836/2003 that-

"At this juncture, it is necessary to refer to the 'doctrine of last opportunity'. The said doctrine is said to have emanated from the principle enunciated in *Devies v. Mann* 1842 (10) M&W 546 which has often been explained as amounting to a rule that when both parties are careless the party which has the last opportunity of avoiding the results of the other's carelessness is alone liable. However, according to Lord Denning it is not a principle of law, but test of causation. (See *Davies v. Swan Motor Co., (Swansea) Ltd.* 1949 (2) KB 291. Though in some decisions, the doctrine has been applied by courts, after the decisions of the House of Lords in *The Volute* 1922 (1) AC 129 and *Swadling v. Cooper* 1931 AC 1, it is no longer to be applied. The sample test is what was the cause or what were the causes of the damage. The act or omission amounting to want of ordinary care or in defiance of duty or obligation on the part of the complaining party which conjointly with the other party's negligence was the proximate cause of the accident renders it one to be the result of contributory negligence."

Admittedly P.W.1 is not an eyewitness, so her testimony leaves no light on the point of negligence and contributory negligence. P.W.2 is Maharashtrian and has been examined by the petitioners for translating the police investigation papers as they are in Marathi. Translating charge-sheet, he has stated that driver of MH 40DX 3118 was going on straight road towards Nagpur. At the same time driver of pleser vehicle No. MH 40Z 0266 did overtake to deceased's vehicle with cut. During the overtake, both vehicles suffered a jerk and the drivers of both the vehicles fell on the road. At the same time the driver of the truck number MH 40 AK 7991 speedily hit the CD Dawn driver Vijay from behind and pressed him under the truck which resulted in the death of Vijay Kumar and severe injuries to driver of plaser vehicle No. MH 40Z 0266 Madhusudan Ganesh Darak. In my observation the above translation is correct. P.W.4 is said to be eye-witness of the accident. Though story of overtaking does not find place in his testimony but he also states that truck No. MH 40AK 7991 crushed motorcycle No. MH 31DX 3118 and this accident took place due to fault of truck driver. He also states that accident took place on 5.10.16 at 12:15. As per Investigation papers the motorcycle which was being ride by the deceased was MH 40DX 3118 but petitioners have made Insurer of different number that is MH 31DX 3118 as O.P. No. 3 saying that deceased was riding MH 31DX 3118. P.W. 3 is owner of the motorcycle on which deceased was riding but he did not tell number of his motorcycle in his testimony before this Tribunal. This may be a mistake only but this mistake will be material if contributory negligence of deceased is found.

11. Neither the investigating officer has been examined nor the facts of the charge sheet have been confronted to P.W.4. Although P.W.4 has admitted that the deceased was his father's colleague, but the mere fact that the deceased was his father's colleague is not sufficient to refute his testimony. Although this witness has stated in his cross examination that if either of the two drivers would have been driving correctly this accident would have not been happen but at the same time in his further cross-examination he clarified that he could not understand the question properly in

this regard. In this case there is no direct evidence regarding contributory negligence of deceased. There is no evidence on record from either side except police investigation papers that another motorcycle was involved in this accident. For a while if it is presumed that another motorcyclist did mistake in overtaking, the petitioners have had option to sue any of them (another motorcycle or truck). FIR was registered against the truck driver on the same day. Police have filed charge-sheet against truck driver alone. P.W.4 states negligence of truck driver. There is no evidence that deceased was not careful in driving his motorcycle. Post-mortem report dated 06.10.2016 corroborates that Vijay Dwarikaprasad Tiwari died due to injuries. In these circumstances, I find that this accident took place due to sole negligence of truck driver and in this accident Vijay Kumar lost his life. Issue No. 1 and 2 are being decided accordingly.

12. Disposal of Issue No. - 3

The investigating officer has filed charge-sheet against Mohammad Azhar OP No. 2. A photocopy of Mohammad Azhar's driving license paper numbers 12C1 have been filed as per which Mohammad Azhar was authorized to drive NT vehicle from 27.08.2005 to 11.04.2031 and TR vehicle from 12.04.2008 to 25.09.2017. Driving License of Vinay Tiwari 29C1 is available on the record. As per this DL Vijay Tiwari was authorized to drive motorcycle from 12.08.08 to 15.10.2019. The Insurance Company has not been able to rebut these licenses. The accident occurred on 05.10.2016. Therefore, it is proved that the driver of Truck No. MH 40 AK 7991 Mohammad Azhar and deceased had valid and effective driving licenses at the time of accident. Issue no. 3 is decided in affirmative.

13. Disposal Issue No. - 4

Petitioner has filed an Insurance Policy 13C1 according to which the Engine No. 61A63488185 and Chassis No. MAT466126G3A01310 Name- Prakash Narhari Gajbhiye was insured from date 07.04.2016 to 06.04.2017 under package policy. Registration Certificate of Truck 14C1 does not disclose above engine and chassis number so Truck No. MH 40AK 7991 does not connect with Insurance policy. Insurance policy of motorcycle No. MH 31DX 3118 is liability policy and it covers insurance from 01.02.2016 to 31.01.2017. The accident occurred on date 05.10.2016. Hence it is proved that motorcycle No. MH 31DX 3118 was insured with liability policy but it is not proved that Truck No. MH 40AK 7991 was insured at the time of the accident. These issues are decided accordingly.

14. Disposal Issue No. - 5

Since the accident took place due to negligence of the driver of offending vehicle Truck No. MH 40AK 7991 hence, the vehicle owner and driver are jointly and severally liable for compensation. Since it is not proved that offending vehicle Truck No. MH 40AK 7991 was insured by opposite party number 3 at the time of the accident, hence the liability remains on O.P. No. 1 and 2.

15. Computation of compensation -

P.W. 1 has deposed that Vijay Kumar Tiwari was her husband. She along with O.Ps. No. 1, 2 and 3 were dependent on him. Her husband was 47 years old at the time of the incident. He used to work at Ramnath Developers in Nagpur since 20 years where he used to get 30,000 per month as salary, hence her family's livelihood. But due to her husband's death in a road accident, the

income received from them ended. Due to death of her husband she devoid of conjugal consortium. She has not received any money from any of the defendants till date. She has claimed ₹42,50,00 as compensation in all heads. Though many papers regarding salary have been filed by the petitioners but they have not been proved by their makers hence content of those papers are not reliable. P.W.3, who is claiming to be employee of that private organization in which deceased too was working, has attested signatures of its makers on salary papers of deceased as secondary evidence but he admits that he has no authority to do so and he has no proof that he is employee of that private organization in which deceased was serving.

16. Income Tax Return filed by the petitioners has been verified by the Income Tax Department and in my view they are best evidence regarding income of the deceased. ITR of 2009-10 shows income as ₹1,24,934. ITR of 2010-11 shows income as ₹1,54,678. ITR of 2011-12 shows income as ₹1,49,829. ITR of 2012-13 shows income as ₹1,75,152. In my view income of 2012-13 should be considered for the purpose of calculation of compensation. In the light of [National Insurance Company Limited Vs. Pranay Sethi and Ors. \(31.10.2017 - SC\)](#): MANU/SC/1366/2017, Multiplier of 13, deduction of 1/3 part on own expenses, addition of 25% as future prospects, 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- YEARLY		175152
FUTURE PROSPECTS IN %	25	43788
PART OF SELF EXPENSE	3	72980
AFTER DEDUCTION OF PART OF SELF EXPENSE (MULTIPLICAND)		145960
MULTIPLIER	13	1897480
LOSS OF CONSORTIUM	40000	1937480
LOSS OF ESTATE	15000	1952480
FUNERAL EXPENSE	15000	1967480
Liability of Insurance Co. in %	100	1967480
TOTAL COMPENSATION		1967480

Thus the petitioners are entitled to receive compensation ₹19,67,480.

17. 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, major sons of the deceased and one of his son Mayank requires some medical care, they will share 40, 20 and 40% respectively. In the light of case [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 invest some part of compensation in annuity.

ORDER

The Claim Petition is partially allowed for compensation ₹19,67,480 (Rupees Nineteen Lakh Sixty Seven Thousand Four Hundred and Eighty) with 7.5% simple annual interest from the date of institution of the petition till the date of deposition/recovery. Opposite Party No. 1 and 2 jointly and severally are liable hence they are ordered to deposit the amount of compensation with interest in tribunal's Punjab National Bank Account Number 3671000101192489 IFSC- PUNB0367100 through RTGS/NEFT within 45 days from the date of the order and submit UTR/Referencce/Transaction number in the office of this Tribunal.

The Petitioners No. 1, 2 and 3 shall share 40, 20 and 40% respectively of which 75% shall be invested in annuity for 3 years. Petitioners will be able to receive rest 25% amount in their bank accounts through RTGS/NEFT.

The FO be prepared accordingly. Record be consigned.

Date 22.02.2021

(Chandrodaya Kumar)
Motor Accident Claim Tribunal,
Jhansi

This award signed, dated and pronounced by me in open court today.

Date 22.02.2021

(Chandrodaya Kumar)
Motor Accident Claim Tribunal,
Jhansi