

Motor Accident Claim Tribunal Jhansi

Present: Chandroday Kumar HJS
MACT No. 340 of 2018

Date of Institution: 08/21/18
MM/DD/YY
Date of Judgement: 09/30/20
MM/DD/YY
Age: 2 Y, 1 M, 9 D

Ravindra Kumar, about 18, S/o Hariram
R/o Village – Silori, Tahsil – Tahrauli, P/s – Tahrauli District – Jhansi
-----Pititioner/Applicant

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 ₹ 15,75,000 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 are that on 12.07.2016 at about 4 pm Ravindra was coming home from Gursarai with his friends Rohit Kumar and Shivam Patel, etc by motorcycle No. UP 93BC 1277. 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 motor cycle 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. The Petitioner was given treatment at Medical College Jhansi.

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 pleaded 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 including necessity of helmet. OP No. 3 further pleaded for contributory negligence and non joinder of necessary party that is owner and driver of motorcycle UP 93BC 1277.

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 and Rohit died and the petitioner was admitted to the medical college where he was given medical treatment?

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 petitioner is 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

PW1 Ravindra Kmar - Petitioner

DOCUMENTARY

Photocopies of the following documents through list – 7C1

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

Outdoor Patient Ticket of Ravindra Kumar - Paper Number 9C1

Discharge Card - Paper Number 9C1/2

Insurance Policy of the bus No. MP 36P 0167 - Paper Number 10C1

Adhar Card of Ravindra Kumar - Paper Number 11C1

Certified copies of following documents through list – 21C1/1 to 21C1/3

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

Original Medical Paper - Paper Numbers 25C1/1 to 33C1/28

Certified Copy of Injury Form – Paper No 34C1.

OP Number 1 and 2 adduced following evidence through list – 15C1

RC of the bus No. MP 36P 0167 - Paper Number 15C1

DL of Rajjab Khan - Paper Number 15C1/2

Insurance Policy of the bus No. MP 36P 0167 - Paper Number 15C1/3

Fitness certificate of the bus No. MP 36P 0167 - Paper Number 15C1/4

Route Permit - Paper Number 15C1/5

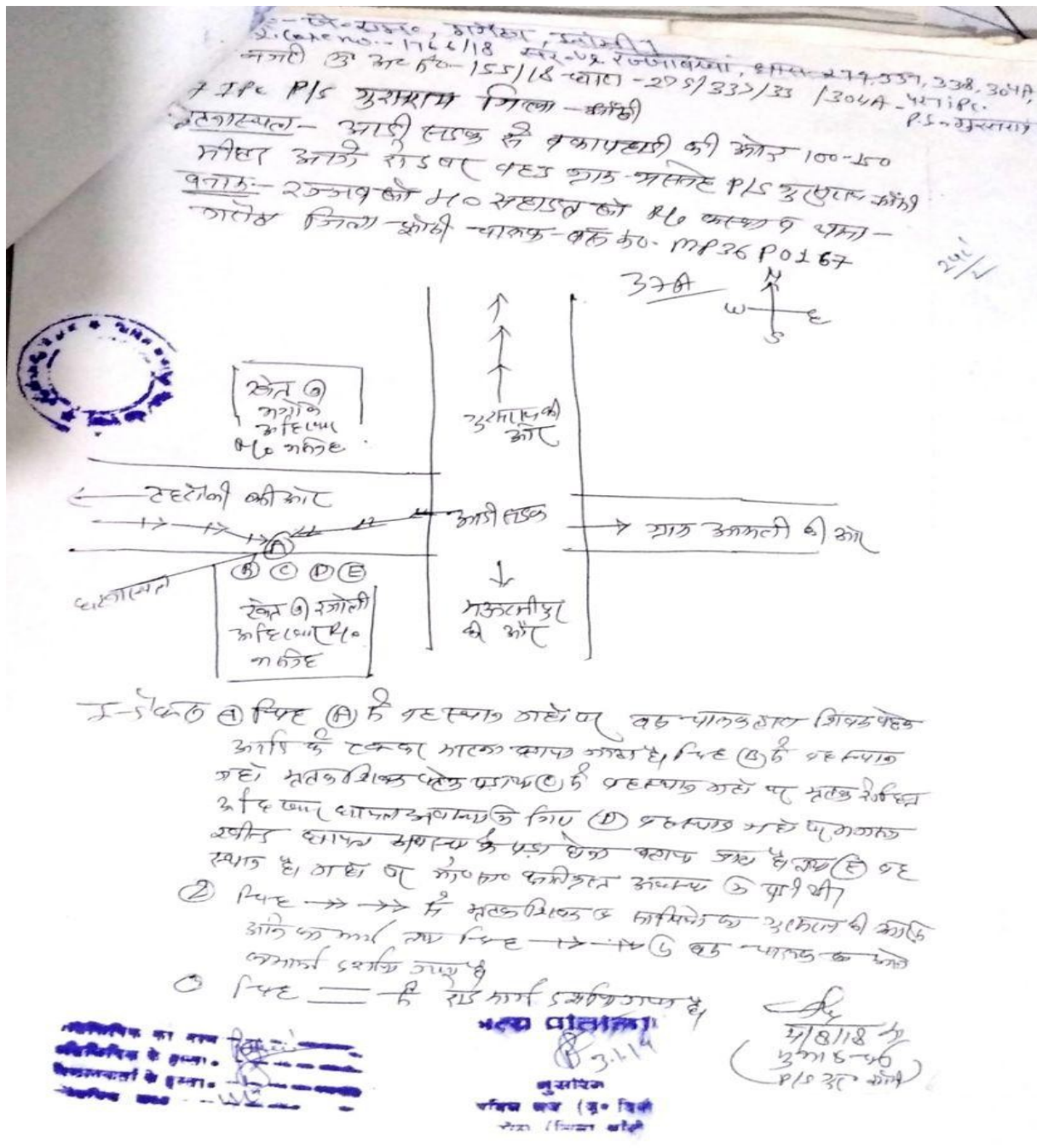
OP Number 3 adduced following evidence -

Insurance company's Report of verified bills - 53 papers

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

In this case FIR has been lodged one day after the accident by the father of one of the deceased of the accident Shivam. After investigation police have filed chargesheet against bus driver. Injured witness PW1, supporting pleadings of the petition, has 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. Ld. Counsel of Insurance Company has argued that motorcyclists were doing stunts without helmet and they also did tripling. Ravindra Kumar PW1, 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. There is no cogent evidence 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 Gururairai side highway to Tahrauli side subway suddenly seeing the bus in front and becoming unbalanced due to speed and tripping. Hence, this issue is decided accordingly.

9. DISPOSAL OF ISSUE NO. 2

This issue pertains to the driving license of the driver of the bus No. MP36P 0167. Police have filed charge-sheet against OP No. 2 as driver of the bus No. MP 36P 0167. Insurance Company has not been able to produce anything in rebuttal of this fact. 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.

10. 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.

11. 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.* It is a head on collision. In the case of *Asha Devi and Ors. vs. Pahelwan 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. Counsel for the petitioner and the insurance company expressed a willingness to negotiate rival pleas of Quantum of Fault and they eventually agreed to a 10% reduction in total compensation due to mistake of tripling without helmet and doing stunt. In my view, if a petition is not collusive, plea bargaining between parties on the quantum of compensation on account of fault of injured/deceased should be permitted in order to speedier disposal of claim petitions and compliance thereof. In this case the accident and consequently injuries to the petitioner is not suspicious. There is no sign of collusion. In the case in hands the accident has been proved successfully. Since, compensation has been bargained at 90% 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 90% of the total compensation. The next question which arises is the amount of the compensation.

12. Calculation of compensation

PW1 Ravindra Kumar, injured, has stated 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 to be 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 ₹ 100 per day Notional Income of unskilled laborer to be 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.

13. PW1 Ravindra Kumar, injured, has also stated that his two friends were died in the accident and he suffered severe injuries. He has further stated that he had fractures below and above the knee of the right leg in the accident, in which a steel rod was inserted after the operation. He had three fractures in the wrist of right hand in which a steel rod was inserted after the operation. The vein at the back of his neck was suppressed and the entire body had deliquescent injuries. The injuries stated above finds support from documentary medical evidence such as paper no. 25C1/1, 33C2/9 and 33C2/12 to 33C2/26. He was given medical treatment for about 37 days as an indoor patient at RLB Medical College Jhansi. Considering all

the medical papers, I think it was a serious accident and the petitioner survived the death. According to common knowledge, the petitioner might not had worked for at least 3 months. Petitioner has claimed permanent disability but no disability certificate has been submitted hence claim regarding disability is not sustainable.

14. Out of ₹ 24,417, the Insurance Company has verified the medical bills of ₹ 22,801. Keeping severity of the accident, following amounts should also be added to the bills-

For mental pain and suffering ₹ 50,000

For healthy diet ₹ 20,000

For attendant ₹ 10,000

For transportation ₹ 10,000

For loss of help in agricultural work $90 \times 165 = ₹ 14,850$

TOTAL = 127651 - 10% = ₹ 1,14,886

Thus the petitioner is entitled to receive ₹ 1,14,886 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.

ORDER

Claim Petition is partly allowed against OP No. 1 and 2 for the compensation amount **₹ 1,14,886** (On Lac Fourteen Thousand Eight Hundred and Eighty Six Only) jointly and severally. The amount allowed against OP No. 1 and 2 has to be indemnified by the OP No. 3 United India Insurance Company Limited with 7.5% simple annual interest from the date of institution of petition till actual recovery. The amount allowed shall be transferred through RTGS/NEFT in his bank account. OP No. 3 is directed to deposit the compensation amount with interest within 45 days from today in the Tribunal's Syndicate Bank Account No. 92352010008560 IFSC-SYNB0009235 through RTGS/NEFT.

Awards be prepared accordingly.

30.09.2020

(Chandroday Kumar)
Presiding Officer

Motor Accident Claim Tribunal Jhansi

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

30.09.2020

(Chandroday Kumar)
Presiding Officer
Motor Accident Claim Tribunal Jhansi