

Motor Accident Claim Tribunal Jhansi

Present: Chandroday Kumar HJS
MACT No. 406 of 2018

Date of Institution: 03/10/18
 Date of Judgement: 20/08/20
 Age: 1 Y, 10 M, 17 D
 MM/DD/YY MM/DD/YY

1. Smt. Mohini Devi, 31, W/o Late Sri Pushpendra Kumar
 2. Km. Pranjal, 2, D/o Late Sri Pushpendra Kumar
 3. Priyansu, 1, S/o Late Sri Pushpendra Kumar
 4. Suresh Kumar, 48, S/o Sri Bhagirath
 5. Smt. Uma Devi, 46, W/o Suresh Kumar
- All R/o Village – Virguvan, P/s - Shahjahanpur Tahsil - Moth, District - Jhansi

Through Guardian Mother-
 Smt. Mohini Devi

-----Pititioners/Applicants

Vs.

1. Abhishek Kumar S/o Sri Ghanshyam Das R/o- H.N. - 234, Chirgaon Dehat P/s - Chirgaon, District Jhansi
Owner Tata Indica Car No. UP 93 AF 4015
2. Brajesh Kumar S/o Sri Parasu Ram R/o – Mohalla Holi Pura Town and P/s - Chirgaon District – Jhansi
Driver Tata Indica Car No. UP 93 AF 4015
3. United India Insurance Co. Ltd. Near Nandanpura Chouraha above Allahabad Bank Cipri Bazar Distt. Jhansi
Insurer Tata Indica Car No. UP 93 AF 4015

-----Opposite Parties

Counsel for the Petitioners Sri. Indrapal Singh Advocate
 Counsel for the OP 1 & 2 Sri. Anand Priya Rajpoot Advocate
 Counsel for the OP 3 Mr. P. K. Mishra Advocate

JUDGEMENT

This Claim Petition has been instituted by the petitioners under section 166 and 140 of the Motor Vehicles Act 1988 for compensation of Rs. 25,50,000 with 18 % annual interest on the death of their husband, father and son Pushpendra Kumar in a motor vehicle accident.

2. In brief, the facts of the case are that on unfortunate day of June 27, 2018 at about 7:30 PM, Pushpendra Kumar was coming from Chirgaon to his home at Bhaunra Ghat by the motorcycle Number UP 93 L 6156. He was driving his motorcycle slow on his side. When they reached near village Kargavan school, at the same time the driver of Tata Indica Car No. UP 93 AF 4015 driving his car rashly and negligently dashed into the motorcycle hard from behind resulting in damage to the motorcycle and grievous injuries to Pushpendra Kumar. With the help of the people present there and police rushed on the spot, injured was being carried to Medical College Jhansi for treatment but he died on the way. The accident occurred due to the sole rash and negligent driving of the car driver. Pushpendra Kumar, agile and healthy, 25 years old, was the bread earner of the family and his income from farming was ₹ 9,000 per month as laborer and ₹ 1,00,000 per anum from agriculture. The accident was reported on 08.08.2018 at Police Station Chirgaon against the driver of car whose criminal case is pending U/s 279, 338, 304A, 427 IPC.

3. Opposite Party No. 1, the owner and 2 the driver of the offending vehicle have filed joint reply in which on the one hand all the pleadings of the petition have been denied while on the other hand they have pleaded that the accident took place due to the rash and negligent overtaking of their car by the motorcycle driver. They have further pleaded that vehicle was insured from OP No. 3 United India Insurance Co. Ltd. and vehicle was being driven by Brajesh Kumar, OP No. 2, who always drives vehicle following traffic rules and had valid and effective driving license.

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 and excessive claim.

5. After exchange of pleadings, following issues were framed-

1. *Whether on the date 27.06.2018 at around 7:30 pm, at the place highway near Kargauvan school in the area of village Kargauvan P/s-*

Chirgaon Jhansi, the driver of Indica car number UP 93 AF 4015 drove his car rashly and negligently dashed motorcycle number UP 93 L 6156 going slow on his side from behind causing grievous injuries to the driver of the motorcycle Pushpendra Kumar who died due to these injuries ?

- 2. Whether above mentioned accident took place due to the contributory negligence of drivers of motorcycle number UP 93 L 6156 ?*
- 3. Whether the driver of the Indica car number UP 93 AF 4015 had a valid and effective driving license on the date and time of accident ?*
- 4. Whether Indica car number UP 93 AF 4015 was lawfully insured from OP number 3 United India Insurance Co. Ltd. at the date and time of accident and the vehicle was being driven under conditions of insurance?*
- 5. Whether the petitioners are entitled to receive the compensation from the opposite parties, if yes, how much and from whom?*

6. Petitioner adduced following oral as well as documentary evidence in support of the petition-

ORAL EVIDENCE-

1. PW1 MohiniDevi, wife of the deceased Pushpendra Kumar - the petitioner No. 1,
2. PW2 Nand Kishore, an eye-witness,

DOCUMENTARY EVIDENCE-

3. Certified copies of the following documents-
Charge Sheet - Paper Number 37C1/2 to 37C1/4
Site Map - Paper Number 37C1/5
Vehicle Accident Inspection Report - Paper Number 37C1/7
Post-Mortem Report - Paper Numbers 37C1/9 to 37C1/15
4. Photo copies of the following documents-
FIR - Paper Numbers 8C1/1 to 8C1/2
Aadhar Cards of the petitioners Mohini Devi, Suresh Kumar, Uma Devi and Pranjal – Paper Nos. 11C1/1, 11C1/2, 11C1/3 and 11C1/4 respectively
4. OP number 1 & 2 adduced photo copies of the following-
Registration Certificate of the vehicle No. UP 93 AF 4015 - Paper Number 22C1
Insurance Policy of the vehicle No. UP 93 AF 4015 - Paper Number 23C1-24C1/2
Driving license of OP number 2 - Paper Number 25C1
Aadhar Card of OP No. 2 - Paper Number 26C1
Aadhar Card of OP No. 1 - Paper Number 27C1

7. No other evidence is produced by the opposite Parties.

8. Due to the prevalent spreading of COVID-19, I have heard the parties in Virtual Court and perused the record and written submission of counsel for OP No. 3 carefully.

9. DISPOSAL OF ISSUE NO. 1 and 2

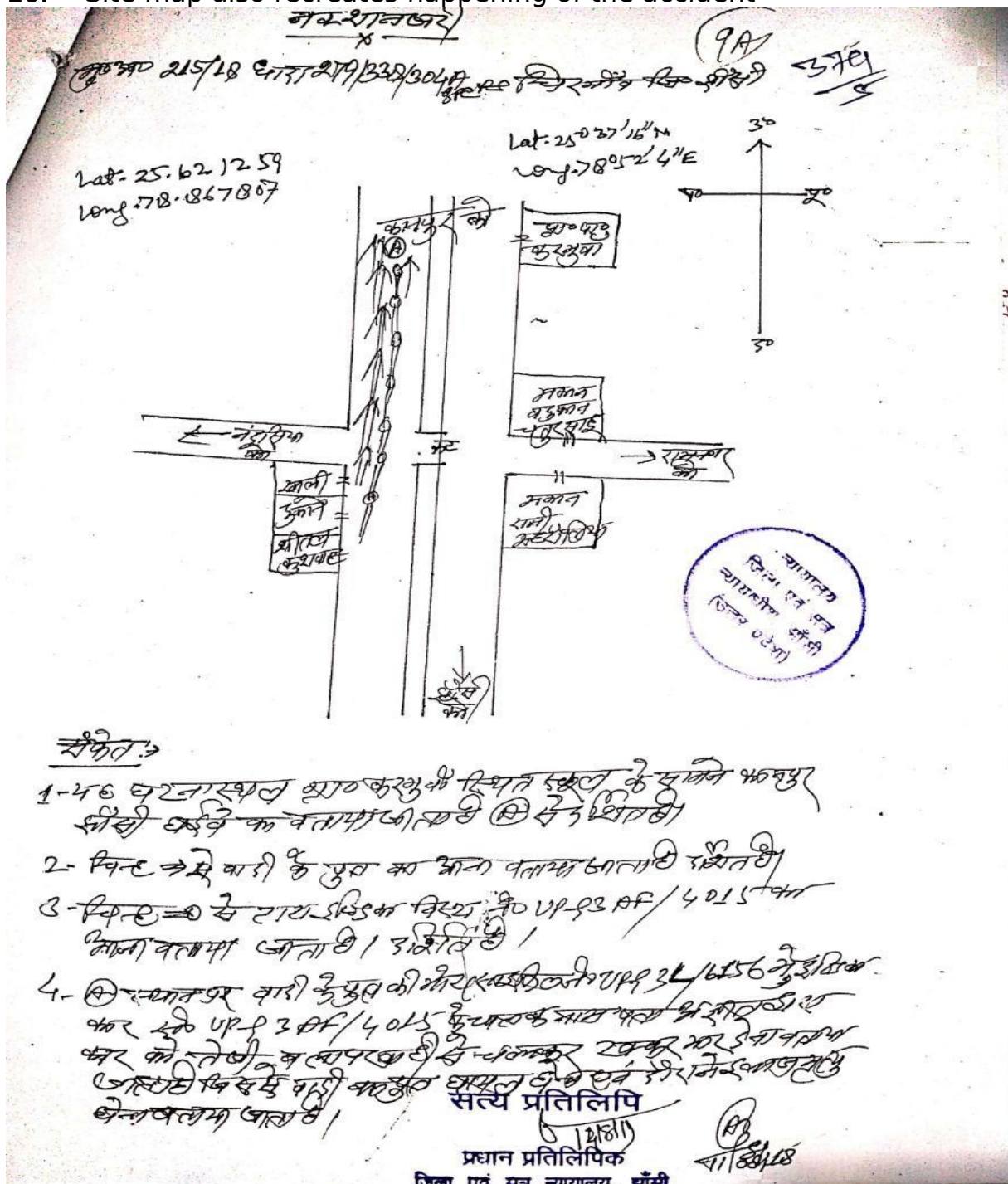
These issues have been framed in order to ascertain the factum of the accident and contributory negligence. In this regard PW 2 is an eye witness and his testimony will have material impact on the case. He has stated that the accident happened on 27.6.18 at about 7:30. He was going to his house from pond side. He saw that a motorcyclist was coming slow on his side from Jhansi side. As soon as he reached near school, a car bearing number UP 93 AF 4015 driven by its driver in rash and negligent manner came and hit hard behind the motorcycle coming on his side. In result, motorcycle get damaged motorcyclist Pushpendra received grievous injuries. He rushed the spot and saw the injured and at then other villagers rushed the spot. After some time police also rushed the spot. He with the help of people present send the injured along with police to the Medical College Jhansi for treatment but injured Pushpendra died due to the injuries on the way. Car driver was totally at fault. He narrated the incident to police on the spot. Though name of this witness does not find place in the charge sheet but nothing material is revealed in the cross-examination of this witness which would be able to refute his testimony rather he detailed

the color of vehicle as silver and injuries of the deceased which are found correct as per RC and PMR. Same cast and locality does not every time make witness bias. In the case of [Ravi vs. Badrinarayan and Ors.](#) (18.02.2011 - SC) : [MANU/SC/0133/2011](#) Hon'ble Apex Court has held that

In a claim for compensation of Motor accident lodging of F.I.R. certainly proves factum of accident so that the victim is able to lodge a case for compensation but delay in doing so cannot be the main ground for rejecting the claim--Cumulative effect of events are to be judged. [Para--20 and 21]

In the case in hand delay of one and half month is well explained in the F.I.R. Every father may slip in depression on her sons death. Now next question is whether deceased had wore helmet. It can be presumed that every rider wear helmet. There is nothing on record to show that he did not wear the helmet. As per PMR, the injuries are on the face including left eye brow and there is no injury on that portion of head which really helmet covers. Every helmet is not 100% safety cover for face. PMR does not necessarily suggest that deceased did not wear helmet. There is no pleadings / evidence regarding helmet. Therefore, question of helmet cannot be raised at the stage of argument only.

10. Site map also recreates happening of the accident-



Technical report though does not supports the petitioner story of hitting behind because in that case the car would have been damaged from front but in fact the car is damaged from back side but there is nothing to show the contributory negligence of motorcyclist. Driver of bigger vehicle has to

be more cautious while driving. No investigation report has been submitted by the insurance company. OP Nos. 1 & 2 who were present in the car and have stated in their reply that accident took place due to the negligence of the motorcyclist did not appear in the witness box. In these circumstances, I find this accident in which Pushpendra Kumar died took place due to the sole rash and negligence of the car driver and there was no contributory negligence of the motorcyclist Pushpendra Kumar. These issues are decided accordingly.

11. DISPOSAL OF ISSUE NO. 3

This issue pertains to the driving license of the driver of the car No. UP 93 AF 4015. Police have charge-sheeted OP No. 2 as driver of the car No. UP 93 AF 4015. Owner and driver both have accepted this fact in the written statement. Nothing in rebuttal of this fact is produced by the OP No. 3. Photocopy of DL of OP No. 2 Brajesh Kumar 25C1 has been produced by the OP No.1. According to this DL (No: UP93 19920008690), Brajesh Kumar is authorized to drive non transport vehicles from 30.10.1992 to 31.12.2018. Nothing has been produced by OP No. 3 in rebuttal of this DL. Hence it is proved that at the time of accident the driver of the the car No. UP 93 AF 4015 Brajesh Kumar had a valid and effective driving license. This issue is decided accordingly.

12. DISPOSAL OF ISSUE NO. 4

This issue is framed to ascertain the insurance of Tata Indica car number UP 93 AF 4015. OP number 1 have filed photo copy of Insurance Policy (United India Insurance Co. Ltd.) of UP 93 AF 4015 which is paper number 23C1. This policy is effective from 30.12.2017 to the midnight of 31.12.2018. Nothing in rebuttal from OP No. 3 is placed before the Tribunal, hence it is proved that car No. UP 93 AF 4015 was insured from OP No. 3 validly and was effective on the date of the accident. The issue No. 3 is being decided accordingly.

13. DISPOSAL OF ISSUE NO. 5

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 & 2 that the accident in question took place due to rash and negligent driving of the driver of the car No. UP 93 AF 4015, hence, driver OP No. 2 and owner OP No. 1 are liable jointly and severally. Since it has been established during disposal of issue No. 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. 3 has to indemnify. The next question which arises is the amount of the compensation.

14. Calculation of the compensation

PW1 Mohini Devi W/o deceased Pushpendra has stated dependency of family of 5 persons which is uncontroverted. He has also stated the income of the deceased ₹ 1,00,000 per year from farming but in this regard neither any independent witness has been examined nor has any documentary evidence of the deceased's agricultural land been produced. P.W. 1 has stated that her husband was earning ₹ 9,000 per month as laborer but no documents 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. P.W. 1 has stated the age of the deceased as 25 years and the postmortem report also states 25. Though postmortem report is not conclusive on the point of age but there is nothing in rebuttal of 32 years hence the age of the deceased is determined as 25 years on the date of the accident. In the light of [National Insurance Company Limited Vs. Pranay](#)

Sethi and Ors. (31.10.2017 - SC): MANU/SC/1366/2017, Multiplier of 18, deduction of 1/4 part on own expenses, addition of ₹ 40,000 for loss of consortium, ₹ 15,000 for loss of estate and addition of ₹ 15,000 for funeral expenses are being determined.

INCOME-MONTHLY x MONTHS OF THE YEAR	165	30	12	59400
FUTURE PROSPECTS IN %			40	23760
PART OF SELF EXPENSE			4	20790
AFTER DEDUCTION OF PART OF SELF EXPENSE (MULTIPLICAND)				62370
MULTIPLIER			18	1122660
LOSS OF CONSORTIUM			40000	1162660
LOSS OF ESTATE			15000	1177660
FUNERAL EXPENSE			15000	1192660
TOTAL COMPENSATION				1192660

Thus the petitioners are entitled to receive ₹11,92,660 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 wife, 2 minor daughters and mother father of the deceased, they will share 30, 20, 20, 15 and 15%. **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 deposit some part of compensation and make a plan to receive the interest half yearly.

ORDER

The Claim Petition is allowed for the compensation amount **₹11,92,660** (Eleven Lac Ninety Two Thousand Six Hundred Sixty Only) against OP No. 1 and 2 jointly and severally. This amount has to be indemnified by the OP No. 3 The United India Insurance Company Limited with 7.5% simple annual interest from the date of institution of the petition till actual recovery. Out of this amount Petitioner Nos. 1, 2, 3, 4 and 5 shall share in the ratio of 30, 20, 20, 15 and 15 respectively. 75% of the share of the Petitioner No. 1, 4 and 5 shall be fixed deposited in any nationalized bank carrying highest interest for 3 years and 25% shall be transferred through RTGS/NEFT in their bank accounts. The share of the Petitioners No. 2 and 3 shall be fixed deposited in any nationalized bank carrying highest interest. Petitioner Nos. 1, 4 and 5 shall get half yearly interest of the fixed deposits in their bank accounts. Insurance company is directed to deposit the compensation amount with interest within 60 days from today in the Tribunal's Syndicate Bank Account No. 92352010008560 IFSC-SYNB0009235 through RTGS/NEFT. Purpose of transfer of money (MACP No. and year) shall be mentioned in RTGS/NEFT and transaction receipt shall be sent to the Tribunal via official email and whatsapp available on Tribunals website- mactjhansi.in.

Awards be prepared accordingly.

20.08.2020

(Chandroday Kumar)
Presiding Officer
Motor Accident Claim Tribunal
Jhansi

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

20.08.2020

(Chandroday Kumar)
Presiding Officer
Motor Accident Claim Tribunal

Jhansi