

## Motor Accident Claim Tribunal Jhansi

Present: Chandroday Kumar HJS

Date of Institution: Date of Judgement:

10/08/16

10/07/20

Age:

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MM/DD/YY

MM/DD/YY

**MACT No. 408 of 2016**

1. Saligram, 38, S/o Sri Ghanaram
2. Smt. Lajjawati, 36, W/o Sri. Saligram

All R/o Village – Bhaunra Ghat, P/s and Tahsil - Moth, District - Jhansi

-----Pititioners/Applicants

Vs.

1. Pradeep Kumar Vishwakarma S/o Sri Narayan Das R/o- 17, Matan Pura Chirgaon P/s Chirgaon, District Jhansi

.....Owner Tavera No. UP 93 AM 5737

2. Sonu Raja S/o Sri Hari Singh R/o – Harijan Colony Chirgaon P/s - Chirgaon Tahsil - Moth, District – Jhansi

.....Driver Tavera No. UP 93 AM 5737

3. National Insurance Co. Ltd. 98, Civil Line behind Elite Cinema through Branch Manager

.....Insurer Tavera No. UP 93 AM 5737

Advocate for the Petitioners Sri. Indrapal Singh

Advocate for the OP 1 &amp; 2 Sri. Vishesh Chandra Pathak

Advocate for the OP 3 Mr. VK Mishra

**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 Rs. 20,50,000 on the death of their father and father-in-law Ghanaram in a motor vehicle accident.

**2.** In brief, the facts of the case are that one unfortunate day of July 06, 2016, Ghanaram was riding pillion from Moth to his house at Bhaunra Ghat on motorcycle number UP 93 AA 1862. The motorcycle was being driven by Pusp Pal slowly on his side. When they reached Moth bypass of Jhansi-Kanpur road near Nehru nagar and started crossing the road blowing horn and giving signal, at the same time the driver of Tavera Vehicle number UP 93 AM 5737 driving his vehicle rashly and negligently from Jhansi side without blowing horn collided motorcycle hard resulting in damage to the motorcycle and greivous injuries to Pusp Pal and Ghanaram. The incident was witnessed by Mukesh Kumar and Kalicharan. They helped injured persons and admitted them in Primary Health Center in Moth for treatment. After first aid, both were referred to Medical College Jhansi but Ghanaram died on the way. Puspal also died the same day while undergoing treatment at the Medical College Jhansi. The accident occured due to the sole rash and negligent driving of Travera driver. Ghanaram, agile and healthy, 62 years old, was the sole bread earner of the family and his income from farming was Rs. 1,00,000 per annum. The accident was reported by Rajendra Singh on 08.07.2016 at Police Station Moth District Jhansi against the driver of Tavera whose criminal case is pending U/s 279, 338, 304A, 427 IPC.

**3.** Opposite Party No. 1, owner of the offending vehicle, has filed reply of the petition in which the fact of accident on 14/06/2017 and place of incidence have been accepted. He has further pleaded that vehicle was insured from OP No. 2 National Insurance Co. Ltd. and vehicle was being driven by Sonu Raja, OP No. 3, who is

expert driver haing valid and effective driving licence number UP 93/20130008156. Rest pleadings including pleading of rash and negligent driving of the petition have been denied and under the additional statement it is stated that the accident took place due to rash and negligent driving of driver of motorcycle UP 93 AA 1862.

4. Opposite Party No. 2, driver of the offending vehicle, has filed reply of the petition in which the fact of accident on 14/06/2017 and place of incidence have been accepted but rest pleadings have been denied in general. He has stated in his additional statement that he is expert driver haing valid and effective driving licence number UP 93/20130008156 which is effective from 07.08.2013 to 06.08.2023. He has further stated that vehicle was insured from OP No. 2 National Insurance Co. Ltd. of which policy number was 450503/31/16/6700004499 and validity was from 01.06.2016 to 31/05/2017. Petitioners pleading of rash and negligent driving have been answered in denial and under the additional statement it is stated that the accident took place due to rash and negligent driving of driver of motorcycle UP 93 AA 1862.

5. 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 defences including probable violation of terms and conditions of the policy. OP No. 3 further pleaded for contributory negligence.

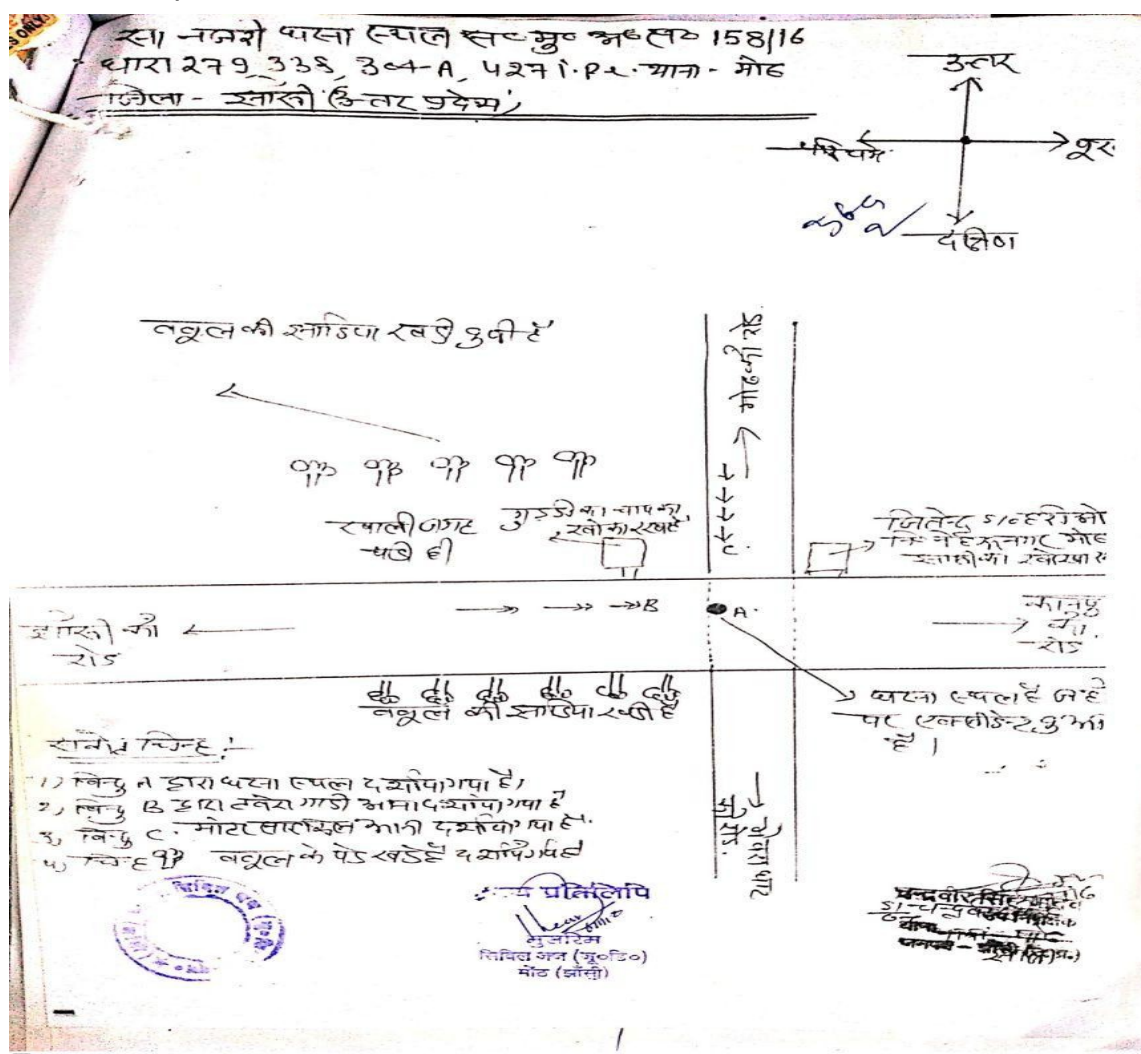
6. After exchange of pleadings, following issues were framed-

1. *Whether on the date 06/07/2016 at around 02:30 pm, at the place Moth bypass of Jhansi-Kanpur road near Nehru nagar in the area of P/s Moth, the driver of Tavera number UP 93 AM 5737 drove his vehicle rashly and negligently collided motorcycle number UP 93 AA 1862 causing greivous injuries to Ghanaram, who was riding pillion of the said motorcycle and died while on his way to the Medical College Jhansi for treatment?*
2. *Whether above mentioned accident took place due to the contributory negligence of both drivers?*
3. *Whether, OP No. 2, the driver of the vehicle Tavera had a valid and effective driving license on the date and time of accident?*
4. *Whether vehicle tavera was insured from OP number 2 at the date and time of accident?*
5. *Whether the petitioners are entitled to receive any compensation, if so, how much and from which opposite party?*

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

1. PW1 Saligram, son of the deceased Ghanaram - the petitioner No. 1,
2. PW2 Mukesh Yadav, an eye-witness,
3. Certified copies of the following documents-
  - FIR - Paper Numbers 34C1/2 to 34C1/3
  - Charge Sheet - Paper Number 35C1/2
  - Site Map - Paper Number 36C1/2
  - Vehicle Accident Inspection Report - Paper Number 37C1/2
  - Post-Mortem Report - Paper Numbers 35C1/2 to 35C1/8
  - Inquest Report - Paper Numbers 25C1/2 to 25C1/3
  - Application to get corpus of deceased - Paper Number 26C1/2

4. OP number 1 produced notary certified copies of the following-  
Certificate of fitness of the Tavera UP 93 AM 5737 - Paper Number 21C1  
Insurance Policy of the Tavera UP 93 AM 5737 - Paper Number 22C1  
Registration Certificate of the Tavera UP 93 AM 5737 - Paper Number 23C1  
Driving licence of OP number 2 - Paper Number 24C1
8. No other evidence is produced by the opposite Parties.
9. Due to the COVID-19 lockdown, I have heard the parties in Virtual Court and perused the record carefully.
10. **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 6/7/16 at about 2:30 pm. He was present at Nehru Nagar – Moth bypass road. He saw that Pusp Pal Yadav was going from Moth to his home Bhora by the motorcycle number UP 93 AA 1862. Ghanaram was sitting on the back of the motorcycle. As soon as motorcycle tried to cross Moth bypass crossing, a Tavera vehicle number UP 93 AM 5737 driven by its driver in rash and negligent manner came from Jhansi side and hit hard in the back side of the slow moving motorcycle. In result, both motorcyclist get injured severely. He with the help of other present people carried both injured to Moth Health Center for treatment. After first aid both were reffered to the Medical College. Ghanaram died on the way. Pushp Pal also died same day during treatment in the Medical College. Nothing in the cross-examination has been revealed by this witness who would be able to refute his testimony.
11. Site map also recreates the actual seen of accident-



Some times slow speed and wrong judgement of surrounding circumstances may also cause accident. In this case, the accident would have been avoided if the motor cyclist had been slightly faster. Both drivers must be more vigilant at the crossing but being Tavera heavier vehicle than motorcycle and running it on the highway where generally speed remains high, I find 70% contributory negligence of Tavera driver and 30% contributory negligence of motorcycle driver. Charge-sheet against the driver of Tavera corroborates more negligence of the driver of the Tavera. Vehicle Accident Inspection Report - Paper Number 37C1/2 also reveals that right headlight side of Tavera have collided with motorcycle. Postmortem report confirms death due to antemortem injuries on head and legs. Ld. Counsel for Insurance Company rightly said that if pillion rider had helmet on his head, he would have saved himself. I would suggest Ld. counsels to make people aware about importance of wearing helmet.

The Issues No. 1 and 2 are being decided accordingly.

#### **12. DISPOSAL OF ISSUE NO. 3**

This issue pertains to the driving licence of the driver of the Tavera No. UP 93 AM 5737. Police have charge-sheeted OP No. 2 as driver of the Tavera No. UP 93 AM 5737. Owner and driver both have accepted this fact. Nothing in rebuttal of this fact is produced by the OP No. 3. Photocopy of DL of OP No. 2 Sonu Raja S/o Sri Hari Singh 24C1 has been produced by the OP No.1. According to this DL (No: UP93 20130008156), Sonu Raja is authorised to drive non transport vehicles from 07.08.2013 to 06.08.2023. Nothing has been produced in rebuttal of this DL by OP No. 3. Hence it is proved that at the time of accident the driver of the the Tavera No. UP 93 AM 5737 Sonu Raja had a valid and effective driving license. This issue is decided accordingly.

#### **13. DISPOSAL OF ISSUE NO. 4**

This issue is framed to ascertain the insurance of Tavera vehicle number UP 93 AM 5737. OP number 1 have filed notary certified copy of Insurance Policy (National Insurance Co. Ltd.) of UP 93 AM 5737 which is paper number 22C1. This policy is effective from 01/06/2016 to the midnight of 31/05/2017. Fitness of the dumper truck was effective from 04 Sept. 2015 to 04 Sept. 2016 (Paper No. 21C1). Nothing in rebuttal from OP No. 3 is placed before the Tribunal, hence it is proved that Tavera No. UP 93 AM 5737 was insured from OP No. 3 validly and was effective on the date of the accident. The issue No. 3 is being decided accordingly.

#### **14. 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 contributory negligent driving of the drivers of the Tavera No. UP 93 AM 5737 and motorcycle number UP 93 AA 1862 in the ratio 70:30, hence, driver OP No. 2 and owner OP No. 1 are liable jointly and severally for 70% only. 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.

#### **15. Calculation of compensation**

PW1 Saligram S/o deceased Ghanaram has stated dependency of family which are 2 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. 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 62 years and the postmortem report states 68. Postmortem report is not conclusive on the point of age. Nothing in rebuttal of 62 years hence the age of the deceased is determined as 62 years on the date of the accident. As per [National Insurance Company Limited Vs. Pranay Sethi and Ors. \(31.10.2017 - SC\): MANU/SC/1366/2017](#), Multiplier of 7, deduction of 1/3 part on own expenses, addition of ₹ 15,000 for loss of estate and addition of ₹ 15,000 for funeral expenses are being determined.

INCOME-DAILY x DAYS OF MONTH x MONTHS OF YEAR	165	30	12	59400
FUTURE PROSPECTS IN %			0	0
PART OF SELF EXPENSE			3	19800
AFTER DEDUCTION OF PART OF SELF EXPENSE (MULTIPLICAND)				39600
MULTIPLIER			7	277200
LOSS OF CONSORTIUM			0	277200
LOSS OF ESTATE			15000	292200
FUNERAL EXPENSE			15000	307200
Liability of Insurance Co. in %		70		215040
TOTAL COMPENSATION				215040

Thus the petitioners are entitled to receive ₹2,15,040 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 son and daughter-in-law, they will share 50-50. [Jai Prakash vs. National Insurance Co. Ltd. and Ors. \(17.12.2009 - SC\): MANU/SC/1949/2009](#), it would be justifiable to fix deposit some part of compensation and make a plan to receive the annuity.

ORDER

The Motor Accident Claim Petition 408 of 2016 Saligram & another Vs. Pradeep Kumar Vishwakarma & Ors. is allowed for the compensation amount ₹2,15,040 ( Two Lac Fifteen Thousand fourty Only) against OP No. 1 and 2 jointly and severally. This amount has to be indemnified by the OP No. 3 National Insurance Company Limited with 7.5% simple annual interest from the date of institution of petition till actual recovery. Out of this amount Petitioners shall share 50% each. 75% of the share of

the Petitioners shall be deposited in fixed accounts for 3 years and 25% shall be transferred through RTGS/NEFT in their bank accounts. Petitioners shall get annual 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 Punjab National Bank Account No. 3671000101192489, IFSC-PUNB0367100 through NEFT/RTGS.

Awards be prepared accordingly.

10.07.2020

(Chandroday Kumar)

Motor Accident Claim Tribunal Jhansi

This judgement sign dated and pronounced in open Virtual Court today.

Records be consigned.

10.07.2020

(Chandroday Kumar)

Motor Accident Claim Tribunal Jhansi