

## Motor Accident Claim Tribunal, Jhansi

Present: Chandroday Kumar, H.J.S. <b>MACP No. 427 of 2018</b>	Date of Institution: 22/10/18 MM/DD/YY	Date of Judgement: 05/09/20 MM/DD/YY	Age: 1 Y, 10 M, 14 D
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1. Smt. Vandana Lodhi, 25, wife of Late Ram Singh Lodhi  
 2. Divyansh Lodhi, 6, son of Late Ram Singh Lodhi – Minor through mother and natural Guardian Smt. Vandana Lodhi, wife of Late Ram Singh Lodhi  
 3. Raghunandan Lodhi, 50, son of Late Sri Pyarelal Lodhi  
 4. Smt. Ramdavi Lodhi, 49, wife of Sri Raghunandan  
 5. Gayatri Devi daughter, 18 of Sri Raghunandan Lodhi resident of village Jitkora, Post Kalra, Police Station Bamhraulikala and Tehsil Palera, District Teekamgarh, M.P.

----- Petitioners

Vs.

1. Rajaram, son of Shri Deen Dayal, resident of Bade Mahaveer Devri Singh Pura Ranipur, Tehsil Mauranipur, District Jhansi, U.P.

..... Driver Truck No. UP 93 AT 0408

2. Bhagwati Prasad Shivhare son of Shri Ram Prasad Shivhare resident of 421, CP Mission Compound, Jhansi District Jhansi U.P.

..... Registered Owner of Truck No. UP 93 AT 0408

3. Universal Sompo General Insurance Company Limited, Unit No. 401, 4<sup>th</sup> Floor, Sangam Complex, 127 Andheri Kurla Road, Andheri (East) Mumbai through Claim Incharge Universal Sompo General Insurance Company Limited Civil Line, Jhansi District Jhansi U.P.

..... Insurer Truck No. UP 93 AT 0408

----- Opponents

Counsel of the petitioner- Sri Rajiv Gupta Advocate

Counsel of OP No. 1 and 2- Sri Rakesh Chandr Sahu Advocate

Counsel of OP No. 3- Sri Sunil Shukla Advocate

### JUDGMENT

The petition has been instituted by the petitioners against the opposite parties for the compensation of ₹ 28,00,000 with interest permissible by law due to the death of Ram Singh Lodhi in the alleged motor vehicle accident under section 166, 167 and 140 of the Motor Vehicle Accident Act.

2. The facts of the petition in a nutshell is that the petitioners' husband, father, son and brother, Ram Singh Lodhi, worked as a laborer on truck number UP 93AT 0408 and on 04.10.2018, was working as a laborer in the employment and direction of opponent number two. In the said truck, the machine was being loaded at Ambavai in front of RS Girls College Gate No. 2 Gwalior Raod District Jhansi. After the machine was loaded, at about 4:00 pm, Ram Singh Lodhi was removing the stopper of the wheels of the truck, then at the same time without giving any indication the truck

driver moved the truck forward rashly and negligently, so that the stepney of the machine laden in the truck fell over Ram Singh Lodhi and he died due to injuries sustained in this accident. The information of the said accident was lodged by the petitioner number three in Sipri Bazar Jhansi after he retired from the cremation of his deceased son, on the basis of which the case against the driver of the said truck was registered under Crime No. 390/2018 u/s 279, 304 IPC.

3. Opposite Party No. 1 and 2, the driver and registered owner of the truck number UP 93AT 0408 respectively denied the pleading of the petition of rash and negligent driving but accepted the accident and have pleaded that the driver at the time of the accident had a valid driving license and the owner of the said truck was duly insured by the OP No. 3. They have further pleaded that the deceased was a laborer on the truck on wages ₹ 4,000 per month. The deceased did not tie stepney of the laden machine on the truck during the course of employment properly, which caused stepney of the machine to fall on the deceased. If the court finds that the petitioners are entitled for compensation, then the OP No. 3 has an obligation to pay compensation to the petitioner.

4. Opposite Party No. 3 Universal Sompo General Insurance Company Limited, the insurer of the truck number UP 93AT 0408 has filed its reply of the petition in which it has denied the pleadings of the petition, mainly stating that the alleged accident has not happened and the insurance company has the right to take all the defenses available u/s 149 and 140 of the M V Act. The insurance company does not have any responsibility. The responsibility of the insurance company is as per the terms of the insurance policy.

5. After exchange of the pleadings of the parties, the following issues have been framed:

1. Whether on date 13.08.2016 while the machine was being loaded in the truck number UP 93AT 0408 at Ambavai in front of RS Girls College Gate No. 2 at about 4:00 pm, then Ram Singh Lodhi was removing the stopper of the wheels of the truck, at the same time without giving any indication the truck driver moved the truck forward rashly and negligently, so that the stepney of the machine laden in the truck fell over Ram Singh Lodhi and he died due to injuries sustained in this accident?

2. Whether the driver of truck number UP 93AT 0408 in question had a valid and effective driving license on the date of the accident?

3. Whether the truck number UP 93AT 0408 in question was insured with OP No. 3 Universal Sompo General Insurance Company Limited at the time of accident?

4. Whether the petitioner is entitled to receive compensation, if so, then how much and from which opponent?

6. In order to prove facts of the petition, the petitioner adduced following oral as well as documentary evidence-

ORAL

PW1 Smt. Vandana, wife of the deceased,

PW2 Hariom, an eye-witness,

PW3 Brajmohan, an eye-witness,

DOCUMENTARY

Photocopies of the following documents through list 7C1-

- FIR - Paper Numbers 8C1/2 to 8C1/2
- Post-Mortem Report - Paper Numbers 9C1 to 9C1/7
- Aadhar Card of Vandana Lodhi, Divyans Lodhi, Raghunandan Lodhi and Ramdevi Lodhi - Paper Numbers 10C1 to 10C1/4 respectively
- Pariwar Card - Paper Number 11C1
- R C of truck number UP 93AT 0408 - Paper Number 12C1
- D L of Raja Ram - Paper Number 13C1
- Insurance Policy of truck number UP 93AT 0408 - Paper Number 14C1

Following photocopies have been produced by the **OP No. 1 & 2** through list 18C1-

- RC of truck number UP 93AT 0408 - Paper Number 19C2
- Authorization Certificate of truck number UP 93AT 0408 - Paper Number 19C2/2
- Fitness Certificate of truck number UP 93AT 0408 - Paper Number 19C2/3
- Fee Slip of truck number UP 93AT 0408 - Paper Number 19C2/4
- Insurance Policy of truck number UP 93AT 0408 - Paper Number 19C2/5
- D L of Raja Ram - Paper Number 19C2/6

Following attested copies have been produced by the **Police Station Cipri Bazar** District Jhansi-

- FIR - Paper Numbers 21C2/2 to 21C2/3
- Site Map - Paper Number 22C2/4
- Vehicle Accident Inspection Report - Paper Number 21C2/5
- Post-Mortem Report - Paper Numbers 21C2/6 to 21C2/12
- Charge Sheet - Paper Number 21C2/13 to 21C2/14

On behest of the Tribunal the investigation report has been submitted by the OP No. 3 which are paper numbers 26C1/1-26C1/3

No other evidence has been presented by the Parties.

7. Due to the proliferation of COVID-19, I have heard the parties in the virtual court and carefully scrutinized the case records along with the written arguments submitted by the petitioner's counsel.

**8. Disposal of Issue No. 1**

In this case, the first information report is lodged by the father of the deceased 12 days after the accident. He has stated in his FIR that he was unable to provide information as

he was engaged in the last rites and in grief over the death of his son, which is an acceptable explanation for the delay in filing the FIR. 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]*

After investigation Police found occurrence of the accident due to rash and negligent driving of truck driver and have filed charge sheet against truck driver. The eye witnesses of the charge sheet PW2 and PW3 have testified before the tribunal that the accident took place due to the rash and negligent driving of the truck driver. Nothing material has surfaced from the cross-examination of these witnesses which may be able to discredit their testimony. The argument regarding JCB (pokland) machine that it does not possess stepney is not tenable as witness has got confused from the question that whether machine was pokland having chain system for crawling. Investigation report of the insurance company and PMR also supports the petitioners case. It was the duty of the truck driver and cleaner to fasten stepney properly. It was also the duty of the truck driver and cleaner to move the standing truck after giving proper indication. The accident has been accepted by the owner and driver. Hence, I find that this accident in which Ram Singh died took place due to the sole rash and negligence of the truck driver.

#### **9. DISPOSAL OF ISSUE NO. 2**

This issue pertains to the driving license of the driver of the truck number UP 93AT 0408. The owner and driver both have accepted in WS that accident took place and Ram Singh was driver at that time. Police has filed a charge sheet against OP No. 1 Ram Singh as the driver of the truck number UP 93AT 0408. Nothing could be presented by OP No. 3 in refutation of this fact. Photocopies of DL of OP No. 2 have been filed by the Petitioners and 1. According to this DL (No: UP93 19990000313), Raja Ram is authorized to drive non transport vehicles from 30.03.1999 to 23.08.2021. Nothing could be produced by OP No. 3 in rebuttal of this DL. Hence it is proved that at the time of accident the driver of the truck number UP 93AT 0408 Raja Ram 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 truck No. UP 93AT 0408. Petitioners, OP No. 1 and 2 have filed photocopies of the Insurance Policy (Universal Sampo General Insurance Company Limited) of UP 93AT 0408. This policy was effective from 01.08.2018 to the midnight of

31.07.2019. Accident took place on 04.10.2018. RC and fitness of the truck was effective from 28 Aug 2012 to 31 Aug 2019 (Paper No. 19C2/1). Goods carriage permit was also effective from 06 September 2018 to 30 August 2019 (Paper No. 19C2/2). Nothing could be placed by OP No. 3 in rebuttal before the Tribunal, hence it is proved that truck No. UP 93AT 0408 was insured from OP No. 3 validly and was effective on the date of the accident. The issue No. 1 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. Since, it has been established during disposal of issue No. 1 that the accident in question took place due to rash and negligent driving of the driver of the truck No. UP 93AT 0408, hence, its driver OP No. 1 and owner OP No. 2 are liable jointly and severally. Since it has been established during disposal of issues No. 3 and 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 compensation**

It is argued that father and sister did not dependent on the deceased. In my view law regarding is very clear since Shushma Thomas case. These principles of dependency have been reiterated by the 3 Judges bench of the Hon'ble Apex Court in [United India Insurance Co. Ltd. vs. Satinder Kaur and Ors. \(30.06.2020 - SC\) : MANU/SC/0500/2020](#). Relevant portion are being reproduced here-

*"43.6. Insofar as deduction for personal and living expenses is concerned, it is directed that the Tribunals shall ordinarily follow the standards prescribed in paragraphs 30, 31 and 32 of the judgment in Sarla Verma MANU/SC/0606/2009 : (2009) 6 SCC 121 subject to the observations made by us in para 38 above...."*

The case at hand has positive evidence to show that the father and sister depended on the deceased. PW1 has stated that the deceased was the only son of her mother-in-law and father-in-law and the only breadwinner of the family. His sister's future turned bleak. They all (Petitioners) were depend on the deceased. His father-in-law does not do any work. In the case of [Gangaraju Sowmini and Ors. vs. Alavala Sudhakar Reddy and Ors. \(01.02.2016 - HYHC\) : MANU/AP/0096/2016](#) it is observed that *"We should remember that in an Indian family, brothers, sisters and brothers' children and some times foster children live together and they are dependent upon the breadwinner of the family and if the breadwinner is killed on account of a motor vehicle accident, there is no justification to deny them compensation....."*

Considering the legal position on the point and evidence adduced, I am of the view that 1/4<sup>th</sup> deduction should be made.

PW1 has stated that her husband was paid ₹ 7500 salary by the owner of the truck. It is stated by the owner of the truck in his WS that he used to pay ₹ 4000 per month as wages to the deceased. Owner of the truck did not appear for examination. In these circumstances, I am of the view that notional income should be considered in computation of 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. The postmortem report states age of the deceased aprox 30 years old and as per\ Aadhar card of the deceased age of the deceased was 27. Postmortem report is not conclusive on the point of age. Nothing in rebuttal of 27 years hence the age of the deceased is determined as 27 years on the date of the accident. As per [National Insurance Company Gangaraju Sowmini and Ors. vs. Alavala Sudhakar Reddy and Ors. \(01.02.2016 - HYHC\) : MANU/AP/0096/2016 Limited Vs. Pranay Sethi and Ors. \(31.10.2017 - SC\): MANU/SC/1366/2017](#), Multiplier of 7, addition of ₹ 15,000 for loss of estate, addition of ₹ 15,000 for funeral expenses and addition of ₹ 40,000 for loss of consortium are being determined.

INCOME-DAILY x DAYS OF MONTH x MONTHS OF 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			17	1060290
LOSS OF CONSORTIUM			40000	1100290
LOSS OF ESTATE			15000	1115290
FUNERAL EXPENSE			15000	1130290
TOTAL COMPENSATION				1130290

Thus the petitioners are entitled to receive ₹11,30,290 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, minor son, mother, father and sister, their corresponding share 35%, 30%, 15%, 10% and 10% shall be justifiable. In the light of case law [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 quarterly interest thereon.

#### **ORDER**

The Petition is partially allowed for compensation amount ₹ **11,30,290** (Eleven Lac Thirty Thousand Two Hundred and Ninety) against OP No. 1 and 2 jointly and severally. This amount and interest thereon has to be indemnified by the OP No. 3 Universal Sompo General Insurance Company Limited with 7.5% simple annual interest from the date of institution of petition till actual recovery. Out of total amount, Petitioner No. 3 and 5 Ragunandan Lodhi and Gayatri Devi shall share 10% each. Petitioner No. 1 Smt Vandana, 2 Divyansh and 4 Smt. Ram Devi shall share 35%, 30% and 15% respectively. Total amount of Petitioner No. 2 Master Divyansh (Minor) shall be fix deposited in any nationalized bank carrying highest interest up to his majority. 70% of the shares of the rest petitioners shall be fix deposited in any nationalized bank carrying highest interest for 3 years and quarterly interest shall have to be transferred into the bank accounts of the petitioners. Petitioner nos. 1, 3, 4 and 5 shall get remaining amount in their bank accounts through electronic mode. Insurance company is directed to deposit the compensation amount with interest within 30 days from today.

05.09.2020

(Chandroday Kumar)  
Presiding Officer  
Motor Accident Claim Tribunal  
Jhansi

The Judgement signed, dated and pronounced in open Virtual Court today.

05.09.2020

(Chandroday Kumar)  
Presiding Officer  
Motor Accident Claim Tribunal  
Jhansi