

Motor Accident Claim Tribunal Jhansi

Present: Chandroday Kumar HJS

Date of Institution: Date of Judgement:

22/08/16
MM/DD/YY30/07/20
MM/DD/YYAge:
3 Y, 11 M, 8 D**MACT No. 428 of 2016**

1. Kashiram, 60, S/o Sri Sulley Rajput
 2. Smt. Sudha Rani, 36, W/o Sri Kashiram Rajput
- All R/o Village — Jakhanwara, P/s — Erach Tahsil — Garotha, District — Jhansi
- Pititioners/Applicants

Vs.

1. Surjeet Singh S/o Gyan Singh R/o— Vill — Chak Jagdevpur Teh — Urai, District JalaunRegistered Owner Vehicle No. UP 92 T 6947
 2. Rohit Kumar S/o Sudama R/o — Vill — Ahrauli, Ghat P/s — Devrahat, Bhoganipur District — Kanpur Dehat.....Driver Vehicle No. UP 92 T 6947
 3. Manager The New India Insurance Co. Ltd. Kuchehary Chouraha, Jhansi
... ..Insurer Vehicle No. UP 93 AM 5737
 4. Amar Singh S/o Suraj R/o— Vill — Mohahlla — Chand Kuan Konch Teh — Konch, District JalaunRegistered Owner Vehicle No. UP 92 T 7413
- Opposite Parties

Advocate for the Petitioners Sri. Umesh Pal

Advocate for the OP 1 & 2 Sri. Naresh Singh

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. 27,50,000 with 18% interest on the death of their son Devendra Rajput in a motor vehicle accident.

2. In brief, the facts of the case are that Devendra Rajput, son of the petitioners, who was about 26 years old, serving as a conductor at the dumper number UP 92 T 7413 was coming from Buxar to Jhansi on 12.07.2016 after evacuating the dumper and when he reached Mughal Road in front of Village Gaur in Bhognipur police station area at around 3:00 pm, the driver of truck number UP 92 T 6947 coming from Bhognipur in rash and negligent manner hit the dumper in front, which led to the death of Devendra Rajput sitting on the dumper and both the vehicles were damaged. The above incident was also witnessed by all the people present on the spot. The accident took place due to the sole negligence of the truck driver. At the time of the incident, Devendra Rajput was strong and hardworking with his body and worked as a conductor/cleaner on the dumper which earned him a salary of ₹ 10000 per month which would support the family. The deceased was the only earning member if in the said event If he had not died, he would have been alive for 80 years and he would have taken care of the petitioners and helped him financially.

3. Opposite Party No. 1 and 2, owner and driver of the offending vehicle, has filed their joint reply of the petition in which the fact of accident on 14.06.2017 and place of incidence have been denied. He has further pleaded that the vehicle was insured from OP No. 3 The New India Insurance

Co. Ltd. and vehicle was being driven by Rohit Kumar, 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 have taken many defenses including probable violation of terms and conditions of the policy. OP No. 3 further pleaded for contributory negligence non joinder of necessary party. OP No. 3 reserved his right to file supplementary W.S. if any otherwise fact emerges in the investigation which are being carried by him. OP No. 3 did not file any investigation report or supplementary W.S.

5. Despite service OP No. 4, owner of the vehicle No. UP 92 T 7413 did not filed his reply hence tribunal proceeded exparte against him.

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

1. *Whether on the date 12.07.2016 at around 3 pm, when Devendra Rajput, son of the petitioners, serving as a conductor at the dumper number UP 92 T 7413 was coming from Buxar to Jhansi after evacuating the dumper and when he reached Mughal Road in front of Village Gaur in Bhognipur police station area, the driver of truck number UP 92 T 6947 coming from Bhognipur in rash and negligent manner hit the dumper, which led to the death of Devendra Rajput sitting on the dumper and both the vehicles were damaged.*
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 UP 92 T 6947 had a valid and effective driving license on the date and time of accident?*
4. *Whether vehicle UP 92 T 6947 was insured from OP number 3 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 and documentary evidence in support of the petition–

1. PW1 Kashiram, father of the deceased Devendra Rajput – the petitioner No. 1,
2. PW2 Jainarayan, an eye–witness,
3. Certified copies of the following documents–
 FIR – Paper Numbers 27C1/2 to 27C1/4
 Charge Sheet – Paper Numbers 27C1/6 to 27C1/10
 Post–Mortem Report – Paper Numbers 27C1/12 to 27C1/21
4. Photocopies of the following documents–
 Adhar Card of the deceased – Paper Number 35C1
 Electors roll of 2015 – Paper Number 36C1
 Parivar Register of the deceased – Paper Number 37C1
5. OP Number 1 and 2 produced photo copies of the following–
 Goods Carriage Permit of the vehicle UP 92 T 6947 – Paper Number 14C1
 Certificate of Fitness of the vehicle UP 92 T 6947 – Paper Number 14C1/2

Registration Certificate of the vehicle UP 92 T 6947 – Paper Number 14C1/3

Insurance Policy of the vehicle UP 92 T 6947 effective from 31.08.2016 to 30.08.2017 – Paper Number 14C1/4

Road Tax of the vehicle UP 92 T 6947 from 1.04.2016 to 31.12.2016 – Paper Numbers 14C1/5 – 14C1/6

Insurance Policy of the vehicle UP 92 T 6947 effective from 31.08.2015 to 30.08.2016 – Paper Numbers 14C1/7 – 14C1/8

Adjustment Voucher – Paper Number 14C1/9

Driving licence of OP Number 2 – Paper Number 14C1/10

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

9. Due to the spreading of the COVID-19, 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 whose name does not find place in the charge sheet is said to be an eye witness, so his testimony will have material impact on the case. He has stated that the accident happened on 12.07.2016 at 3 pm and he was present there. He further has stated that accident was caused due to the rash and negligent driving of the driver of the truck no. UP 92 T 6947 but he has not stated the manner in which accident took place so it is not much clear that actually accident took place due to the sole negligence of the driver of the truck no. UP 92 T 6947. He has further stated that Devendra Rajput was died on the spot while both drivers sustained simple injuries. The Post Mortem report of Devendra Rajput states cause of death was anti mortem injuries. PW2 has stated in its cross-examination that the dumper number UP 92 T7413 and truck number 92 T 6947 had a head-on collision. Nothing much has come out of his cross-examination which can basically shake his credibility.

In the cases of [Bijoy Kumar Dugar vs. Bidyadhar Dutta and Ors. \(01.03.2006 – SC\) : MANU/SC/1027/2006](#) and [Minu Rout and Ors. vs. Satya Pradyumna Mohapatra and Ors. \(02.09.2013 – SC\) : MANU/SC/0912/2013](#) Honorable Apex Court has held–

‘when the vehicles had a head-on collision, the drivers of both the vehicles should be held responsible to have contributed equally to the accident.’

In the cases of [Thomas vs. P. Sivasubramaniam and Ors. \(03.01.2013 – MADHC\) : MANU/TN/0728/2013](#) it is observed that *Merely because, there is a head on collision, it cannot be contended that it is a case of contributory negligence, on the part of both the drivers of the vehicles involved in the accident. No doubt, last opportunity theory of avoiding an accident can be applied to a case of head on collision. In the case of head on collision, negligence to be fixed on the drivers of the vehicles, involved in the accident, depends upon the evidence adduced by the parties. The appellant has not alleged any negligence on the driver of the Transport Corporation bus and from the manner of accident, averred by the appellant, the plea of composite negligence cannot be countenanced.*

In the case of Machindranath Kernath Kasar vs. D.S. Mylarappa and Ors. (29.04.2008 – SC) : MANU/SC/2484/2008 following ratio has been laid down by the Honorable Apex Court–

"As it is imperative on the part of the Tribunal to specify the amount payable by the driver of the vehicle under Section 168, a fortiori driver should be impleaded as a party in the proceeding."

In the case of The Municipal Corporation of Greater Bombay vs. Laxman Iyer and Ors. (27.10.2003 – SC) : MANU/SC/0836/2003 Honorable Apex Court held that *where there has been no contributory negligence on the part of the victim, the question of apportionment does not arise. Where a person is injured without any negligence on his part but as a result of combined effect of the negligence of two other persons, it is not a case of contributory negligence in that sense. It is a case of what has been styled by Pollock as injury by composite negligence.*

11. Considering above case laws, there is no doubt that the case in hands is a case of composite negligence only. The drivers and owners of the both vehicles did not adduced any evidence regarding manner of accident. Though charge sheet against driver of the vehicle No. UP 92 T 6947 has been produced but Site Map of the accident prepared by the Investigating Officer has been withheld by the petitioner. PW 1 has stated that his son was conductor/cleaner on dumper number UP 92 T 7413. There is nothing on the record in rebuttal of this evidence. Considering front collision and other circumstances of the case, I find that this accident occurred due to the equal negligence of the drivers of both the vehicles in which Devendra Singh died. The Issues No. 1 and 2 are being decided accordingly.

12. DISPOSAL OF ISSUE NO. 3

This issue pertains to the driving license of the driver of the vehicle No. UP 92 T 6947. Police have charge-sheeted OP No. 2 as driver of the vehicle No. UP 92 T 6947. Nothing in rebuttal of this fact is produced by the OP No. 3. Photocopies of DL of OP No. 2 Rohit Kumar S/o Sudama Prasad 9C1 and 14C1/1 have been produced by the Petitioners. According to this DL (No: UP77 20080005204), Rohit Kumar is authorized to drive transport vehicles from 15.11.2010 to 14.11.2016. 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 vehicle No. UP 92 T 6947 Rohit Kumar 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 the vehicle No. UP 92 T 6947. Petitioners have filed photocopies of Insurance Policy (The New India Insurance Co. Ltd.) of the vehicle No. UP 92 T 6947 which is paper numbers 9C1/4 and 14C1/7–14C1/8. This policy is a commercial vehicle package policy effective from 31/08/2015 to the midnight of 30/08/2016. Fitness of the vehicle No. UP 92 T 6947 was effective from 16 Oct. 2015 to 11 Oct. 2017 (Paper No. 9C1/3 and 14C1/2). 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. 4 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 the equal negligence of the drivers of the vehicle No. UP 92 T 6947 and vehicle number UP 92 T 7413, hence, owner and driver of the vehicle No. UP 92 T 6947 OP No. 1 and 2 together with owner of the vehicle number UP 92 T 7413 OP No. 4 are liable jointly and severally for 50–50%. Since it has been established during disposal of issue No. 3 that the DL of the driver of vehicle No. UP 92 T 6947 was valid and effective at the time of the accident, hence the OP No. 3 has to indemnify for 50% only. For the rest 50% liability goes to OP No. 4. There is no logic to indemnify insurance company for what he has not contracted. The next question which arises is the amount of the compensation.

15. Calculation of compensation

PW1 Kashiram F/o deceased Ghanaram has stated dependency of family which are 2 persons which is uncontroverted. He has also stated the earning of the deceased ₹ 10,000 per month from salary as conductor/cleaner of truck but in this regard neither any independent witness has been examined nor has any documentary evidence 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 26 years unmarried and the postmortem report also states 26 but electoral roll of 2015 paper no. 36C1 states 30 years. Most reliable document on age is photocopy of Aadhar Card, paper no. 35C1, according to which age of the deceased on the date of the accident was 29 years 6 months and 11 days. In these circumstances I find the age of the deceased as 29 years old. As per [National Insurance Company Limited Vs. Pranay Sethi and Ors. \(31.10.2017 – SC\): MANU/SC/1366/2017](#), Multiplier of 17, deduction of 1/2 part on own expenses, 40% future prospects, 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 %			40	23760
PART OF SELF EXPENSE			2	41580
AFTER DEDUCTION OF PART OF SELF EXPENSE (MULTIPICAND)				41580
MULTIPLIER			17	706860
LOSS OF CONSORTIUM			0	706860
LOSS OF ESTATE			15000	721860
FUNERAL EXPENSE			15000	736860
Liability of Insurance Co. in %		50		368430
Liability of OP No. 4 in %		50		368430
TOTAL COMPENSATION				736860

Thus the petitioners are entitled to receive ₹7,36,860 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](#) 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 annuity.

ORDER

Claim Petition is partly allowed against OP No. 1 and 2 for the compensation amount ₹3,84⁶⁸,430 (Three Lac ~~Eighty Four~~^{Sixty Eight} Thousand Four Hundred and Thirty Only) jointly and severally and against OP No. 4 for the compensation amount ₹3,84⁶⁸,430 (Three Lac ~~Eighty Four~~^{Sixty Eight} Thousand Four Hundred and Thirty Only). The amount allowed against OP No. 1 and 2 has to be indemnified by the OP No. 3 The New India Insurance Company Limited with 7.5% simple annual interest from the date of institution of petition till actual recovery. The amount allowed against OP No. 4 has to be paid with 7.5% simple annual interest from the date of institution of petition till actual recovery. Out of the total amount of the compensation ₹7,36,860, Petitioners shall share equally. 75% of the share of the Petitioners shall be deposited in fixed accounts for 5 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. OP No. 3 and 4 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.

Awards be prepared accordingly.

30.07.2020

(Chandroday Kumar)
Presiding Officer

Motor Accident Claim Tribunal Jhansi

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

Records be consigned.

30.07.2020

(Chandroday Kumar)
Presiding Officer

Motor Accident Claim Tribunal Jhansi