

Motor Vehicle Accident Claims Tribunal, Jhansi

Present: Chandroday Kumar H.J.S. M.A.C.P. No. 441 of 2018 1. Smt. Radha age 22 years wife of Late Shri Abir Singh 2. Shiva Yadav (Minor) age 6 months son of Late Shri Abir Singh through guardian mother Smt. Radha 3. Khushilal son of Late Shri Gorelal 4. Rajabeti wife of Khushilal All Resident of Village- Asaupura, Tehsil- Taalbehath, District- Lalitpur	Date of Institution:	Date of Judgement:	Age:
	11/12/18	03/18/21	2 Y, 4 M, 6 D
	MM/DD/YY	MM/DD/YY	

----- Petitioners

Versus

1. Hargovind Choubey son of Shri Madhav Prasad Resident of- House No. 699 Talabpura, Tehsil & Police Station- Lalitpur, District- Lalitpur
..... Owner Truck No. UP94T4727
2. Brajesh Singh son of Sitaram Resident of- Village- Harshpur Tehsil- Talbehath, District- Lalitpur
..... Driver Truck No. UP94T4727
3. New India Asurance Company, through Regional Manager Court Intersection, Jhansi
..... Insurer Truck No. UP94T4727
----- Opposite Parties

Counsel for the petitioner- Shri Mahendra Singh Rajawat Advocate
Counsels for the opposite party No. 1 & 2- Shri Lokendra Sharma & Shri Rashid Khan Advocate
Counsel for the opposite party No. 3- Shri Arun Srivastav Advocate

AWARD

This Claim Petition has been instituted by the petitioners under section 166 and 140 of the Motor Vehicles Act for the compensation of ₹24,94,000 with 12% interest on account of death of their husband, father and son Abir Singh in motor vehicle accident.

2. The brief facts of the case are that deceased was cleaner on Truck No. UP94T4727 and while he was coming from Kanpur to Lalitpur via Jhansi on 12.10.2018 on above mentioned truck as a cleaner and as soon as he reached Parichha over-bridge at around 1:30 AM, the driver of the Truck No. UP94T4727 driving it rashly and negligently dashed another Truck No. UP32T8622 standing side of the road. As a result thereof, Abir Singh and truck driver suffered grievous injuries and truck got damaged. Injured Abir Singh was brought to the Medical College Jhansi where doctor declared him dead. The accident was witnessed by Rahish S/o Rajdhar R/o village Motikhera, P/s Bar Distt. Lalitpur. The incident was reported to P/s Baragaon by elder brother of the deceased Devendra Singh. The deceased was 24 years old hale and hearty man used to earn ₹9,000 per month from work of cleaner on truck.

3. A Joint written statement has been filed by O.P. No. 1 & 2 stating therein in respect of the accident that OP No. 1 is registered owner of Truck No. UP94T4727 and the same was insured by Package Policy No. 42150931180100000063 from Opposite Party Number 3 from 27.04.2018 to 26.04.2019. OP No. 2, a valid driving license holder, was driving the truck carefully and was going from Kanpur to Lalitpur and when he reached near Parichha over-bridge at around 1:30 AM, his truck dashed into Truck No. UP92T8622 standing in the center of the road without any signal and without

illuminating its lights. OP No. 1 & 2 has also pleaded for contributory negligence.

4. A written statement has been filed by Insurance Company O.P. No. 3 in which accident as well as any liability has been denied for violation of terms and conditions of insurance policy. Insurance Company has also pleaded for contributory negligence and exaggerated demand of compensation.

5. On the basis of pleadings, following issues are framed:

1. Whether on date 12.10.2018 at about 1:30 AM, the driver of Truck No. UP94T4727 driving it rashly and negligently dashed into Truck No. UP92T8622 standing in the side of the road as a result thereof, cleaner of the Truck No. UP94T4727 Abir Singh suffered grievous injuries and succumbed ?

2. Whether accident in question took place due to contributory negligence of the driver of Truck No. UP92T8622 ?

3. Whether at the time of the accident, driver of Truck No. UP94T4727 had a valid and effective driving license ?

4. Whether Truck No. UP94T4727 was insured from O.P. No. 3 New India Asurance Company at the date and time of the accident and the Truck was being plied in conformity with terms of insurance ?

5. Whether the petitioners are entitled to get compensation from opposite parties, if so, how much and from whom?

6. The following documentary and oral evidence have been produced by the parties: -

By the petitioners

Documentary

1. Through List 7C1 photocopies of F.I.R. 8C1/1-8C1/2, GD dated 23.10.2018 8C1/3, GD dated 24.10.2018 8C1/4, R.C. of Vehicle No. UP94T4727- 9C1, Permit of Vehicle No. UP94T4727- 9C1/2-9C1/2, Insurance Policy of Vehicle No. UP94T4727- 10C1-10C1/2, DL of Brajesh Singh 11C1, Postmortem Report of deceased Abeer Singh 12C1-12C1/4, Inquest Report 13C1, Aadhaar Card of Radha 14C1 and Aadhaar Card of Abir Singh 14C1/2,

2. Through List 23C1 photocopies of Adhar Card of Khushilal 24C1 and Adhar Card of Rajabeti 24C1,

3. Through List 55C1 certified copies of Charge-Sheet 56C1-56C1/4, Site-Map 57C1, and Postmortem Report of deceased Abeer Singh 58C1/2-58C1/8.

Oral

PW1 Smt. Radha (Petitioner) and PW2 Rahish Kumar (Eye Witness).

By the OP No. 1 & 2

Documentary

1. Through List 27C1 photocopies of DL Brajesh Singh 28C1, RC of Vehicle No. UP94T4727- 29C1, Insurance Policy of Vehicle No. UP94T4727- 30C1-30C1/2, Permit of Vehicle No. UP94T4727- 31C1 and Fitness Certificate 32C1,

No other oral or documentary evidence has been given by either side.

7. I have heard and perused the oral arguments of the learned counsels of the both side as well as written arguments on behalf of the Insurance Company and perused the record and evaluated the evidence carefully.

FINDINGS

8. **Disposal of Issues No. – 1 & 2**

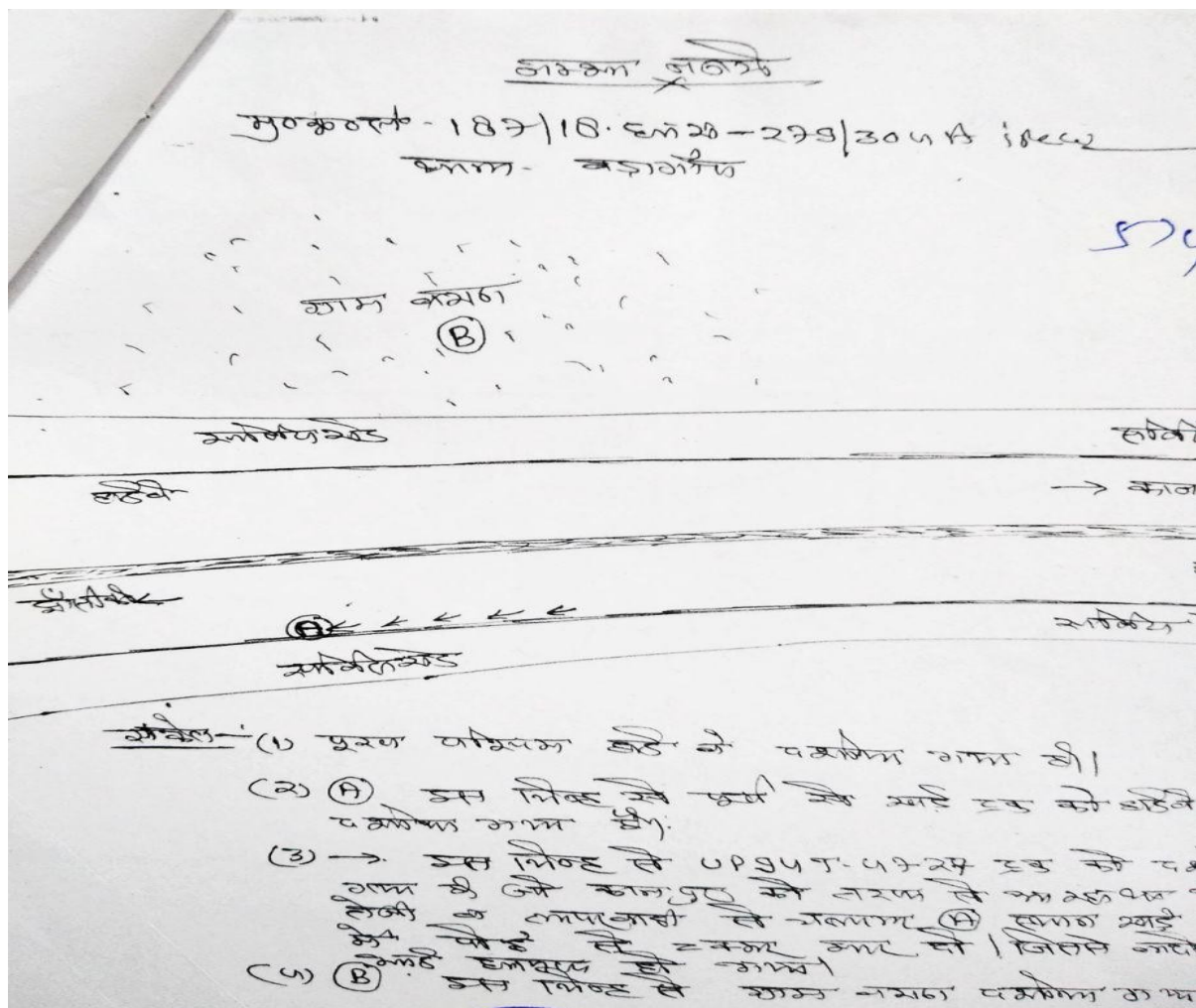
learned Counsel for the insurance company argued that this accident may have been taken place due to the negligence of standing truck. On the other hand, Learned Counsel for the petitioners has argued that petitioners have proved their case while opposite parties led no evidence.

9. PW1 has supported her claim petition but she is not eye witness so her testimony does not throw any light on accident. PW2 Rahish Kumar (Eye Witness) has stated in his examination-in-chief that accident occurred near Parichha over-bridge under police station Baragaon on date 12.10.2018 at 2 O'Clock of night. Sitting in a truck, he was coming from Jhansi and was going to Orai. Deceased was in truck No. UP94T4727 and its driver was coming from Kanpur to Jhansi side. The driver driving rashly and negligently dashed behind standing truck. As a result thereof, driver, cleaner suffered injuries. Truck too remained on the spot. Police and other people rushed on the spot. He and driver both rushed on the spot. Ambulance too reached on call. Injured were taken to the Medical for treatment. We also placed the injured in the ambulance. Abir Singh collapsed in Medical. Stones were laying on the road around the standing truck and front and rear light was on. Above accident took place due to fault of driver of truck No. UP94T4727 and it was standing in the side of the road. In his cross-examination this witness has said that deceased was his acquaintance. He did not give any statement to police. Today he has come to testify on behest of Radha's father. He did not get summon of the Court for evidence. He was going in truck. He could not tell the number of the truck. He was sitting in truck as Gardner. Number of standing truck was UP92T8622. He and petitioners are of the Yadav caste. Both they do not belong to same village and are not relative. This witness has denied the suggestion of not seeing the incident and not seeing the stones around standing truck and lights of standing truck.

10. In my view, credibility of PW2 is not shaken by mere being caste of victim, appearing in court for evidence mere at the behest of the claimant's father and mere not simply stating the number of the truck in which he was traveling. Since there is no any evidence on the record which may show that witness is interested witness, hence I do not find any reason to believe on suggestions of counsel of the Insurance Company. In the case of [Archit Saini and Ors. vs. The Oriental Insurance Company Ltd. and Ors. \(09.02.2018 - SC\)MANU/SC/0105/2018](#) Honourable Apex Court has held that *it is well settled that the nature of proof required in cases concerning accident claims is qualitatively different from the one in criminal cases, which must be beyond any reasonable doubts.*

Insurance Company has not submitted any investigation report which can show that accident did not take place due to negligence of moving truck or that this case is hit and run case. 9 days delay in lodging F.I.R. is not material in motor accident cases. 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]*

Charge-Sheet, Postmortem report and Site-Map corroborates testimony of PW2. Site map recreates happening of the accident-



During arguments parties have bargained plea of contributory negligence of standing truck @ 10% on the account of failure of giving proper signals and lights in the night. In my view plea bargain on contributory negligence should be allowed. In this way, I find that this accident in which Abir Singh died took place due to 90% negligence of moving truck driver and 10% of standing truck driver. Issues No. 1 & 2 decided accordingly.

11. Disposal Issue No. - 3

Charge-Sheet (Paper No. 56C1-56C1/4) against driver of offending vehicle UP94T4727 Brajesh Kumar under sections 279 & 304-A has been filed and Court concerned has taken cognizance. A photocopy of Brajesh Kumar's driving license (Paper No. 28C1) has been filed on the record as per which Brajesh Kumar is authorized to drive non transport vehicles from 11.03.2015 to 10.03.2035 and transport vehicle from 05.08.2016 to 04.08.2019. This license could not be rebutted by the insurance company. The accident happened on 12.10.2018. Therefore, it is proved that at the time of accident, the driver of Truck No. UP94T4727 Brajesh Kumar had a valid and effective driving license. Hence, issue no. 3 is decided in affirmative.

12. Disposal Issue No. - 4

Registered owner and driver of the offending Truck No. UP94T4727 have filed paper no. 30C1 photocopy of Commercial Package Policy No. 42150931180100000063 according to which the vehicle No. UP UP94T4727 name- MR Har Govind Choubey was insured from date 27.04.2018 to 26.04.2019. It is clear from registration certificate 29C1 that registered owner of above mentioned Truck No. UP94T4727 is Sri Har Govind Choubey. Fitness 32C1 of this vehicle is valid from 11.05.2018 to 11.05.2019. Permit of this vehicle is valid from 17.05.2016 to 16.05.2021 and National Permit is valid from 21.05.2018 to 16.05.2019. The accident occurred on date 12.10.2018. Insurance policy, fitness and permit could not be

rebutted by the insurance company. Hence, issue no. 3 is decided in affirmative.

13. **Disposal Issue No. - 5**

Since the accident took place due to 90% negligence of the driver of moving Truck No. UP94T4727 hence, the vehicle owner and driver are jointly and severally liable for 90% compensation. Since the vehicle was insured by opposite party number 3 at the time of the accident, the liability for reimbursement of compensation rests with opposite party number 3.

14. **Computation of compensation -**

PW 1 wife of deceased has deposed that her husband was working as cleaner on truck and was earnings ₹9,000 per month but there is no documentary proof of this. Therefore, I am of the view that in calculating the compensation, it would be appropriate to take into consideration the income of the deceased as an unskilled laborer. It is noteworthy that unorganized unskilled laborers do not get full year employment. It is also noteworthy that unskilled laborers do not get employment throughout the year. In the case of [Laxmi Devi and Ors. vs. Mohammad Tabbar and Ors. \(25.03.2008 - SC\)](#): MANU/SC/7368/2008, 12 years back, Hon'ble Supreme Court has considered ₹100 per day wage for unskilled laborers to be appropriate. In the case of [Chandrawati Vs. Shushil Kumar and Ors. \(01.08.2018 - ALLHC\)](#): MANU/UP/2954/2018 Hon'ble High Court Allahabad considered ₹200 per day wage for unskilled laborers to be appropriate. In fact, hypothetical income is an estimate based on time, place, and circumstances. It is noteworthy that unskilled laborers do not get employment throughout the year. There is a possibility of not getting wages for four days in a month. Thus, notional income is ₹165 is determined. In these facts and circumstances, in the light of [National Insurance Company Limited Vs. Pranay Sethi and Ors. \(31.10.2017 - SC\)](#): MANU/SC/1366/2017, Multiplier of 15, deduction of 1/4 part on own expenses, addition of 40% as future prospects, addition of ₹40,000 for loss of consortium, addition of ₹15,000 for loss of estate and addition of ₹15,000 for funeral expenses are being determined.

ANNUAL INCOME- MONTHLY INCOME x MONTHS OF YEAR	165	30	12	59400
FUTURE PROSPECTS IN %			40	23760
PART OF SELF EXPENSE			3	27720
AFTER DEDUCTION OF PART OF SELF EXPENSE (MULTIPLICAND)				55440
MULTIPLIER			18	997920
LOSS OF CONSORTIUM			40000	1037920
LOSS OF ESTATE			15000	1052920
FUNERAL EXPENSE			15000	1067920
NEGLIGENCE OF MOVING TRUCK			90	961128
NEGLIGENCE OF STANDING TRUCK			10	106792
COMPENSATION				961128

Thus the petitioners are entitled to receive ₹9,61,128 as compensation.

15. In the light of ruling [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. In the light of ruling [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 invest some part of compensation in annuity.

ORDER

The Claim Petition is partially allowed for compensation ₹9,61,128 (Rupees Nine Lakh Sixty One Thousand One Hundred and Twenty Eight) with 7.5% simple annual interest from the date of institution of the petition till the date of deposition/recovery. Opposite Party No. 3 New India Assurance Company Limited is ordered to deposit the amount of compensation with interest in tribunal's Punjab National Bank Account Number 3671000101192489 IFSC- PUNB0367100 through RTGS/ NEFT within 45 days from the date of the order and submit UTR/Referencce/Transaction number in the office of this Tribunal.

Petitioners No. 1, 2, and 4 shall share 35, 20, and 10 percent of total compensation respectively. Out of total compensation 75% of Petitioner No. 1 shall be invested in annuity in any Nationalized Bank for 10 years, 75% of Petitioner No. 4 shall be invested in annuity in any Nationalized Bank for 3 years and 100% of Petitioners No. 2 shall be fixed deposited in any Nationalized Bank up to his majority through Natural Guardian mother Petitioner No.1. Petitioners No. 1 and 4 shall get rest 25% amount each in their Bank Accounts through RTGS/NEFT. ATM Cards may be issued in order to get monthly proceeds of annuities.

The FO be prepared accordingly. Record be consigned.

Date 18.03.2021

(Chandrodaya Kumar)
Motor Accident Claim Tribunal,
Jhansi

This award signed, dated and pronounced by me in open court today.

Date 18.03.2021

(Chandrodaya Kumar)
Motor Accident Claim Tribunal,
Jhansi