

MOTOR ACCIDENT CLAIM TRIBUNAL, JHANSI

Date of Institution:	Date of Judgement:	Age:
03/06/18	05/13/20	2 Y, 2 M, 7 D
MM/DD/YY	MM/DD/YY	

Present: Chandroday Kumar HJS

MACP No. 76 of 2018

Smt. Shakuntala Devi W/o Om Prakash, age about 51, R/o Budha Thana Sipri Bazar, Distt. Jhansi, U.P.Petitioner

vs.

1. Ambey Supplier Pvt. Ltd. authorized possessor Sharif Khan S/o Sameer Khan R/o Khaju Ka Mohalla Ward 24 Nawalgarh Jhunjhunu Rajasthan -----Owner of the vehicle
2. Manoj Kaurav S/o Sri. Ramesh Kaurav R/o Kamti Gadarwala Narsinghpur M.P.Driver
3. Magma S.D.I. General Insurance Company Ltd. through Manager Magma House 24 Park Street Kolkata 700016 -----Insurer
.....Opposite Parties

And

MACP No. 77 of 2018

1. Smt. Sanju Devi W/o Late Arvind Kumar, age about 27,
2. Piyush Yadav S/o Late Arvind Kumar through Guardian Smt Sanju W/o Late Arvind Kumar
3. Shakuntala Devi W/o Om Prakash, age about 51,
4. Om Prakash S/o Asharam, age about 55
All R/o Budha Thana Sipri Bazar, Distt. Jhansi, U.P

.....Petitioners

vs.

1. Ambey Supplier Pvt. Ltd. Authorized Possessor Sharif Khan S/o Sameer Khan R/o Khaju Ka Mohalla Ward 24 Nawalgarh Jhunjhunu Rajasthan -----Owner of the vehicle
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3. Magma H.D.I. General Insurance Company Ltd. through Manager Magma House 24 Park Street Kolkata 700016 -----Insurer
.....Opposite Parties

Advocate of Petitioners..... Sri Rajeev Sharma

Advocate of Opposite Parties.....Sri Raj Tilak Saxena

JUDGMENT

Both the cases mentioned above are related to the same accident hence for the sake of convenience both are being decided by the common judgment.

2. In a nutshell, the facts of the case are such that on January 2, 2018, at around 6:00 pm, Arvind, along with his mother Shakuntala, walked from the house at Budha to the Hanuman temple of Sakhi for Kanya Bhoj (girl's meal) and reached near the entry point of the highway. Omprakash, Bhagat Singh and Rahul were present there. Arvind started chatting with them. Suddenly, the driver of the Scorpio car number MP 20 CD 5917 brought the car running fast and carelessly from Gwalior side and hit it hard to Arvind and Shakuntala and thereby both got severely injured. The car driver left the car and fled. Both the injured were taken to the medical college where Arvind died during treatment. Shakuntala Devi has claimed compensation of ₹5,78,000 in respect of self injuries by instituting MACP 76 of 2018 under section 166,144 of the Motor Vehicle Act while petitioners of the MACP 77 of 2018 have claimed compensation of ₹64,00,000 under section 166,144 of the Motor Vehicle Act in respect of death of Arvind.

3. Tribunal proceeded ex parte against Defendant No. 1 and 2. Defendant No. 3 has submitted his reply denying the facts of the petition. On the basis of pleadings following issues were framed-

1- Whether on date 02.01.2018, time at 6 pm and place near the entry point of ring road approaching highway, driver of the Scorpio car number MP20 CD 4917 hit Arvind and Sakuntala which resulted in serious injuries to them (....MACP No. 76 of 2018)

1- and eventually the death of Arvind during treatment? (....MACP No. 76 & 77 of 2018)

2- Whether the driver of Scorpio car No. MP20 CD 4917 had a valid and effective driving license to drive the vehicle on the date of accident? (....MACP No. 76 & 77 of 2018)

3- Was Scorpio car number MP20 CD 4917 insured from Magma HDI General Insurance Company on the date of the accident? (....MACP No. 76 & 77 of 2018)

4- Are petitioners entitled to receive compensation? If yes, from which defendant and how much? (....MACP No. 76 & 77 of 2018)

4. In order to prove their petitions, in Petition No. 76 of 2018, the sole petitioner Smt. Sakuntala Devi has examined herself as PW1 and an eye witness Rahul Yadav as PW2 whereas in Petition No. 77 of 2018, petitioner Mrs. Sanju Devi has examined herself as PW1 and an eye witness Rahul Yadav as PW2. The following papers have also been produced in **Petition No. 76 of 2019** as documentary evidence -

True copy of the **Charge Sheet** paper No. 25C1/2 to 25C1/3;

Photocopy of the **Site Map** of the occurrence paper No. 25C1/2 to 25C1/3;

Photocopies of the **RC, Insurance Cover Letter** and **DL** paper Nos. 14C1/1, 14C1/2 and 14C1/3 respectively;

Photocopies of various **Medical Papers** from 9C1/1 to 9c1/12 and 10C1/1 to 10C1/4.

The following papers have also been produced in **Petition No. 77 of 2019** as documentary evidence -

True copy of the **Site Map** of the occurrence paper No. 27C1/2;

True copy of the **Post-Mortem Report** paper No. 27C1/4 to 7C1/10

True copy of the **Charge Sheet** paper No. 27C1/12 to 27C1/1;

Photo copies of the **RC, Insurance Cover Letter** and **DL** paper Nos. 16C1/1, 16C1/2 and 16C1/3 respectively;

Photo copy of **FIR** paper No. 8C1/1 to 8C1/2

Photo copies of the **Aadhaar Cards** of Piyush Yadav Om Prakash Yadav Shakuntala Devi paper Nos. 10C1/2, 10C1/3 and 10C1/4 respectively;

Photocopy of the **Elector Photo Identity Card** paper No. 10C1/1.

5. Neither oral nor documentary evidence have been produced by the Defendant No. 3

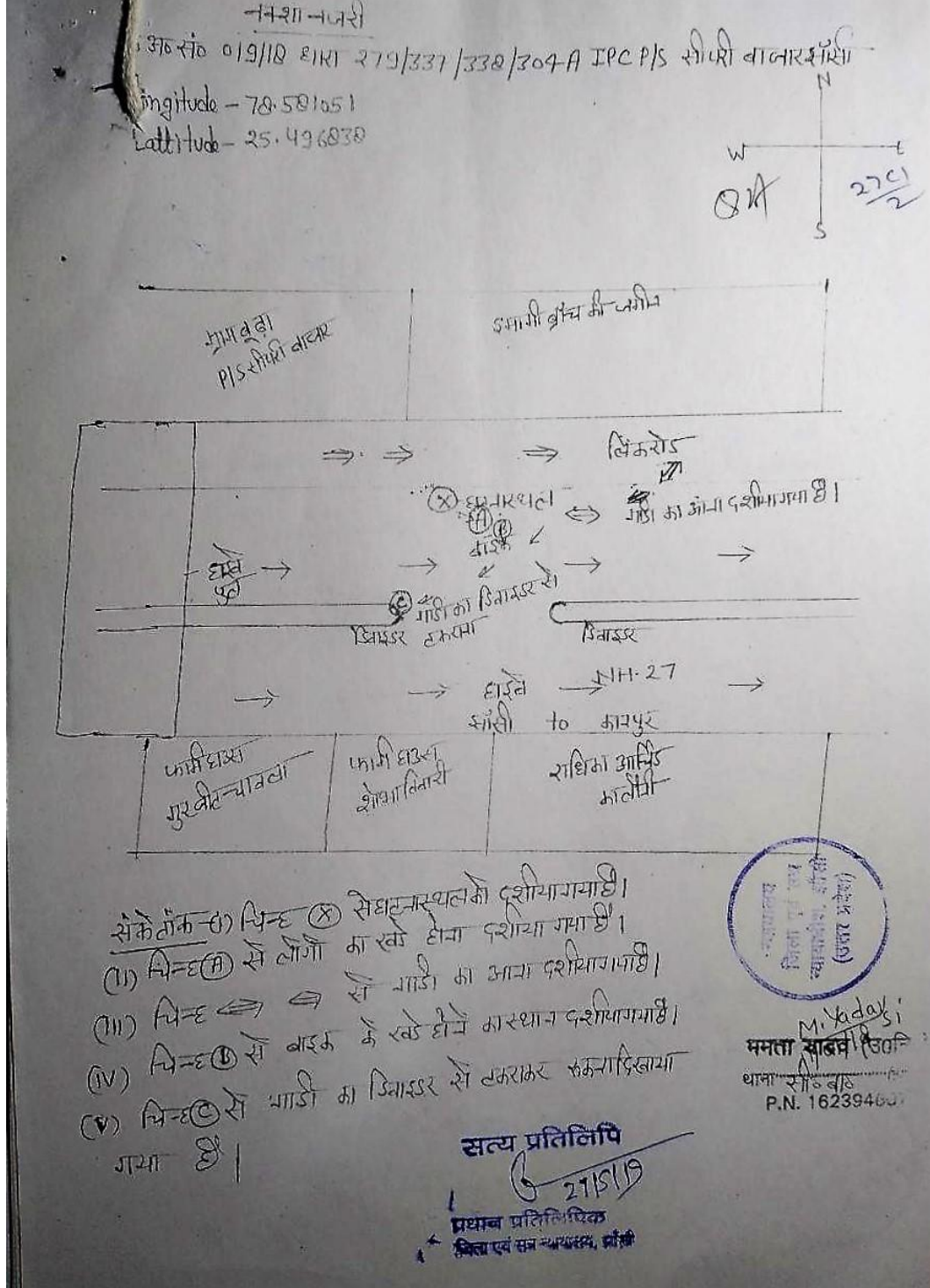
6. I have heard arguments of learned Advocate of both sides in Virtual Court and perused the record as well as written arguments of Ld. Counsel of Defendant No. 3 submitted through Email.

7. It has been argued by the learned Advocate of the petitioner that both the cases were fixed in Lok Adalat for disposal by conciliation agreement but since consensus on the point of amount could not be arrived at hence parties decided to fight the cases on merits. Learned Advocate of OP No.3 admits this fact and has argued that in the report of the alleged incident it is said that the driver has left the vehicle at the scene and run away and if police had come to know after the incident, then the police must have seized the offending vehicle. The second argument he has put forward is that it is surprising that only two out of four people were injured, while two escaped. On the other hand, it has been argued by the learned Advocate of the petitioner that it has been established from the charge sheet and the evidence of PW1 and PW2 that the accident was caused by the driver of car MP20 CD 4917 Manoj Kaurav driving the car rash and negligent and car was insured with Defendant No. 3. So the liability goes to the Defendant No.3.

8. **Disposal of Issues Nos. 1**

In the cases at hand, testimony of Rahul Yadav is the same in both cases. He has categorically narrated the way the accident happened. He

has stated that the driver of MP20 CD 5917 Scorpio drove his vehicle fast and negligent and dashed Arvind, Sakuntala and his motorcycle near Budha Bridge. He further narrated that Arvind died during treatment. Nothing material has surfaced out from the cross examination of this witness which can discredit his testimony. The answer of the second argument of the learned Advocate of opposite party no. 3 may also be traced in the cross examination of this witness. He has stated that he was standing on the height of the drain that is why he escaped but Shakuntala and her son Arvind could not escape as they were below the drain height. Injured eye witness of the Petition No. 76 of 2018 Shakuntala also narrated the way the accident happened. She has supported Rahul Yadav in toto. She has stated that her both legs got badly fractured. Her collar bone was fractured and she had a lacerated wound on her head. Nothing material has surfaced out from the cross examination of this witness also which can discredit his testimony. Site map is as following-



9. In the case of [Ravi vs. Badrinarayan and Ors. \(18.02.2011 - SC\)](#): [MANU/SC/0133/2011](#), Honorable 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]

10. In the instant case FIR was lodged by Om Prakash, the father of the deceased Arvind, with a delay of 8 days, the delay was well explained. Any father will be grieved because of his son's death.

11. First argument of Ld. Counsel of OP No. 3 is not tenable as it is totally hypothetical. How can it be said that the police had seized the vehicle on the first day, further OP cannot dictate what evidence had to produce and what not.

12. In the case of [Archit Saini and Ors. Vs. The Oriental Insurance Company Ltd. and Ors. \(09.02.2018 - SC\): MANU/SC/0105/2018](#), Honorable Apex Court has held that in a case relating to motor accident claims, the claimants are not required to prove the case as it is required to be done in a criminal trial. The Court must keep this distinction in mind. Strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied.

13. Though applications u/s 170 has been allowed, Ld. Council for OP No. 3 could not be able to rebut the cases of petitioners. After considering oral testimony of Shrimati Shakuntala, Rahul Yadav, charge sheet against driver of the offending vehicle, site map, postmortem report and injury report of Shrimati Shakuntala, I am of the definite view that petitioners have been able to prove the issue number one of both the petitions. Accordingly issue no. one of the both petitions is decided in favors of the concerned petitioners.

14. **Disposal of Issues Nos. 2**

During the investigation, the police found that Manoj Kaurav was driving the vehicle in question at the time of the accident and on this basis the police have presented a charge sheet against Manoj Kaurav. Photocopies of DL of Manoj Kaurav are available on both the files, which show that Manoj Kaurav had a valid and effective (valid through 22.01.2008 - 21.01.2028 LMV) driving license at the time of the accident i.e. 02.01.2018. The Ld. Advocate of OP number three has not opposed this DL. Thus I find that the petitioners have succeeded in proving issue no. two in the affirmation.

15. **Disposal of Issues Nos. 3**

Photocopies of Insurance cover letter are available on the records according to which the vehicle number MP20 CD 5917 was insured from the Magma S.D.I. General Insurance Company Ltd. and insurance was effective from 27.04.2017 to 26.04.2018. The Ld. Advocate of OP number three has not opposed this Insurance Cover Letter. Thus I find that the petitioners have succeeded in proving issue no. two in the affirmation.

16. **Disposal of Issues Nos. 4**

All the above issues have been decided in favor of the petitioners hence the petitioners are entitled to receive compensation. Now the question is what the compensation amount should be.

17. **Calculation of compensation in MACP No. 76 of 2018**

Mrs. Shakuntala has said that both her legs were severely broken, her collar bone was broken and her head was ruptured. Due to this accident she was admitted to the Medical College and Ramaraja Super Specialty. Her treatment cost over two and a half lakh rupees. She used to work as a farmyard before the accident but now she is unable to walk like before. She is a permanent disabled but does not have a disability certificate. Therefore, in the absence of disability certificate, she is entitled to compensation only for injuries. Discharge Ticket Paper no. 9C1 supports the testimony of Mrs. Shakuntala regarding severe injuries. Ld. Advocate of OP No. 3 has not opposed the medical papers submitted by the petitioner. She has been admitted to the hospital for 1 week and has also undergone surgery. Medical Bills of ₹ 71870 of Ramaraja Super Speciality Hospital and Medanta Heart Centre Orchha, Tikamgarh, MP have been filed. The cost of treatment and deemed reasonable expenses in other heads are being calculated as follows-

Treatment	71870
Pain & Suffering	3000
Nutritious Diet	3000
Expenses on attendant	3000
Expenses on Journeys	3000
Work Loss @ 165/day for 30 days	4950
Total	88820

Thus the petitioner in petition No. 77 is entitled to receive **₹88,820** as compensation.

19. Calculation of compensation in MACP No. 77 of 2018

PW1 Mrs. Sanju Devi W/o deceased Arvind Kumar has stated dependency (uncontroverted) of 4 persons viz. herself as wife, Piyus as minor son, Mrs. Sakuntala Devi and Mr. Om Prakash as mother and father of the deceased, the income of the deceased ₹ 10,000 per month as a grassland laborer, but in this regard neither any independent witness has been examined nor has any documentary evidence of the deceased's income been produced. Taking cognizance of these circumstances Notional Income will be justified. 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 the 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 28 years and the post-mortem report also states 28 which have not been opposed by the OP No. 3. As per [National Insurance Company Limited Vs. Pranay Sethi and Ors. \(31.10.2017 - SC\): MANU/SC/1366/2017](#), Multiplier of 17, addition of 40% as future prospects for age group less than 40 years, deduction of 1/4 part on own expenses, 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.

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			10000	1125290
TOTAL COMPENSATION				1125290

Thus the petitioners in petition No. 77 are entitled to receive **₹11,25,290** as compensation.

20. 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 and father, their share as 25%, 35%, 20% and 20% 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 month's interest/annuity.

ORDER

The Motor Accident Claim Petition 76 of 2018 Smt. Shakuntala Devi Vs. Ambey Supplier Pvt. Ltd. & Ors. is allowed for the compensation amount **₹88,820 (Eighty Eight Thousand Eight Hundred and Twenty Only)** against OP No. 3 Magma H.D.I. General Insurance Company Ltd. with 7.5% simple annual interest from the date of institution of petition till actual recovery. Whole amount shall be transferred from Tribunal's account to petitioner's bank account through RTGS/NEFT after realization.

The Motor Accident Claim Petition 77 of 2018 Smt. Sanju Devi & Ors. Vs. Ambey Supplier Pvt. Ltd. & Ors. is allowed for the compensation amount **₹11,25,290 (Eleven Lac Twenty Five Thousand Two Hundred and Ninety Only)** against OP No. 3 Magma H.D.I. General Insurance Company Ltd. with 7.5% simple annual interest from the date of institution of petition till actual recovery. Out of this amount Petitioner No. 3 and 4 Mrs. Shakuntala and Mr. Om Prakash shall share 20% each, Petitioner No. 1 Mrs. Sanju Devi and Petitioner No. 2 Master Piyush (Minor) shall share 25% and 30 % respectively. 80% of the share of the Petitioner Nos. 1, 3 and 4 shall be deposited in fixed accounts for 5, 3 and 3 years respectively. Petitioner Nos. 1, 3 and 4 shall get monthly interest of the fixed deposits. The whole share of Petitioner No. 2 Master Piyush (Minor) shall be invested in fixed deposit up to his majority. Insurance company is directed to deposit compensation amount with interest within 90 days from today.

Awards be prepared accordingly.

13.05.2020

(Chandroday Kumar)
Motor Accord Prakashitkar Tribunal
Jhansi

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


Copy of this Judgement be placed on Motor Accident Claim Petition 77 of 2018.

Records be consigned.

13.05.2020

(Chandroday Kumar)
Motor Accord Prakashitkar Tribunal
Jhansi

5/13/2020

X 

Chandroday Kumar HJS
PO MACT JHANSI