

Motor Accident Claim Tribunal, Jhansi

Present: Chandroday Kumar, H.J.S. MACP No. 85 of 2017 Himanshu Sharma, 14, son of Shri Rajesh Kumar, resident of village Phulkhiria, Post Bangra Bangri, Police Station and Tehsil Tehrauli, District Jhansi, U.P.	Date of Institution: 20/03/17 <small>MM/DD/YY</small>	Date of Judgement: 02/09/20 <small>MM/DD/YY</small>	Age: 3 Y, 5 M, 13 D
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----- Petitioner

Vs.

1. Mahendra Kumar Sharma, son of Shri Kaushal Kishore Sharma, resident of village Phulkhiria, Post Bangra Bangri, Police Station and Tehsil Tehrauli, District Jhansi, U.P. present resident Saket Nagar, Chirgaon Tehsil Moth, District Jhansi, U.P.

..... Driver Motorcycle No. UP 93 AR 9428

2. Vikas Pandey son of Shri Pramod Pandey resident of 280 Brahmapuri, Rajgarh, Bijauli, Jhansi Tehsil and District Jhansi

..... Registered Owner Motorcycle No. UP 93 AR 9428

3. ICICI Lombard General Insurance Company Limited, ICICI Lombard House, 714 Veer Savarkar Marg, Near Sidhi Vinayak Temple, Prabhadevi, Mumbai 400025 through Manager Legal ICICI. Lombard General Insurance Company Limited, Kachhari Chauraha, Jhansi District Jhansi

..... Insurer Motorcycle No. UP 93 AR 9428

----- Opponents

Counsel of the petitioner- Sri Rajiv Gupta Advocate

Counsel of OP No. 1 and 2- Sri Indrapal Singh Advocate

Counsel of OP No. 3- Sri Pankaj Nigam Advocate

JUDGMENT

The petition has been instituted by the petitioner against the opposite parties for the compensation of ₹ 22,00,000 with 12 per cent interest due to the injuries suffered by the petitioner Himanshu Sharma in the alleged motor vehicle accident under section 166 and 140 of the Motor Vehicle Accident Act.

2. The facts of the petition in a nutshell is that the petitioner on date 13.04.2016 was going as pillion rider from Saket Nagar, Chirgaon to his uncle's shop which is near the Swami Gas Agency Chirgaon with his uncle Mahendra Kumar Sharma on motorcycle no. UP 93AR 9428. The uncle of the petitioner was driving the motorcycle in a rash and negligent manner. When the bike reached in front of Dr. Sanaullah Khan's shop at around 5.00 pm, animals suddenly came on the road and in an attempt to save them the motorcycle hit a cow. The petitioner fell from the motorcycle and was seriously injured. The information of the above accident was recorded on the date 31.12.2016 at 21:10 on G. D. No. 50. Before the accident the petitioner was earning along with his studies ₹ 7,000 per month by giving tuition to the children of primary. Due to the grievous injuries caused by the accident, he

incurred an excessive amount of money in treatment and due to the closure of tuition, the financial condition of the petitioner has become worrisome.

3. Opposite Party No. 1 and 2, the driver and registered owner of the motorcycle No. UP 93 AR 9428 respectively denied the pleading of the petition of rash and negligent driving but accepted the pleading of sudden coming of animals on the road by filing a reply 22B. They further stated in their reply that the driver OP No.1 at the time of the accident had a valid driving license and the owner OP No. 2 of the said motorcycle was duly insured by the OP No. 3 and all its papers were valid and effective. If the negligence of the driver is found, then the OP No. 3 has an obligation to pay compensation to the petitioner.

4. Opposite Party No. 3 ICICI Lombard General Insurance Company Limited, the insurer of the Motorcycle No. UP 93AR 9428 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 147, 149, and 174 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 at around 5:00 pm when the petitioner Himanshu Sharma along with his uncle Mahendra Kumar Sharma, sitting behind the motorcycle no. UP 93 AR 9428, was going from Saket Nagar Chirgaon to his shop near Swami Gas Agency Chirgaon, then the uncle of the petitioner driving the motorcycle rashly and negligently collided by a cow in front of the shop of doctor Sanaullah Khan, due to which the petitioner fell from the said motorcycle and suffered serious injuries?

2. Whether the driver of motorcycle No. UP 93 AR 9428 in question had a valid and effective driving license to ride motorcycles at the date and time of the accident?

3. Whether the motorcycle No. UP 93 AR 9428 in question was insured with OP No. 3 ICICI Lombard General Insurance Company Ltd. at the time of accident?

4. Whether the petitioner is entitled to receive compensation, if so 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 Himanshu Sharma, the petitioner,

PW2 Vikash Tiwari, an eye-witness,

DOCUMENTARY

Photocopies of the following documents through list 7C1-

- Extract of S. N. 50 of the GD of P/s Chirgaon dated 31.12.2016 - Paper Number 8C1/2
- Injury Report of Himanshu- Paper Number 9C1
- RC of the Motorcycle No. UP 93 AR 9428 - Paper Number 10C1
- Insurance Policy of the Motorcycle No. UP 93 AR 9428 - Paper Number 11C1

Original copies and Photocopies of the following documents through list 25C1-

- Various Medical Papers- Paper Numbers 25C1/3 to 25C1/72
- Various Education Papers of Himanshu Sharma- Paper Numbers 25C1/73, 25C1/73A to 25C1/74 & 25C1/76
- Aadhar Card of Himanshu Sharma- Paper No. 25C1/75
- Photocopy of DL of Mahendra Kumar Sharma- Paper No. 25C1/77

Original copies and Photocopies of the following documents through list 30C1-

- Various Medical Papers and Medical Bills- Paper Numbers 31C1/3 to 35C1/4
- B H T and registration have been produced by one Umesh Chandra Manager Chirgaon Medical Store through list 36C1/1 (Paper Nos. 36C1/2 to 36C1/10), some medical bills and B H T have been produced by one Sagar Raj Katara Marketing Executive Soni Hospital Jaipur through list 37C1/1 (Paper Nos. 37C1/2 to 37C1/33) and attested copy of Injury Report has also been produced by one Ajay Nayak L. Asst. M. C. Jhansi.

➤ Following photocopies have been produced by the **OP No. 1 & 2** through list 24C1-

- RC of Motorcycle No. UP 93 AR 9428 - Paper Number 24C1/2
- Insurance Policy of Motorcycle No. UP 93 AR 9428 - Paper Number 24C1/3
- D L of Mahendra Kumar Sharma - Paper Number 24C1/4
- Information to police - Paper Number 24C1/5
- Extract of GD - Paper Number 24C1/6
- Certified copy of the Judgement of Motor Accident Claim Tribunal/Judge (E. C. Act) Jhansi in M A C T No. 245/2016 – Paper Nos. 45C1/2 to 45C1/5 has been produced by the Ld. Counsel of OP No. 3 through the list 44C1.

No other evidence is produced by the Parties.

7. Due to the spreading of the COVID-19, I have heard the parties in the Virtual Court and perused the written arguments submitted by the OP No. 1, 2 and 3 as well as record of the case carefully.

8. Disposal of Issue No. 1

In this case, there is no first information report has been lodged within reasonable time nor any investigation has been

carried out by the police. Admittedly there is no charge sheet against OP No. 1. The information of the haply occurred accident has been given by the uncle of the petitioner after about five and half months who is opponent number 1 and said to be the driver of the motorcycle. The argument which has been raised by the petitioner side that the police of Chirgaon police station said that get treatment first and remove the word rash and negligent from the information, then they will write the information is not tenable as there is nothing on the record to show that why the police became biased. It is a case of the petitioner that accident took place on 13.07.2016 at 5:00 PM but as per Chiranjeev Medical Center's Registration Paper 36C1/2, the injured was admitted on 13.07.2016 at 3:15 PM of which no clarification by means of any cogent evidence is given. Mere argument that it may be a clerical mistake is not suffice to convince. Petitioner PW 1 is an interested witness and has cleverly taken both the plea i.e. 'fault' and 'no fault' of the driver and has testified accordingly in his examination-in-chief but his cross examination creates many doubts. He has revealed in his cross examination that he did go his 30 km away school daily but on the day of the accident he did not go school and did not send leave application. Why he had bunked the school on that particular day and why he was going to his uncle's shop with uncle has not been clarified. PW 1 has accepted that his uncle OP No. 1 and owner of the vehicle OP No. 2 are close friends. Why FIR was not lodged on the same day or within 2-3 days by the uncle while as per paper number 36C1/2 the injured was being taken care of by his father Rajesh Kumar in the hospital. On one hand this witness says that his uncle was driving rashly and negligently while on the other hand he is saying that he has seen his uncle driving a motorcycle. His uncle knows driving. If the uncle was driving rashly and negligently, either he should have gotten off the motorcycle or at least he should have asked his uncle not to drive rashly and negligently.

9. PW 2 is said to be an eye-witness. He has stated in his cross examination that he was coming home from his college at Chirgaon. Classes run from 10 to 4:00. The college took off at 4:00 – 4:00. He reached the spot at 5:00. How did he see the accident at 5:00 pm when the incident happened before 3:15. Admittedly, his house is in Gursarai, 40 km from the spot and the he lives in Jhansi, 30 km from spot. His presence on the spot is highly doubtful. He says that he come to his college from Jhansi daily. Nothing documentary has been filed regarding this witness being a regular student of the college at Chirgaon. His age is 22 years. He states that he know Himanshu Sharma, Mahendra Kumar Sharma and Vikash Pandey very well from 15 years. How it is possible that he know all the above persons from the age of 7. Something is being hidden by this witness. When this witness was asked

about the owner of the motorcycle in the cross examination, this witness refused to know Vikas Pandey. This witness surprisingly tells the name of the day of the incident which took place 3 years ago, while generally it is not possible to remember. It seems that this witness is tutored. The witness has admitted that he has not received any summons, he has come to testify at the behest of Himanshu. This witness refutes the suggestion that the accident occurred due to the arrival of the animal whereas in the examination-in-chief this witness says that the accident happened due to the animal coming on the road also. Strangely, despite this witness being well acquainted with Himanshu did not carry Himanshu to the hospital and did not inform the police. In my finding information of haply occurred accident to the police and involvement of the motorcycle are afterthoughts and PW 2 is planted witness. Claim can not be based on 'fault' and 'no fault' simultaneously- [Deepal Girishbhai Soni and Ors. vs. United India Insurance Co. Ltd., Baroda \(18.03.2004 - SC\) : MANU/SC/0246/2004.](#)

10. Learned counsel of the petitioner has relied on [Sumitra Kaur and Ors. vs. New India Assurance CO. Ltd. and Ors. \(20.07.2012 - ALLHC\) : MANU/UP/2742/2012](#) in which it is held that "*even where no first information report is lodged the Tribunal has ample power to hold an inquiry and admit or reject the claim petition keeping in view the evidence on record.*" and [Oriental Insurance Co. Ltd. vs. Indra and Ors. \(24.01.2017 - ALLHC\) : MANU/UP/0390/2017](#) in which it is held that "*even in case there is no FIR, the Tribunal can proceed and decide the claim petition on the basis of the evidence produced before it.*" These rulings tell only that FIR is not a prerequisite of inquiry. They themselves say that claims can be rejected if evidence is not reliable.

11. After considering all the evidence produced before the Tribunal, I find that, though it may be a case of road side accident but the petitioner failed to prove that accident occurred due to the rash and negligent driving of the OP No.1 and that the accident took place by the motorcycle no. UP 93AR 9428. The issue no. 1 is decided accordingly.

12. DISPOSAL OF ISSUE NO. 2

This issue pertains to the driving license of the driver of the motorcycle no. UP 93AR 9428. Petitioner has posed OP No. 1 as the driver of the motorcycle, but during disposal of issue no. 1, it is found that petitioner has failed to establish OP NO. 1 as the driver of the motorcycle in question. However, DL produced by the petitioner is not rebutted by the insurance company hence it is found that D L produced was valid and effective at the time of alleged accident. This issue is decided accordingly.

13. DISPOSAL OF ISSUE NO. 3

This issue has been framed in order to ascertain the insurance of the motorcycle no. UP 93AR 9428. OP number 1

has filed a photocopy of the Insurance Policy (ICICI Lombard General Insurance Company Limited) of the motorcycle no. UP 93AR 9428 which is Paper Number 24C1/3. This package policy is effective from 18.10.2015 to the midnight of 17.10.2016. Nothing in rebuttal from OP No. 3 is placed before the Tribunal, hence it is proved that insurance of the motorcycle no. UP 93AR 9428 was valid and the truck was insured from OP No. 3 validly and was effective on the date of the accident but pillion rider was not covered. Ld. Counsel of OP No. 3 has relied on ruling [The General Manager, United Insurance Co. Ltd. vs. M. Laxmi and Ors. \(14.11.2008 - SC\) : MANU/SC/8251/2008](#) in which it is held that “*Insurance policy being a statutory policy does not cover the risk of death of or bodily injury to gratuitous passenger/pillion rider but as per Circular dated 2.6.1986 issued by Tariff Advisory Committee when insurance policy is comprehensive policy--Insurer liable for compensation on death of pillion rider.*” This ruling does not apply on the present case as in the present case policy is package policy in which only driver cum owner has been covered. The petitioner was a pillion rider hence he was not covered by the insurance. The issue No. 3 is being decided accordingly.

14. DISPOSAL OF ISSUE NO. 4

This issue relates to the amount of compensation and liability of the parties to pay. Since issues Nos. 1, 2, 3, are decided against the petitioner hence petition deserves to be rejected. At this juncture before parting the judgment, it will be pertinent to mention here that Learned Counsel of OP No. 3 has relied on Judgment of Motor Accident Claim Tribunal/Special Judge (E. C. Act) Jhansi in M A C T No. 245/2016 – Paper Nos. 45C1/2 to 45C1/5 argued that this case is similar to that case which has been rejected by the M A C T/ Special Judge (EC Act) Jhansi. It appears that Learned Counsel for OP No. 3 Sri Pankaj Nigam does not know Doctrine of 'Precedent' in India. I take strong exception to this.

ORDER

The Claim Petition is rejected.

02.09.2020

(Chandroday Kumar)
Presiding Officer

Motor Accident Claim Tribunal Jhansi

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

Records be consigned.

02.09.2020

(Chandroday Kumar)
Presiding Officer

Motor Accident Claim Tribunal Jhansi