

**IN THE COURT OF SHRI PARMOD GOYAL, MOTOR
ACCIDENT CLAIMS TRIBUNAL, HISAR**

(UID NO. : HR0041)

MVA Petition No. 76 of 12.07.2016

CIS No. - MACP No. 327 of 2016

Date of Institution : 11.07.2016

Date of Decision : 07.02.2018

Smt. Kusum, aged 27, years wife of Dheeraj Kumar, resident of Shiv Colony, Mandi Adampur, Tehsil Adampur, District Hisar.

..... Claimant-Petitioner

Vs.

1. Sanjay Kumar son of Subhash Chand, resident of House No. 48, Modal Town, Mandi Adampur, Tehsil Adampur, District Hisar.

(Driver of offending Scooty bearing registration No. HR-20AF-2439)

2. Dhiraj Bansal son of Ved Parkash, resident of House No. 852, Shiv Colony, Mandi Adampur, Tehsil Adampur, District Hisar.

(Owner of offending Scooty bearing registration No. HR-20AF-2439)

3. ICICI Lombard General Insurance Company Ltd. ICICI Lombard House 1414, Veer Savarkar Marg, near Siddhi Vinayak Temple Parbha Devi, Mumbai - 400025, (Maharashtra) through its Divisional Manager / Authorized person.

(Insurer of offending Scooty bearing registration No. HR-20AF-2439 vide Policy No. 3005/2010991927/00/0000001472 valid from 06.07.2015 to 05.07.2016).

..... Respondents.

Claim Petition under Section 166 of Motor Vehicles Act, 1988 for grant of compensation of ₹ 80,00,000/-

Present : Shri Narender Saini, counsel for petitioner.

Shri B.S. Ladoia, counsel for respondents No. 1 & 2.

Shri Rajesh Arora, counsel for respondent No. 3.

JUDGMENT

Claimant - Injured has sought compensation of ₹ 80,00,000/- under section 166 of the Motor Vehicles Act, 1988 (hereinafter called M.V. Act) on account of injuries suffered by her in motor vehicular accident dated 09.12.2015, which took place in the area of P.S. Adampur, i.e. near Water Works of village Kohli due to the alleged rash and negligent driving of offending Scooty bearing registration No. HR-20AF-2439 driven by respondent No. 1.

2. In her claim petition, claimant had alleged that on 09.12.2015 injured was going to Sukh Ram Memorial School situated at Village Kalirawan where her children namely Ujjwal and Komal, are studying, on

scooty bearing registration No. HR-20AF-2439 which was being driven by respondent No. 1 while petitioner was pillion rider on the same. Respondent No. 1 was driving the scooty at very high speed, rashly and in negligent manner, petitioner requested respondent No. 1 to drive the scooty at moderate speed with care and caution but respondent No. 1 did not pay any heed towards the request of petitioner, continue driving the scooty with very high speed and in rash and negligent manner. When they reached near water work of village Kohli then a Nilgai (antelope) suddenly came on the road and due to high speed of scooty, respondent No. 1 could not control the scooty which fell on the road & sustained multiple injuries on her person. That due to the injuries, petitioner was taken to Jindal Hospital, Hisar for treatment by arranging vehicle. That petitioner remained unconscious due to injuries received in the accident for many days. Police of police station Adampur came to petitioner then petitioner narrated the manner of accident but police colluded with respondent No. 1 did not register the case against him. That petitioner has become permanently disabled, has suffered great physical pain, mental agony, financial loss and the petitioner has spent a huge amount on treatment and special diet. She was doing sewing, stitching and tuition work and was earning ₹ 30,000/- per month and also suffered loss of income. Accordingly, compensation of ₹ 80,00,000/- has been sought by petitioner.

3. On notice, respondents No. 1 & 2 vide their joint written

statement took preliminary objections as regards to cause of action; locus standi, maintainability and non - joinder & mis - joinder. Liability to pay compensation was denied. Respondents No. 1 & 2 submitted that no such accident had taken place in the manner so alleged in the claim petition. Rather the facts have been twisted because there was no negligence on the part of respondent No. 1 while driving the offending vehicle. Respondents No. 1 & 2 further stated that the accident was incidental due to sudden coming of Ronge (Nilgai) in front of the vehicle of respondent No. 1. It was asserted that offending scooty was insured with respondent No. 3. Liability to pay compensation if any was stated to be that of insurance company. Dismissal of claim petition was accordingly prayed for.

4. Respondent No. 3 vide its detailed written statement took number of preliminary objections regarding collusion; petition being bad for mis-joinder & non-joinder of necessary parties; locus standi; estoppel; maintainability and jurisdiction. On merits, manner of accident, injuries in accident, quantum of compensation and entitlement of compensation were denied. DDR was stated to be false. Additionally, liability to pay compensation was denied on the grounds that respondent No. 1 was not holding valid and effective driving licence on the date of occurrence and that owner and driver had violated the terms of insurance policy. Respondent No. 3 has also prayed for dismissal of the claim petition.

5. From the pleadings of the parties, following issues were

framed vide order dated 16.12.2016 :

1. Whether accident in question occurred due to rash and negligent driving of offending vehicle scooty bearing No. HR-20AF-2439 by respondent No. 1 ? OPP
2. Whether the petitioner is entitled to recover the compensation from the respondents, if so, to what extent ? OPP.
3. Whether the present petition of the petitioner is not maintainable in law ? OPR
4. Relief.

6. In order to prove their case claimants have placed/examined following documents/witnesses :

PW-1	Kusum	Claimant -injured - eye witness	Tendered in evidence affidavit Ex. PW-1/A
PW-2	Jitender Sharma	Record Keeper, OP Jindal Institute of Cancer & Cardiac Research, Model Town, Hisar	Proved and placed on record documents: Ex. P-1 to Ex. P-5
PW-3	Satish Kumar	M.R.C. Sub Divisional Magistrate Office, Hisar	Proved and placed on record documents: Certificate report Ex. P-6 Original registration certificate Ex. P-7
PW-4	Dr. Jyoti	Medical Officer, K.L. Jalan, Govt. Eye Hospital, Meham Gate, Bhiwani	Proved disability certificate Ex. P-8
PW-5	Saurav	Clerk, Cardiac Care	Placed and proved on record

		Pharmacy, Jindal Hospital, Hisar	documents :- Ex. P-9 to Ex. P-92
PW-6	Dr. Shantunu Rawat	Medical Officer	Placed and proved on record documents: Ex. P-1 Bill Ex. P-93 Discharge Card, Ex. P-94 Ruqqa Ex. P-95 MLR Ex. P-96 Treatment Record, Ex. P-97 Admission & discharge card, Ex. P-4 Copy of CT Scan Ex. P-5 Hospital Bill Ex. P-6 to Ex. P-23 Bills of investigation & medicines etc.
PW-7	EASI Satbir Singh	MHC P.S. Adampur	Placed and proved on record documents: Ex P-98 DDR No. 38 dated 07.01.2016.

Learned counsel for petitioner has also tendered documents Ex. P-99 to Ex. P-128.

7. To rebut the case of petitioners, respondents have placed / examined following documents / witnesses :

RW-1	Satish Kumar	Clerk office of Sub Divisional Magistrate, Hisar	Place and proved on record documents : Ex. R-1 Extract of Register Ex. R-2 Copy of Registration
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Learned counsel for respondents in support of their case have tendered following documents:

Ex. R-3	Driving licence of Sanjay Kumar
Ex. R-4	Insurance policy with terms & conditions.

8. I have heard the learned counsels for the parties and have gone through the records carefully. My issue-wise findings are as under :

ISSUE NO. 1 :

9. To prove that the accident dated 09.12.2015 was result of rash and negligent driving of respondent No. 1 while driving offending Scooty bearing registration No. HR-20AF-2439, claimant Smt. Kusum (injured) appeared as PW-1. PW-1 - Smt. Kusum vide her affidavit Ex. PW-1/A asserted that on 09.12.2015 she was going to Sukh Ram Memorial School situated at Village Kalirawan where her children namely Ujjwal and Komal, were studying, on offending scooty which was being driven by respondent No. 1 and she was pillion rider on the same. She further asserted that respondent No. 1 was driving the scooty at very high speed, in rash and negligent manner. She requested respondent No. 1 to drive the scooty at moderate speed with care and caution but he did not pay any heed towards her request and continue driving the scooty at very high speed and in rash and negligent manner. When they reached near water works of village Kohli then an antelope (Nilgai) suddenly came on the

road and due to high speed of scooty, respondent No. 1 could not control his scooty which fell on the road, resulting in multiple injuries on her person. She was taken to Jindal Hospital, Hisar for treatment by arranging vehicle. She remained unconscious due to injuries received in the accident for many days.

10. Petitioner has placed reliance upon the testimony of PW-7 EASI Satbir Singh, Police Station Adampur who has brought the summoned record of DDR No. 38 dated 07.01.2016 which was placed on file as Ex. P-98.

11. On the basis of above noted facts, Ld. Counsel for respondent No. 3 insurer of Scooty driven by respondent No.1 has argued that no evidence has been led by claimants / petitioners to prove rash and negligent driving on the part of respondent No. 1 driver of Scooty upon which petitioner was pillion rider. DDR Ex. P-98 clearly shows that accident had occurred in order to save antelope (Nilgai (blue bull)) which had suddenly appeared on the road. In DDR which was lodged by PW-1 it was specifically asserted that no one was at fault. The evidence of PW-1 in court is an improvement and therefore evidence of PW-1 is not reliable. It is submitted that in absence of proof of negligence petitioner/claimant can not succeed under section 166 of Motor Vehicles Act. To seek compensation under section 166 it is incumbent upon petitioner to prove negligence which may be contributory or composite against respondents

from whom compensation is being sought.

12. Ld. Counsel for petitioner has argued that the contents of DDR has been disowned by claimant PW-1 and respondents have failed to rebut assertions of PW-1 in this regard, therefore, contents of DDR cannot be considered against the case of petitioner. In alternative, on the basis of judgments noted below it was argued that present is the case of package insurance policy and in view of judicial pronouncement in case of package insurance policy compensation is payable by vehicle involved in accident and therefore, petitioner is entitled for compensation from respondents No. 1 to 3 i.e. driver, owner and insurer of Scooty on which injured was pillion rider. Reliance has been placed on following judgments to support claim of compensation.

- **Oriental Insurance Co. Ltd. Vs. Indro Devi and others**, 2016 (4) T.A.C. 585 (P & H)
- **Yashpal Luthra and another Vs. United India Insurance Co. Ltd. and another**, 2011 ACJ 1415
- **Chindo Devi and another Vs. M/s. Oil Mills and others**, 2015 (1) T.A.C. 717 (P&H)
- **Sushila and others Vs. Sh. Pankaj Mahajan & another**, 2013 (1) PLR (Civil)715 (P&H)

In **Oriental Insurance Co. Ltd. Vs. Indro Devi and others**, 2016 (4) T.A.C. 585 (P & H) Hon'ble High Court had held that a package policy covering risk of passenger or pillion rider is innovation propelled by

judicial interventions. Only two factors are required to be established i.e. (i) that death was on account of use of motor vehicle and (ii) vehicle in which he was traveling was insured under a package policy. Similarly in **Yashpal Luthra and another Vs. United India Insurance Co. Ltd. and another**, 2011 ACJ 1415 it was held :

“In view of the aforesaid, it is clear that the Comprehensive/Package Policy of a two-wheeler covers a pillion rider and Comprehensive/Package Policy of a private car covers the occupants and where the vehicle is covered under a Comprehensive/Package Policy, there is no need for Motor Accidents Claims Tribunal to go into the question whether the insurance company is liable to compensate for the death or injury of a pillion rider on a two-wheeler or the occupants in a private car. In fact, in view of the TAC's directives and those of the IRDA, such a plea was not permissible and ought not to have been raised as, for instance, it was done in the present case.”

It is not in doubt that as general rule to seek compensation under section 166 Motor Vehicles Act it is incumbent to prove negligence on the part of the vehicle from whose driver, owner or insurer compensation is being sought. In present case accident is not being denied by respondents No. 1 & 2. They have denied the negligence on the part of respondent No. 1. On the other hand petitioner while appearing as PW-1 duly asserted accident to be result of rash and negligent driving on the part of respondent No. 1. DDR Ex. P-98 has not been owned by PW-1. It is asserted by PW-1 that her signatures were taken on blank paper and fact stated by her in the

court were not recorded deliberately by police. Respondents have not examined IO or police official who had recorded the said statement to prove that contents of DDR were read over to petitioner. It is therefore, evidence of PW-1 which alone can be considered to find out rash and negligent driving on the part of respondent No. 1. The evidence of PW-1 has gone un rebutted and unchallenged. Respondent No. 1 has failed to appear to state the manner of accident in different manner then one stated by PW-1. Further, perusal of Ex. R-4 clearly shows that Scooty driven by respondent No. 1 was under Package Policy from 06.07.2015 to 05.07.2016. In view of judgment of Hon'ble Punjab & Haryana High Court it is held that claimants are entitled to seek compensation from respondents as Scooty on which petitioner was pillion rider was covered by Package Policy and it was respondent No. 1 who was driving scooty in rash and negligent manner. Accordingly, issue No. 1 is decided in favour of petitioner.

ISSUE NO. 2 :

13. Injured-claimant has sought compensation of ₹ 80,00,000/- for loss suffered by her on account of injuries in accident dated 09.12.2015. While appearing as PW-1 claimant had asserted that she was taken to Jindal Hospital, Hisar where she remained admitted from 09.12.2015 to 27.12.2015 and was medico legally examined, operated and treated. She was again admitted in Jindal Hospital on 19.04.2016 for operation of eye and was discharged on 21.04.2016. She claimed to have spent ₹

10,00,000/- on her treatment, medicines, transportation, special diet and attendant. She has lost her left eye which is totally damaged as per opinion of the doctor. She has sought loss of income as she was doing sewing stitching and tuition work and used to earn ₹ 30,000/- per month.

14. To prove nature of injuries, nature of treatment, permanent disability, period of hospitalization and expenses incurred on medical treatment claimant has placed reliance upon testimony of PW-2 - Jitender Sharma, O.P. Jindal Institute of Cancer & Cardiac Research Center, Hisar, PW-4 Dr. Jyoti, K.L. Jalan, Government Eye Hospital, Bhiwani, PW-5 Saurav Clerk, Cardiac care Pharmacy, Jindal Hospital, Hisar and PW-6 Dr. Shantunu Rawat, Jindal Hospital, Hisar.

15. PW-2 - Jitender Sharma, O.P. Jindal Institute of Cancer & Cardiac Research Center, Hisar has proved bills of medicines Ex. P-1 to Ex. P-5. PW-4 - Dr. Jyoti, K.L. Jalan, Government Eye Hospital, Bhiwani has proved disability certificate Ex. P-8. She asserted that she along with other Board Members, Civil Surgeon, Hisar & PMO, Hisar had assessed the disability and found 30% permanent disability with regard to her eyes. PW-5 Saurav Clerk, Cardiac Care Pharmacy, Jindal Hospital, Hisar has proved bills Ex. P-9 to Ex. P-92 and PW-6 Dr. Shantunu Rawat, Jindal Hospital, Hisar has asserted that patient Kusum was admitted in their hospital on 09.12.2015 with alleged history of roadside accident. She was suffering from moderate head injury with left eye injury. She was

operated for the same by Dr. Vijay Kumar and was discharged on 28.12.2015. He remained member of the team of treating doctors. He proved discharge card Ex. P-93 and further stated that hospital had charged a sum of ₹ 1,08,400/- vide bill Ex. P-1. He also proved MLR as Ex. P-94, ruqqa as Ex. P-95, treatment record as Ex. P-96. He further asserted that on 09.01.2017 patient was again admitted and was discharged on 10.01.2017 and proved admission and discharge card as Ex. P-97.

16. No evidence to rebut evidence led by claimant has been produced by respondents. From the evidence of PW-1, PW-2, PW-4, PW-5 and PW-6 and bills of medicines as Ex. P-1 to Ex. P-5, Disability Certificate Ex. P-8, medical bills Ex. P-9 to 92, discharge card Ex. P-93, MLR Ex. P-94, treatment record Ex. P-96 and discharge card as Ex. P-97 it is clearly made out that claimant had suffered head injury with left eye injury in accident dated 09.12.2015. She was operated upon and had remained admitted from 09.12.2015 to 28.12.2015 and from 09.1.2017 to 10.01.2017. From perusal of hospital and medicines Bills P-1 to Ex. P-5, Ex. P-9 to 92, it is clear that an amount of ₹ 1,89,734 was spent on treatment / medical expences. No evidence has been led as regards to expenditure on transportation, special diet and on attendant. However, keeping in view nature of injury (head and eye injuries) nature of treatment (surgery) and period of hospitalization from 09.12.2015 to 28.12.2015 and from 09.1.2017 to 10.01.2017 it is clearly made out that

petitioner must have spent some amount on special diet, transportation and attendant. Accordingly, petitioner is awarded an amount of ₹ 2,05,000/- as compensation for medical expenditure, expenses on attendant, special diet and transportation.

17. Petitioner has claimed compensation for pain and suffering, loss of future amenities of life and future medical expenses. Nature of injuries, nature of treatment, hospitalization & permanent disability goes to show that petitioner must have undergone immense pain & sufferings and will be deprived of future amenities of life. Petitioner is accordingly awarded compensation of ₹ 30,000/- as compensation for pain and sufferings & ₹ 25,000/- for loss of future amenities / opportunities of life. Neither the nature of future treatment nor estimated expenses have been placed on record by the petitioner. Therefore, no compensation in absence of any material is payable for future medical expenses.

18. Petitioner has claimed loss of earning capacity and future loss of income on account of permanent disability to the extent of 30% of eyes. Petitioner has placed reliance upon evidence of PW-4 - Dr. Jyoti Medical Officer, General Hospital, Bhiwani, who had examined claimant and had found 30% permanent disability with regard to her eyes. She has placed the disability certificate on record as Ex. P-8. From the evidence of PW-4, it is clearly made out that on account of accidental injuries, petitioner had suffered 30% permanent disability which is qua her eyes

and not whole body. From opinion of doctor it is clearly made out that petitioner shall face restrictions, therefore, would suffer loss of overall earning capacity to the extent of 10%. Keeping in view age of petitioner i.e. 27 years, the multiplier of 17 needs to be applied to determine loss of income / future income to the petitioner. No evidence regarding her earnings have been placed on record except for making assertion that petitioner was doing sewing, stitching and tuition work and used to earn ₹ 30,000/- per month. Petitioner has not placed on record any documentary evidence regarding her income. No corroboration is available to facts stated by PW-1. In these circumstances, the assertion made by petitioner that she was earning ₹ 30,000/- per month cannot be taken as gospel truth. However, since petitioner was abled body person at the time of accident, therefore, her notional income is taken as ₹ 5,000/- per month. Taking annual notional income of ₹ 60,000/- the 10% annual loss of future income comes to ₹ 6,000/- (₹ 500/- pm (being 10% loss of earning capacity of ₹ 5,000/- notional monthly income) x 12 months) and after multiplying the same with multiplier of 17, the total loss of future income comes to ₹ 1,02,000/-. The above calculated amount is just compensation for loss of income / future income. Hence awarded.

19. **Who is liable to pay compensation** : Learned counsel for respondent No. 3 has argued that insurance company is not liable to pay compensation as offending vehicle was being driven without valid registration certificate. It is argued that since running of vehicle without

registration certificate is violation of section 39 of Motor Vehicles Act therefore, amounts to fundamental breach of term and conditions of the insurance policy. Reliance has been placed upon following judgments :

- **Taranjit Kaur Vs. Subhash Chand & Others**, 2014 (3) P.L.R. 332 (P&H);
- **Narinder Singh Vs. New India Assurance Company Ltd. and others**, 2014 (4) P.L.R. 824 (SC);
- **Ranjeet Singh Vs. Permanent Lok Adalat & Others**, 2017 (1) P.L.R. 267 (P&H);

20. Facts in present case are not in dispute and are clearly made out from evidence of RW-1 - Satish Kumar, Registration Clerk in the office of SDM Hisar. He has duly submitted that as per record vehicle No. HR-20AF-2439 was issued in the name of Dhiraj Bansal on 22.12.2015 which was valid upto 05.07.2030. Accident took place on 09.12.2015. Therefore, on day of accident offending vehicle was not registered. The vehicle was transferred in the name of Jagdish Kumar son of Arjun Dass on 05.07.2016. He proved extract of register as Ex. R-1 and registration certificate as Ex. R-2. In cross examination he had duly admitted that any unregistered vehicle can be registered with submission of late fee after the expiry of stipulated period of registration of vehicle.

21. Even learned counsel for respondents No. 1 & 2 could not rebut any of the above noted facts but is seeking to rebut the case setup by Ld. counsel for respondent No. 3 with the help of following judgments :

- **National Insurance Co. Ltd. Vs. Daya Chand & Anr.**, 2016 (1) ACC 298 (P&H);
- **National Insurance Company Ltd. Vs. Jaspal Kaur @ Jaspreet Kaur @ Jass**, 2017(2) PLR 34 (P&H).

22. On consideration of respective contention I find merit in contentions of ld. counsel for respondent No. 1 & 2. In **National Insurance Co. Ltd. Vs. Daya Chand & Anr.** (supra) Hon'ble High Court had duly noticed judgment cited by ld. counsel for respondent No. 3 titled as **Narinder Singh Vs. New India Assurance Company Ltd. and others**, (supra) and found that in said case insurance had expired and non registration was incidental. Moreover, **Narinder Singh Vs. New India Assurance Company Ltd. and others** (supra) was case wherein owner of vehicle had sought compensation whereas in present case compensation is being sought by third party. Hon'ble Punjab & Haryana High Court in **National Insurance Company Ltd. Vs. Jaspal Kaur @ Jaspreet Kaur @ Jass**, (supra) taking note of judgment in **Joby Thomas Vs. Annamma Augustine**, 2012 ACJ 848 had held that in case of third party claim, insurance company can avoid its liability for the specific defence made available only u/s 149 Motor Vehicles Act and since non registration of vehicle is not one of defence therefore insurance company cannot avoid its liability. **National Insurance Company Ltd. Vs. Jaspal Kaur @ Jaspreet Kaur @ Jass**, (supra) is fully applicable to facts of present case and accordingly applied to facts of present case.

23. Therefore, all the three respondents are liable to pay compensation as accident was result of rash and negligent driving of respondent No. 1, respondent No. 2 being owner of offending vehicle and respondent No. 3 being under agreement of insurance. Respondents are liable to pay compensation jointly and severally. Issue No. 2 is accordingly decided in favour of petitioners.

ISSUE NO. 3 :

24. Respondents have claimed that the present petition is not maintainable as per law and that the petition is liable to be dismissed on the pleas taken by respondents in their written statement. Onus to prove these assertions was upon respondents. However, no evidence was led by the respondent No. 3 to prove that the petition is not maintainable as per law. Since onus of this issue was on respondents who has failed to discharge the same, therefore, this issue is decided against the respondents.

ISSUE NO. 4 (Relief) :

25. In view of my findings on the various issues above, the claim petition is partly allowed with costs and claimant is awarded **total compensation of ₹ 3,62,000/- (₹ Three Lacs Sixty Two Hundred only) (₹ 2,05,000/- as compensation for medical expences etc. + ₹ 30,000/- as compensation for pain and sufferings + ₹ 25,000/- as compensation for future loss of amenities / opportunities on account of**

permanent disability + ₹ 1,02,000/- as compensation for loss of income / future income) from all the respondents. Keeping in view prevalent interest rates, the claimant shall also be entitled to interest on the above awarded amount at the rate of 7.5% per annum from the date of filing of the present petition till its final realization. The liability of the respondents to pay the compensation shall be joint as well as several. 50% amount be deposited in FDR / monthly income scheme for three years with liberty to receive monthly income. Remaining amount 50% be paid to petitioner through his bank account. Memo of costs be prepared and file be consigned to records.

Announced in open court :

(Parmod Goyal)

07th day of February, 2018 Motor Accident Claims Tribunal, Hisar

Sanjay Kumar – SGI

(UID NO. : HR0041)