

Received on :- 01-10-2007.

Registered on :- 01-10-2007.

Decided on :- 30-08-2018.

Duration :- 10 10 29  
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**Before the Motor Accident Claims Tribunal (Auxi.),  
Panchmahals at Halol.**

**M. A. C. P. No.837/2017.**  
[Old MACP No.1518/2007]

**Exh.64.**

Applicants :

- 1 Manjulaben wd/o. deceased Manojkumar Shakrabhai Munia  
aged about - 30 years, occu. - HH work
- 2 Minor Shrutiben Manojkumar Munia  
aged about - 16 years, occu. - study
- 3 Minor Hardikkumar Manojkumar Munia  
aged about - 14 years, occu. - study
- 4 Manthanbhai Manojkumar Munia  
aged about - 1 years and 2 months, occu. - study,

All the applicants are residing at village - Dudhia, Tal.Limkheda,  
Dist.Dahod.

V/s.

Opponents :

- 1 Nareshbhai Bachubhai Baria, driver,  
At - Sutharwada, Tal.Jhalod, Dist.Dahod.
- 2 Heir of deceased Gopal @ Pal Krishna Mansing Tanvar-C/o.Ramesh  
Samuda Patel, original owner:-

2/1Ushaben Gopalbhai Tanvar

At - 30, Ramnagar Society, Godi Road, Dahod

[As per order dated 11-02-14 upon application Exh.12 on sad demise of Opp. No.2].

3 Samudabhai Rupabhai Bhuria, real owner,  
At - Bilwani, Tal.Jhalod, Dist.Dahod.

4 United India Insurance Co. Ltd., insurer,  
Office at - Godhra.

5 Shakrabhai Kaliabhai Munia

6 Chaturiben Shakrabhai Munia

[Opp. Nos.5 and 6 being parents of deceased who have joined as per order upon application Exh.13].

Both are resi. at village - Bilwani, Tal.Jhalod, Dist.Dahod.

Subject :- Petition under Sec.166 of M. V. Act to get the compensation of Rs.70,50,000/-.

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**Appearance :**

Mr. P. A. Joshi, LA for the applicants.

The opponent No.1, 3, 5 and 6 - Duly served but remained absent.

Mr. R. A. Panchal, LA for the Opponent No.2.

Mr. S. A. Pathan, LA for the opponent No.4 - Insurer-**Exonerated**.

**- : J U D G M E N T :-**

1. The applicants have initially filed this claim petition to get the compensation for Rs.19,60,000/- together with interest and costs from the opponents, jointly and severally for the death of deceased Manojkumar Shakrabhai Munia in the vehicular accident took place on 31-03-07 by the involved vehicle Jeep

No.GJ 20 A 616. Thereafter, LA for the applicants has submitted an application at Exh.17 to enhance the claimed amount to the tune of Rs.70,50,000/- which has been allowed by an order dated 18-11-14 on basis of "No Objection" endorsement made thereupon by LA for the Opponent-insurer.

2. The short facts of the present claim petition are as under :

It is the case of the applicant that on 31-03-07 at about 6-00 a.m. in the morning, deceased Manojkumar Shakrabhai Munia and his relatives-family were going towards Pavagadh for religious purpose travelling in a Jeep No.GJ 20 A 616 which was being driven by the Opponent No.1 rashly and negligently with excessive and uncontrollable speed and while arriving at the spot of accident, he lost control over it and the jeep left the road and turned turtle in a ditch on side of the road. Thus, the accident was occurred and the deceased and others sustained grievous injuries with fracture. It is the say of the applicants that on account of the accident, the deceased died before taking any primary medical treatment. Hence, in all, the applicants have claimed Rs.70,50,000/- towards compensation under the various heads.

3. The notices were duly served upon the Opponents however, the opponents No.1, 3, 5 and 6 have never contested the claim petition. The Opponent No.2 being original owner - Gopal@ Pal Krishna Mansing Tanvar died during pendency of this claim petition i.e. on 26-12-2011 as per certified copy of his Death Certificate, dated 01-06-2012, issued by the Sub-Registrar, Nagar Seva Sadan, Dahod available on record and hence, his wife i.e. present Opponent No.2/1 has contested the claim petition at Exh.19 denying the facts alleged in the claim petition and contended that the Opponent No.1 has tried to avoid so called accident but an another vehicle suddenly came on the opposite direction on turning, alleged accident happened. It is also contended that the involved vehicle was insured with the Opponent No.4 and hence, the Opponent No.2/1 is not liable to pay any amount of compensation and it is lastly requested for dismissal of this claim petition against the Opponent No.2/1 with costs. Whereas, the opponent No.4-insurer has contested the claim petition submitting its written reply at Exh.22 contending that the claim petition is not bonafide and hence, deserves to be dismissed. It is further contended that the accident has not been happened due to negligence on part of the opponent No.1 but the applicant has falsely involved such

vehicle in the so called accident. It is also contended that Mr.Shankarbhai Javrabhai Bariya was driving the involved vehicle at the time of accident but he was not holding valid and effective driving license at the relevant time hence, his name was changed by the complainant being police constable and thus, there is a breach of terms and conditions of the insurance policy therefore, the opponent No.4 is not liable to pay any amount of compensation to the applicants. In nutshell, the opponent No.4 has denied all the material facts stated in the claim petition in toto and prayed either for being exonerated the Opponent-insurer or for dismissal of the claim petition with costs.

4. The applicant has produced following documentary evidence :
  1. Copy of inquest panchnama at Exh.34.
  2. Copy of spot panchnama at Exh.35.
  3. Copy of insurance policy at Exh.32 and 36.
  4. Copy of driving license - Opp. No.1 at Exh.37.
  5. Copy of R. C. Book - Opponent No.2 at Exh.38.
  6. Certified copy of P. M. Note at Exh.39.
  7. Copy of Caste Certificate - Rameshbhai Shakriabhai Munia at Exh.40.

8. Copy of order changing name of Manojbhai from Rameshbhai on basis of Government Gazette at Exh.41.
9. Copy of School Leaving Certi. of Munia Rameshbhai Shakriabhai at Exh.42.
10. Copy of pedigree of Manjulaben Manojbhai Munia at Exh.43.
11. Copy of Death Certificate of Manojkumar Shakriabhai Munia at Exh.44.
12. Copy of Election Commission Card of Manjulaben Manojkumar Munia at Exh.45.
13. Copy of Ration Card of deceased at Exh.46.
14. Copy of police complaint at Exh.56.
15. Complainant's application dated 17-04-2017 to the PSI, Rajgadh police station for recording of his further statement at Exh.57.
16. Pay Slip of the deceased at Exh.28.
17. Original Pay Rojmel of the deceased at Exh.29.
5. I have carefully gone through entire documentary evidence as well as an affidavit filed by the applicant No.1 at Exh.20. Mr.Jashwantsinh Bahecharsinh Jadav, retired Police Inspector has been examined at Exh.55. LAs for the applicants and Opp. No.3 have filed a common closing pursis vide Exh.59 and LA for

the Opp. No.2 has filed a closing pursis at Exh.60. Heard LAs for the respective parties.

6. Following issues have been framed at Exh.23 for the determination of the claim petition.
  1. Whether it is proved that the deceased sustained injuries and died on account of rashness or negligence in driving on the part of the driver of the vehicle involved in the accident ?
  2. What amount, if any, the claimants are entitled to by way of compensation and from which of the opponents ?
  3. What order ?
7. My findings on the above issues are as under :-
  1. In negative.
  2. In negative.
  3. As per final order.

-: **REASONS** :-

8. **Issue No.1 to 3** :- All these issues are interconnected hence, to avoid repetition of facts, they are discussed altogether hereunder.

Basically, the complainant Mr.Subhashbhai Samudabhai Bhuria who is serving as a police constable since 9 years in the police headquarter at Dahod was travelling in the involved Jeep No.GJ 20 A 616 and he has lodged the complaint for the so called

vehicular accident on 31-03-2007 stating that his father Samudabhai Rupabhai Bhuria has purchased said jeep from Gopalbhai Mansingbhai of Dahod six years ago which runs in his name up-till-now and his father has employed Mr.Shankar Javra Baria, resi. of Sutharvada, Ta-Jhalod to ply it since four months. They have decided to visit Pavagadh for religious purpose with deceased and thereby, the deceased along with his relatives were travelling in the said jeep which was being driven by Shankar Javra Baria rashly and negligently and while arriving it at the spot of accident, he lost control over it and it turned turtle in a ditch on roadside and all were pressed below the jeep wherein deceased died on the spot and others have been come out by the villagers and they had admitted in civil hospital and thereafter, he has written his further reply on 14-04-2007 stating that he had sustained grievous head injuries in the alleged accident and due to which, he has lodged a complaint in semi-conscious condition stating the name of Shankarbhai Javrabhai Baria as a driver of the involved vehicle but actually, Shankarbhai Javrabhai is serving in the jeep as a cleaner since last four months and one Nareshbhai Bachubhai Baria was driving such vehicle at the relevant time and he has also filed an affidavit to that extent before the I.O. Moreover,

Mr.Jashwantbhai Becharsinh Jadav, I. O. has been examined at Exh.55 wherein he has admitted that the police investigating officer has never issued any notice/summons upon the complainant and he himself, has remained present in the Rajgadh police station and filed his further reply and upon perusing it, at the time of writing the complaint, he has sustained grievous injuries and he was semi-conscious due to which, he has falsely written the name of Shankarbhai Javrabhai but indeed, the said jeep was driving by Naresh Bachubhai Baria. The earlier Tribunal has also allowed the application u/s.170 of the M. V. Act submitted at Exh.24 by LA for the opponent-insurer. Upon perusing the application Exh.57, dated 16-04-07 which was received by the PSI, Rajgadh on 17-04-07 wherein it is nowhere mentioned that the complainant has sustained grievous head injuries and was in semi-conscious condition but it is mentioned that the complainant was serving as police constable in police headquarter at Dahod and he was occasionally visit his native place hence, he has unmistakably written the name of Shankarbhai Javrabhai Baria who was conductor instead of Nareshbhai Bachubhai Baria who was jeep driver but it reveals from the contents of the complaint that the name of Mr.Naresh Bachubhai Baria is not mentioned means,

such person was not present in the said jeep at the time of accident. The jeep driver Shankarbhai Javrabhai Baria was the driver but he was not holding any driving license hence, Subhashbhai Samudabhai Baria being complainant and was serving as a police constable in the headquarter at Dahod since last nine years in collusion with the I.O. retired PSI of Rajgadh police station Mr.Jashvantbhai B. Jadav, has changed the name of Nareshbhai Bachubhai Baria as jeep driver who was holding valid driving license. The further statement of the complainant has been recorded on 14-04-07 and the IO has never issued any notice upon the complainant to remain present for recording of further statement however, the I.O. in his cross-examination Exh.55, has clearly admitted that he was not willing to explain to that extent. Thus, the I.O. was not willing to explain such important point and the LA for the Opponent-insurer has arisen a point that the complainant is a police constable and the I.O. has wrongly deposed in his favour to assist him and his such dispute is genuine one. It also reveals from the cross-examination Exh.55 that the complainant has written such complaint staying for half an hour in the Rajgadh police station and the complainant had gone at the spot of accident with police and panchas and thus, it is proved as per say of the I.O. in

Exh.55 that the complainant was in conscious condition at the relevant time. He has also admitted that the driving license of Shankar Javra Baria was never found during investigation and due to which, the I.O. has also recorded the further statement of complainant, Lilaben and Lalitbhai on 14-04-2007 to assist the complainant who is a police constable and thereby, changed the name of actual jeep driver and such dispute has been arisen by the LA for the Opponent-insurer is believable as the complainant has lodged the complaint for the so called accident on the day of such accident happened at 6-00 a.m. and the IO has also prepared the spot panchnama on the same day during 16-30 hrs. to 17-00 hrs. in presence of two panchas along with presence of complainant who has shown the spot of such accident as well as the complainant being friend of the deceased Manojbhai was also remained present in the CHC, Ghoghamba and he has also taken the custody of the dead body of the deceased from the PSI Mr.Jadav and made his signature and issued a receipt on the same day however, the complainant has written in his further statement dated 14-04-2007 that he has sustained head and other grievous injuries and he was in semi-conscious condition and the name of Shankarbhai Javrabhai Baria, resi. of Sutharvada, Ta-Jhalod being jeep driver has been

written by mistake instead of Nareshbhai Bachubhai Baria while such application has been received by the PSI Mr.Jadav on 17-04-2007. Thus, this claim petition has been filed managing in collusion with the above person in order to get monetary benefit from the opponent-insurer which is proved to the satisfaction of this Tribunal considering the above stated factual aspects.

- 9 I have read the case authority - AIR 2009 Supreme Court 3104 - Smt. Sarla Verma & Ors. V. Delhi Transport Corporation & Anr. of the Hon'ble Supreme Court submitted in support of the arguments by LA for the applicant but the same is not applicable to the case on hand.
- 10 I have also read the following case authorities of the Hon'ble Apex Courts submitted by LA for the Opponent-Insurer for being exonerated but the same are never considered being not applicable having different aspects regarding driving license.

| Sr. No. | Case Authority                                                                                                             |
|---------|----------------------------------------------------------------------------------------------------------------------------|
| 1       | 2016 (0) AIJEL-HC 236792 - National Insurance Co. Ltd. V. Hiral Chandrakant Chauhan.                                       |
| 2       | Civil Appeal No.1733 of 2008 [Arising out of SLP (C) No.19965 of 2004]. D/d.4.3.08 - Sardari & Ors. V. Sushil Kumar & Ors. |
| 3       | 2017 (1) Air Kar R 607 : 2017 AAC 911 - Karnataka High Court - Raghavendra M. J. V. R. Rahashekhar and others.             |
| 4       | 2016 (0) AIJEL-HC 235634 - Patel Vishnubhai Lakhabhai V. Patel Jasvantbhai Dahyabhai Driver Cum Owner of Motorcycle.       |

11 In view of the above discussion, factual aspect and the facts and circumstances of the matter, the present claim petition deserves to be dismissed and hence, I answer issue No.1 and 2 in the negative and with respect to issue No.3, the following order is passed in the interest of justice.

**-: ORDER :-**

1. Present claim petition is hereby dismissed.
2. No order as to costs.
3. Award to be drawn accordingly.

Signed and pronounced in the open court today on this 30<sup>th</sup> day of August, 2018.

Date : 30-08-2018.

Place : Halol

P. P. Joshi.

(Atulkumar Vinodbhai Hirpara)  
M. A. C. T. (Auxi.) &  
4<sup>th</sup> Additional District Judge,  
Panchmahals at Halol.  
GJ00656