



BEFORE 1st MOTOR ACCIDENT CLAIM TRIBUNAL, JANJGIR (C.G.)

(Presiding officer: Suresh Joon)

MACT No. 72/2022

Date of Institution:- 11.10.2022

CNR NO. CGJC01-002138-2022

Ku. Garima Tiwari D/o Rajendra Prasad Tiwari

Age 21 years

R/o village Farashwani, Tahsil and District Korba (C.G.)

-----Petitioner

Versus

1. Amardas Manikpuri S/o Manbodh Das Manikpuri
Age 43 years
R/o village Mahoda, P.S. Ratanpur, Tahsil Ratanpur
District Bilaspur (C.G.)
(Driver of offending vehicle No. CG-04LV-6655)
2. Indarmani Mineral Private Limited
Tower C-1 First Floor Aishwarya Chamber G.E. Road
Telibandha Raipur, Tahsil and District Raipur (C.G.)
(Regd. owner of offending vehicle No. CG-04LV-6655)
3. Branch Manager
The New India Assurance Company Limited
Bilaspur (C.G.)
(Insurer of offending vehicle No. CG-04LV-6655)

-----Respondents

CLAIM PETITION UNDER SECTION 166 OF MOTOR VEHICLE ACT



Present:-

Sh. U.K.Satpathi, learned counsel for the petitioner.

Sh. R.R.Tiwari, learned counsel for the respondent No. 1 and 2.

Sh. Abhishekh Dubey, learned counsel for the respondent No.3.

AWARD

(Passed on 01.04.2023)

By this award, the present claim petition filed by the petitioner for claiming compensation to the tune of ₹ 31,00,000/- (Thirty One Lakh only) on account of injuries sustained by her in a road side accident taken place on dated 12.05.2022, with in the area of P.S. Janjgir, District Janjgir- Champa (C.G.) is disposed of.

2. Brief matrix of the case is that on dated 12.05.2022, the petitioner along with her friend Ku. Riya Mishra and Ku. Mahima Tiwari was returning from Atal Bihari University Bilaspur to village Farashwani, District Korba on a scooty bearing registration No. CG-11BD-6626. On the way, at about 2:00 PM, driver of a Trailer bearing registration No. CG-04LV-6655, which will be referred as offending vehicle hereinafter, by driving his vehicle in high speed and negligently dashed the aforesaid scooty and thus caused accident. In



the said accident Riya Mishra died on the spot whereas the petitioner sustained multiple grievous injuries over his head, left ear, left cheek, left eye and fingers of right hand. In respect of the aforesaid accident, a criminal case bearing FIR No. 321/2022 was registered in P.S. Janjgir. Petitioner was 21 years old and earning ₹ 15,000/- per month by giving tuition and also pursuing her studies at the time of said accident. The respondents being driver, owner and insurer of the offending vehicle are jointly and severally liable to pay the compensation to the tune of ₹ 31,00,000/- (Thirty One Lakh only) under various heads to the petitioner.

3. On appearance, the respondent No. 1 filed his written statement in which he has denied the material facts of the petition and further pleaded that petitioner was pursuing her studies as such earning nothing. Criminal case has been registered against him is not based on true facts. Offending vehicle was parked in the side of the road and the respondent No. 1 has not caused the accident by driving the vehicle in high speed and negligently. In fact, there were three passengers on the scooter due to which the petitioner lost her balance and fallen down on the road as such accident has taken place due to her own negligence. On the date of accident the respondent No. 1 was having a valid driving licence and vehicle was insured with



respondent No. 3, so the liability, if any, is of respondent No. 3. The respondent No. 2 has not filed his written statement.

4. The respondent No. 3 has filed his separate written statement in which he has also denied the material facts of the petition and further pleaded that owner and driving of the offending vehicle has not informed the respondent No. 3 about the alleged accident. Three persons were traveling on the aforesaid scooty and at that time the petitioner was not having a valid licence, so accident has been taken place due to contributory negligence. The respondent No. 1 and 2 were driving the vehicle in violation of terms and conditions of insurance policy as at the time of accident there was neither a valid licence with the respondent No. 1 nor a valid and effective permit and fitness of said vehicle, so the respondent No. 3 is liable to be discharged from the liability. The petitioner has claimed the compensation in excess.

5. On the basis of the rival contentions of the parties following issues were framed vide order dated 16.01.2023 :-

S.No.	Issues	Result
1.	Whether on dated 12.05.2022, the respondent No. 1 has caused accident by driving vehicle trailer bearing registration No. CG-04LV-6655 negligently ?	"Proved"



2.	Whether in the said accident petitioner Ku. Garima Tiwari sustained injuries in the aforesaid accident and whether due to said injuries she got permanent disability ?	"Proved"
3.	Whether principle of contributory negligence is applicable in this case ?	"Not Proved"
4.	Whether the respondent No. 1 and 2 were driving the offending vehicle in violation of terms of insurance policy?	"Not Proved"
5.	Whether the petitioner is entitled for compensation from the respondents, if yes, how much and by whom ?	" Yes, R-3 "
6.	Relief ?	In para No. 22

6. In support of her case, petitioner Garima Tiwari has appeared as Pw1. She has also tendered and exhibited the documents Ex.P-1 to Ex.P-9. On the other hand, respondents have given no evidence, either oral or documentary.

7. I have heard Sh. U.K.Satpati, learned counsel for the petitioner, Sh. R.R.Tiwari, learned counsel for the respondent No. 1 and 2, Sh. Abhishekh Dubey, learned counsel for the respondent No. 3 and also gone through the case file carefully and minutely.

ISSUE No. 1 to 3:-

8. All the aforesaid issues are inter-connected and inter-



related, therefore, only for avoiding the repetition of evidence, all are taken together for disposal. Learned counsel for the petitioner contended that the accident has been caused by respondent No.1 by driving offending vehicle negligently and in the said accident petitioner has sustained grievous injuries, so the respondents are jointly and severally. Per contra, learned counsel for the respondent No. 1 and 2 contended that no accident has been taken place with the offending vehicle and the respondent No. 1 has been falsely implicated in the criminal case. Learned counsel for the respondent No. 3 contended that the accident has been taken place due to negligence riding of petitioner as she was riding her scooty negligently with two pillion riders. If the Tribunal finds the respondent No. 1 negligent in driving his vehicle then principle of contributory negligence is made out in this case. Petitioner was riding her scooty with two pillion riders without helmet and driving licence, so she is not entitled for any compensation.

9. Garima Tiwari Pw1 in her examination-in-chief has stated that on dated 12.05.2022, she along with her real sister Mahima Tiwari and cousin Riya Mishra was returning to Farashwani from Atal Bihari Vajpai University Bilaspur on scooty bearing registration No. CG-11BD-6626. When she reached near village Tilai then a Trailer



bearing registration No. CG-04LV-6655 coming from opposite side and driven by his driver in high speed and negligently dashed her scooty. In the said accident, she and her sisters sustained multiple grievous injuries. She was cross-examined at length, but nothing has come out which can falsify him.

10. Further, in support of her case she has tendered the documents of criminal case registered about the said accident as Ex.P-1 to Ex.P-5, which prove that a criminal case for negligent driving of offending vehicle has been registered against the respondents No. 1 and in the said case he is facing trial. The respondent No.1 has not made any complaint to the superior police officers about his false implication, therefore, it is safe to infer that he has admitted that the criminal case is registered against him is on true facts.

11. Hon'ble High Court of Chhattisgarh in case ***Smt. Shail versus Nasib Khan and others MAC No. 1079 of 2012, decided on 06.04.2018*** has observed, “ The Tribunal while dealing the cases for compensation arising out of the motor vehicle accident are required to follow such summary procedure as it thought fit and the certified copy of FIR, inspection, maps, panchnama, injury report etc. as the



case may be and other relevant documents including the statement and the document prepared by the police while discharging the official duties would be admissible in evidence without their being a formal proof.” Hon'ble Delhi High Court in case ***National Insurance Company Limited Vs Pushpa Rana and others*** 2009 ACJ 287 has held, "documents of in criminal case are sufficient proofs to reach the conclusion that the driver was negligent. Proceedings under Motor Vehicles Act are not akin to proceedings in a civil suit and hence strict rules of evidence are not required to be followed in this regard". Therefore, on the basis of aforesaid ocular and documentary evidence, it has proven that respondent No.1 was driving offending vehicle negligently at the time of accident.

12. The respondents have taken the plea of negligent riding of petitioner, but to prove the same they have given no evidence, either oral or documentary. Hon'ble High Court of Madhya Pradesh in case ***Devakar Shukla and tree others Vs Ashok Thakur and two others***, 2006 (II) D.M.P. 225 (M.P.) has held, "the doctrine of res ipsa loquitur can be applied in the case where the claimants were not present on the spot at the time of accident and brought the circumstances in which accident occurred then there was heavy burden on the driver of the vehicle to prove that he was not driving the



vehicle rash and negligently or to explain circumstances in which accident occurred. And if the driver has not examined himself in the court that adverse inference may be drawn against the driver and may be presumed that he was driving the vehicle rash and negligently". The respondent No. 1 could be the best witness to prove the negligence of deceased, but he has not come in to witness box, so an adverse inference is drawn against them. These evidences, either oral or documentary produced by petitioner, have not been rebutted by the respondents so, its trustworthiness can not be doubted.

13. Learned counsel for the respondent No. 3 would have argued that petitioner was riding her scooty with two pillion riders without helmet and driving licence, so principle of contributory is applicable in this case. But this Tribunal is not convinced with this point of argument raised by learned counsel for the respondent No. 3 because if the petitioner was riding the scooty without helmet or licence with two other persons, even then it does not give any legal right to the respondent No. 1 to dash her scooty. Hon'ble High Court in case ***Komal Prasad Shukla and others versus Raj Nath Yadav and others 2019 (4) A C C D 1723 (CG)*** has observed, "even if three persons were traveling on motorcycle as against total seating capacity of two, then also the same does not bring the conduct of deceased



within the ambit of contributory negligence. It may be an offence but the same will not lead to an automatic inference that the person concerned was guilty of contributory negligence or that he contributed to the cause of accident.” Hon’ble High Court of Allahabad in case ***Arti Yadav and another versus Mahendra Kumar Verma and others 2021 (2) ACCD 684 (AII)*** has observed, “As far as aspect of non wearing of helmet and driving licence is concerned, they may be construed to be an act of violation of law but certainly not an act of negligence.” Therefore, principle of contributory negligence is not found applicable in the case in hand.

14. The petitioner has produced treatment record/discharge summery of Apollo Hospital Bilaspur as Ex.P-6, which prove that she had been admitted in Neurosurgery department of said hospital on dated 12.05.2022 and discharged on dated 25.05.2022. During her admission in the said hospital she has taken treatment of head injury, diffuse axonal injury and blunt trauma abdomen hemo-peritoneum with lever laceration. It has not come on record that petitioner has sustained the aforesaid injuries in any other accident, therefore, there is no reason for this Tribunal to disbelieve the said record.

15. On the basis of the discussion, made above, this Tribunal



has no hesitation to held that petitioner Garima Tiwari has sustained injuries in a road side accident caused by the respondent No.1 by driving offending vehicle negligently. Therefore, issue No.1 & 2 are replied as **“Proved”** and issue No. 3 is replied as **"Not Proved"**.

ISSUE No. 4:-

16. Learned counsel for the respondent No. 3 contended that the respondent No. 1 and 2 were driving the offending vehicle in violation of terms and conditions of insurance policy as there was not a valid and effective fitness certificate. On the other hand, learned counsel of the respondent No. 1 and 2 has contended that terms and conditions of insurance policy has not been violated, so insurance company can not absolve its liability.

17. The petitioner has produced certified copy of seizure memo of criminal case as Ex.P-5 and as per the said seizure memo beside the driving licence of respondent No.1 documents of offending vehicle like registration certificate, fitness certificate and permit have also been taken into possession by police. As per seizure memo Ex.P-5, fitness certificate is valid up to 18.07.2023 and permit is valid up to 01.02.2023. The document itself proves that on the date of accident dated 12.05.2022 the aforesaid documents were valid and



effective. Further, on receiving the complete details of the fitness certificate and permit, it was obligatory upon the insurance company to get them verify from the concerned RTO office and if found not valid then produce the evidence in this respect, but insurance company has not produce any such evidence, so an adverse inference is drawn against it. In such a condition, this Tribunal is of view the vehicle in use with a valid and effective fitness certificate as well as a valid permit, so insurance company can not deny its liability to pay compensation to the claimant. Therefore, **issue No. 4 is replied as "Not Proved"**.

ISSUE No. 5:-

18. In the case in hand, the petitioner has placed on file discharge summary of Apollo Hospital Bilaspur about her treatment as Ex.P-6, according to which she has remained hospitalized there from 12.05.2022 to 25.05.2022. She has also produced copy of inpatient bill amounting to ₹ 2,23,169/-, which includes all other bills as Ex.P-7. Hon'ble High Court *in Smt. Prasanni Vs Sube Singh and another, 2012 (1) ACCD 196 (P&H)* has held, "production of bills relating to purchase of medicine during period of hospitalization and oral evidence given by party about purchasing of medicines ought to be taken as sufficient proof of authentication and admissibility of



these documents." Therefore, the aforesaid documents are taken into consideration and the petitioner is found entitled for ₹ 2,23,169/-. The petitioner has not stated that she has become permanent disabled person due to the injuries sustained in the accident. She has also not produced any disability certificate etc. Therefore, he is not found entitled for disability.

19. Petitioner Garima Tiwari Pw1 has also stated that plastic surgery is required for such marks and this fact has gone unrebutted as there is neither any cross-examination nor any suggestion by respondents, so there is no reason to disbelieve her statement. Moreover, the case is pertaining to compensation under MV Act on account of injuries sustained by the petitioner in a road side accident and the provisions of MV Act are benevolent provisions and Tribunal has to award a just compensation to the petitioner, therefore, when she appeared as Pw1, she was examined by the Tribunal to verify her aforesaid statement and found that there were several stitch marks over her forehead and right hand, due to which her looks were unpleasant. The petitioner is an unmarried girl, therefore, those marks make create hindrance in her marriage, if not removed by plastic surgery or otherwise. Therefore, this Tribunal is of view that some amount should be given to her for her future treatment required for



removing the said marks. So, considering the nature of injuries/marks, for future treatment ₹1,50,000/- is also awarded to her.

20. On the basis of the treatment record Ex.P-6 and Ex.P-7, petitioner has remained hospitalized for 4 days. It can be safely presumed that during this hospitalization she would have suffered the mental and physical pain and agony and would have taken special diet. Considering the nature of injury, it can be presumed that he would have spent some amount on transportation for routine check-up etc. Therefore, this Tribunal is of view that it would be proper if the petitioner is awarded ₹ 5,000/- for special diet, ₹ 5,000/- for mental and physical pain and agony and ₹ 2,500/- for transportation etc. Considering the nature of injuries, hospitalization of petitioner, it can be safely presumed that she would not able to work normally at least for 1 month due to the injuries. Therefore, considering her an unskilled labour, she is also found entitled for **₹ 6,000/-** for loss of earning for 1 month. Thus, the petitioner is found entitled for **₹ 3,91,669/- (Three Lakh Ninety One Thousand Six Hundred Sixty Nine Only) in total along with its interest @ of 9% per annum** from date of filing of petition to till realization.

21. Now, the next question is, who is liable to pay the



compensation. The respondent No. 1 to 3 being driver, owner and insurer respectively are jointly and severally liable, but the respondent No.1 and 2 have not violated the terms and conditions of the insurance policy, therefore, the respondent No.3 is held liable to pay the amount of compensation to the petitioner along with its interest. The answer of this issue is given in “**Yes**” from respondent No.3.

ISSUE No. 6 (Relief)

22. Resultantly, on the basis of the discussion made above, the petition filed by the petitioners is hereby allowed with cost and thereby following award is passed :-

I. The respondent No. 3 i.e. insurance company is hereby directed to pay **₹ 3,91,669/- (Three Lakh Ninety One Thousand Six Hundred Sixty Nine Only) along with its interest at the rate of 9% per annum** from the date of filling the petition to the date of realization of aforesaid amount with in 30 days from date of this award to the petitioner.

II. Aforesaid amount of petitioner be transferred in her bank account of Nationalized Bank on production of Aadhar Card, Ration Card, Bank Passbook etc. and proper verification.



III. If the respondents have already paid ₹ 25,000/- as no fault liability to the petitioner than same be adjusted at the time of payment of aforesaid amount.

IV. Advocate fee is assessed as ₹ 2,500/-, payable by the respondent No. 3.

V. Memo of cost be prepared as per award.

Announced in open court.

File be consigned in the record room after due compliance.

At :- Janjgir

(Suresh Joon)

Date:- 01.04.2023

1st MACT, Janjgir

District Janjgir-Champa (C.G.)

Note:- This Award is typed on my dictation and all pages are checked and signed by me.

(Suresh Joon)

1st MACT, Janjgir

District Janjgir-Champa (C.G.)