

**IN THE COURT OF VIVEK NASIR , MOTOR ACCIDENT
CLAIMS TRIBUNAL, BHIWANI UID No. HR0177**

MACT Case No. : 10 of 2017

Date of Institution : 15.02.2017/16.02.2017

CIS No. : MACP/65 of 2017

CNR No. : HRBH01-001698-2017

Date of Decision : 14.07.2021

1. Smt. Kamlesh, aged about 40 years, **widow of Sh. Subhash,**
2. Bhupender, aged about 18 years son of **Subhash,**
3. Rupender, aged about 14 years minor **son of Subhash,**
4. Harish, aged about 13 years minor **son of Subhash,**
5. Anjali, aged about 12 years minor **daughter** of Subhash minors through their natural guardian mother Kamlesh widow of Sh. Subhash, all residents of village Bank Colony, Bhiwani, Tehsil and District Bhiwani.

----Petitioners

Versus

1. Sunil Kumar son of Prem Kumar, resident of village Dhigawa Jatan, District Bhiwani.
(Driver).
2. Vijay Kumar son of Balbir, resident of H.No. 85 village Kari Tokha, Charkhi Dadri).
(Owner).
3. Sonu son of Parkash, resident of village Dhigawa Jatan, Tehsil Loharu, District Bhiwani.
(Subsequent Purchaser/Special Power of Attorney Holder)
4. United India Insurance Company Ltd., having its branch at Chirigar Road, near redcross Bhawan Bhiwani, Tehsil and District Bhiwani through it branch manager.
(Insurer of vehicle Truck bearing registration no. HR-61A/6865).

----Respondents.

Claim Petition under Section 166 of Motor Vehicle Act 1988

Present : Shri Mukesh Gulia, Advocate for the petitioners.

Respondent no. 1 exparte v.o.d. 15.03.2017.

Shri Kuldeep Legha, Advocate for respondent No. 2.

Respondent no. 3 exparte v.o.d. 08.10.2018.

Shri Mukesh Jangra, Advocate for respondent No. 4.

AWARD :

This petition is filed by LR/dependents of Subhash, who died in a Motor Vehicular Accident dated 28.12.2016, to seek an amount of Rs. 01 crore along with interest @ 24% per annum from the date of filing of present petition, till realization of total amount, for various losses and other expenditure suffered by them, on account of death of said Subhash.

2. The facts connected with said accident are that on 28.12.2016 at about 11:30 PM, Subhash was going to attend his duty at Railway Station, Bhiwani, on motor-cycle No. HR16L-7113. Witness Sunil Dutt was behind Subhash, on another motor-cycle, because he had to go to Jaipur for some personal work. When Subhash reached Rohtak chowk Bhiwani, Truck bearing registration no. HR-61A/6865 driven in a rash and negligent manner, came from back side. After over taking the motor-cycle of Sunil Dutt, it hit into the motor-cycle of Subhash. As a result, Subhash fell with his motor-cycle and got crushed under the rear tyres of the truck, which was driven by respondent no. 1, who fled away from the spot. Subhash succumbed to his injuries while on his way to GH, Bhiwani in ambulance. Postmortem examination of Subhash was got conducted. The accident took place due to sole rash and negligent driving of respondent no. 1.

In this respect, Sunil Dutt son of Jeet Ram, resident of Bank

Colony, Bhiwani got registered FIR No. 585 dated 29.12.2016 under Sections 279 & 304A of IPC at Police Station City Bhiwani.

3. Subhash was hale and healthy person of only 48 years in age, at the time of his death. He had all prospects of leading a long and healthy life. He was employed as clerk in North Western Railway and was posted at Bhiwani. At the time of his death, gross pay of Subhash, was Rs. 62,851/-. As a result of death of Subhash, the petitioners have suffered huge loss of estate, loss of consortium, loss of love and affection, mental agony and also incurred expenses on transportation of the dead body, as well as on cremation. The petitioners averred that they were completely dependent upon the salary/income of Subhash. Hence, for various losses suffered by the petitioners, they have instituted the present petition to seek due compensation.

4. In response of notice of present petition, respondent no. 1 did not file any written statement, rather turned ex parte on 15.03.2017.

5. However, respondent No. 2 being owner of Truck No. HR-61A-6865, filed a written statement taking preliminary objections that petition is wrong, incorrect against law and facts; same is not maintainable in present form; petitioners have no cause of action and that the petition is bad for non-joinder and mis-joinder of necessary and proper parties.

It was also averred that on 23.09.2016, respondent no. 2 had sold the vehicle no. HR-61A-6865 to Sonu son of Parkash, resident of Dhigawa Jatan, Tehsil Loharu, District Bhiwani. After 30.09.2016, respondent no. 2 has no concern with the vehicle in question and as stated

in the agreement, all kind of responsibility will be of Sonu son of Parkash who is required to be impleaded in present petition.

Upon that, respondent no. 3 Sonu was also impleaded in present petition.

6. While replying on merits, respondent no. 2 controverted all material averments of petitioners and alleged that the petitioners have demanded exaggerated amount and since, he has no concern with the offending vehicle, present petition deserves to be dismissed against him.

7. Respondent no. 3 also did not file any written statement and was proceeded against ex parte on 08.10.2018.

8. On its part, respondent no. 4-Company filed a separate written statement taking preliminary submissions regarding non-maintainability, incompleteness and vagueness of the petition; absence of cause of action in the petition; terms and conditions of Insurance policy to have been violated by the insured; by not transpiring the information of accident in time; collusion between the claimant; leave of the Court to take defences available to respondent no. 1 by respondent no. 4; since, insurance still exists in the name of respondent no. 2, whereas he has sold the offending vehicle to respondent no. 3 on 23.09.2016, present petition is liable to be dismissed, petition is bad for non-joinder of necessary parties, because owner and insurer of Motor-cycle No. HR-16L-7113 have not been impleaded and that either respondent no. 1 driver was not holding a valid and effective driving license (for short-'DL') or he was not having a license at all.

It was also averred that necessary documents of Truck No.

HR-61A-6865, like registration certificate, tax payments certificate, fitness certificate, route permit etc. were not valid at the time of accident. If insured owner fails to prove validity of these documents, then Insurance Company cannot be encumbered with any liability, by virtue of Section 149 of MV Act.

9. While replying on merits, respondent no. 4-Company denied the age and health condition of deceased Subhash. It denied the quantum of salary of deceased Subhash. It alleged that a false FIR has been registered in respect of accident of Subhash. Apart from that, respondent no. 2 has sold the Truck to Sonu son of Parkash, resident of village Dhigawa Jatan, who deserves to be impleaded in present petition, as necessary party. While denying other material facts, respondent no. 4-company prayed for dismissal of present petition.

10. In the wake of rival pleadings above, following issues were framed by the then Learned Presiding Officer MACT, Bhiwani:

Issue No. 1 : Whether the accident in question causing death of Subhash Kumar took place on 28.12.2016, due to rash and negligent driving of Truck bearing registration No. HR-61A/6865 by respondent no. 1, as alleged ? OPP

Issue No. 2 : If issue No. 1 is proved, whether the claimants are entitled for compensation, if so to what amount and from whom? OPR

Issue no. 3: Whether the claim petition is liable to be dismissed on the pleas taken by insurance company in its written statement?OPR

Relief.

11. In order to prove the grounds of their claim, the petitioners have got examined three witnesses in all, as under:

PW1	Kamlesh	She is petitioner no. 1 herself. She has reiterated the material averments of the petition, in her examination-in-chief vide affidavit Ex. PW1/A.
PW2	Sunil Dutt	He is eye witness of the accident dated 28.12.2016 and is complainant of FIR no. 585/29.12.2016, under sections 279/3040A of IPC, PS City Bhiwani. He has reiterated the manner in which accident of Subhash took place and that Subhash succumbed to his injuries on the spot, vide affidavit Ex. PW2/A.
PW3	Usman Gani	Chos/DRM, Railway Bikaner. He has examined to prove that at the time of his death, Subhash used to obtain a gross salary of Rs. 62,851/- per month.

12. Through the depositions of above witnesses and vide statement of Learned counsel for the petitioners, recorded on 03.04.2018, following documents were brought in evidence of petitioners:

Ex.P1	Copy of FIR no. 585/2016, PS City Bhiwani.
Ex.P2	Postmortem examination report (for short-'PMR') of dead body of Subhash.
Ex.P3	Charge-sheet dated 11.08.2017, against respondent no. 1.
Ex.P4	Final report under Section 173 of Cr.P.C., prepared in case FIR no. 585 (Supra).
Ex.P5	Photocopy of DL of Subhash, showing its validity upto 01.01.2018.
Ex. PW3/A and Ex. PW3/B	Salary slips of Subhash deceased.
Mark A	Photocopy of salary slip of deceased Subhash
Mark A2	Photocopy of ration-card of deceased Subhash.

13. In order to counter the case of petitioners and to prove their own stand, respondents did not get examined any oral witness. However, respondents tendered following documents in their evidence:

Ex. R1	Photocopy of DL of respondent no. 1 Sunil.
Ex. R2	Report of transport department, regarding Ex. R1.
Ex. R3	Copy of verification letter about Ex. R1.
Ex. R4	Letter regarding Court evidence.
Ex. R5	Copy of vehicle particulars.
Mark R1	Photocopy of power of attorney executed by respondent no. 2, in favour of respondent no. 3.
Mark R2	Photocopy of sale deed.
Mark R6	Copy of Insurance Policy Contract.

14. Following documents were tendered in evidence in rebuttal, on behalf of petitioners:

Ex. P7	Letter dated 28.02.2017, issued by North-western Railway, regarding pension.
Ex. P8	Pension payment order.

15. Evidence in rebuttal was closed by learned counsel for the petitioners, on 13.07.2021, so arguments were heard.

16. Learned counsel for petitioners has submitted that the fact that death of Subhash Kumar has taken place in a motor vehicular accident on 28.12.2016, is proved from oral deposition of PW2 Sunil Datt, who is an eye-witness of said accident, coupled with documentary evidence in terms of FIR Ex.P1, final report under Section 173 of Cr.P.C. Ex.P4, charge-sheet framed

against respondent No.1 Ex.P3 and PMR of Subhash Kumar Ex.P2. He has impressed that petitioners were required to prove rashness and negligence of respondent No.1, behind causing accident dated 28.12.2016. As per his version, said fact is proved from oral deposition of PW2 Sunil Dutt and corroborated by FIR Ex.P1 and conclusion derived by police, vide final report Ex.P4. He has argued that in view of above oral and documentary evidence, issued No.1 deserves to be decided in favour of petitioners.

17. In respect of issue No.2, learned counsel for petitioners has submitted that as per PMR Ex.P2, age of Subhash Kumar was 48 years. He has argued that it is not a dispute on the part of respondents, that Subhash Kumar was an employee with north western railways and was posted at Railway Station, Bhiwani as clerk. He has invited attention of Court towards deposition of PW3 Usman Gani Clerk from office of DRM Railways, Bikarner, who proved the salary slips/statements of deceased Subhash Kumar, as Ex.PW3/A & B, which reflects that at the time of his death, Subhash Kumar was drawing gross salary of Rs.62,851/-. Learned counsel argued that in the wake of age of Subhash Kumar and the quantum of salary drawn by him at the time of his death, coupled with various other losses and expenditure suffered by the petitioners, an award of Rs.01 crore payable along with interest @ 18% per annum deserves to be passed in favour of

petitioners, being not only legal heirs of deceased Subhash Kumar, but also his dependents. So, learned counsel for petitioners has prayed to allow this petition, accordingly.

18. On his part, learned counsel for respondent No.2 pointed towards photocopy of special power of attorney dated 23.09.2016, executed by respondent No. 2 in favour of respondent No. 3, to contend that prior to accident dated 28.12.2016, respondent No.2 had sold truck bearing No.HR61A-6865 to respondent No.3, who had taken full responsibility about all encumbrance or other eventualities connected with said truck. So, he has prayed that if this tribunal comes to a conclusion that some amount of compensation is required to be paid to petitioners, liability to pay the same be fixed against respondent No.4-Company or respondents No.1 and 3, in the alternative.

19. On his part, learned counsel for respondent No.4-Company has submitted that present petition deserves to be dismissed qua respondent No.4, for several reasons. Firstly, respondent No.2 sold the vehicle bearing No.HR61A-6865 to respondent No.3, without making any information to respondent No.4 company. As per his version, since respondent No.2 is the actually insured person qua insurance policy contract Ex.R6, but is no more owner of vehicle bearing No.HR61A-6865, respondent No.4 company does not bear any liability to pay any amount of compensation in respect of insurance policy Ex.R6.

20. Secondly, during cross-examination, alleged eye-witness Sunil Dutt (PW2) has made strange admissions, which reflects that actually, he was not present on the spot and as such FIR Ex.P1 turns fictitious and false.

Thirdly, driving license of respondent No.1 has been proved by respondent No.4, to be a fake document. A report in this respect is present on record as Ex.R2. No evidence was adduced by respondents No.1 & 2, to disprove this report. He has argued that when driving license of driver of offending vehicle is found fake, terms and conditions of insurance policy contract Ex.R6 are grossly violated. On this score also, present petition deserves to be dismissed qua respondent No.4. He has lastly argued that during cross-examination, PW1 has admitted that she is obtaining pension after death of her husband Subhash Kumar and that if this tribunal comes to a conclusion that some amount of money should be paid to petitioners as compensation, then also said amount of pension obtained by PW1 Kamlesh till the age of retirement of Subhash Kumar, deserves to be deducted from the total amount of compensation calculated for payment to the petitioners. However, learned counsel for respondent No.4-Company laid stress for dismissal of the petition.

21. This Tribunal paid thoughtful consideration to the rival contentions, apart from perusing the record carefully. Issue-wise findings are as under :

ISSUE NO. 1 :-

22. Onus to prove this issue was upon the petitioners. In order to prove that accident dated 28.12.2016 was motor-vehicular accident and resulted into death of Subhash, the petitioners have got examined petitioner no. 1 as PW1 and one eye witness of said accident, viz. Sunil Dutt as PW2. Both these witnesses have categorically deposed vide their respective affidavits that on 28.12.2016, when Subhash was going to Railway Station to attend his duty on Motor-cycle No. HR-16L-7113, a Truck bearing registration No. HR-61A-6865 came driven in a rash and negligent manner, from behind and it hit into the motor-cycle of Subhash; as a result, Subhash fell with the motor-cycle and got crushed under rear tyres of that Truck. These facts from part of FIR Ex. P2 and were also verified by police, after due investigation, compendium of which is compiled in final report Ex. P4. This fact is also reported in PMR of Subhash i.e. Ex. P2. From above oral and documentary evidence, it is sufficiently proved for the purposes of present petition, that on 28.12.2016, death of Subhash took place in a motor-vehicular accident near Rohtak chowk, Bhiwani.

23. In order to allege rashness and negligence on the part of respondent no. 1 Sunil Kumar, petitioners have relied upon oral deposition of PW2 Sunil Dutt, who has projected himself as not only eye-witnesses of said accident, but also complainant of FIR no. 585/2016, PS City, Bhiwani. He has categorically deposed that the fact that accident had taken place before his eyes and that it was caused by respondent no. 1 while driving Truck No. HR-61A-6865 in a rash and negligent manner, by

colliding the same into the motor-cycle, Subhash from back side. As per the final report Ex. P4, the Truck was taken into police custody, from place of occurrence itself, i.e. Rohtak chowk, Bhiwani. Respondent no. 1 did not file any pleadings to controvert any of the allegations made in the petition and rather turned ex parte on 15.03.2017. Though, there are certain abnormal admissions in the cross-examination of PW2 Sunil Dutt, yet same are not of such magnitude, as to completely discard the testimony of PW2. Even otherwise, allegations made in FIR Ex. P1, have been verified by police and sufficient evidence was collected to prepare final report under Section 173 of Cr.P.C. Ex. P4 against respondent no. 1. It is pertinent to observe that after paying attention to complete material on record, even criminal Court framed charges under Sections 279 and 304-A of IPC, against respondent no. 1 Sunil Dutt vide charge-sheet dated 11.08.2017 (Ex. P3). Since, present petition's is summary proceeding, evidence need not be evaluated with greater circumspection. From above oral and documentary evidence, for the purposes of present petition, it is sufficiently proved on record that accident dated 28.12.2016 took place due to rash and negligent driving of Truck No. HR-61A-6865, by respondent no. 1. Hence, issue no. 1 is decided in favour of petitioners and against the respondents.

ISSUES NO. 2 & 3 :-

24. Onus to prove issue no. 2 was on the petitioners, whereas onus to prove issue no. 3 was on respondent no. 4-Company. Since, above two issues are inter-connected and inter-related, they are taken up and decided together, for the sake of brevity. In order to prove issue no. 2,

petitioners have firstly relied upon ration-card of Subhash, copy of which is on record as Mark P2. The same reflects that petitioner no. 1 is wife of late Subhash, petitioners no. 2 to 4 are his sons, whereas petitioner no. 5 is his daughter. Meaning thereby that, all the petitioners are legal heirs of Subhash. Petitioner no. 1 being wife and petitioners no. 3 to 5 being minor children of Subhash shall also be treated as dependent of Subhash. Though, petitioner no. 2 has turned major on the date of filing of petition, yet it deserves to be appreciated that he is only 18 years of age. Obviously, his studies are not completed and several years would be consumed to enable him to earn livelihood on his own. So, petitioner no. 2 shall also be treated as dependent of Subhash, since deceased.

25. In order to prove age of Subhash, the petitioners have relied upon PMR as Ex. P2. Same finds recorded age of Subhash as 48 years. Though, respondent no. 4 contended that age of Subhash was more than 50 years, yet it failed to prove from the document, that age of Subhash was more than 48 years. As such, for instant purpose, age of Subhash shall be treated as 48 years, in view of the evidence coming from the side of petitioners.

26. Salary slips of Subhash have been got proved on record as Ex. PW3/A and Ex. PW3/B, through an official of North-western Railway viz. Usman Gani examined as PW3. From salary slips of Subhash, it is made out that his total annual income from salary was Rs. 7,65,097/-. Income tax being paid by Subhash was Rs. 52,530/-. As such net annual income of Subhash for the purpose of calculating loss of estate, is Rs. 7,12,,567/-. As per the directions of Hon'ble Apex Court promulgated

vide judgment passed in Pranay Sethi's case, future prospects to the tune of 30% deserve to be added to his figure. Same come not to the tune of Rs. 2,13,770/-. As such annual income becomes Rs. 9,26,337/-.

Since, there were five dependents on said Subhash, as per the table laid by Hon'ble Apex Court in Sarla Verma's case, an amount to the extent of $\frac{1}{4}$ of above figure, has to be rejected from same. Same comes out to be Rs. 2,13,770/-. After deduction, figure comes out to be Rs. 6,94,753/-.

27. As per the table laid by Hon'ble Apex Court in selected Sarla Verma's case, since as per age, Subhash fell in the category of 45-50 years, multiplier of '13' shall be applied to above figure. Thereafter, (694753 x 13) figure comes out to be Rs. 90,31,789/-.

28. Apart from that, as per directions passed by Hon'ble Apex Court, in Pranay Sethi's case, consolidated a sum of Rs. 70,000/- has to be added in above amount as miscellaneous expenses, pertaining to loss of consortium, funeral expenses, transport expenses etc. Thereby figure comes out to be 91,01,789.

29. Lastly, the Hon'ble in respect Court laid down in Magma Fincorp's case, Filial consortium to the tune of Rs. 40,000/- per dependent has to be paid. Said amount comes to the tune of Rs. 02 lacs. After adding the same, the net annual income for the purpose of calculating loss of estate, comes to the tune of Rs. 93,01,789, which is net amount of 'due compensation' found payable to the petitioners.

30. Now, comes the occasion to decide as to who out of respondents shall be held liable to pay above amount. On this aspect,

learned counsel for the respondent no.2 argued that respondent no. 2 had already sold Truck No. HR-61A-6865, to respondent no. 3 and as such, respondent no. 2 should not be held liable to pay the amount of compensation to the petitioners. In this respect, respondent no. 2 relied upon photocopy of special power of attorney executed by respondent no. 2, in favour of respondent no. 3. But this tribunal fails to appreciate this contention advanced on the part of respondent no. 2, because as per record, even on present date, respondent no. 2 is recorded as registered owner of vehicle no. HR-61A/6865. The special power of attorney relied upon by respondent no. 2 as Mark R1, is not an authenticated document. Same is merely a photocopy. Meaning thereby that, even said document is not proved in accordance with law. As such, for the purposes of present petition, respondent no. 2 only shall be treated as (registered) owner of said vehicle.

31. Learned counsel for the respondent no. 4-Company argued that when respondent no. 2 had already sold vehicle to respondent no. 3 and did not make any information to respondent no. 4 and also did not get changed the name of respondent no. 3 in the record of respondent no. 4, then petition deserves to be dismissed qua respondent no. 4. But when this tribunal has already discarded the version of respondent no. 2, to absolve his liability on account of sale in favour of respondent no. 3, by relying upon the present registered ownership of the vehicle in the name of respondent no. 2 only, then the argument of learned counsel for the respondent no. 4-Company does not sustain.

32. Learned counsel for the respondent no. 4-Company had

argued that since DL of respondent no. 1 was found fake, terms and conditions of Insurance policy contract Ex. R6 stand violated and so, Insurance company be not held liable for payment of any compensation to petitioners. But this tribunal fails to appreciate this contention, because in National Insurance Company Limited Vs. Swaran Singh and others 2004(2) RCR (Civil) 114, Hon'ble Apex Court has held that:

‘The breach of policy condition e.g. disqualification of the driver or invalid driving licence of the driver, as contained in sub-section (2)(a) (ii) of Section 149, has to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties’.***

33. Since, Insurance policy contract Ex. R6 has relied upon by respondent no. 4-Company itself shows the vehicle as been duly insured, it is liability of Insurance company to indemnify the petitioners. However, since DL of respondent no. 1 was fake on the date of accident, Insurance company would be held entitled for recovery of the amount paid by it as compensation to the petitioners, from respondents no. 1 and 2. If there has been any contract between respondents no. 2 and 3 regarding sale of said Truck, then respondent no. 2 would be entitled to recover his part of amount of paid to Insurance company, from respondent no. 3, by filing a civil suit for recovery.

34. In view of whole of above discussion, issue no. 2 is decided

in favour of petitioners, accordingly, whereas issue no. 3 is decided against respondent no. 4-Company.

RELIEF :

35. As a sequel to whole of above discussion, present petition is allowed with costs. An award is passed in favour of the petitioners, whereby compensation to the tune of Rs. 93,01,789/- along with interest at the rate of 6% per annum from the date of filing of this petition till the date of actual realization, shall be payable by respondent no.4-Company, to the petitioners within a period of 02 months from even date, in equal shares. Award amount qua the shares of petitioners no. 1 and 2 shall be deposited in the Bank where these petitioners may be having account, on furnishing details of Bank account by petitioners' counsel, to the Bank. Amount of award qua shares of petitioners no. 3 to 5 shall be deposited in FD, in a Nationalized Bank of their area of residence, which shall be released, when these petitioners obtain the age of majority.

Memo of costs be prepared accordingly. File be then consigned to record-room.

Pronounced in open Court
Date: 14.07.2021

Vivek Nasir
Presiding Officer,
Motor Accident Claims Tribunal,
Bhiwani/UID No. HR0177

Note : All 17 pages of this award/judgment have been
checked and signed by me.

Date: 14.07.2021
Suman, SG.II

Vivek Nasir
Presiding Officer,
Motor Accident Claims Tribunal,
Bhiwani/UID No. HR0177

