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# BEFORE MOTOR ACCIDENTS CLAIMS TRIBUNAL, GURUGRAM PRESIDED OVER BY PHALIT SHARMA, ADDITIONAL DISTRICT JUDGE : GURUGRAM.

(UID No. HR0105)

#### Claim Petition-I.

Case type.	:	MACP.
CNR Number	:	HRGR01-001214-2018.
CIS Number	:	MACP-66-2018.
Institution Number	:	81 dated 24.01.2018/ 12.04.2021.
Date of institution	:	24.01.2018.
Date of order	:	09.12.2021.

Smt. Summi Bai, aged 52 years, wife of Shri Mohan Balmeek, resident of village Mohandra, Tehsil Pawai, Police Station Simaiya, District Panna (Madhya Pradesh), presently residing in House of Puran Chaudhari, village Islampur, District Gurugram.

......Petitioner-claimant.

## Versus

- 1. Mehas Kumar son of Shri Ram Saroop, resident f village Dosa Kherli, Tehsil Sohna, District Gurugram.
  - (Driver of offending vehicle bearing regn. No.HR-72-B-7424)
- 2. M/s Ryan International School, opposite BSF Camp, Bhondsi, Sohna Road, Gurugram, through its Director.
  - (Owner of offending vehicle bearing regn.No.HR-72-B-7424)
- 3. National Insurance Co. Ltd., having its office at 386-387, Jacobpura, old Railway Road, Gurugram 122001, through its Divisional Manager.

(Insurer of offending vehicle bearing regn. No.HR-72-B-7424)

.....Respondents.

Claim Petition under section 166 of the Motor Vehicles Act, 1988 as amended upto date for grant of compensation of ₹10.00 lac along with interest on account injuries sustained by the claimant, in the motor vehicular accident which took place on dated 31.07.2017.

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#### Claim Petition-II.

Case type.	:	MACP.
CNR Number	:	HRGR01-001216-2018.
CIS Number	:	MACP-67-2018.
Institution Number	•	82 dated 24.01.2018/ 12.04.2021.
Date of institution	:	24.01.2018.
Date of order	:	09.12.2021.

Mohan Balmeek, aged 54 years, son of Shri Suraj Balmeek, resident of village Mohandra, Tehsil Pawai, Police Station Simaiya, District Panna (Madhya Pradesh), presently residing in House of Puran Chaudhari, village Islampur, District Gurugram.

......Petitioner-claimant.

#### Versus

- 1. Mehas Kumar son of Shri Ram Saroop, resident f village Dosa Kherli, Tehsil Sohna, District Gurugram.
  - (Driver of offending vehicle bearing regn. No.HR-72-B-7424)
- 2. M/s Ryan International School, opposite BSF Camp, Bhondsi, Sohna Road, Gurugram, through its Director.

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National Insurance Co. Ltd., having its office at 386-387, 3. Jacobpura, old Railway Road, Gurugram – 122001, through its Divisional Manager.

(Insurer of offending vehicle bearing regn. No.HR-72-B-7424)

.....Respondents.

Claim Petition under section 166 of the Motor Vehicles Act, 1988 as amended upto date for grant of compensation of ₹10.00 lac along with interest, on account injuries sustained by the claimant, in the motor vehicular accident which took place on dated 31.07.2017.

## Argued by:

Shri Sajjan Yadav, counsel for the claimants in both claim petitions.

Respondent No.1/driver of offending vehicle ex parte.

Shri Ashok Sehrawat, counsel for the respondent No.2/owner of offending vehicle.

Shri Satish Gupta, counsel for the respondent No.3/insurance company.

## **AWARD:**

This Award shall dispose of above stated two Claim Petitions bearing CIS Nos. MACP-66-2018 and MACP-67-2018, as the same have arisen out of one motor vehicular accident.

2. First above stated petition under section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act' for brevity), has been instituted by claimant Smt. Summi Bai, seeking compensation to the tune of ₹10 lacs (Rupees Twn lac) along with interest at the rate of 24% per annum, from the date of accident, till the realisation of awarded

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amount on account of injuries sustained by her in the accident in

question.

3. While the second above stated petition under section 166 of

the Act, has been instituted by claimant Mohan Balmeek Sandeep,

seeking compensation to the tune of ₹10 lac (rupees ten lac) along with

interest at the rate of 24% per annum, from the date of accident, till the

realisation of awarded amount, on account of injuries sustained by him in

the accident in question.

4. In brief, it is the case of the claimants (Smt. Summi Bai and

Mohan Balmeek) that on dated 31.07.2017, at about 7:15 a.m., the

claimants were going to their duties from Islampur to Cyber Park,

Gurugram on bicycle and when reached at Bakhtawar Chowk, a car

bearing registration No. HR-72-B-7424 driven rashly and negligently by

its driver i.e. respondent No.1 directly hit the bicycle from back as a result

thereof, their bicycle fallen on the road and both claimants got injured.

The claimant Smt. Summi Bai got fractured her waist line and multiple

injuries were on her body while 12 stitches were administered on her

head. Claimant Mohan Balmeek's left leg got fractured and multiple

injuries were on his body. The supervisor of the claimants had taken to

injured to General Hospital, Gurugram and lateron shifted to Safe Hand

Hospital. On receiving information from Hospital, the police official

recorded statement of claimant and on the basis thereof, FIR No. 763

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dated 31.07.2017 was registered in Police Station Sadar, Gurugram. The

accident took place due to sole rash and negligent act of respondent No.1.

The respondent No.1 was driver of respondent No.2, which was insured

with respondent No.3, thus, they all are jointly and severally liable to pay

the compensation to the claimants.

It is further pleaded that claimant Smt. Summai Bai is aged

52 years, employed as Sweeper in the Municipal Corporation, Gurugram

and drawing salary as ₹15,000/- per month. She was taken to General

Hospital, Gurugram and on the same day, was shifted to Safe Hand

Hospital, Gurugram, on 31.07.2017 where the doctor on duty attended her

and she remained admitted there till 03.08.2017. Her treatment is still

going from the date of accident. A sum of ₹2 lac was spent on her

medicines, treatment and transportation etc. and still further expenditure is

likely to be incurred.

It is also pleaded that claimant Mohan Balmeek is aged 54

years, employed as Sweeper in the Municipal Corporation, Gurugram and

drawing salary as ₹15,000/- per month. He was also taken to General

Hospital, Gurugram and on the same day, was shifted to Safe Hand

Hospital, Gurugram, on 31.07.2017 where the doctor on duty attended

him and he remained admitted there till 03.08.2017. His treatment is still

going from the date of accident. A sum of ₹2 lac was spent on his

medicines, treatment and transportation etc. and still further expenditure is

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likely to be incurred. Hence, these petitions filed.

5. Notice of both petitions was served upon the respondents.

Respondent No.1/driver of offending vehicle did not appear despite

service and was proceeded ex parte vide order dated 19.07.2019.

6. Upon being served, respondents No.2 appeared and filed

written statement taking preliminary objections that petition is not

maintainable in the present form; that vehicle No. HR-72-B-7424 is not

an offending vehicle; that respondent No.1 was not involved in any

accident on 31.07.2017. Even otherwise, respondent No.1 holds a valid

driving licence, however, a delayed and false FIR dated 31.07.2017 has

been lodged as a result of afterthought just to extract huge amount of

compensation. Without admitting any liability, it is submitted that even if

the petitioner is held entitled for compensation, the liability for payment

of compensation lies on respondent No.3 as the alleged offending vehicle

was insured with respondent No.3.

On merits, respondent No.2 has denied all the averments

made in the petition and prayer is made to dismiss the claim petition.

7. Similar pleas were taken by the respondent No.2 in his

written statement filed in the connected claim petition titled as "Mohan

Balmeek Vs. Mehas Kumar and others, CIS No. MACP-67-2018".

8. Respondent No.3 also appeared and filed its separate written

statement taking preliminary objections regarding maintainability, locus

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standi, cause of action, concealment of true and material facts etc. It is

submitted that alleged driver of vehicle No. HR-72-B-7424 was not

holding a valid and effective driving licence at the time of alleged

accident. The respondents No. 1 and 2 have violated the terms and

conditions of insurance policy. The said vehicle was being plied without a

valid permit, fitness certificate and in contravention of the other terms and

conditions of the insurance policy.

While replying on merits, answering respondent No.3 denied

other averments of the claim petition for want of knowledge and took the

plea that claim petition is false and frivolous and liable to be dismissed.

9. Similar pleas were taken by the respondent No.3 in its written

statement filed in the connected claim petition titled as "Mohan Balmeek

Vs. Mehas Kumar and others, CIS No. MACP-67-2018".

10. It is pertinent to mention that the second above stated Claim

Petition was consolidated with the present Claim Petition vide order dated

19.07.2019.

11. Replication was not filed by the claimants. From the

pleadings of the parties, following issues were settled vide order dated

19.07.2019 for adjudication :-

1) Whether the accident in question was caused by respondent No.1 while driving vehicle bearing registration

No. HR-72-B-7424 in a rash and negligent manner

resulting into injuries to petitioners Smt. Summi Bai and

Mohan Balmeek, as alleged

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- 2) If issue no.1 is proved, whether the petitioners are entitled compensation. If so to what amount and from whom? OPP.
- 3) Whether the respondent No.1 was not holding a valid and effective driving licence at the time of accident? OPR(3).
- 4) Whether the respondent No.3 is not liable to make payment of any compensation on account of alleged violation of terms and conditions of insurance policy? OPR(3).
- 5) Relief.
- 12. In order to prove their case, claimants examined following

#### witnesses:

PW-1	:	Mohan, claimant himself.	
PW-2	:	Smt. Summi Bai, another claimant herself.	

The documentary evidence of the claimants is as under:

Ex.P1	Copy of FIR No.763 dated 31.07.2017, under Sections 279, 337, 427 IPC and 185, 188 of M.V. Act.
Ex.P2	Certified copy of final report under Section 173 Cr.P.C. filed by prosecution against accused-respondent No.1 in case FIR No.763 dated 31.07.2017, under Sections 279, 337, 427 IPC and 185, 188 of M.V. Act.
Ex.P3	Certified copy of driving licence of respondent No.1
Ex.P4	Certified copy of RC of vehicle No.HR-72-B-7424.
Ex.P5	Attested copy of final bill dated 01.08.2017 of ₹9,000/-issued by Safe Hands Hospital, Sector-46, Gurugram, to injured Mohan.
Ex.P6	Attested copy of receipt dated 01.08.2017 regarding receipt of ₹6,000/-, issued by Safe Hands Hospital, Sector-46, Gurugram, to injured Mohan, which is included in bill Ex.P5.
Ex.P7	Attested copy of receipt dated 31.07.2017 regarding receipt of ₹800/-, issued by Safe Hands Hospital,

	Sector-46, Gurugram, to injured Mohan.
Ex.P8	Attested copy of medicines bill of ₹518/- in the name of injured Mohan.
Ex.P9	Attested copy of medicines bill of ₹851/- in the name of injured Mohan.
Ex.P10	Attested copy of medicines bill of ₹210/- in the name of injured Mohan.
Ex.P11	Attested copy of medicines bill of ₹971/- in the name of injured Mohan.
Ex.P12	Attested copy of receipt of ₹1900/- dated 31.07.2017 issued by Safe Hands Hospital, Sector-46, Gurugram, to injured Mohan.
Ex.P13	Attested copy of receipt of advance of ₹3000/- dated 31.07.2017 issued by Safe Hands Hospital, Sector-46, Gurugram, to injured Mohan, which is also included in final bill Ex.P5.
Ex.P14	Attested copy of final bill dated 01.08.2017 of ₹3,000/-issued by Safe Hands Hospital, Sector-46, Gurugram, to injured Smt. Summi Bai.
Ex.P15 to Ex.P18	Attested copy of medicines bills, wherein name of patient is not legible.
Ex.P19	Attested copy of medicine bills of ₹2091/- issued in the name of patient Summi Devi.
Ex.P20	Attested copy of medicine bills of ₹971/- issued in the name of patient Mohan.
Ex.P21	Attested copy of receipt of ₹1100/- issued by Safe Hands Hospital, Sector-46, Gurugram, to injured Smt. Summi Bai.
Ex.P22	Attested copy of receipt of advance of ₹3000/- dated 31.07.2017 issued by Safe Hands Hospital, Sector-46, Gurugram, to injured Summi, which is also included in final bill Ex.P14.
Ex.P23	Photocopy of receipt of ₹3500/- dated 31.07.2017 issued by Advance Diagnostic and Research Centre, Badshahpur, in the name f Smt. Simmi.
Mark-A	Photocopy of discharge on request of claimant Summi Devi.
Mark-B	Photocopy of Bank Account Passbook of claimant Mohan Balmeek.

Mark-C	Photocopy of Bank Account Passbook of claimant Smt.
	Summi Bai.

Thereafter, claimants had closed their evidence.

13. In order to rebut the evidence of the claimants, respondent No.3 tendered following documents in its evidence:

Ex.R1	Attested copy of driving licence of respondent No. 1 along with report of L.Acum-Secy. RTA, Nuh dated 21.08.2020.
Ex.R2	Extract of driving licence of respondent No.1 issued by L.Acum-Secy. RTA, Nuh.
Ex.R3	Photocopy of driving licence of respondent No.1
Ex.R4	Verification report regarding driving licence of respondent No.1
Ex.R5	Copy of insurance policy of the vehicle in question.

Thereafter, respondent No.3 closed its evidence.

14. To rebut the evidence of respondent No.3, respondent No.2 owner of the offending vehicle examined Vargheese Thankachan, authorised person of Ryan International School, Bhondsi, as RW-1 and he tendered following documents in his evidence:

Ex.RW1/1	Authority letter issued by Ryan International School in favour of RW-1 Vargheese Thankachan, for deposing in this case on behalf of the School.
Ex.RW1/2	Attested copy of Transport Manpower Services Agreement dated 01.07.2017
Ex.RW1/3	Muster roll of the employees employed in Ryan International School, Bhondsi, for the month of July, 2017, deposited by Contractor M/s Ravi Security Services with the concerned department.
Ex.RW1/4	Combined challan regarding EPF of employees deposited by Ryan International School.
Ex.RW1/5	Attested copy of PF record maintained by Contractor

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Thereafter, respondent No.2 closed its evidence.

- 15. No evidence in rebuttal was led by the claimants. The respondent No.3 also did not lead any evidence in rebuttal to the evidence led by the respondent No.2.
- 16. This Tribunal has heard learned counsel for the claimants and respondents at length and also gone through the case file carefully.
- 17. The issue-wise findings of this Tribunal are as under:

## ISSUES NO.1 TO 4:

1) Whether the accident in question was caused by respondent No.1 while driving vehicle bearing registration No. HR-72-B-7424 in a rash and negligent manner resulting into injuries to petitioners Smt. Summi Bai and Mohan Balmeek, as alleged

#### and

2) If issue no.1 is proved, whether the petitioners are entitled compensation. If so to what amount and from whom? OPP.

#### and

3) Whether the respondent No.1 was not holding a valid and effective driving licence at the time of accident? OPR(3).

#### and

4) Whether the respondent No.3 is not liable to make payment of any compensation on account of alleged violation of terms and conditions of insurance policy? OPR(3).

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18. These issues are taken up together as evidence on these issues

is interconnected. The onus to prove issue Nos.1 and 2 rests upon

claimants and issue Nos.3 and 4 are to be proved by respondent No.3 i.e.

insurance company.

To prove their contentions, claimant Mohan himself stepped (A).

into witness box as PW-1 and submitted his examination-in-chief in the

form of duly sworn affidavit Ex.PW1/A wherein he reiterated the

averments of his petition on oath.

During cross-examination, he deposed that he do not know

date of accident, however, it was happened about two years ago. He

further deposed that he got lodged FIR in the Police Station on the same

day. He denied the suggestion that he was driving his bicycle in the

middle of the road and accident had occurred due to his own negligence.

He further denied the suggestion that there was no negligence on the part

of respondent No.1. He further denied the suggestion that he had not

suffered any permanent injury. He further denied the suggestion that he

was not working as Sweeper in M.C. Gurugram or not earning ₹15,000/-

per month. He further denied the suggestion that ₹2 lac were not spent on

his treatment etc. He denied the suggestion that he has deposed falsely.

(B) Claimant Smt. Summi Bai herself stepped into witness box as

PW-2 and submitted her examination-in-chief in the form of duly sworn

affidavit Ex.PW2/A wherein she reiterated the averments of her petition

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on oath.

During cross-examination, she deposed that she do not know

date of accident, nor, the registration number of the offending vehicle.

She further deposed that she fell unconscious after the accident. She

further deposed that she do not know who was driver of the said vehicle.

She further deposed that she was sitting on the back seat of the bicycle

and her husband was ridding the bicycle. She further deposed that driver

of the offending vehicle was in a drunken condition. She denied the

suggestion that er husband was driving the bicycle in zig-zag manner in

the middle of the road. She further denied the suggestion that there was

no negligence on the part of respondent No.1. She further denied the

suggestion that she had not suffered any disability. She further denied the

suggestion that she was not working as Sweeper in M.C. Gurugram or not

earning ₹15,000/- per month. She further denied the suggestion that ₹2

lac were not spent on her treatment etc. She denied the suggestion that she

has deposed falsely.

19. On the other hand, to rebut the claim of claimants, respondent

No.2 has examined Shri Vargheese Thankachan, authorised person of

Ryan International School, Bhondsi, as RW-1 who submitted his

examination-in-chief in the form of duly sworn affidavit Ex.RW1/A

wherein he deposed that authority letter Ex.RW1/1 has been issued in his

favour by the School and he is fully competent to depose in this matter.

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He further deposed that respondent No.1 was hired by one Transport

Manpower Service Provider, namely, M/s Ravi Security Services, 196-P,

Sector-52, Gurugram, for respondent No.2. He placed on record certified

copy of Agreement of outsource hiring between respondent No.2 and M/s

Ravi Security Services as Ex.RW1/2. He further deposed that at the time

of hiring, driving licence Ex.R3 of respondent No.1 was seen by him as

well as by said agency which seemed to be valid and genuine one and

respondent No.1 gave driving test to his satisfaction. He further deposed

that no circumstance ever arose which could give any doubt or suspicion

to his mind with regard to driving licence Ex.R3. He further deposed that

respondent No.2 had no reason to believe that respondent No.1 was

carrying a fake driving licence. He further deposed that respondent No.2

came to know about the said misconduct of respondent No.1 once Ex.R1

and Ex.R2 were filed before this Tribunal. He further deposed that there

has been no malafide negligence on the part of respondent No.2. He also

tendered documents Ex.RW1/3 to Ex.RW1/5 in his evidence.

During cross-examination, he deposed that he has seen

driving licence Ex.R1 which belongs to driver respondent No.. He further

deposed that he has no knowledge if driving test of respondent No.1 was

conducted by Service Providing Agency as per agreement Ex.RW1/2. He

self stated that they had taken the test. He further deposed that there is no

such record which reveals that driving test of respondent No.1 was taken

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by him or their school at any point of time. He further deposed that they

have not got verified driving licence of respondent No.1 from the

concerned issuing authority because it looked genuine on the face of it.

He further deposed that he has not brought any office record with regard

to providing of driving licence of respondent No.1 to the school authority.

He denied the suggestion that he has concocted a false story regarding

validity and genuineness of driving licence of respondent No.1.

To prove that the driving licence of respondent No.1 was

fake, respondent No.3 has placed on record documents Ex.R1 to Ex.R4 as

described at page 10, which in the absence of only rebuttal are admissible

in evidence as per law laid down by our Hon'ble High Court in Mahi

Ram and others Vs. Jailla Devi and another: 2015(71) RCR (Civil)

138 and by Hon'ble Madhya Pradesh High Court in Oriental Insurance

Co. Ltd Vs. Mulayam Bai, 1999 ACJ 727.

19. Based on above evidence on record, learned counsel for the

claimants has argued that both claimants themselves duly supported by

medical evidence, have proved as to how accident was caused by rash and

negligent driving of offending vehicle by respondent No.1, which is

owned by respondent No.2 and insured with respondent No.3. He has

further argued that medical treatment taken and expenditure incurred

thereon is also further proved from documents Ex.P5 to Ex.P13, Ex.P20

in respect of claimant Mohan and Ex.P14 to Ex.P19, Ex.P21 and Ex.P23

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in respect of claimant Smt. Summi Bai and Mark-A is the discharge

report of claimant Summi Bai which was prepared by Safe Hands

Hospital, Gurugram. He has further argued that this accident had taken

place due to rash and negligent driving of vehicle No.HR-72-B-7424 and

for causing this accident, accused-respondent No.1 has also been

prosecuted by the police by filing final report under Section 173(2)

Cr.P.C. Ex.P2 against him, which was the basis of FIR Ex.P1 got lodged

by claimant Mohan against the respondent No.1. He has further argued

that certified copies of driving licence of respondent No.1 Ex.P3 and RC

of offending vehicle Ex.P4 have also been tendered in evidence. Finally,

he has prayed that both claim petitions be allowed as prayed.

20. On the other hand, learned counsels for the respondent No.3

has argued that the vehicle aforesaid, driven by respondent No.1 was not

involved in the accident and claimants have no right to maintain the claim

petition under section 166 of Motor Vehicles Act. He has further argued

that there is no liability of the respondent No.3 to compensate the

claimants, who have produced false medical record and cash receipts on

the file showing excessive amount, which are photocopies and original

thereof have not been produced nor any of the witness from the hospital

or concerned medical store has been examined to prove these bills/

receipts Ex.P5 to Ex.P23.

In addition thereto, learned counsel for respondent No.3 has

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also argued that respondent No.1 was not holding a valid and effective

driving licence at the time of alleged accident as Ex.R1 clearly reveals

that driving licence No.HR7420080004101 was issued in the name of

Mohabat Khan son of Ayub, resident of Salaheri, Nuh and not in the name

of Mehas Kumar, as reported by the office of L.A.-cum-Secretary, R.T.A.,

Nuh and as per report of investigator Ex.R4, this driving licence is fake

one. He has further argued that RW-1 Vargheese Thankachan during

cross-examination stated that he has no knowledge if driving test of

respondent No.1 was conducted by the service Providing Agency as per

agreement Ex.RW1/2. He self stated that they had taken the test. He has

further argued that RW-1 failed to produce such record which reveals that

driving test of respondent No.1 was taken by RW-1 or their school at any

point of time and even Ex.RW1/2 relied by respondent No.2 is fake as

stamp paper was purchased on dated 18.01.2018, whereas agreement is

shown to have been executed on 01.07.2017, for three months including

the date of accident. Thus, he has prayed to dismiss the claim petition qua

respondent No.3.

21. Learned counsel for respondent No.2 has argued that

respondent No.1 was hired by Ryan International School through

contractor M/s Ravi Security Services with whom Transport Manpower

Services Agreement Ex.RW1/2 was executed by the School and

Ex.RW1/3 is the muster roll of the employees which were deployed by the

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said agency in their school, whose PF was being deducted by the said

agency vide Ex.RW1/4 and Ex.RW1/5. He has further argued that it was

the duty of the said agency to verify the driving licence of the respondent

No.1 prior to deploying him in their school and liability to pay

compensation, if any, is liable to held of the said agency or the respondent

No.1 and not respondent No.2 moresowhen respondent No.2 had taken

driving test and also seen the driving licence to verify its genuinity. Thus,

he has prayed to dismiss claim petition qua respondent No.2.

22. To decide the rival contentions on issue Nos. 1, 2, 3 and 4,

this tribunal decides to give its findings on three aspects of negligence,

quantum of compensation and who is liable to pay and these findings

shall clear the clouds on the main points raised in issue Nos.1,2, 3 and 4.

**NEGLIGENCE:** 

23. Before giving its findings as to whether the claimants have

succeeded in establishing the negligence of the respondent no.1 which

resulted into accident in question on the relevant day and time, this

Tribunal would like to see what legally is the standard of proof required to

establish the negligence in front of the Tribunal. Hon'ble apex court in

Surender Kumar Arora vs. Dr. Manoj Bista and others, 2012 SCR

<u>362</u> held that for the success of a petition under section 166 of Motor

Vehicle Act, 1988, it is the entire responsibility of the claimant to

establish that respondent was driving the vehicle in a rash and negligent

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manner which resulted into accident. With regard to standard of proof, it

has been held by Hon'ble apex court in Parmeshwari Devi vs. Amir

Chand and others, 2011(2) RCR (Civil) 153 that in the claim

pertaining to a road accident, the strict principles of proof in a criminal

case are not attracted and that the claimants are merely to establish their

case on the touch stone of preponderance of probabilities. Even, our

Hon'ble High Court in Virenderjit Singh vs, Tejinder Singh and

others, 2008(1) RCR (Civil) 67 has held that Tribunal cannot act as a

criminal court and the demand of proof of accident beyond any shadow of

reasonable doubt. Under the scheme incorporated under Motor Vehicle

Act relating to the inquiries by Motor Accident Claims Tribunal, the

proceedings are summary in nature and strict rules of evidence are not

applicable. The job of the Tribunal is to ascertain as to whether the

accident has been caused out of use of Motor Vehicle.

From the above discussed law, it is clear that the onus is upon

the claimants to prove the negligence on the part of the respondent No.1-

driver of the offending vehicle but the claimants have to establish their

case on the touchstone of preponderance of probabilities and not beyond

reasonable doubt as is otherwise required in criminal cases.

24. With the above discussed law and the facts of the case, this

Tribunal is satisfied that the claimants have succeeded in establishing that

on dated 31.07.2017 at about 7:15 a.m., when they were going to Cyber

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Park, Gurugram from village Islampur on bicycle ridden by claimant

Mohan and when reached near Bakhtawar Chowk, car bearing registration

No. HR-72-B-7424 driven rashly and negligently by respondent No.1

directly hit their bicycle from back side and got injured the claimants for

which they got medical treatment. The said car was being driven by

respondent No.1 which is owned by respondent No.2 and insured with

respondent No.3-insurance company. The negligence of respondent No.1

is duly proved. This factum also gets proved from the fact that neither

respondent No.1 elected to refute this allegation of negligence by stepping

into witness box, nor, there is any evidence that if respondent No.1 was

not driving the vehicle, who else was driving the same. Moreover, when

admittedly, respondent No.1 is facing trial for the accident as is proved on

record from the final report Ex.P2, it is safe to conclude that accident had

occurred on account of rash and negligent driving of the respondent No.1,

whose offending vehicle is owned by respondent No.2. This line of

thought of Tribunal has support of the law laid down in Raju and others

Vs. Sukhvinder Singh and others, 2006 (4) RCR (Civil) 82 (P&H)

and by Hon'ble M.P. High Court in Madhya Pradesh State Road

Transport Corporation versus Vaijanti and others, 1995 Accident

Claims Journal 560 (DB) wherein it has been held that if the driver of

offending vehicle does not come forward to deny his negligence, then

adverse inference is to be drawn in favour of the claimant and he is

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presumed to be negligent. Had the accident not been caused by

respondent no.1 while driving Car No.HR-72-B-7424 rashly and

negligently, then there would have been no reason on the part of PW-1

Mohan, to lodge the FIR and to appear as a witness against respondent

No.1, therefore, it is safe to conclude that the accident was result of sole

rash and negligent driving of car aforesaid by respondent No.1. In this

regard, reliance is placed on the observations made by our Hon'ble High

Court in Girdhari Lal vs. Shyam Lal and others, 1993(2) PLR 109

and Gurdeep Singh vs. Tarsem Singh and others, 2008(2) RCR

(Civil) 774 wherein it has been held that it is, prima facie, safe to

conclude in claim cases that accident has occurred on account of rash and

negligent driving of the driver, if the driver is facing criminal trial on

account of rash and negligent driving.

Further, the respondent No.2 has taken the plea that no

accident had taken place with the vehicle in question i.e. Car bearing

registration No.HR-72-B-7424. However, respondent No.1 neither

himself appeared in the witness box, nor, examined any other witness

alleged to have witnessed the accident to prove that no accident had taken

place with the vehicle in question. The respondents No.1 and 2 also did

not produce any oral or documentary evidence on record to show that they

had made any complaint to the higher police authorities regarding false

implication of the vehicle in question. The oral and documentary evidence

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and the circumstances explained above are sufficient to prove that the

claimants have proved the negligence of respondent No.1's vehicle in the

accident on the touchstone of preponderance of probabilities.

**COMPENSATION:** 

25. Since, this Tribunal has held respondent No.1 responsible for

the accident in question, which finally resulted into the injuries to

claimants Smt. Summi Bai and Mohan Balmeek, it is required to be seen

how much compensation the claimants are entitled to get?

It is the case of the claimants that on their medical treatment,

32.00 lac each have been spent and more than that is to be spent on it,

so, a claim of ₹10,00,000/- each be passed in their favour. It is also the

case of claimants that they remained admitted in Safe Hands Hospital,

Sector-46, Gurugram w.e.f. 31.07.2017 to 01.08.2017 and claimant

Mohan spent a sum of ₹9,000/- and claimant Smt. Summi Bai spent a

sum of ₹3000/- in the said hospital, as per bills Ex.P5 and Ex.P14 and

also purchased medicines from Medical Store vide bills Ex.P7 to Ex.P11,

Ex.P20 by claimant Mohan and vide bills Ex.P15 to Ex.P19 by claimant

Smt. Summi Bai. However, both the claimants have failed to produce on

record original bills for purchase of medicines and also failed to examine

any witness to prove these bills/cash receipts. Perusal of medicines bills,

which are photocopies only, do not reveal name of the patient thereon.

Since, the claimants had met with an accident and admitted in the hospital

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and got treatment, they might have incurred some amount for purchasing

medicines and have suffered pain, a sum of ₹3,000/- each is awarded to

them under this head.

Bill Ex.P5 is the final bill issued by Safe Hands Hospital,

Sector-46, Gurugram to patient/claimant Mohan vide which an amount of

₹9,000/- was charged from the claimant for providing him treatment for

the period 31.07.2017 to 01.08.2017. Ex.P6 and Ex.P13 are the receipts

for making payment of ₹6,000/- and ₹3,000/- respectively to the said

hospital which is duly reflected in bill Ex.P5. Ex.P7 is a receipt of ₹800/-

and Ex.P12 is receipt of ₹1900/- towards lab test. In total, claimant

Mohan Balmeek is entitled for compensation of ₹9,000/-+₹3,000/-

+Rs.2700/-=₹14,700/-.

Bill Ex.P14 is the final bill issued by Safe Hands Hospital,

Sector-46, Gurugram to patient/claimant Smt. Summi Bai vide which an

amount of ₹3,000/- was charged from the claimant for providing her

treatment for the period 31.07.2017 to 01.08.2017. Ex.P22 is the receipt

for making payment of ₹3,000/- to the said hospital which is duly

reflected in bill Ex.P14. Ex.P21 is a receipt of ₹1100/- and Ex.P23 is

receipt of ₹3500/- towards lab tests. Thus, in total, claimant Smt. Summi

Bai is held entitled for compensation of 3,000/-+3,000/-+Rs.4600/- =

₹10,600/-.

It is worth to mention here that this Tribunal has taken into

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consideration the photocopies of the bills simply because the amount

mentioned therein is nominal which in normal course would have been

spent by the injured. Otherwise, in normal course, this Tribunal would

have insisted for solid proof of such bills, had the amount mentioned

therein would have been exorbitant. It being a beneficial legislature, the

Tribunal some times required to be sympathetic towards a claimant who

failed to prove his contentions in accordance with law, provided his case

is genuine as is the case under consideration.

WHO WOULD PAY THE COMPENSATION :-

26. Now, the question arises, who will pay the compensation?

27. Learned counsel for the respondent No.2 has argued that the

respondent No.3 has not been able to show as to how there had been

violation of the Motor Vehicle Act on the part of respondent No.2 being

owner and respondent No.1 being the driver of the insured vehicle, so, it

is the liability of the insurer to pay the amount of compensation. He has

further argued that the respondent No.1 was having a valid and effective

driving licence at the time of the accident, certified copy of which is on

the file as Ex.P3.

28. On the other hand, learned counsel for respondent No.3 has

argued that the respondent No.1 was not having valid driving licence on

the date of accident as is duly established from the documents Ex.R1 and

Ex.R4, so, the fake licence exonerate the insurance company to pay

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compensation. On this point, he has supported his arguments with law

laid down in Oriental Insurance Company Ltd. vs. Prithvi Raj,

2008(1) RCR (Civil) 851, United India Insurance Co. Ltd Vs.

Sujata Arora and others, 2013(3) TAC 29 (SC). He has also argued

that insurance company is also not liable to pay as the respondent No.1

had no valid route permit.

29. Having due regards to the rival contentions and evidence on

record and the law on the subject, at the outset, it is pertinent to mention

here that as per documents Ex.R1 and Ex.R4, it is duly established on the

case file that the respondent no.1 was not having a valid driving licence at

the time of the accident, or, was in possession of fake licence.

endorsement/report made by the office of Licensing Authority, Nuh as

Ex.R1, driving licence No.HR7420080004101 was issued in the name of

Mohabat Khan son of Ayub, resident of Salaheri, Nuh and not in the name

of Mehas Kumar. As per report of vigilant investigations Ex.R4, driving

licence was fake. Documents Ex.R1 to Ex.R4 are admissible in view of

the law laid down by our Hon'ble High Court in Mahi Ram and others

Vs. Jailla Devi and another: 2015(71) RCR (Civil) 138 and by

Hon'ble Madhya Pradesh High Court in Oriental Insurance Co. Ltd

Vs. Mulayam Bai, 1999 ACJ 727. In Mahi Ram's case (supra), our

Hon'ble High Court had observed at para 10 in the following manner:

"The certified copy of the report issued by the Office of Regional Transport, Cuttak was tendered in evidence

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showing that no driving licence No. 1834/97 was issued by it. However, no contrary evidence was produced by

the driver or the owners of the offending vehicle showing that the aforesaid report was not genuine. Mere

non-examination of witness to prove the aforesaid report

does not mean that reliance cannot be placed upon it. In

the present case, the appellants did not produce any contrary or cogent evidence in rebuttal to show that the

aforesaid report was false. In the absence of such

contrary or cogent evidence, it cannot be said that the findings given by the Tribunal are erroneous and require

interference by this Court."

It is pertinent to mention here that in the case in hand, neither

respondent No.1, nor, respondent No.2 have been able to rebut the reports

submitted as Ex.R1 to Ex.R4 with regard to fakeness of the driving

licence. In the given circumstances, Ex.R1 to Ex.R4 could be used to

hold that driving licence in question i.e. Ex.R3/Ex.P3 is fake.

Now, the question arises once this Tribunal has held that

driving licence is fake and that respondent No.1 has failed to rebut this

claim, now, it is to be seen whether or not respondent No.1 could escape

the liability to pay the compensation being owner of the offending

vehicle?

To save oneself from the liability, respondent No.2 has

examined RW-1 Vargheese Thankachan, its authorised person to say that

driving licence in question was verified prior to engagement of

respondent No.1 as driver by the outsource company with which it had

executed agreement Ex.RW1/2. This Tribunal is of the view that this

document Ex.RW1/2 is nothing but a fabricated document created by

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respondent No.2 to save its liability. Perusal of Ex.RW1/2 indicates that

the stamp paper has date of issuance as 18.01.2018, whereas the Transport

Manpower Services Agreement so relied, show execution of this

agreement on dated 01.07.2017 valid up to 30.09.2017, which includes

the date of accident i.e. 31.07.2017. It is a matter of common sense that if

a stamp paper is issued on a particular date, use of the same could be done

either on the same day or any date thereafter but certainly it cannot be

used ante-dated. Hence, this document being fake, cannot come to the

rescue of the respondent No.2. Otherwise also, respondent No.2 in its

written statement no where had taken the plea that it had verified the

driving licence of the driver-respondent No.1 or had tested the driving

skill of the driver-respondent No.1 at the time of engagement or that had

verified the genuinity of the driving licence in question, thus, any

evidence led thereafter is beyond pleadings. In the given circumstances,

respondent No.2 cannot claim that it was diligent at the time of engaging

the services of respondent No.1 as driver. Not only this, RW-1 Vargheese

Thankachan by admitting that he had not taken the driving test of the

driver or that no verification report of the driving licence was obtained by

respondent No.2, respondent No.2 is left with no option but to face the

consequences of its driver driving the vehicle in question at the relevant

time with fake driving licence. The benefit of the law laid down in

National Insurance Co. Ltd. Vs. Ashwani Kumari and others:

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2020(4) RCR (Civil) 206 (J&K) relied for respondent No.2, is not

available as here in the case in hand, respondent No.2 is not proved to be

diligent but is proved not to have exercised reasonable care in the matter

of fulfilling conditions of policy. In fact, by using a forged document

Ex.RW1/2, respondent No.2 has tried to mislead the Tribunal, hence, do

not deserve any relief as he expects.

30. Now, it remains to be seen what is the impact of fake driving

licence of respondent No.1,j on the liability to pay compensation?

The respondent No.1 and 2 have not been able to rebut the

claim of respondent No.3 that driving licence of respondent No.1 was

fake on the day of accident. If this be so, it is safe to conclude that driver-

respondent no.1 was not possessing a valid driving licence at the time of

accident. In the given circumstances, it is held by Hon'ble apex court in

United India Insurance Co. Ltd Vs. Sujata Arora's case (supra) and

Oriental Insurance Company Ltd. vs. Prithvi Raj's case (supra), that

where driver is not holding a valid and effective driving licence, it is not

for the insurance company to prove breach of conditions of the contract of

insurance and neither liability to pay compensation could be fastened on

the insurer.

Ex.R5 i.e. insurance policy shows that the offending vehicle

was insured with the respondent No.3 on the date of accident i.e. on dated

30.07.2017.

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With above discussed facts, in nut shell, it could be said that

respondent No.1 was holding a fake licence on the date of accident. Thus,

in view of the law laid down in National Insurance Co. Ltd. Vs.

Swaran Singh, 2004(2) RCR (Civil), 114, it is held that the insurance

company-respondent No.3, though not liable to pay the amount of

compensation, shall satisfy the award and shall have the right to recover

the amount deposited by it along with interest from the driver and owner

of the vehicle jointly and severally. For the purpose of recovering the

amount paid from the driver and owner, the insurer shall not be required

to file a suit and would be entitled to recover the same by initiating

proceedings before the executing court.

It is further held that the insurance company-respondent

No.3, though not liable to pay the amount of compensation, shall satisfy

the award and shall have the right to recover the amount deposited by it

along with interest from the driver and owner of the vehicle. For the

purpose of recovering the amount paid from the driver and owner, the

insurer shall not be required to file a suit and would be entitled to recover

the same by initiating proceedings before the executing Tribunal.

Hence, issue Nos.1 and 2 are decided in favour of the

claimants and issue Nos.3 and 4 are also decided in favour of the

respondent No.3 accordingly.

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(RELIEF):

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31. Keeping in view of my findings on aforesaid issues, both the

claim petitions are partly allowed with costs. An amount of ₹10,600/- is

hereby awarded in favour of claimant Smt. Summi Bai and an amount of

₹14,700/- and is hereby awarded in favour of claimant Mohan Balmeek.

The claimants shall also be entitled to interest @ 9% per annum on the

said awarded amount from the date of filing of the petition till actual

realization.

The insurance company-respondent No.3 though not liable to

pay the amount of compensation, shall satisfy the award and shall have

the right to recover the amount deposited by it along with interest from

the driver and owner of the vehicle. It is also clarified here that the

insurance company-respondent No.3 will not be required to file a separate

petition for securing a right of recovery of the amount from the

respondents No. 1 and 2-driver and owner of offending vehicle as the

recovery rights provided by the Award shall be enforced in execution after

satisfying the claim of the claimants.

The said compensation amount would be paid to the

claimants in cash being trivial in nature.

32. Before, parting with this award, this Tribunal having in mind

the guidelines laid down by Hon'ble apex Court at para 20 of its judgment

titled as Jai Parkash Vs. National Insurance Co. Ltd. & others, SLP

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(Civil) No.11801-11804 of 2005, decided on dated 17.12.2009,

remind duty fastened by Hon'ble apex court upon the Insurance Company

to lodge a complaint with concerned police for prosecution as the driver

of the insured vehicle possessed fake/forged driving licence.

33. In order to facilitate the easy release of the amount to the

claimants, the claimants are directed to supply their Bank Account

numbers to respondent No. 3 or the learned counsel for respondent No. 3,

within a period of 30 days from today and the amount of compensation

will be deposited by respondent No. 3 in the Bank Accounts of the

claimants and the intimation of the same will be furnished to the

claimants. If the claimants fail to supply their Bank Account numbers to

the counsel for respondent No. 3 or respondent No. 3, within a period of

30 days from today, the claimants will not be entitled to future interest

i.e. from the expiry of the period of 30 days from the date of Award till the

supply of the Bank Account numbers. Respondent No. 3 would deposit

the amount of compensation in the accounts of the claimants latest within

two months from the date of receipt of Bank Account numbers of the

claimants failing which respondent No. 3 would be liable to pay interest

on the amount of compensation at the rate of 10% per annum with yearly

rests from the date of Award till realisation.

Counsel's fee is to be assessed at ₹5,000/- each. The

claimants are directed to furnish the particulars of their bank accounts at

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the time of disbursement of the awarded amount or at the time of filing of petition seeking execution of the award, as the case may be.

A copy of this Award duly attested by Reader, be placed on the Claim Petition titled "Mohan Balmeek Vs. Mehas Kumar and others" bearing CIS No.MACP-67-2018.

Memo of costs of both Claim Petitions be prepared accordingly. File be consigned to the record room after due compliance.

Pronounced in open Tribunal.

Dated: 09.12.2021

Rakesh SG-I

(Phalit Sharma) Presiding Officer, Motor Accidents Claims Tribunal, Gurugram. (UID No.HR0105)

Certified that this Award contains **Thirty two (32)** pages and each page has been checked and signed by me.

Dated: 09.12.2021

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