

Kiara (Victim) D/O Vikram vs Yogender S/O Lt Sh. Gaje Singh on 24 December, 2024

IN THE MOTOR ACCIDENT CLAIMS TRIBUNAL,
NORTH WEST, ROHINI COURTS, DELHI
PRESIDED BY SH. SHIVAJI ANAND,

FIR No. 170/2023, PS Sultanpuri In the matter of :

1. Kiara D/o Vikram R/o Jhuggi No.A-5/53, Mangal Bazar, Sultanpuri, Delhi.

.....Petitioner Vs.

1. Yogender S/o Late Sh. Gaje Singh R/o H.No.C-7/37, Sultanpuri, Delhi.

....Driver/respondent no.1

2. Himanshu S/o Sh. Suresh R/o H.No.C-7/37, Sultanpuri, Delhi.

...Owner/respondent no.2

3. IFFCO Tokio General Insurance Company Ltd. 6th Floor, Ansals Imperial TWR, C- Block, Community Centre, Naraina Vihar, New Delhi.

...Insurer/respondent no.3

Date of filing of DAR	:	24.05.2023
Date of final Arguments	:	28.09.2024
Date of Decision	:	24.12.2024

Appearance (s) : Sh. Pranav Sharma, Ld. LAC for petitioner.

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JUDGMENT/AWARD

1. Vide this judgment/award, I shall dispose off the DAR of Motor Vehicle Act (in short "MV Act") filed by IO SI Rohit, PS Sultanpuri, Delhi pertaining to the injuries sustained by Bay Kiara (in short, the injured) in road accident. The mother of petitioner had got recorded the present DAR as petition u/s 164 M V Act during the course of proceedings.

FACTUAL POSITION AND PLEADINGS

2. The brief facts relevant for disposal of the present DAR are that on 09.02.2023 at about 1:00 am in front of Jhuggi No.A-5/53, Mangal Bazar, Sultanpuri, Delhi, the petitioner met with an accident with the vehicle bearing registration no.DL-4SBS-376 (in short, "the offending vehicle") being driven by its driver in rash and negligent manner. As a result, the petitioner sustained grievous injuries.

3. The petitioner was admitted to Sanjay Gandhi Memorial Hospital, Delhi where her MLC bearing no.2565 was prepared by the doctors.

4. An FIR No.170/2023, PS Sultanpuri was registered in this case.

5. Reply/written statement was filed on behalf of respondents.

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6. From the pleadings of the parties, following issues were framed for consideration on 27.07.2023:-

1. Whether petitioner Baby Kiara D/o Sh. Vikram suffered injuries in road traffic accident on 09.02.2023 at about 01:00 PM, in front of Jhuggi No.A-5/53, Mangal Bazar, Sultanpuri, Delhi due to rash and negligent driving of offending vehicle bearing registration no. DL-4SBS-376 which was being driven by driver Yogender S/o Late Sh. Gaje Singh on the said date, time and place? OPP

2. Whether the petitioner/injured is entitled for compensation, if so, to what amount and from whom? OPP.

3. Relief.

EVIDENCE

7. Thereafter, matter was listed for recording of evidence before Local Commissioner. No evidence was led by any parties and matter was listed for final arguments.

RELEVANT LAW: ARGUMENTS AND FINDINGS.

8. I have heard ld. Counsel for the petitioner and respondents, the pleadings and the documents.

Issue No.1

1. Whether petitioner Baby Kiara D/o Sh. Vikram suffered injuries in road traffic accident on 09.02.2023 at about 01:00 PM, in front of Jhuggi No.A-5/53, Mangal Bazar, Sultanpuri, Delhi due to rash and negligent driving of offending vehicle bearing registration no. DL-4SBS-376 which was being driven by driver Yogender S/o Late Sh. Gaje Singh on the said date, time and place? OPP

9. It is well settled that the procedure followed for MACT Case No. 470/23 (FIR No. 170/2023) Baby Kiara Vs. Yoginder & Ors.

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proceedings conducted by an accident tribunal is similar to that followed by a civil court and in civil matters the facts are required to be established by preponderance of probabilities only and not by strict rules of evidence or beyond reasonable doubts as are required in a criminal prosecution. The burden of proof in a civil case is never as heavy as that is required in a criminal case, but in a claim petition under the Motor Vehicles Act, this burden is infact even lesser than that in a civil case. Reference in this regard can be made to the propositions of law laid down by the Hon'ble Supreme Court in the case of Bimla Devi and others Vs. Himachal Road Transport Corporation and others, reported in (2009) 13 SC 530, which were reiterated in the subsequent judgment in the case of Parmeshwari Vs. Amir Chand and others 2011 (1) SCR 1096 (Civil Appeal No.1082 of 2011) and also recently in another case Mangla Ram Vs. Oriental Insurance Co. Ltd. & Ors., 2018 Law Suit (SC) 303.

10. The Hon'ble Supreme Court of India in its full bench decision in matter "United India Insurance Company Limited Vs. Shila Datta & Ors." (2011) 10 SCC 509 has made following observations about inquiry contemplated under MV Act:-

"5. A claim petition for compensation in regard to a motor accident (filed by the injured or in case of death, by the dependant family members) before the Motor Accident Claims Tribunal constituted under section 165 of the Act is neither a suit nor an adversarial lis in the traditional sense. It is a proceedings in terms of and

regulated by the provisions of Chapter XII of the Act which is a complete Code in itself. We may in this context refer to the following MACT Case No. 470/23 (FIR No. 170/2023) Baby Kiara Vs. Yoginder & Ors.

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significant aspects in regard to the Tribunals and determination of compensation by Tribunals:

(i) A proceedings for award of compensation in regard to a motor accident before the Tribunal can be initiated either on an application for compensation made by the persons aggrieved (claimants) under section 166(1) or section 163A of the Act or suo moto by the Tribunal, by treating any report of accident (forwarded to the tribunal under section 158(6) of the Act as an application for compensation under section 166 (4) of the Act.(iii) In a proceedings initiated suo moto by the tribunal, the owner and driver are the respondents. The insurer is not a respondent, but a noticee under section 149(2) of the Act. Where a claim petition is filed by the injured or by the legal representatives of a person dying in a motor accident, the driver and owner have to be impleaded as respondents. The claimants need not implead the insurer as a party. But they have the choice of impleading the insurer also as a party respondent. When it is not impleaded as a party, the Tribunal is required to issue a notice under section 149(2) of the Act. If the insurer is impleaded as a party, it is issued as a regular notice of the proceedings.

Though the tribunal adjudicates on a claim and determines the compensation, it does not do so as in an adversarial litigation. On receipt of an application (either from the applicant or suo motu registration), the Tribunal gives notice to the insurer under section 149(2) of the Act, gives an opportunity of being heard to the parties to the claim petition as also the insurer, holds an inquiry into the claim and makes an award determining the amount of compensation which appears to it to be just.

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(Vide Section 168 of the Act).

The Tribunal is required to follow such summary procedure as it thinks fit. It may choose one or more persons possessing special knowledge of and matters relevant to inquiry, to assist it in holding the enquiry (vide section 169 of the Act).

We have referred to the aforesaid provisions to show that an award by the tribunal cannot be seen as an adversarial adjudication between the litigating parties to a dispute, but a statutory determination of compensation on the occurrence of an accident, after due enquiry, in accordance with the statute."

11. The Hon'ble Supreme Court of India in matter of "Dulcina Fernandes & ors. Vs. Joaquim Xavier Cruz & Anr." (2013) 10 SCC 646 while relying upon the above full bench decision has held/observed as under:-

"8. However, there are certain other features of the case which are more fundamental and, therefore, have to be specifically noticed. CW-2, who was at the relevant time working as the Head Constable of Main Eurtorim, Police Station, had deposed that a criminal case was registered against the first respondent in connection with the accident and that after investigation he was chargesheeted and sent up for trial. Though it is submitted at the Bar that the first respondent was acquitted in the said case what cannot be overlooked is the fact that upon investigation of the case registered against the first respondent, prime facie, materials showing negligence were found to put him on trial.. "

12. The Hon'ble High Court of Delhi in matter "National MACT Case No. 470/23 (FIR No. 170/2023) Baby Kiara Vs. Yoginder & Ors.

Page no. 6 of 10 SHIVAJI by SHIVAJI ANAND Insurance Company Ltd. Vs. Smt. Pushpa Rana & ors." 2009 ACJ 287 has held/observed as under:-

"11. The last contention of the appellant insurance company is that the respondents claimants should have proved negligence on the part of the driver and in this regard the counsel has placed reliance on the Judgment of the Hon'ble Supreme Court in Oriental Insurance Co. Ltd. v. Meena Variyal. On perusal of the award of the Tribunal, it becomes clear that the wife of the deceased had produced (i) certified copy of the criminal record of criminal case in FIR NO. 955/2004, pertaining to involvement of the offending vehicle, (ii) criminal record showing completion of investigation of police and issue of charge sheet under Section 279/304-A, IPC against the driver; (iii) certified copy of FIR, wherein criminal case against the driver was lodged; and (iv) recovery memo and mechanical inspection report of offending vehicle and vehicle of the deceased. These documents 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.

Hence, this contention of the counsel for the appellant also falls face down. There is ample evidence on record to prove negligence on the part of the driver."Section 164 in The Motor Vehicles Act, 1988

164. Payment of compensation in case of death or grieved hurt, etc. - (1)
Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument MACT Case No. 470/23 (FIR No. 170/2023) Baby Kiara Vs. Yoginder & Ors.

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having the force of law, the owner of the motor vehicle or the authorised insurer shall be liable to pay in the case of death or grievous hurt due to any accident arising out of the use of motor vehicle, a compensation, of a sum of five lakh rupees in case of death or of two and a half lakh rupees in case of grievous hurt to the legal heirs or the victim, as the case may be.

(2)In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or grievous hurt in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or of the vehicle concerned or of any other person.

(3)Where, in respect of death or grievous hurt due to an accident arising out of the use of motor vehicle, compensation has been paid under any other law for the time being in force, such amount of compensation shall be reduced from the amount of compensation payable under this section.

13. The respondent has not led any evidence to rebut the DAR placed by IO. On dt. 07.08.2024, the petitioner had given statement for converting the present DAR to be treated u/s 164 M V Act. There is no objection till date on behalf of respondents regarding conversion of DAR into petition u/s 164 M V Act. In petition u/s 164 M V Act, there is no need to prove negligence. Therefore, the petitioner has become entitled to be compensated for injuries caused MACT Case No. 470/23 (FIR No. 170/2023) Baby Kiara Vs. Yoginder & Ors.

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2024.12.24 to him, but computation of compensation and liability to pay the same are required to be decided.

14. Hence, the petitioners are awarded total compensation of Rs. 2,50,000/- (Rupees Two Lacs Fifty Thousand only) as per Section 164 of M V Act.

LIAIBILITY:

15. Respondent no. 1 & 2 being the driver and owner of the offending vehicle are liable to pay the compensation to the petitioner. Since the vehicle was insured, therefore, respondent no. 3 is liable to pay the compensation to the petitioner. The parties are directed to download the digital signed copy of judgment online.

ISSUE No.3/ RELIEF:

16. Thus, in view of the aforesaid discussion, this tribunal awards compensation of Rs. 2,50,000/- (Rupees Two Lacs Fifty Thousand only) to the petitioner and against the respondents.

RELEASE

17. The entire amount alongwith interest be released to petitioner in his saving bank account. Concerned Manager, SBI, Rohini Court Branch is directed to transfer the disbursed amount immediately to the petitioner in his saving bank accounts, on completing necessary formalities as per rules.

18. A separate file be prepared for compliance report by the MACT Case No. 470/23 (FIR No. 170/2023) Baby Kiara Vs. Yoginder & Ors.

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Nazir and put up the same on 24.01.2025.

File be consigned to record room after due compliance.

ANNOUNCED IN THE OPEN COURT
ON 24th DECEMBER 2024

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