

Sh. Ram Avtar (Injured) vs Shivam (Driver Of The Offending ... on 2 March, 2022

IN THE COURT OF Dr. KAMINI LAU : JUDGE (MACT)-01
(CENTRAL) TIS HAZARI COURTS, DELHI

MACT No. 656/2019
CNR No. DLCT01-012026-2019

Sh. Ram Avtar (Injured)
S/o Sh. Jawala Prasad,
R/o A-1/301, Street No.9,
Harsh Vihar, Mandoli,
Delhi-110094.

..... Petitioner

Versus

1. Shivam (Driver of the offending vehicle)
S/o Sh. Shankar,
R/o H. No. 76, SLF, Ved Vihar, Loni,
Distt. Ghaziabad, Uttar Pradesh.
2. Shankar (Owner of the offending vehicle)
S/o Sh. Hari Singh,
R/o H. No. 76, SLF,
Ved Vihar, Loni, Distt. Ghaziabad,
Uttar Pradesh.
3. ICICI Lombard General Insurance Co. Ltd. (Insurer)
315, 3rd Floor, Agarwal City Mall,
Pitampura, New Delhi.

.....Respondents

Date of filing of DAR:	04.09.2019
Arguments concluded on:	21.02.2022
Date of passing of Award:	02.03.2022

Ram Avtar Vs. Shivam & Ors. MACT No. 656/2019, Award dated 02.03.2022

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A W A R D:

(1) The present Detail Accident Report (DAR) has been filed on 04.09.2019 and has been registered as Motor Accident Claim Petition in respect of an accident which took place on 02.02.2019 at 7:35 AM in front of G.B. Pant Hospital between JLN Marg & MCD Parking, Delhi wherein the petitioner Ram Avtar sustained Grievous injuries.

BRIEF FACTS:

(2) Facts in brief as emerged from the DAR are that on 02.02.2019, the petitioner Ram Avtar was going to G.B Pant Hospital for his treatment from his house and when he was crossing the road at about 7:30 AM from MCD Parking JLN Road towards Gate No.7 of the G.B. Pant Hospital, then suddenly the offending motorcycle bearing registration No. DL-5S-CA-4634 which was being driven by its driver with two other pillion riders, at a fast speed, rashly and negligently, in a zig-zag manner, in complete contravention of traffic rules and regulations, without carrying for the other traffic on the road, and in the process hit the petitioner Ram Avtar. As a result of the impact, the petitioner fell down on the road and sustained multiple grievous injuries on his body including severe head injury. After the accident, the injured became unconscious and he was taken to Lok Nayak Hospital, Delhi where his MLC was prepared. Thereafter, the injured was shifted to Max Super Specialty Hospital, Patparganj, Delhi where he was treated till 10.02.2019. During treatment, the doctor diagnosed head injury and Ram Avtar Vs. Shivam & Ors. MACT No. 656/2019, Award dated 02.03.2022 Page No. 2 of 29 fracture in right leg of the petitioner.

(3) The respondent no.1 Shivam and the respondent no.2 Shankar have not filed their written statement/ reply despite grant of sufficient opportunity. Therefore, their right to file written statement / reply was closed by the Ld. Predecessor of this Tribunal vide order dated 10.10.2019.

(4) A detailed reply has been filed on behalf of the respondent no.3 ICICI Lombard General Insurance Company wherein the Insurance Company has conceded that the offending vehicle i.e. motorcycle No. DL-5SCA-4634 was insured in the name of respondent no.2 Shankar vide policy No. 3005/42584574/11315/000 issued for the period 04.01.2018 to 03.11.2023. It is pleaded that the liability of the respondent no.3 Insurance Company is subject to the compliance of the terms and conditions of the Insurance Company as well as the provisions of the Motor Vehicles Act by the respondent no.2 insured. It is further pleaded that during police investigations, it has been revealed that the respondent no.1 Shivam was not holding a valid and effective driving license authorizing him to drive the insured vehicle and according, he was also challaned by the police under Section 3/181 of M.V. Act as he was driving the motorcycle alongwith two other persons i.e. his mother Smt. Anuradha and his brother Sh. Sunder. It is also pleaded that the respondent no.2 owner of the vehicle in question has violated the terms and conditions of the Insurance policy issued by the respondent no.3 by allowing the respondent no.1, who is his son, to drive the insured vehicle without holding a valid and effective driving Ram Avtar Vs. Shivam & Ors. MACT No. 656/2019, Award dated 02.03.2022 Page No. 3 of 29 license. It is further pleaded that as per the terms and conditions of the Insurance policy issued by the respondent no.3, a person holding a valid and effective driving license was only authorized to drive the insured vehicle and in view of the violation of the terms and conditions of the insurance policy by the owner/insured/ the respondent no.2, the respondent no.3 Insurance Company has no liability to pay any amount of compensation to the claimant or to indemnify the owner/ insured of the vehicle.

ISSUES:

(5) On the basis of the pleading of the parties, vide order dated 10.10.2019 passed by the Ld. Predecessor of this Tribunal, the following issues were settled which issues are as under:□

1. Whether the petitioner had suffered grievous injuries in the road traffic accident which took place on 02.02.2019 within the jurisdiction of P.S. Darya Ganj, Delhi due to rash and negligent driving of the vehicle bearing registration No. DL5SCA□4634 by the respondent no.1?
2. Whether the petitioner is entitled to any compensation, if so, to what amount and from whom?
3. Relief.

EVIDENCE:

(6) In order to prove his case the petitioner Ram Avtar has examined himself as PW1 and Sh. Akash Singh, Medical Record Ram Avtar Vs. Shivam & Ors. MACT No. 656/2019, Award dated 02.03.2022 Page No. 4 of 29 Technician, Max Hospital, Patparganj, Delhi which is PW2 whereas the respondent no.3 Insurance Company has examined Sh. Gautam Bhatnagar as R3W1. For the sake of convenience, the testimonies of the witnesses examined by the parties are put in a tabulated form as under:

S. No.	Witness	Deposition
Petitioner / Injured		
1.	Sh. Ram Avtar (PW1)	PW1 Sh. Ram Avtar is the injured in the present case who in his examination-in-chief by way of affidavit which

is Ex.PW1/A has corroborated the version of the Investigating Officer in the DAR and placed his reliance on the following documents:

1. Photocopy of Aadhar Card which is Ex.PW1/1 (OSR).
2. Medical documents which are Ex.PW1/2 (running into 32 pages).

In his cross examination by the Ld. Counsel for the respondent no.3, the witness has deposed as under:□ That there was no zebra crossing on the road from where he was crossing the road and there was a traffic signal at the place from where he was crossing.

That he had seen the offending vehicle prior to the accident when it was a distance of 30□40 feet from him.

That there was no heavy traffic on the road.

That he had already crossed more than half of the road at the time when he was hit by the offending vehicle.

That the witness has denied the suggestion that the accident had taken place due to his negligence while crossing the road.

That immediately after the accident, he fell down and become unconscious.

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That he regained his consciousness after one week in the hospital.

That he was removed from the hospital by his relative.

That police official met him at his home when he was discharged from the hospital.

That his signature was obtained by the police official on the statement given by him.

That he is 8th class passed but he does not have any documents in this regard.

That he also does not have any document to show that he was earning Rs.15,000/□per month while working as labourer.

That he is also not having any document to show the amount spent by him towards special diet, conveyance and the attendant charges.

That the witnesses has denied the suggestion that his niece did not render her service as an attendant after the accident.

That he has not been reimbursed any amount incurred by him towards his medical expenses. That the witness has denied the suggestion that he has not spent Rs.3,50,000/□on his medicine and treatment etc. That the witness has denied the suggestion that he has filed false documents alongwith his affidavit in evidence.

2. Sh. Akash Singh PW2 Sh. Akash Singh is the Medical Record (PW2) Technician, Max Hospital, Patparganj, Delhi who in his examination□in□chief has deposed on the following aspects:□

1. That he is working as Medical Record Technician in Max Hospital, Patparganj, Delhi.

2. That he has brought the summoned record i.e. Medical Record which are the discharge summary and medical bills with regard to the patient Ram Avtar Sharma and the same are already Ex.PW1/2 (Colly).

3. That a total sum of Rs.2,51,995/□was charged by the hospital towards the payment made by Sh.

Ram Avtar Sharma.

Ram Avtar Vs. Shivam & Ors. MACT No. 656/2019, Award dated 02.03.2022 Page No. 6 of 29 In his cross examination by the Ld. Counsels for the respondents no.1 & 2 and respondent no.3, the witness has deposed on the following aspects:□ That a payment receipt is issued by the hospital in lieu of the payment made by the patient.

That the entire bill amount as mentioned above has been made by the patient Ram Avtar.

That he has no personal knowledge about the case.

Respondent's Evidence

3. Sh. Gautam R3W1 Sh. Gautam Bhatnagar is the Manager Legal, Bhatnagar ICICI Lombard General Insurance Co. Ltd. who in his (R3W1) examination□in□chief by way of affidavit Ex.R3W1/A has deposed on the following aspects:

1. That the offending vehicle bearing No. DL□5SCA□4634 was insured with the respondent no.3 vide policy, copy of which is Ex.R3W1/1 (Colly, running into 11 pages).
2. That vide notice dated 15.05.2020 under Order 12 Rule 8 CPC was sent by sent to the respondent no.2 Shankar the owner of the offending vehicle, to produce the original insurance policy qua the vehicle in question and copy of the driving license possessed by the respondent no.1 driver, copy of which notice is Ex.R3W1/2 and its postal receipts are Ex.R3W1/3 & Ex.R3W1/4.
3. That the respondent no.2 has not responded to the said notice nor produced the copy of the driving license of the respondent no.1.

This witness has not been cross examined by the Ld. Counsel for the petitioner despite opportunity in this regard.

FINDINGS & OBSERVATIONS:

(7) I have heard the arguments advanced before me by the Ld. Counsels for the petitioner and the respondent no.3. I have also gone through the written memorandum of arguments filed by the parties and Ram Avtar Vs. Shivam & Ors. MACT No. 656/2019, Award dated 02.03.2022 Page No. 7 of 29 also given my thoughtful consideration to their contentions. My findings on the various issues are under:

Issue no.1: Whether the petitioner had suffered grievous injuries in the road traffic accident which took place on 02.02.2019 within the jurisdiction of P.S. Darya Ganj, Delhi due to rash and negligent driving of the vehicle bearing registration No. DL5SCA□4634 by the respondent no.1?

(8) The case of the petitioner Ram Avtar is that on 02.02.2019, the petitioner Ram Avtar was going to G.B Pant Hospital for his treatment from his house and when he was crossing the road at about 7:30 AM from MCD Parking JLN Road towards Gate No.7 of the G.B. Pant Hospital, suddenly the offending motorcycle bearing registration No. DL-5SCA-4634 which was being driven by its driver with two other pillion riders, at a fast speed, rashly and negligently, in a zig-zag manner, in complete contravention of traffic rules and regulations, without carrying for the other traffic on the road, hit the petitioner Ram Avtar. As a result of the impact, the petitioner fell down on the road and sustained multiple grievous injuries on his body including severe head injury. After the accident, the injured became unconscious and he was taken to Lok Nayak Hospital, Delhi where his MLC was prepared. Thereafter, the injured was shifted to Max Super Specialty Hospital, Patparganj, Delhi where he was treated till 10.02.2019. During treatment, the doctor diagnosed head injury and fracture in right leg of the petitioner which injuries were opined to be grievous in nature.

Ram Avtar Vs. Shivam & Ors. MACT No. 656/2019, Award dated 02.03.2022 Page No. 8 of 29 (9) In so far as the respondents no.1 and 2 are concerned, they have not filed any reply/ written statement.

(10) I have considered the arguments advanced before me and perused the record including the DAR and the documents attached along with the same. I have also gone through the testimonies of the various witnesses examined by the petitioners.

Identity of the respondent no.1 as Driver of the offending vehicle:

(11) Coming first to the identity of the respondent no.1 Shivam as the Driver of the offending vehicle i.e. Motorcycle bearing No. DL-5SCA-4634, I may note that the statement of respondent no.1 Shivam was recorded under Section 165 of Evidence Act by the Ld. Predecessor of this Tribunal on 10.10.2019, wherein he has admitted that his bike was involved in the accident causing injuries to one person whose name he came to know as Ram Avtar. According to the respondent no.1, the accident was not caused due to any negligence on his part. He further stated that the petitioner had suddenly appeared while crossing the road and the accident occurred due to his own fault.

The respondent no.1 has admitted that he had no driving license. This being the background, I hold that the identity of the respondent no.1 Shivam as driver of the offending vehicle i.e. Motorcycle bearing No. DL-5SCA-4634 stands established.

Rashness and Negligence attributed to the respondent no.1:

(12) Now coming to the aspect of rashness and negligence so Ram Avtar Vs. Shivam & Ors. MACT No. 656/2019, Award dated 02.03.2022 Page No. 9 of 29 attributed to the respondent no.1 Shivam. According to the petitioner, the accident in question had taken place on account of the negligence of the respondent no.1 Shivam who was driving his motorcycle in a rash and negligent manner with two pillion at a high speed in a zig-zag manner. In this regard, the petitioner Ram Avtar has examined himself as PW1.

(13) In so far as the respondent no.1 Shivam is concerned, he claimed that the accident in question had taken place on account of negligence of the petitioner himself who suddenly appeared in front of his motorcycle while crossing the road.

(14) I have considered the arguments advanced before me. I may observe that the present FIR has been registered on the basis of DD No. 10/A recorded at Police Station Darya Ganj on 02.02.2019 at 8:36 AM regarding admission of an Unknown person admitted at LNJP Hospital as well as the admission of Smt. Anuradha, Sunder and Shivam at LNJP Hospital who had sustained injuries in a road traffic accident. Smt. Anuradha who is the mother of the respondent no.1 Shivam had informed the Investigating Officer that she had got the unknown injured admitted in the hospital and the accident was caused by their motorcycle which was being driven by her son Shivam. A perusal of the chargesheet filed by the Investigating Officer reveals that the offending vehicle i.e. motorcycle bearing No. DL-5SCA-4634 was found parked outside the Emergency Gate of LNJP Hospital which was seized by the Investigating Officer.

Ram Avtar Vs. Shivam & Ors. MACT No. 656/2019, Award dated 02.03.2022 Page No. 10 of 29 (15) The copy of Mechanical Inspection Report of the offending vehicle i.e. motorcycle bearing No. DL-5SCA-4634 which forms a part of the DAR, shows that the head light visor was damaged and front mudguard was scratched. Further, the site plan of the spot of accident shows that the accident in question has taken place in the middle of the road. It has come on record that three persons were riding the offending vehicle and it was the respondent no.1 Shivam who was driving the said motorcycle whereas his mother Smt. Anuradha and younger brother Sunder were the pillion riders and all of them have also sustained minor injuries. It is further evident from the record that the respondent no.1 Shivam was not having any valid and effective Driving License at the time of accident for which provisions of Section 3/181 of Motor Vehicles Act were invoked against the respondent no.1 Shivam and provisions of Sections 5/180 of Motor Vehicles Act were invoked against the respondent no.2 Shankar the owner of the offending vehicle.

The mere fact that the respondent no.1 Shivam was driving the offending vehicle without any driving license, shows that he was not aware of the traffic rules and regulations and there is a presumption against him.

(16) Here, I may note that a specific stand has been taken by the respondent no.1 Shivam in his statement under Section 165 of Evidence Act that the accident had occurred due to negligence of the injured himself who suddenly came in front of his motorcycle. In this regard, I may observe that the petitioner Ram Avtar has categorically admitted in his cross-examination that there was no zebra crossing on the road from Ram Avtar Vs. Shivam & Ors. MACT No. 656/2019, Award dated 02.03.2022 Page No. 11 of 29 where he was crossing the road. I may also note that the site plan of the place of incident confirm that there was no zebra crossing at the road at the site of the accident. The injured had failed to take reasonable care of his own safety and hence, there was some extent of

failure on the part of the injured to observe the rules for his own good and he was guilty of Contributory Negligence to that extent. However, merely because the petitioner himself was guilty of contributory negligence, would not exonerate the respondent no.1 of his corresponding duty of being more careful.

(17) It is a settled law that a claim before the Motor Accident Claims Tribunal is neither a criminal case nor a civil case. In a criminal case in order to have conviction, the matter is to be proved beyond reasonable doubt and in a civil case the matter is to be decided on the basis of preponderance of evidence but in a claim before the Motor Accidents Claims Tribunal, the standard proof is much below than what is required in a criminal case as well as in a civil case. No doubt before the Tribunal there must be some material on the basis of which the Tribunal can arrive or decide things necessary to be decided for awarding compensation. In a criminal case the rashness and negligence against the accused has to be proved beyond reasonable doubt whereas in a civil case or MACT claim for grant of compensation the principle involved is preponderance of probability. It would be sufficient if the surrounding circumstances and the material on record establishes the allegations of rashness and negligence made against the driver of the offending vehicle.

Ram Avtar Vs. Shivam & Ors. MACT No. 656/2019, Award dated 02.03.2022 Page No. 12 of 29 (18) By application of the above principles, I hereby hold that the respondent no.1 Shivam was negligent in driving the offending vehicle i.e. Motorcycle bearing No. DL-5S-CA-4634 and the injured Ram Avtar was himself guilty of Contributory Negligence. The interest of justice requires that 15% (Fifteen Percent) be deducted from the entire compensation amount on account of the contributory negligence on the part of the injured.

Injuries caused to the injured:

(19) In so far as the aspect of Injuries caused to the injured Ram Avtar is concerned, I have gone through the photocopy of the MLC of the injured prepared at Lok Nayak Hospital, New Delhi which shows that the injured was brought to the hospital on 02.02.2019 at 7:49 AM with alleged history of Road Traffic Accident near Gate No.5, G.B. Pant Hospital at 7:35 AM. The injured was medically examined as an 'Unknown' and on local examination there were following injuries:

1. Lacerated wound positive left parietal region.
2. Mouth bleeding was positive.
3. Abrasion in right little finger of foot.

(20) The injured Ram Avtar was thereafter removed to Max Super Specialty Hospital, Patparganj, Delhi by his relatives where he remained admitted till 10.02.2019. The original medical documents of Max Super Specialty Hospital have been placed on record which are Ex.PW1/2 (running into 32 pages) which show that the injured was diagnosed Ram Avtar Vs. Shivam & Ors. MACT No. 656/2019, Award dated 02.03.2022 Page No. 13 of 29 B/L Temporal Haemorrhage contusion, Right

frontal hemorrhagic contusion with right temporoparietal SDH (subdural hematoma) and fracture of 5th metatarsal right foot. As per the MLC of the injured, the said injuries were opined to be Grievous in nature. (21) This being the background and coupled with the fact that the respondent no.1 Shivam has been made an accused in FIR No. 32/2019, PS Darya Ganj under Sections 279/338 IPC, wherein he has been arrested, I hereby hold that the petitioner Ram Avtar had suffered grievous injured in a road traffic accident which took place on 02.02.2019 within the jurisdiction of Police Station Darya Ganj, Delhi due to rash and negligent driving of the vehicle bearing registration No. DL5S4634 by the respondent no.1 Shivam.

(22) Issue is accordingly disposed off.

Issue No.2: Whether the petitioner is entitled to any compensation, if so, to what amount and from whom?

(23) The case of the petitioner is that he had spent Rs.3,50,000/-

towards his medicines, treatment etc. out of which he is having the bills of amount of Rs.2,51,994/- which he had filed on record. According to the petitioner, he had spent Rs.50,000/- towards special diet and Rs.30,000/- towards conveyance. It is the case of the petitioner that during the period of his confinement to bed, his niece (sister's daughter) had taken extra care of him as an attendant apart from doing the other household work like cooking food, washing clothes etc. therefore, the Ram Avtar Vs. Shivam & Ors. MACT No. 656/2019, Award dated 02.03.2022 Page No. 14 of 29 injured is claiming the attendant charges of Rs.50,000/- According to the petitioner, at the time of the accident the injured was working as a labourer on daily wages and was earning Rs.15,000/- per month but due to the accident, he could not continue his job and suffered financial losses to the tune of Rs.1,50,000/-

(24) In so far as the respondent no.3 Insurance Company is concerned, they have not offered any amount on the ground that there is a violation of terms and conditions of the Insurance Policy since the respondent no.1 Shivam was not having any driving license at the time of accident.

(25) I have considered the arguments advanced before me and the evidence on record. Coming first to the medical expenses incurred by the petitioner, I may observe that the petitioner has placed on record the original medical documents/ bills which are Ex.PW1/2 (running into 32 pages) details of which are as under:

Sr. Details of Bill Date Exhibit No. Amount in Rs. No. 1 Bill Summary of Max Super 10.02.2019 Ex.PW1/2 2,51,995/- Specialty Hospital 2 Medicine bill of Max Super 19.03.2019 Ex.PW1/2 800 Specialty Hospital 3 Medicine bill of Max Super 19.03.2019 Ex.PW1/2 50 Specialty Hospital TOTAL 2,52,845/-(26) Ld. Counsel for the respondent no.3 Insurance Company submits that though the petitioner has placed on record the original Ram Avtar Vs. Shivam & Ors. MACT No. 656/2019, Award dated 02.03.2022 Page No. 15 of 29 medical bill to the tune of Rs.2,51,995/- but he has not placed on record the original receipts showing the payment of the said

amount. In this regard, I may note that the last page of Bill Summary shows that the dates as well as receipt numbers have been specifically mentioned showing that different amounts have been deposited on different dates.

The witness Akash Singh (PW2) who has duly proved the discharge summary and medical bills, has specifically admitted that the entire bill amount of Rs.2,51,995/□ has been made by the patient Ram Avtar Sharma. This being the background, I hold that the petitioner is entitled to the compensation to the tune of Rs.2,52,845/□ (Rupees Two lacs, Fifty Two Thousand, Eight Hundred Forty Five Only) towards medical expenses.

(27) In so far as the Special Diet expenses, are concerned, the petitioner has claimed that he had spent about Rs.50,000/□ towards Special Diet but he has not placed on record any such document. The medical documents placed on record do not reflect that any special diet has been recommended to the petitioner. Hence, a notional amount of Rs.10,000/□ is awarded.

(28) Coming next to the Conveyance charges, it is the case of the petitioner that he had spent about Rs.30,000/□ towards Conveyance. However, the petitioner has not placed on record any documents in the form of bills issued by the transporter to show that any amount towards conveyance has been paid by him. Hence, a notional amount of Rs.10,000/□ is awarded.

Ram Avtar Vs. Shivam & Ors. MACT No. 656/2019, Award dated 02.03.2022 Page No. 16 of 29 (29) In so far as the Nursing/ Attendant Charges are concerned, the petitioner claimed that during the period of his confinement to bed, his niece (sister's daughter) had taken extra care of him as an attendant apart from doing the other household work like cooking food, washing clothes etc. and hence, the petitioner is claiming attendant charges of Rs.50,000/□ I may note that only a vague and non specific averment has been made by the petitioner in this affidavit of evidence. The details of the niece of the petitioner has not been mentioned nor she was called to the Court to prove that she worked as an attendant during the treatment period of the petitioner and charged for the same. Hence, I hereby hold that he is not entitled to any compensation under this head. (30) Now coming to the aspect of Loss of Income of the petitioner/ injured Ram Avtar. The case of the petitioner is that at the time of accident he was working as a labour on daily wages and was earning Rs.15,000/□ per month but due to the accident, he could not continue his job and suffered financial losses to the tune of Rs.1,50,000/□ In this regard, I may observe that no document has been placed on record to show the employment details of the petitioner/ injured and his income at the time of accident. Apart from the petitioner, no other witness has been examined to prove that he was working as a labour and was earning Rs.15,000/□ per month. Further, it is evident from the record that the petitioner has not placed any document to show his educational qualifications. Therefore, the minimum wages for unskilled worker prevailing at the time of accident (i.e. Rs.14,000/□) is taken as the monthly income of the injured.

Ram Avtar Vs. Shivam & Ors. MACT No. 656/2019, Award dated 02.03.2022 Page No. 17 of 29 Keeping in view the nature of injuries received by the petitioner, I hold that the petitioner is entitled to the loss of income for two months i.e. Rs.14,000 X 2 = 28,000/□ (Rupees Twenty Eight Thousand only). (31) Accordingly, keeping in view the facts and circumstances, the material on record, and the

settled principles and guidelines governing the injury cases like the present one, the compensation is being derived in the present case as under:

NAME OF HEAD	AMOUNT (in Rupees)
Expenditure on Treatment	2,52,845/-
Expenditure on Conveyance	10,000/-
Expenditure on Special Diet	10,000/-
Cost of Nursing/ Attendant	Nil
Mental & Physical Shock, Pain & Suffering	30,000/-
Loss of Income for Two Months	14,000 x 2 = 28,000/-
Total	3,30,845/-

Deductions @ 15% towards Contributory 15% of 3,30,845 = Negligence 49,626/□Total Compensation 3,30,845 - 49,626 = 2,81,219/□Round Off: 2,81,500/□(32) I may note that interest @ 9% per annum was awarded by the Hon'ble Apex Court in the case of Municipal Corporation of Delhi Vs. Association of Victims of Uphaar Tragedy reported in 2012 ACJ 48 (SC). In the interest of justice, it is held that claimant shall be entitled to interest @ 6% per annum from the date of filing of DAR i.e. from Ram Avtar Vs. Shivam & Ors. MACT No. 656/2019, Award dated 02.03.2022 Page No. 18 of 29 04.09.2019 till realization.

Disbursement:

(33) The Financial Statement of the petitioner Ramavatar Sharma was recorded on 21.02.2022 according to which his family consists of himself, his wife and one minor son aged about 16 years. According to the petitioner, his monthly family expenses are about Rs.20,000/□per month.

(34) In view of the above and keeping in view the age of the injured/ petitioner who is at present aged about 70 years, I hereby direct that on realization of the award amount, a sum of Rs.31,500/□plus entire interest amount be released to him and the balance amount of Rs.2,50,000/□(Rupees Two Lacs Fifty Thousand only) shall be put in Twenty Five monthly fixed deposits in his name in MACAD account of equal amount of Rs.10,000/□(Rupees Ten Thousand only) each for a period of 01 month to 25 months respectively, with cumulative interest, in terms of the directions contained in FAO No. 842/2003 dated 07.12.2018 & 08.01.2021. Besides the above said amount, amount of FDRs on maturity, shall automatically be transferred in his saving account maintained in a nationalized bank without the facility of cheque book and ATM card. It is clarified that the amount shall be released to him only on submitting the copy of passbook of such saving account with endorsement of the bank that no cheque book facility and ATM card has been issued and same shall not be issued without the prior permission of this Tribunal. The petitioner shall have liberty to seek the Ram Avtar Vs. Shivam & Ors. MACT No. 656/2019, Award dated 02.03.2022 Page No. 19 of 29 release of Rs.31,500/□plus entire interest amount from the bank located within the jurisdiction of this Tribunal itself.

(35) The above FDRs shall be prepared with the following conditions as enumerated by the Hon'ble Delhi High Court vide orders dated 07.12.2018 & 08.01.2021 in FAO No. 842/2003 under the title Rajesh Tyagi & Ors. Vs. Jaivir Singh & Ors.:

- (i) The bank shall not permit any joint name to be added in the saving account or fixed deposit accounts of the claimants i.e. saving bank accounts of the claimants shall be an individual saving bank account and not a joint account.
- (ii) Original fixed deposit shall be retained by the bank in safe custody. However, the statement containing FDR number, FDR amount, date of maturity and maturity amount shall be furnished by bank to the claimants.
- (iii) The maturity amount of the FDRs be credited by the ECS in the saving bank account of the claimant near the place of their residence.
- (iv) No loan, advance or withdrawal or premature discharge be allowed on the fixed deposits without the permission of the court.
- (v) The concerned bank shall not issue any cheque book and/or debit card to claimants. However, in case the debit card and/or cheque book have already been issued, bank shall cancel the same before the disbursement of the award amount. The bank shall debit card(s) freeze the account of claimants so that no debit card be issued in respect of the account of claimants from any other branch of the bank.

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- (vi) The bank shall make an endorsement on the passbook of the claimant to the effect, that no cheque books and/or debit card have been issued and shall not be issued without the permission of the Court and the claimant shall produced the passbook with the necessary endorsement before the Court for compliance.

(36) In compliance of the directions given by Hon'ble High court in FAO No. 842/2003 dated 07.12.2018 & 08.01.2021, Summary of the Award in the prescribed Format ☐XV is as under:

SUMMARY OF AWARD:

1. Date of Accident: 02.02.2019
2. Name of the Injured: Ram Avtar
3. Age of the Injured: 70 Years

4. Occupation of the Injured: Labour

5. Income of the Injured: Rs.14,000/□(Minimum wages for unskilled worker)

6. Nature of Injury: Grievous

7. Medical Treatment taken by Lok Nayak Hospital and the injured: Max Super Specialty Hospital, Patparganj, Delhi

8. Period of Hospitalization: 02.02.2019 till 10.02.2019

9. Whether any permanent Nil disability? If yes, give details:

Ram Avtar Vs. Shivam & Ors. MACT No. 656/2019, Award dated 02.03.2022 Page No. 21 of 29

10. COMPUTATION OF COMPENSATION Sr. Heads Awarded by the Claims No. Tribunal

11. Pecuniary Loss:

(i)	Expenditure on Treatment				2,52,845/-
(ii)	Expenditure on Conveyance	(no document)			10,000/-
(iii)	Expenditure on Special Diet	(no document)			10,000/-
(iv)	Cost of Nursing/ attendant	(no document)			Nil
(v)	Loss of earning capacity				Nil
(vi)	Loss of income (Two Months)				14,000 x 2 = 28,000
(vii)	Any other loss which may require any special treatment or aid to the injured for the rest of his life				Nil

12. Non Pecuniary Loss

(i)	Compensation for mental and physical shock				30,000/-
(ii)	Pain and Sufferings				
(iii)	Loss of amenities of life				Nil
(iv)	Disfiguration				Nil
(v)	Loss of marriage prospects				Nil
(vi)	Loss of earning, inconvenience,				Nil

hardships, disappointment, frustration, mental stress, dejection and unhappiness in future life etc. Ram Avtar Vs. Shivam & Ors. MACT No. 656/2019, Award dated 02.03.2022 Page No. 22 of 29

13. Disability resulting in loss of earning capacity:

(i) Percentage of disability assessed and Nil nature of disability as permanent or temporary

(ii) Loss of amenities or loss of expectation Nil of life span on account of disability

(iii) Percentage of loss of earning capacity in Nil relation to disability

(iv) Loss of future income - (income x % Nil earning capacity x Multiplier)

14. TOTAL 3,30,845/□Deductions @ 15% towards 15% of 3,30,845 = Contributory Negligence 49,626/□Total Compensation 3,30,845 - 49,626 = 2,81,219/□Round Off: 2,81,500/□

15. INTEREST AWARDED 6%

16. Interest amount upto the date of award 42,104/□(2 Years, 5 Months & 28 Days)

17. Total amount including interest 3,23,605/□

18. Award amount released As mentioned in para

19. Award amount kept in FDRs As mentioned in para

20. Mode of disbursement of the award As mentioned in para

21. Next date for compliance of the award 08.04.2022 Ram Avtar Vs. Shivam & Ors. MACT No. 656/2019, Award dated 02.03.2022 Page No. 23 of 29 Liability:

(37) In so far as the liability to pay the award amount is concerned, the case of respondent no.3 ICICI Lombard General Insurance Co. Ltd.

is that the driver of the offending vehicle i.e. respondent no.1 Shivam was not holding any driving license on the date of accident i.e. 02.02.2019 and hence, the Investigating Officer had invoked the provisions of Section 3/181 of Motor Vehicles Act against the respondent no.1 Shivam and also invoked the provisions of Section 5/180 of Motor Vehicles Act against the respondent no.2 Shankar who is the owner of the offending vehicle. Ld. Counsel for the respondent no.3 has argued that since there is a willful violation of terms and conditions of the Insurance Policy and provisions of Motor Vehicles Act/ Rules on the part of the owner/ insured as well as the driver and hence, the Insurance Company is not liable to pay any compensation to the petitioner.

(38) In this regard, the Insurance Company has examined its Manager Legal Sh. Gautam Bhatnagar as R3W1 who in his examination in chief by way of affidavit Ex.R3W1/A has stated that the Insurance Company had served upon the respondent 2 being owner of vehicle No. DL□5SCA□4634, a notice under Order 12 Rule 8 CPC to produce the copy of driving license possessed by the

respondent no.1, office copy of which notice is Ex.R3W1/2 and its postal receipts are Ex.R3W1/2 which notice has not been replied or complied with by the respondent no.2.

Ram Avtar Vs. Shivam & Ors. MACT No. 656/2019, Award dated 02.03.2022 Page No. 24 of 29 (39) I have considered the arguments made before me and the documents on record. As per the Detail Accident Report, during investigations it was found that the respondent no.1 Shivam was driving the offending vehicle i.e. Motorcycle bearing No. DL-5SCA-4634 without any Driving License. In fact, a Kalandra under Section 5/180 of Motor Vehicles Act was prepared against the respondent no.2 Shankar being the owner of the offending vehicle and even the provisions of Section 3/181 of Motor Vehicles Act were added against the respondent no.1 Shivam being the driver of the offending vehicle. Even otherwise, it is an admitted case of the respondent no.1 Shivam that he was not having any Driving License at the time of accident.

(40) From the above it becomes crystal clear that the respondent no.1 Shivam was not holding a valid and effective driving license to drive the offending vehicle which tantamounts to violation of the terms and conditions of the Insurance Policy. Being the driver the respondent no.1 Shivam was not supposed to drive the offending vehicle i.e. motorcycle bearing No. DL-5SCA-4634 without a valid and effective driving license. The respondent no.2 Shankar being the owner of the offending vehicle, was not supposed to allow the respondent no.1 to drive the offending vehicle. Accordingly, the insurance Company is entitled for recovery rights qua them but after satisfying the award amount.

(41) Since the offending vehicle was being driven by respondent no.1 Shivam and it was registered in the name of the respondent no.2 Ram Avtar Vs. Shivam & Ors. MACT No. 656/2019, Award dated 02.03.2022 Page No. 25 of 29 Shankar whereas the same was insured with respondent no.3 ICICI Lombard General Insurance Co. Ltd. all shall be jointly and severally liable to pay compensation to the petitioner. However, after satisfying the award, the Insurance Company shall have a right to recover the award amount from the respondents no.1 and 2 during execution proceedings without filing a separate civil suit.

(42) Issue No.3 is accordingly decided in favour of the petitioner and against the respondents.

RELIEF:

(43) The respondent no.3 ICICI Lombard General Insurance Co. Ltd. is directed to deposit a sum of Rs.2,81,500/- (Rupees Two Lacs, Eighty One Thousand, Five Hundred only) with interest @ 6% per annum from the date of filing of DAR i.e. 04.09.2019 till realization with the Civil Nazir of this Tribunal within 30 days under intimation to the petitioner failing which insurance company shall be liable to pay interest @ 12% per annum for the period of delay beyond 30 days.

(44) The Insurer of the offending vehicle is also directed to place on record the proof of deposit of the award amount, proof of delivery of notice in respect of deposit of the amount to the petitioner/claimant and complete detail in respect of calculation of

interest etc. within 30 days. (45) A copy of this judgment be sent to the respondent No.3 i.e. ICICI Lombard General Insurance Co. Ltd. for compliance within Ram Avtar Vs. Shivam & Ors. MACT No. 656/2019, Award dated 02.03.2022 Page No. 26 of 29 the time granted. Respondent No.3 ICICI Lombard General Insurance Co. Ltd. is further directed to give intimation of deposit of the compensation amount to the claimant and shall file a compliance report with the Claims Tribunal with respect to the deposit of the compensation amount within 15 days of the deposit with upto date interest with a copy to the counsel for the claimant namely Sh. A.R. Tripathi Advocate, Chamber No. 430, Civil Side, Tis Hazari Courts, Delhi (Mobile No. 8218798276).

(46) Civil Nazir is directed to place a report on record on 08.04.2022 in the event of non-receipt/deposit of the compensation amount within the time granted.

(47) A copy of this award be sent to the concerned court of Ld. Metropolitan Magistrate and Secretary DLSA, Central District for information and necessary action.

(48) File be consigned to Record Room.

Announced in the open court
Dated: 02.03.2022

(Dr. KAMINI LAU)
PO, MACT-01 (Central),
Tis Hazari Courts, Delhi

Ram Avtar Vs. Shivam & Ors. MACT No. 656/2019, Award dated 02.03.2022
FORM - XVII

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COMPLIANCE OF THE PROVISIONS OF THE SCHEME TO BE MENTIONED IN THE AWARD 1
Date of Accident 02.02.2019 2 Date of filing of Form I - First Accident Not Applicable being a case
of Report (FAR) 2019 3 Date of delivery of Form II to the Not Applicable being a case of victim(s)
2019 4 Date of receipt of Form III from the Not Applicable being a case of Driver 2019 5 Date of
receipt of Form IV from the Not Applicable being a case of Owner 2019 6 Date of filing of the
Form V - Interim Not Applicable being a case of Accident Report (IAR) 2019 7 Date of receipt of
Form VIA and Form Not Applicable being a case of VIB from the Victim(s) 2019 8 Date of filing of
Form VIII - Detail 04.09.2019 Accident Report (DAR) 9 Whether there was any delay or deficiency
on the part of the Investigating Officer? If so, whether any action/direction No warranted?

10 Date of appointment of the Designated Officer by the Insurance Company 10.10.2019 11 Whether
the Designated Officer of the Yes Insurance Company admitted his report within 30 days of the
DAR?

12 Whether there was any delay or deficiency No on the part of the Designated Officer of the Insurance Company? If so, whether any action/direction warranted?

13 Date of response of the claimant(s) to the No legal offer filed by the offer of the Insurance Company. Insurance Company Ram Avtar Vs. Shivam & Ors. MACT No. 656/2019, Award dated 02.03.2022 Page No. 28 of 29 14 Date of award 02.03.2022 15 Whether the claimant(s) were directed to No such order was passed by open savings bank account(s) near their the Ld. Predecessor Court at place of residence? the time of filing of DAR. 16 Date of order by which claimant(s) were directed to open Savings Bank Account(s) No such order was passed by near his place of residence and produce the Ld. Predecessor Court at PAN card and Aadhaar Card and the the time of filing of DAR. direction to the bank not to issue any cheque book/debit card to the claimant(s) and make an endorsement to this effect on the passbook(s).

17 Date on which the claimant(s) produced PAN Card No. BAUPA8787M, the passbook of their savings bank Aadhar Card and Bank Pass account(s) near the place of their residence Book with endorsement alongwith the endorsement, PAN card and produced on 21.02.2022.

Aadhaar Card?

18 Permanent residential address of the As per Award claimant(s).

19 Whether the claimant(s) savings bank Yes account(s) is near their place of residence? 20 Whether the Claimant(s) were examined at Yes. Financial Statement of the the time of passing of the Award to petitioner was recorded on ascertain his/their financial condition? 21.02.2022.

(Dr. KAMINI LAU) PO, MACT□b1 (Central), Tis Hazari Courts, Delhi/ 02.03.2022 Ram Avtar Vs. Shivam & Ors. MACT No. 656/2019, Award dated 02.03.2022 Page No. 29 of 29