A.F.R.

Reserved on :25.3.2021

Pronounced on : 13.4.2021

Court No. - 21

Case :- FIRST APPEAL FROM ORDER No. - 2103 of 2017
Appellant :- National Insurance Co. Ltd.
Respondent :- Smt. Anuradha Kejriwal And 4 Others
Counsel for Appellant :- Kuldip Shanker Amist,Manoj Nigam
Counsel for Respondent :- Manoj Nigam,Amit Kumar Sinha,Deepali Srivastava Sinha,Mata Pher,Ram Singh

With

Case :- FIRST APPEAL FROM ORDER No. - 1735 of 2017
Appellant :- Smt. Anuradha Kejriwal
Respondent :- Abdul Kalam Azad And 4 Others
Counsel for Appellant :- Manoj Nigam
Counsel for Respondent :- Kuldip Shanker Amist,Mata Pher

With

Case :- FIRST APPEAL FROM ORDER No. - 1819 of 2017
Appellant :- Smt. Rajani Agrawal And Another
Respondent :- National Insurance Co. Ltd. And 3 Others
Counsel for Appellant :- Amit Kumar Sinha,Deepali Srivastava Sinha,Ram Singh
Counsel for Respondent :- Mata Pher,Nagendra Kumar Srivastava

Hon'ble Dr. Kaushal Jayendra Thaker,J.
Hon'ble Ajit Singh,J.

(Per : Hon'ble Dr. Kaushal Jayendra Thaker, J.)

1. Heard Sri Kuldip Shanker Amist, learned counsel for National Insurance Co. Ltd., Sri Ram Singh, assisted by Sri Amit Kumar Sinha, learned counsel for the claimant-parents, Sri Manoj Nigam, learned counsel for claimant-widow and Sri Mata Pher, learned counsel for the owner of the truck.

2. By way of these appeals, claimants as well as the Insurance Company who has been saddled with liability have felt aggrieved by the award and decree dated 3.3.2017 passed by Motor Accident

Claims Tribunal/ Additional District Judge, Court No.5, Jhansi (hereinafter referred to as 'Tribunal') awarding sum of Rs.69,70,500/- as compensation with interest at the rate of 7%.

3. Parties are referred to as claimants as they were arrayed in Tribunal and Insurance Company, owner and driver namely opponents as arrayed in Tribunal.

4. As these are appeals under Motor Vehicles Act, 1988, as per the decision of the Apex Court in **UPSRTC Vs. Km. Mamta and others, reported in AIR 2016 SC 948,** all the issues/grounds raised in the appeal and contested will have to be considered and decided.

5. The factual data as it emerges from the record is that the claimants are the legal heirs namely widow and parents of the deceased who died in the vehicular accident which occurred on 2.8.2015. Till penning of this judgment, it has not been brought on record whether the widow who has now in dispute with her in-laws after the decision of the Tribunal, has remarried or not? Therefore, we go on the premise that she continues to be the widow of the deceased.

6. The claimants had filed one claim petition being MACP No. 471 of 2015 before the Tribunal claiming sum of Rs.3,40,50,000/- for the death of Somesh Agrawal, as according to the claimants the accident took place on account of rash and negligent driving of the driver of the truck bearing No.UP 55 T 5151. It is averred in the claim petition that the deceased was aged 28 years and was earning Rs.25,00,000/- per annum as he was qualified engineer and was engaged in the business of construction work for U.P. Power Corporation.

7. Respondent-Abdul Kalam Azad is the owner of the truck which was being driven by respondent-Afzal Sekh and was insured with

National Insurance Co. Ltd. who have been saddled with the liability to make good the amount of compensation.

8. As far as factum of accident is concerned, the same is not in dispute. The genesis of the accident as narrated in the claim petition and the record go to show that the accident occurred on 2.8.2015 at about 2.00 p.m. when the deceased was plying on his motorcycle bearing No.UP 93Z/7103 and was going to his factory at Pratappura, near Pratappur Gas Agency, the truck in question which was being driven rashly and negligently dashed the motorcycle of deceased from behind. The deceased died out of accidental injuries on the same evening.

9. Tribunal decided issue Nos. 1 and 4 together as they were related to negligence and involvement of the vehicles in question. The learned Tribunal has decided the issues in favour of the claimants as First Information Report was filed against the driver of the truck and charge-sheet was laid against him. The claimants examined three witnesses out of whom P.W.2 was projected as eye-witness.

10. The claimants tried to prove negligence as is required under Section 166 of Motor Vehicles Act, 1988 (hereinafter referred to as ‘Act’) by leading evidence and on relying upon documentary evidence produced. The vehicle being insured with National Insurance Co. Ltd. was sought to be proved by documents filed by the owner of the said vehicle who had filed reply and driving license of the driver as 17C-1/6. Very strangely the Insurance Company filed document showing that the driver was not authorized to drive the transport vehicle and the said licence had expired but did not produce any such documentary evidence so as to convincingly prove that the vehicle was being driven by a person who was unauthorized. The compensation as prayed for was on the basis that the claimants were

the parents and the widow namely they were legal representatives of the deceased and that the deceased had taken loan of Rs.1 crore and was setting up a factory at Pratappura. The claimants had claimed that the deceased was earning Rs.25,00,000/- per year and for which they have filed before the Tribunal educational certificates, training certificates, loan approval certificate, land allocation certificate, Income Tax Return and copies of bank accounts of the deceased for the relevant period. The income of the deceased was objected by Insurance Company.

11. The Tribunal has considered the income of the deceased on the basis of Income Tax Return for the year which was filed prior to his death. The Tribunal has considered his income to be Rs.6,78,950/- per annum out of which it deducted tax and interest and considered income to be Rs.6,09,749/-, deducted 1/3rd from the same, granted multiplier of 17 as the deceased was in the age group of 26-30 years and added Rs.60,000/- for non pecuniary damages. The Tribunal refused to grant future loss of income as according to it the deceased was not in employment and he was about to set up a factory and, therefore, there was no question of future loss of income is the finding of the Tribunal. The Tribunal has not considered the dicta in the judgments in **Munna Lal Vs. Vipin, 2015 (3) TAC 1 SC and Smt. Savita Vs Binder Singh, 2014 (2) TAC 385 (SC)** though cited before it**.** The Tribunal mulcted the liability on the owner but directed the compensation to be paid by the Insurance Company as the vehicle was insured.

12. As narrated above, the Insurance Company has challenged the award on the grounds that the deceased was a contributor to the accident having taken place, that the income considered by the Tribunal was on higher side and same would not have been made the basis of compensation and that the driver of the said vehicle did not

have proper driving licence when the accident took place as it was proved by documentary evidence produced from the R.T.O. that the driver did not have licence to drive transport vehicle. It is submitted that the evidence produced by the owner also suffers from vice of not being given by the authority which is said to have issued the license.

13. As against these, claimants have also felt aggrieved as the Tribunal has not considered any amount for future loss of income. The Tribunal while granting compensation has not granted proper interest and that the Tribunal has committed an error in directing 2/3rd of the compensation to be paid to the parents and 1/3rd to the widow. The claimants have preferred two different appeals and, therefore, this submission is being made.

14. At the outset, the issue of negligence as raised, the contention that the deceased was driving the motorcycle on the middle of the road, that the F.I.R. was a belated F.I.R and was lodged in consultation with other people, and that the motorcycle in fact had slipped on the road and as the accident took place in the middle of the road, the deceased was also negligent will have to be decided.

15. It is submitted by Sri Shukla, learned counsel for the claimants that the deceased was rightly not considered to be negligent as he was driving a smaller vehicle and while driving the said vehicle he had taken all care and caution. The driver of the truck has been righly held negligent and the finding of facts need not be upturned. The submission that P.W.2 was not an eye-witness is belied from the fact that his name has been shown in the F.I.R. and the Charge-sheet. The truck dashed the motorcycle from behind. The delay in F.I.R. was because of the fact that the deceased was in hospital, he had a young widow and parents who had come in trauma on hearing the said accident to their son and, therefore, the delay has been rightly not

considered to be fatal.

Negligence:

16. Let us consider the negligence from the perspective of the law laid down.

17. The term negligence means failure to exercise care towards others which a reasonable and prudent person would in a circumstance or taking action which such a reasonable person would not. Negligence can be both intentional or accidental which is normally accidental. More particularly, it connotes reckless driving and the injured must always prove that the either side is negligent. If the injury rather death is caused by something owned or controlled by the negligent party then he is directly liable otherwise the principle of "*res ipsa loquitur*" meaning thereby "the things speak for itself" would apply.

18. The principle of contributory negligence has been discussed time and again. A person who either contributes or author of the accident would be liable for his contribution to the accident having taken place. The Division Bench of this Court in **First Appeal From Order No. 1818 of 2012 (Bajaj Allianz General Insurance Co.Ltd. Vs. Smt. Renu Singh And Others)** decided on 19.7.2016 has held as under :

> "*16. Negligence means failure to exercise required degree of care and caution expected of a prudent driver. Negligence is the omission to do something which a reasonable man, guided upon the considerations, which ordinarily regulate conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do. Negligence is not always a question of direct evidence. It is an inference to be drawn from proved facts. Negligence is not an absolute term, but is a relative one. It is rather a comparative term. What may be negligence in one case may not be so in another. Where there is no duty to exercise care, negligence in the popular sense has no legal consequence. Where there is a duty to exercise care, reasonable care must be taken to avoid acts or omissions which would be reasonably foreseen likely to caused physical injury to person. The degree of care required, of course, depends upon facts in each case. On these broad*

principles, the negligence of drivers is required to be assessed.

17. It would be seen that burden of proof for contributory negligence on the part of deceased has to be discharged by the opponents. It is the duty of driver of the offending vehicle to explain the accident. It is well settled law that at intersection where two roads cross each other, it is the duty of a fast moving vehicle to slow down and if driver did not slow down at intersection, but continued to proceed at a high speed without caring to notice that another vehicle was crossing, then the conduct of driver necessarily leads to conclusion that vehicle was being driven by him rashly as well as negligently.

18. 10th Schedule appended to Motor Vehicle Act contain statutory regulations for driving of motor vehicles which also form part of every Driving License. Clause-6 of such Regulation clearly directs that the driver of every motor vehicle to slow down vehicle at every intersection or junction of roads or at a turning of the road. It is also provided that driver of the vehicle should not enter intersection or junction of roads unless he makes sure that he would not thereby endanger any other person. Merely, because driver of the Truck was driving vehicle on the left side of road would not absolve him from his responsibility to slow down vehicle as he approaches intersection of roads, particularly when he could have easily seen, that the car over which deceased was riding, was approaching intersection.

19. In view of the fast and constantly increasing volume of traffic, motor vehicles upon roads may be regarded to some extent as coming within the principle of liability defined in ***Rylands V/s. Fletcher, (1868) 3 HL (LR) 330****. From the point of view of pedestrian, the roads of this country have been rendered by the use of motor vehicles, highly dangerous. 'Hit and run' cases where drivers of motor vehicles who have caused accidents, are unknown. In fact such cases are increasing in number. Where a pedestrian without negligence on his part is injured or killed by a motorist, whether negligently or not, he or his legal representatives, as the case may be, should be entitled to recover damages if principle of social justice should have any meaning at all.*

20. These provisions (sec.110A and sec.110B of Motor Act, 1988) are not merely procedural provisions. They substantively affect the rights of the parties. The right of action created by Fatal Accidents Act, 1855 was 'new in its species, new in its quality, new in its principles. In every way it was new. The right given to legal representatives under Act, 1988 to file an application for compensation for death due to a motor vehicle accident is an enlarged one. This right cannot be hedged in by limitations of an action under Fatal Accidents Act, 1855. New situations and new dangers require new strategies and new remedies.

21. In the light of the above discussion, we are of the view that even if courts may not by interpretation displace the principles of law which are considered to be well settled and, therefore, court

> *cannot dispense with proof of negligence altogether in all cases of motor vehicle accidents, it is possible to develop the law further on the following lines; when a motor vehicle is being driven with reasonable care, it would ordinarily not meet with an accident and, therefore, rule of res-ipsa loquitor as a rule of evidence may be invoked in motor accident cases with greater frequency than in ordinary civil suits* ***(per three-Judge Bench in Jacob Mathew V/s. State of Punjab, 2005 0 ACJ(SC) 1840)***.
>
> *22. By the above process, the burden of proof may ordinarily be cast on the defendants in a motor accident claim petition to prove that motor vehicle was being driven with reasonable care or that there is equal negligence on the part the other side."*
>
> *emphasis added*

19. The latest decision of the Apex Court has laid down one further aspect about considering the negligence more particularly contributory negligence. The deceased or the person concerned should be shown to have contributed either to the accident and the impact of accident upon the victim could have been minimised if he had taken care.

20. It is further submitted by learned counsel for Insurance Company that the vehicle was not even involved in the accident as the F.I.R. was lodged after two days by the father of the deceased and that the technical report of both the vehicles do not corroborate the manner of accident as alleged. The technical report also substantiate that the truck did not hit any vehicle. The evidence of P.W.2 is full of contradiction and his presence at the place of accident is doubtful.

21. Alternatively, it is submitted that even if the accident occurred involving truck No.UP 55 T5151, negligence on part of the deceased in driving the motorcycle was maximum and the negligence should have been apportioned between the authors of the accident.

22. While considering issue of negligence, it emerges that deceased was on motorcycle, was going ahead of the truck. P.W.2 has categorically mentioned that the truck driver drove the truck rashly

and negligently. The Insurance Company and the owner took the stand that the vehicle was not involved in the accident. The Tribunal has considered the depositions of P.W.1 who conveyed that his son started from his home to go to his factory and met with the accident though he is not an eye-witness, he was the author of the F.I.R. The accident occurred in broad day light. The eye-witness conveyed that he saw the deceased driving his motorcycle with all care and caution and was driving the vehicle on his correct side, at that time the truck came from behind and dashed with the motorcycle, the driver of the truck ran away from the place of accident and he was the one who informed the family members of the deceased.

23. The Tribunal has rightly considered the case of **Mallamma Vs. Balaji and others, 2003 (2) TAC 428 (Kant) and Oriental Insurance Co. Ltd. Vs. Reena, 2011 (4) T.A.C. 227 (All.)** in accepting the fact that the delay in lodging the F.I.R. occurred as the family was in trauma. The Tribunal further came to the conclusion that the motorcycle was dashed from behind. The driver and the owner except filing his written statement of denial of involvement, did not examine any witness. The learned Tribunal has relied on the decision in **Yogendra Pal Vs. M.A.C.P. 1995 (2) TAC 152 (All) (DB).** Recent decision of the Apex Court in **Md. Siddiqui and another Vs National Insurance Co. Ltd and others. (2020) 3 SCC 57** would come to the aid of the claimants as there was no colossal connection of the deceased having contributed to the accident. Hence, the said submission of Sri Amist that the deceased has contributed in the accident cannot be accepted.

Liability :

24. This takes us to the question of liability of the Insurance Company. Sections 147 and 149 of the Act reads as follows:

*"**147 Requirements of policies and limits of liability. —***
(1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which—
(a) is issued by a person who is an authorised insurer; and
(b) insures the person or classes of persons specified in the policy to the extent specified in sub-section (2)—
(i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person, including owner of the goods or his authorised representative carried in the vehicle] or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;
(ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place:
Provided that a policy shall not be required—
(i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923 (8 of 1923) in respect of the death of, or bodily injury to, any such employee—
(a) engaged in driving the vehicle, or
(b) if it is a public service vehicle engaged as conductor of the vehicle or in examining tickets on the vehicle, or
(c) if it is a goods carriage, being carried in the vehicle, or
(ii) to cover any contractual liability.
Explanation. —For the removal of doubts, it is hereby declared that the death of or bodily injury to any person or damage to any property of a third party shall be deemed to have been caused by or to have arisen out of, the use of a vehicle in a public place notwithstanding that the person who is dead or injured or the property which is damaged was not in a public place at the time of the accident, if the act or omission which led to the accident occurred in a public place.
(2) Subject to the proviso to sub-section (1), a policy of insurance referred to in sub-section (1), shall cover any liability incurred in respect of any accident, up to the following limits, namely:—
(a) save as provided in clause (b), the amount of liability incurred;
(b) in respect of damage to any property of a third party, a limit of rupees six thousand:
Provided that any policy of insurance issued with any limited liability and in force, immediately before the commencement of this Act, shall continue to be effective for a period of four months after such commencement or till the date of expiry of such policy whichever is earlier.
(3) A policy shall be of no effect for the purposes of this Chapter unless and until there is issued by the insurer in favour of the person by whom the policy is effected a certificate of insurance in the prescribed form and containing the prescribed particulars of any condition subject to which the policy is issued and of any other prescribed matters; and different forms, particulars and matters may be prescribed in different cases.

(4) Where a cover note issued by the insurer under the provisions of this Chapter or the rules made thereunder is not followed by a policy of insurance within the prescribed time, the insurer shall, within seven days of the expiry of the period of the validity of the cover note, notify the fact to the registering authority in whose records the vehicle to which the cover note relates has been registered or to such other authority as the State Government may prescribe.

(5) Notwithstanding anything contained in any law for the time being in force, an insurer issuing a policy of insurance under this section shall be liable to indemnify the person or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of persons"

149. Duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks.—

"(1) If, after a certificate of insurance has been issued under sub-section (3) of section 147 in favour of the person by whom a policy has been effected, judgment or award in respect of any such liability as is required to be covered by a policy under clause (b) of sub-section (l) of section 147 (being a liability covered by the terms of the policy) 1[or under the provisions of section 163A] is obtained against any person insured by the policy, then, notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy, the insurer shall, subject to the provisions of this section, pay to the person entitled to the benefit of the decree any sum not exceeding the sum assured payable thereunder, as if he were the judgment debtor, in respect of the liability, together with any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments.

(2) No sum shall be payable by an insurer under sub-section (1) in respect of any judgment or award unless, before the commencement of the proceedings in which the judgment or award is given the insurer had notice through the Court or, as the case may be, the Claims Tribunal of the bringing of the proceedings, or in respect of such judgment or award so long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely:—

(a) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely:—

(i) a condition excluding the use of the vehicle—

(a) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or

(b) for organised racing and speed testing, or

(c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle, or

(d) without side-car being attached where the vehicle is a motor cycle; or

(ii) a condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification; or

(iii) a condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion; or

(b) that the policy is void on the ground that it was obtained by the non- disclosure of a material fact or by a representation of fact which was false in some material particular.

(3) Where any such judgment as is referred to in sub-section (1) is obtained from a Court in a reciprocating country and in the case of a foreign judgment is, by virtue of the provisions of section 13 of the Code of Civil Procedure, 1908 (5 of 1908) conclusive as to any matter adjudicated upon by it, the insurer (being an insurer registered under the Insurance Act, 1938 (4 of 1938) and whether or not he is registered under the corresponding law of the reciprocating country) shall be liable to the person entitled to the benefit of the decree in the manner and to the extent specified in sub-section (1), as if the judgment were given by a Court in India: Provided that no sum shall be payable by the insurer in respect of any such judgment unless, before the commencement of the proceedings in which the judgment is given, the insurer had notice through the Court concerned of the bringing of the proceedings and the insurer to whom notice is so given is entitled under the corresponding law of the reciprocating country, to be made a party to the proceedings and to defend the action on grounds similar to those specified in sub-section (2).

(4) Where a certificate of insurance has been issued under sub-section (3) of section 147 to the person by whom a policy has been effected, so much of the policy as purports to restrict the insurance of the persons insured thereby by reference to any condition other than those in clause (b) of sub-section (2) shall, as respects such liabilities as are required to be covered by a policy under clause (b) of sub-section (1) of section 147, be of no effect: Provided that any sum paid by the insurer in or towards the discharge of any liability of any person which is covered by the policy by virtue only of this sub-section shall be recoverable by the insurer from that person.

(5) If the amount which an insurer becomes liable under this section to pay in respect of a liability incurred by a person insured by a policy exceeds the amount for which the insurer would apart from the provisions of this section be liable under the policy in respect of that liability, the insurer shall be entitled to recover the excess from that person.

(6) In this section the expression "material fact" and "material particular" means, respectively a fact or particular of such a nature as to influence the judgment of a prudent insurer in determining whether he will take the risk and, if so, at what premium and on what conditions, and the expression "liability covered by the terms of the policy" means a liability which is covered by the policy or which would be so covered but for the fact that the insurer is entitled to avoid or cancel or has avoided or cancelled the policy.

> *(7) No insurer to whom the notice referred to in sub-section (2) or sub-section (3) has been given shall be entitled to avoid his liability to any person entitled to the benefit of any such judgment or award as is referred to in sub-section (1) or in such judgment as is referred to in sub-section (3) otherwise than in the manner provided for in sub-section (2) or in the corresponding law of the reciprocating country, as the case may be. Explanation.—For the purposes of this section, "Claims Tribunal" means a Claims Tribunal constituted under section 165 and "award" means an award made by that Tribunal under section 168"*

25. Learned counsel for the Insurance Company has heavily relied on the fact that the driver of the truck did not have proper driving licence. It is submitted by learned counsel for the the Insurance Company that the document which was produced by the Insurance Company goes to show that on the date of accident, driver was not authorized to drive transport vehicle. The accident occurred on 2.8.2015. The document which was given goes to show that there is breach of policy as licence was not renewed. It is submitted that the driving licence produced by the owner could not have been relied by the Tribunal to come to contrary finding. It is further submitted that the R.T.O. Report produced by the owner was an after thought and accepted without granting any opportunity to Insurance Company to verify veracity of the same.

26. While considering the issue of breach of policy condition under Section 149 of the Act, we will have to elaborately sift the documentary evidence on record and whether the owner had taken proper care and caution to see that the driver was authorised to drive the vehicle or not. We will also have to look into all those issues on the touchstone of judgments which are supposed to throwing light.

27. We may first deal with the factual data and then the submission of Sri Amist, learned counsel for Insurance Company. We have perused the record and the driving licence to drive the vehicle which was produced before the Tribunal. The Insurance Company produced

a document known as ‘Report of Jai Claims Recovery Consultants’ which was produced before the Tribunal but, unfortunately, no one was examined to verify the data. The extract of driving licence was given by the R.T.O. The validity of licence to drive non transport vehicle was up to 17.3.2030 and validity of licence to drive transport vehicle was up to 17.3.2013. The said document reads as “LMV Transport Goods with effect from 8.3.2010, transport Vehicle M/HMV with effect from 9.11.2011”. Issue of NOC was on 13.7.2012 and, therefore, the conclusion by “Jai Claim Recovery Consultants” was that the driving licence was not valid for driving the transport vehicle at the time of accident.

28. On production of this, the owner immediately came up with the certificate of extract of driving license which was valid up to 17.3.2016 for transport vehicle issued by R.T.O. Mumbai on 25.9.2012. If we go by the documentary evidence produced that of Government of Maharashtra by Insurance Company, the submission of Sri Amist would fail as issue of NOC/CC was in the year 2012, more particularly on 13.7.2012 which corroborates with D.L. extract dated 27.7.2016. Record goes to show that nothing was proved by the Insurance Company that the said extract was manipulated and was an after thought. The factual data has been considered by the Tribunal while deciding issue Nos. 2 and 3 and, therefore, in absence of any proof to the contrary we cannot take the different view then that taken by the Tribunal. The findings cannot be upturned just because the Certificate was given by R.T.O. West and was signed by R.T.O. East as we are not aware whether R.T.O. West was on leave. The document at 53 C/1 has been believed by the Tribunal as licence was renewed for three years. Therefore, the contention of learned counsel for Insurance Company that the driver was not holding valid and effective driving licence cannot be accepted.

29. The evidence on record on the contrary proved other way. The document/report was prepared by private agency and on one was examined on their part. The licencing authority was not examined by the Insurance Company. The submission that they were not permitted to examine them is also absent. There was no application filed by them for examining the author of the report dated 9.2.2017. Even if the said document was not there, the document produced by the Insurance Company of a private agency showed that the driver was having driving licence. He was having a transport vehicle licence which is even present in the record produced by the Insurance Company itself.

30. While considering the case of the Insurance Company, can it be said that the driver did not have valid driving licence? This question has to be answered in favour of the claimants and owner. We are fortified in our view by the latest decision of the Apex Court in **Nirmala Kothari Vs. United India Insurance Co. Ltd., (2020) 4 SCC 49.**

31. Further, this aspect also goes against the Insurance Company that the Insurance Company has not examined any person so as to prove that the report of the R.T.O. is vitiated. We are even supported in our view by the decision of this Court in **Oriental Insurance Company Limited Vs. Poonam Kesarwani and others, 2008 LawSuit (All) 1557,** where in a similar situation converse view then that contended by Sri K.S. Amist is taken. Reliance can also be placed on the finding of the Tribunal which unless proved to the contrary should not be easily interfered with. Further, the owner of the vehicle was satisfied and it was proved that he has taken all care and caution that vehicle was being driven by a person who was authorised to drive the same which is even apparent from the fact that the owner has gone to the extent of producing evidence so as to bring home the fact that

there was no breach of policy condition.

32. In that view of the matter, on the facts and the law, it cannot be said that the owner has committed breach of policy conditions.

33. This takes us to the issue of compensation which has aggrieved the claimants and the Insurance Company.

Compensation :

34. As far as age and profession of the deceased are concerned, he was 28 years of age and was an Engineering Graduate, Contractor/Supplier in U.P. Power Corporation and was running Electrics Tools Manufacturing Company. The age of his widow was 24 years and parents were 54 and 51 years of age respectively at the time of death of their son. These facts are not in dispute.

35. Learned counsel for the claimants has contended that the Tribunal has erred in not granting future loss of income, filial consortium. It is also submitted that the Tribunal has not granted proper amount under the head of non pecuniary damages to the widow who became widow at the age of 24 and who has not re-married.

36. It is also submitted that the interest awarded by the Tribunal is on the lower and as the legal heirs are highly educated persons, the amount may not be kept in Fixed Deposit.

37. As against this, the Insurance Company has also felt aggrieved and has challenged the compensation and has relied on the decisions of the Apex Court in Civil Appeal No.2836 of 2015 (**Shashikala and others Vs. Gangalakshmamma and Anr.)** decided on 23.3.2015, **V. Subbalakshmi and others Vs. S. Lakshmi and Anr. (2008) 4 SCC 224 and Sangita Arya and others Vs. Oriental Insurance Co. Ltd. and others, (2020) 5 SCC 224.**

38. On considering the facts and the decisions cited by Sri K.S. Amist, learned counsel for Insurance Company, one thing is clear that even in the decision cited by Sri Amist, the compensation has been decided on the basis of Income Tax Return but which has to be relied has to be considered. In this case, just prior to the death of the deceased, his Income Tax Return for last three years has been considered by the Tribunal but his income has been taken for the period just preceding his death namely for the year of death.

39. It is submitted by Sri Amist that income at the time of death must be considered and that he was not entitled to any future loss of income. The challan of Income Tax was also not proved and that the Income Tax Return dated 14.10.2016 could not have been made the basis of granting compensation.

40. It is further submitted by Sri Amist that the factory had not even started or was started in the name of his brother and, therefore, the only income of *Theka* should have been considered and that the apportionment must be in proportion.

41. As far as compensation is concerned, at the outset, the submission of Sri Amist cannot be accepted as the Tribunal has rightly considered the annual income on the basis of Income Tax Return filed for the year 2014-2015 and discarding the return for the period 1.4.2015 to 31.3.2016 which was preceding the year of his death. In **Shashikala (Supra)** also, the Income Tax Return of the deceased for the assessment year 2005-06 and 2006-07 was Rs.1,55,812/-, the High Court considered the net income to be Rs.1,17,000/-. The High Court took the assessment year 2005-06 & 2006-07. Similar is the situation in our case, hence, there can be no deviation. The Apex Court in paragraph 16 has held that income of the deceased was considered for the year 2006-07. As far as decision in **V. Subhalakshmi (Supra)** is

concerned, the accident took place on 7.5.1997 and the Tax Returns filed on 23.2.1997 was not made the basis . The Apex Court has held that in case of motor accident compensation, guess work is inevitable. The decision of the Apex Court in **Sangita Arya (Supra)** can be even applied for the benefit of the claimants considering later most Income Tax Returns. Similar view has been taken by the Apex Court in the decisions in **Sarla Verma Vs. Delhi Transport Corporation, (2009) 6 SCC 121 and National Insurance Company Limited Vs. Pranay Sethi and Others, 2017 0 Supreme (SC) 1050.**

42. Hence, the compensation payable to the appellants in view of the decision of the Apex Court in **Pranay Sethi (Supra)** is computed herein below:-

i. Annual Income: Rs.6,09,749

ii. Percentage towards future prospects : 40 % namely Rs.2,43,900/- (rounded figure)

iii. Total income : Rs.6,09,749 + 2,43,9001 = Rs.8,53,649/-

iv. Income after deduction of personal expenses of 1/3rd : Rs. 5,69,100/-

v. Multiplier applicable : 17

vi. Loss of dependency: Rs.5,69,100 x 17 = Rs.96,74,700/-

vii. Amount for filial consortium to parents = Rs. 70,000/- with 10% increase per every three years namely Rs.85,000/- as per Pranay Sethi (Supra)

viii. Amount for love, affection and consortium to widow :Rs.70,000/- with 10% increase per every three years namely Rs.85,000/- as per Pranay Sethi (Supra)

ix.Total compensation: Rs.96,74,700 + 85,000 + 85,000 = 98,44,700/-

Interest:

43. As far as issue of rate of interest is concerned, it should be 7.5% in view of the latest decision of the Apex Court in **National Insurance Co. Ltd.Vs. Mannat Johat and Others, 2019 (2)**

T.A.C.705 (S.C.) wherein the Apex Court has held as under:

> *"13.The aforesaid features equally apply to the contentions urged on behalf of the claimants as regards the rate of interest. The Tribunal had awarded interest at the rate of 12% p.a. but the same had been too high a rate in comparison to what is ordinarily envisaged in these matters. The High Court, after making a substantial enhancement in the award amount, modified the interest component at a reasonable rate of 7.5%p.a. and we find no reason to allow the interest in this matter at any rate higher than that allowed by High Court."*

Disbursement and Tax at Source

44. At this stage, it has been submitted by Sri Ram Singh, learned counsel for the claimants that several years have elapsed, the parents are at the fag end of their lives, therefore, on additional deposit being made, this Court may not direct deposit of said amounts in fixed deposits and though this Court has time and again directed the Insurance Companies not to deduct TDS, the same is being deducted.

45. We deem it fit to rely on the judgment of the Apex Court in the case of **A.V. Padma and others Vs. R. Venugopal, 2012 (3) SCC 378** wherein the Apex Court has considered the judgment rendered in **General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Susamma Thomas and others, AIR 1994 SC 1631.** Paras 5 and 6 of A.V. Padma's Judgment read as under:-

> *"5. Thus, sufficient discretion has been given to the Tribunal not to insist on investment of the compensation amount in long term fixed deposit and to release even the whole amount in the case of literate persons. However, the Tribunals are often taking a very rigid stand and are mechanically ordering in almost all cases that the amount of compensation shall be invested in long term fixed deposit. They are taking such a rigid and mechanical approach without understanding and appreciating the distinction drawn by this Court in the case of minors, illiterate claimants and widows and in the case of semi- literate and literate persons. It needs to be clarified that the above guidelines were issued by this Court only to safeguard the interests of the claimants, particularly the minors, illiterates and others whose amounts are sought to be withdrawn on some fictitious grounds. The guidelines were not to be understood to mean that the Tribunals were to take a rigid stand while considering an application seeking release of the money. The guidelines cast a responsibility on the Tribunals to pass*

appropriate orders after examining each case on its own merits.

However, it is seen that even in cases when there is no possibility or chance of the feed being frittered away by the beneficiary owing to ignorance, illiteracy or susceptibility to exploitation, investment of the amount of compensation in long term fixed deposit is directed by the Tribunals as a matter of course and in a routine manner, ignoring the object and the spirit of the guidelines issued by this Court and the genuine requirements of the claimants. Even in the case of literate persons, the Tribunals are automatically ordering investment of the amount of compensation in long term fixed deposit without recording that having regard to the age or fiscal background or the strata of the society to which the claimant belongs or such other considerations, the Tribunal thinks it necessary to direct such investment in the larger interests of the claimant and with a view to ensure the safety of the compensation awarded to him. The Tribunals very often dispose of the claimant's application for withdrawal of the amount of compensation in a mechanical manner and without proper application of mind. This has resulted in serious injustice and hardship to the claimants. The Tribunals appear to think that in view of the guidelines issued by this Court, in every case the amount of compensation should be invested in long term fixed deposit and under no circumstances the Tribunal can release the entire amount of compensation to the claimant even if it is required by him. Hence a change of attitude and approach on the part of the Tribunals is necessary in the interest of justice.

6. In this case, the victim of the accident died on 21.7.1993. The award was passed by the Tribunal on 15.2.2002. The amount of compensation was enhanced by the High Court on 6.7.2006. Neither the Tribunal in its award nor the High Court in its order enhancing compensation had directed to invest the amount of compensation in long term fixed deposit. The Insurance Company deposited the compensation amount in the Tribunal on 7.1.2008. In the application filed by the appellants on 19.6.2008 seeking withdrawal of the amount without insisting on investment of any portion of the amount in long term deposit, it was specifically stated that the first appellant is an educated lady who retired as a Superintendent of the Karnataka Road Transport Corporation, Bangalore. It was also stated that the second appellant Poornachandrika is a M.Sc. degree holder and the third appellant Shalini was holding Master Degree both in Commerce and in Philosophy. It was stated that they were well versed in managing their lives and finances. The first appellant was already aged 71 years and her health was not very good. She required money for maintenance and also to put up construction on the existing house to provide dwelling house for her second daughter who was a co-owner along with her. The second daughter was stated to be residing in a rented house paying exorbitant rent which she could not afford in view of the spiralling costs. It was further stated in the application that the first appellant was obliged to provide a shelter to the first daughter Poornachandrika. It was pointed out

> *that if the money was locked up in a nationalised bank, only the bank would be benefited by the deposit as they give a paltry interest which could not be equated to the costs of materials which were ever increasing. It was further stated that the delay in payment of compensation amount exposed the appellants to serious prejudice and economic ruin. Along with the application, the second and third appellants had filed separate affidavits supporting the prayer in the application and stating that they had no objection to the amount being paid to the first appellant.*
>
> *7. While rejecting the application of the appellants, the Tribunal did not consider any of the above-mentioned aspects mentioned in the application. Unfortunately, the High Court lost sight of the said aspects and failed to properly consider whether, in the facts and circumstances of the case, there was any need for keeping the compensation amount in long term fixed deposit. "*

46. Thus, it goes without saying that, in our case, the oral prayer of Sri Singh requires to be considered as the guidelines in A.V. Padma and others **(supra)** was in the larger interest of the claimants. Rigid stand should now be given way. People even rustic villagers' have bank account which has to be compulsorily linked with Aadhar, therefore, what is the purpose of keeping money in fixed deposits in banks where a person, who has suffered injuries or has lost his kith and kin, is not able to see the colour of compensation. We feel that time is now ripe for setting fresh guidelines as far as the disbursements are concerned. The guidelines in **Susamma Thomas (supra),** which are being blindly followed, cause more trouble these days to the claimants as the Tribunals are overburdened with the matters for each time if they require some money, they have to move the Tribunal where matters would remain pending and the Tribunal on its free will, as if money belonged to them, would reject the applications for disbursements, which is happening in most of the cases. The parties for their money have to come to court more particularly up to High Court, which is a reason for our pain. Should reliance can be placed on Susamma Thomas **(supra)** in matters where claimants prove and show that they can take care of their money? In our view, the Tribunal may release the money with certain

stipulations and that guidelines have to be followed but not rigidly followed as precedents. Recently, the Jammu and Kashmir High Court was faced with similar situation in the case of **Zeemal Bano and others Vs. Insurance Company, 2020 TAC (2) 118.**

47. While sitting in Single Bench of this Court, one of us (Dr. Justice Kaushal Jayendra Thaker) has held that the Insurance Company should not deduct any amount under T.D.S in the case of **Smt. Sudesna and others Vs. Hari Singh and another, F.A.F.O. No.23 of 2001,** decided on 26.11.2020, which should be strictly adhered to. Relevant part of the said Judgment is as under:-

> *" It is further orally conveyed that even if the amounts will be deposited, the Insurance company normally deducts TDS. The judgement is reviewed and at the end.*
>
> *I. On depositing the amount in the Registry of the Tribunal, Registry is directed to first deduct the amount of deficit court fees, if any.*
>
> *II. Considering the ratio laid down by the Hon'ble Apex Court in the case of A.V. Padma V/s. Venugopal, Reported in 2012 (1) GLH (SC), 442, the order of investment is not passed because applicants/claimants are neither not illiterate and in New India Assurance Co. Ltd. Vs. Hussain Babulal Shaikh and others, 2017 (1) TAC 400 (Bom.).*
>
> *III. View of the ratio laid down by Hon'ble Gujarat High Court, in the case of Smt. Hansaguti P. Ladhani v/s The Oriental Insurance Company Ltd., reported in 2007(2) GLH 291, total amount of interest, accrued on the principal amount of compensation is to be apportioned on financial year to financial year basis and if the interest payable to claimant for any financial year exceeds Rs.50,000/-, insurance company/owner is/are entitled to deduct appropriate amount under the head of 'Tax Deducted at Source' as provided u/s 194A (3) (ix) of the Income Tax Act, 1961 and if the amount of interest does not exceeds Rs.50,000/- in any financial year, registry of this Tribunal is directed to allow the claimant to withdraw the amount (as directed in para No. II) without producing the certificate from the concerned Income-Tax Authority."*

48. In view of the above, the appeals preferred by the claimants are partly allowed and the appeal preferred by the Insurance Company is dismissed. Award and decree passed by the Tribunal shall stand

modified to the aforesaid extent. The respondents shall jointly and severally liable to pay additional amount within a period of 12 weeks from today with interest at the rate of 7.5% from the date of filing of the claim petition till the amount is deposited.

49. In view of the above, it is directed that on deposit of the amount, the Tribunal shall disburse the entire amount by way of account payee cheque or by way of RTGS to the account of the claimants within 12 weeks from the date the amounts are deposited by the respondents. Record be sent back to the Tribunal.

50. We modified the apportionment as 60% to the parents and 40% to the young widow of the additional amounts.

Order Date :- 13.4.2021
DKS