

case of death of a boy of aged about 13 years and the case of the appellant is identical and fully covered with the judgment of Hon'ble Apex Court and the appellants are also entitled for compensation of Rs. 2,25,000/-.

7. In Manju Devi Vs. Musafir Paswan (Supra) the Hon'ble Supreme Court has held that :

"As set out in the Second Schedule to the Motor Vehicles Act, 1988, for a boy of 13 years of age, a multiplier of 15 would have to be applied. As per the Second Schedule, he being a non-earning person, a sum of Rs. 15,000.00 must be taken as the income. Thus, the compensation comes to Rs. 2,25,000.00."

8. The case law Rajendra Singh Vs. National Insurance Company Ltd. and others (Supra) cited by the learned counsel for the appellants will not apply in the present case as in that case the date of the accident was 25.12.2012 and award was passed thereafter. The amount of compensation was assessed on the basis of notional income of 36,000/- per annum and applying a 50% deduction towards personal expenses with multiplier of 15 the compensation was calculated as Rs. 2,70,000/- and out of which 50% was deducted towards contributory negligence. A sum of Rs. 25,000/- was added towards funeral expenses leaving to a total award of Rs. 1,60,000/-. The Hon'ble Supreme Court has held that there was no contributory negligence of the deceased and deduction on account of contributory negligence was held to be unsustainable.

9. In the facts of the present case the judgment of Manju Devi (Supra) under all the heads is applicable. Award is required to be enhanced accordingly.

10. The award is enhanced to Rs. 2,25,000/- with interest @ 7% per annum.

11. The appeal is **allowed** accordingly. Respondent no. 3 will re-calculate the amount of compensation accordingly and deposit the difference within 12 weeks from today before the tribunal. The judgment and decree shall stand modified to the aforesaid extent. The record, if in this Court, be sent forthwith to the tribunal with the copy of the judgment to enable the respondent no. 3-Insurance Company to deposit the difference.

(2022)02ILR A742

APPELLATE JURISDICTION

CIVIL SIDE

DATED: ALLAHABAD 03.01.2022

BEFORE

**THE HON'BLE DR. KAUSHAL JAYENDRA
THAKER, J.**

First Appeal From Order No. 1972 of 2021

M/s New India Assurance Comp. Ltd.

...Appellant

Versus

Smt. Usha Taneja & Ors.

...Respondents

Counsel for the Appellant:

Sri Arun Kumar Shukla, Sri Pankaj Bhatia

Counsel for the Respondents:

(A) Civil Law - Motor Vehicles Act, 1988 - Section 140 - Liability to pay compensation in certain cases on the principle of no fault , Section 147 - Requirements of policies and limits of liability - negligence - principle of "res ipsa loquitur" - "the things speak for itself" - if the the order is not questioned as to whether the driver was having a driving licence or not and if it is proved that the driving licence was there in that

case of the matter thus it cannot be said that driver was disqualified to drive the vehicle. (Para -13)

Accident taken place - respondents are drivers and owner of the truck - insured with appellant - death of the sole bread-earner of the respondents-claimants - filed claim petition - claimed a sum of Rs.25,64,000/- - judgment and award granting a sum of Rs.3,24,000/- by tribunal - challenged by Insurance Company - defective appeal since 1998 - pending till date - main dispute regarding driving licence of the driver - finding of fact . (Para - 2,3,4)

HELD:- Not proved by the Insurance Company that the owner was aware of the fact that driving licence had expired . Tribunal has not granted any amount under the head of future loss of income rather the multiplier of 17 though is slightly on higher-side the dependency. Thus, this court does not that any amount under the head of in absence of the appellant appear before this Court, no amount requires to be enhanced. Court do not feel that the tribunal has committed any error in allowing the claim petition.(Para - 14,16,17)

Appeal dismissed. (E-7)

List of Cases cited:-

1. Bajaj Allianz General Insurance Co.Ltd. Vs Smt. Renu Singh & ors., First Appeal From Order No. 1818 of 2012
2. Ram Chandra Singh Vs Rajaram & ors., AIR 2018 SC 3789
3. Nirmala Kothari Vs United India Insurance Co. Ltd.,2020 4 SCC 49 (12)

(Delivered by Hon'ble Dr. Kaushal
Jayendra Thaker, J.)

1. Heard learned counsel for the parties and perused the judgment and order impugned..

2. Despite notice, none has appeared and it was a defective appeal since 1998

and has been recently numbered and taken up for final disposal. The record is not necessary as the matter can be disposed of as there is Annexure appended to the appeal itself.

3. By way of this appeal, the Insurance Company has brought in challenge the judgment and award granting a sum of Rs.3,24,000/- for the death of the sole bread-earner of the respondents-claimants, who had filed claim petition claimed a sum of Rs.25,64,000/- for the death of Sudhir Mohan Taneja who died in the vehicular accident and left behind him his widow and three minor children. The matter has remained pending from 1998 till date.

4. Before this Court adverts to the brief facts, the accident having taken place is not in dispute. The respondents are the drivers and the owner of the truck which is insured with appellant which is also not in dispute. The main dispute is regarding the driving licence of the driver and, therefore, the insurance company could not have been fastened with liability to pay the claimants. Hence insurance company could not have been made liable and that the multiplier was wrongly applied.

5 . The brief facts of this case are that on 22.4.1992, the deceased while he tried to board the bus, was no successful in boarding the bus in the meantime, the truck came from Delhi Road side, which was being driven rashly and negligently and dashed with the deceased. The driver of the truck tried to overtake the stationary bus from the wrong side without blowing horn, which was driven by one of the opponents and while the deceased was taken to hospital he succumbed to the injuries. The involvement of the truck and it being

insured with the appellant is not in dispute, it is not disputed that the truck tried to overtake the stationary bus and, therefore, the issue of negligence has not been raised.

6. The deceased was 32 years of age. He was a medical representative and without waiting an FIR was lodged and the witnesses were examined.

7. It is an admitted position of fact that the driver of the truck did not appear and, therefore, when a truck driver tries to overtake a bus which was stationary from the left side, the driver of the truck has to be held to be negligent which this court holds negligence judgments. This Court concur with the tribunal that the driver of the truck was rightly held to be and, therefore, this Court concur with the tribunal as far as issue of negligence is concerned and the same and the submission made by learned counsel for appellant is negated.

8. The issue of negligence has to be decided from the perspective of the law laid down by the Courts.

9. The term negligence means failure to exercise care towards others which a reasonable and prudent person would in a circumstance. Negligence can be both intentional or accidental which can also be accidental. More particularly, term negligence connotes reckless driving and the injured of claimants 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.

10. 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 loquitur* 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."

11. The aspect of the driver Sarvan Singh not having a valid driving licence,

the tribunal had considered the clause of the policy. It has been held by the tribunal as follows:

"Person or persons entitled to drive"

The insured,

Any other person who is driving on the Insurance order or with his permission.

Provided, the person driving holds a valid licence to drive the vehicle or has held a permanent driving licence (other than a learner's licence) and is not disqualified from holding or obtaining such a licence."

12. Thus, this Court also concurs with the findings of fact. It cannot be held that the driver was not knowing driving nor it can be said that he was disqualified for holding of a valid licence, not knowing how to drive a vehicle in a separate issue. The Provision of Section 147 of Motor Vehicles Act, 1988 read with Section 140 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 bodily²⁷ [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.

Section 140 in The Motor Vehicles Act, 1988

140. Liability to pay compensation in certain cases on the principle of no fault.--

(1) Where death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicle shall, or, as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this section.

(2) The amount of compensation which shall be payable under sub-section (1) in respect of the death of any person shall be a fixed sum of [fifty thousand rupees] and the amount of compensation payable under that sub-section in respect of

the permanent disablement of any person shall be a fixed sum of 2[twenty-five thousand rupees].

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

(4) A claim for compensation under sub-section (1) shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made nor shall the quantum of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement. 3[(5) Notwithstanding anything contained in sub-section (2) regarding death or bodily injury to any person, for which the owner of the vehicle is liable to give compensation for relief, he is also liable to pay compensation under any other law for the time being in force: Provided that the amount of such compensation to be given under any other law shall be reduced from the amount of compensation payable under this section or under section 163A."

13. It has been discussed by the learned tribunal that the persons who are entitled to drive reads or as holds a bringing driving licence and it cannot disqualifies holding and obtaining such licence. One more aspect borne in mind, recently the Apex Court has held that if the order is not questioned as to whether

the driver was having a driving licence or not and if it is proved that the driving licence was there in that case of the matter thus it cannot be said that driver was disqualified to drive the vehicle.

14. In our case, it is not proved by the Insurance Company that the owner was aware of the fact that driving licence had expired. The judgment in **Ram Chandra Singh v. Rajaram and others, AIR 2018 SC 3789** wherein on liability of insurance company, no attempt was made by High Court and trial court to examine whether owner of vehicle was aware of fact that driving licence possessed by driver was valid or not. The matter was remanded back to High Court for fresh consideration of question of liability of owner or of insurer to pay consideration. (Section 147 of Motor Vehicles Act, 1988).

15. In our case, learned counsel Shri Arun Kumar Shukla has contended that driver was not having a valid driving licence which has been proved by leading evidence. In our case the judgment of the Apex Court titled **Nirmala Kothari v. United India Insurance Company Ltd.**, reported in **2020 4 SCC 49 (12)** will apply in full force.

16. As far as the compensation is concerned, the tribunal cannot be said to have exceeded the principles as enunciated in those days. The tribunal has no granted any amount under the head of future loss of income rather the multiplier of 17 though is slightly on higher-side the dependency, the income of the deceased was Rs.3,000/- per month which is incentive which has also not been considered by the tribunal. The bonus has been deducted, the tribunal has deducted 1/4 for his personal expenses. The income of the deceased has been

