land is sold, Courts have allowed deduction considering principles of largeness of area, which vary from 20 to 75%. If we apply 15% appreciation per anum to the rate of land in sale deed dated 6.7.1990, it would come to around Rs.46,000/- for 1800 square feet in two years and if we apply 30% of deduction in respect of largeness of area, it will reduce to about Rs.29,000/- and odd for 1800 square feet. There is not much difference in two rates and probably, for this reason, Reference Court has followed the rates shown in sale deed 6.7.1990, which was executed two years back without making any enhancement or deduction of any amount.

37. In the entirety of facts and circumstances of the case, we do not find that rates determined by court below can be said to be excessive and inflated to such an extent that the same should be reversed or interfered with by this Court in this appeal.

38. Question, therefore, formulated above, is answered by holding that market value for the purposes of compensation determination of court below is neither unjust, unreasonable or excessive and hence, it warrants no interference.

39. The appeal, therefore, lacks merit. Dismissed with costs.

(2022)02ILR A730
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 05.01.2022

BEFORE

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

First Appeal From Order No. 534 of 2000

Oriental Insurance Comp. ...Appellant

Versus

Pramod Kumar Srivastava & Ors. ...Respondents

Counsel for the Appellant:
Sri Ajay Singh

Counsel for the Respondents:
Sri Sanjay Kumar Srivastava

(A) Civil Law - Motor Vehicles Act, 1988 - Section 3 - Necessity for driving liscence , Section 149 (2) (a) (ii) - a condition excluding driving by a named person or persons or by any person who is not duly licenced , or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification - negligence - principle of "*res ipsa loquitur*" - "the things speak for itself" -principle of contributory negligence - A person who either contributes or author of the accident would be liable for his contribution to the accident having taken place.(Para - 10,11)

Claimant was the driver of tempo - no driving licence - driver of the truck has not stepped into the witness box. -- truck and the tempo are of unequal magnitude - driving the truck in rash and negligent manner - Tribunal awarded a sum of Rs.1,00,000/- - with interest at the rate of 12% as compensation to the respondent claimant - aggrieved by the order of trinbunal - appeal filed by the Insurance company .

HELD:-An additional sum of Rs. 25,000/- @ 6% granted to respondent-claimant. The reason for granting additional amount is that while granting the amount of Rs.1,00,000/-, the Tribunal has not added any amount under the head of future loss of income . Rate of interest of 12% granted by Tribunal not disturbed looking to the passage of time and the injuries which the claimant has sustained.(Para - 20,21)

Appeal partly allowed. (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. Nirmala Kothari Vs United India Insurance Co. Ltd. (2020) 4 SCC 49.

3. M/S New India Assurance Company Ltd. Vs Smt. Usha Taneja & ors., First Appeal From Order No.1972 of 2021

4. Anita Sharma Vs New India Assurance Co. Ltd., (2021) 1 SCC 171

5. Oriental Insurance Company Limited Vs Poonam Kesarwani & ors., 2008 LawSuit (All) 1557

6. National Insurance Co. Ltd. Vs Brij Pal Singh, LAWS (ALL) 2002 (12) 19

7. Ram Chandra Singh Vs Rajaram & ors., AIR 2018 SC 3789.

8. United India Insurance Co. Ltd. Vs Sujata Arora & ors., 2013 (3) T.A.C. 29 (SC)

9. National Insurance Co. Ltd. Vs Smt. Vidyawati Devi & 2 ors., F.A.F.O. No.2389 of 2016

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

1. Heard learned counsel for the appellant and learned counsel for the respondent-claimant. Despite notice, none has appeared for the owner.

2. This appeal challenges the judgment and order dated 2.2.2000 passed by Special Judge/Motor Accident Claims Tribunal, Kanpur Dehat in M.A.C.P. No. 100 of 1992 filed by one Pramod Kumar Srivastava, (respondent-claimant herein) whereby the Tribunal awarded a sum of Rs.1,00,000/- with interest at the rate of 12% as compensation to the claimant.

3. The factual scenario urged by the claimant was the driver of tempo being No. CIW 6668. Break of the said tempo failed and, therefore, the claimant along with one other person was rolling the tempo slowly. At that point of time, one truck being No. HYM 7245 which was being driven rashly and negligently by its driver dashed the claimant which caused multiple injuries to the injured claimant. He had to be hospitalized. He had suffered multiple fractures. He was admitted in Madhuraj Nursing Home. He had claimed a sum of Rs. 1,50,000/- for the tortuous act of the respondent. None appeared for the owner. As far as Insurance Company and the driver are concerned, they filed their reply of negativity and contended that it was the claimant who himself

4. At the outset, it is an admitted position of fact that except filing reply, the driver or the owner did not step into the witness box. The Insurance Company has contended that the accident took place due to negligent driving of the injured and not that of the driver of the truck.

5. Learned counsel for the appellant has further submitted that oral testimony of P.W.1 and P.W.2 has been misread by the Tribunal. The second issue on which the appeal has been preferred is that there is breach of provisions of Section 3 of the Act, 1988 and, therefore, the Insurance Company is not liable to indemnify a third party as per the provisions of Section 149 (2) (a) (ii) of the Act, 1988. The Tribunal according to the learned counsel for the appellant has committed an error in not accepting the oral testimony of the investigator appointed by the Insurance Company and has taken a technical stand that if the Transport Authority has not been

examined, then no adverse inference can be drawn.

6. It is further submitted that the evidence adduced by the appellant is a public document and, therefore, when it is proved that the Licensing Authority, Solan has not issued the license, this fact should not have been ignored by the Tribunal.

7. Lastly it is submitted that the compensation awarded by the Tribunal is on the higher side.

8. By way of this appeal, the Insurance Company has felt aggrieved as the Tribunal has negatived its contention that the driver of the truck was not negligent. The Insurance Company has also felt aggrieved as though it was proved by them that the driver of the truck was not having driving license to drive the truck, a negative finding has been returned by the Tribunal. This according to the Insurance Company is flaw in the judgment and they could not have been made liable.

9. Having heard the learned counsel for the parties, let us consider the issue of negligence from the perspective of the law laid down.

10. 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.

11. 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.

12. 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*

13. While going through the facts of this case, it is an admitted position of fact as elaborately discussed by the Tribunal in issue Nos. 1 and 2. The first fact is that the driver of the truck has not stepped into the witness box. Second, the truck and the tempo are of unequal magnitude. The evidence of P.W.1 and P.W.2 go to show that the driver of the truck was driving the truck in rash and negligent manner and when the charge-sheet was led against the driver of the truck, it cannot be said that the claimant was negligent and was a co-author of the accident. This Court cannot differ with the finding of issue Nos.1 and 2 of the Tribunal.

14. It is a matter of concern that the Insurance Company has taken the plea under Section 149 of Motor Vehicles Act, 1988 (hereinafter referred to as 'Act, 1988') and has examined an advocate to bring home their contention that the driver was not having proper driving license. The law on the point has been propounded recently in **Nirmala Kothari vs. United India Insurance Co. Ltd. (2020) 4 SCC 49.**

15. This Court in First Appeal From Order No.1972 of 2021 **(M/S New India Assurance Company Ltd. v. Smt. Usha Taneja and Others)** while deciding the issue of license on 3.1.2022 has discussed the duty of the owner and Insurance Company at length. In our case, learned counsel for the appellant has contended that the driver was not having valid driving license which has been proved by leading evidence.

16. The judgment of the Apex Court in **Anita Sharma v. New India Assurance Co. Ltd. (2021) 1 SCC 171** would also apply to the facts of this case.

17. In our case, though the Insurance Company has examined an advocate who was appointed as investigator, the decision cited by learned counsel for the appellant will not apply to the facts of this case as the judgment in **Oriental Insurance Company Limited Vs. Poonam Kesarwani and others, 2008 LawSuit (All) 1557** will apply to the fact of this case. The judgment in **National Insurance Co. Ltd. v. Brij Pal Singh, LAWS (ALL) 2002 (12) 19** relates to the fact that the insured entrusted the truck to a person who did not have valid and effective driving license. In our case, it has not been proved by the Insurance Company that the owner was in nohow of the fact that the driver did not have a valid driving license and, therefore, the claimant cannot be done injustice.

18. This Court directed deposit of only 50% of the amount which has caused harm to the third party. There was no collusion between owner and claimant and therefore also even if the said judgment is made applicable, the later judgment in **Ram Chandra Singh v. Rajaram and others, AIR 2018 SC 3789.**

19. The judgment of this Court in **United India Insurance Co. Ltd. vs. Sujata Arora and others, 2013 (3) T.A.C.**

29 (SC) cannot be made applicable. Even if we go by the fact that the driver and the owner did not appear before Tribunal, subject to a rider to prove that the owner proves that he had taken all cautions, recovery right is granted to the Insurance Company.

20. As far as quantum is concerned, in view of the decision of the this Court in **F.A.F.O. No.2389 of 2016 (National Insurance Co. Ltd. Vs. Smt. Vidyawati Devi And 2 Others) decided on 27.7.2016** and as per the oral submission of learned counsel for the respondent-claimant, an additional sum of Rs. 25,000/- is granted. The reason for granting additional amount is that while granting the amount of Rs.1,00,000/-, the Tribunal has not added any amount under the head of future loss of income. His income was considered to be Rs.5000/- and a lump sum of Rs.1,00,000/- was granted by the Tribunal without any further bifurcation which is bad in eye of law but, however as the accident took place in the year 1992 and 30 years have practically elapsed a lump sum of Rs.25,000/- would be admissible to the injured-claimant over and above the amount granted by the Tribunal.

21. The rate of interest of 12% granted by the Tribunal is not disturbed looking to the passage of time and the injuries which the claimant has sustained. However, this additional sum of Rs.25,000/- will carry 6% flat rate of interest.

22. In view of the above, this appeal is partly allowed. The remaining amount be deposited with the accrued interest and the claimant be given the same without keeping the same in fixed deposit as more than 30 years have elapsed and the claimant must be in his prime now.

23. Record and proceedings be sent back to the Tribunal forthwith

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(2022)02ILR A735
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 06.01.2022

BEFORE

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

First Appeal From Order No. 876 of 1992

State Of U.P. & Ors. ...Appellants
Versus
Km. Anubhooti @ Eena ...Respondent

Counsel for the Appellants:
S.C.

Counsel for the Respondent:
Sri A.Kumar, Sri kamal Kumar Singh

(A) Civil Law - Motor Vehicles Act, 1988 - Section 173 - Appeal - Injuries caused to minor - filed claim petition through legal guardian - tribunal raised issues and granted a sum of Rs.2,27,560/- with a rate of interest 12% - State felt aggrieved by award of compensation to the respondent - hence appeal.(Para - 2,4)

HELD:-Negligence proved and involvement also proved. Driver never stepped into the witness box, child is a third party and, therefore, also this Court cannot take a different view then that taken by the tribunal. Compensation as awarded to the minor cannot be said to be exorbitant. Amount of Rs.2, 27,560/- for the injuries caused to the minor even in those days cannot be said to be such which requires any interference. The interim relief shall stand vacated forthwith. The amount be deposited with interest at the rate of 9% . (Para -8,9)