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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 11th October, 2012

+ **MAC.APP. 287/2012**

SUDIPTA KUMAR DAS

Through

..... Appellant

Mr.S.K. Katriar, Sr.Advocate with Mr.
Pradeep Sharma, Mr. Dinesh Kumar
Tiwari, Advocates

versus

CHANDERMANI DEVI & ORS.

Through

..... Respondents

Mr.Gurmit Singh Hans, Advocate for the
Respondents (Claimants).

+ **MAC.APP. 472/2012**

CHANDERMANI DEVI & ORS.

Through

..... Appellants

Mr.Gurmit Singh Hans, Advocate

versus

BAJAJ ALLIANZ GENERAL INSURANCE CO. LTD. & ORS.

Through

..... Respondents

Mr. Rajat Brar, Advocate for the
Respondent No.1 Insurance Co.

Mr.S.K. Katriar, Sr.Advocate with Mr.
Pradeep Sharma, Mr. Dinesh Kumar
Tiwari, Advocates for the Respondent
No.2.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. These two Appeals (MAC.APP.287/2012 and MAC.APP.472/2012) arise out of a common judgment dated 07.12.2011 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby while awarding a compensation of ₹7,76,192/- in favour of the Claimants (the legal heirs of deceased Pramod Srivastava), the Respondent Bajaj Allianz General Insurance Co. Ltd. was made liable to pay the compensation with a right to recover it from the Appellant Sudipta Kumar Das, owner and driver of the offending Maruti Wagon R No.DL-3C-BC-1790.
2. MAC.APP.287/2010 has been preferred by Sudipta Kumar Das, the owner of the offending maruti car who takes exception to the impugned judgment to the extent whereby recovery rights were granted against him.
3. MAC.APP.472/2012 is preferred by the legal representatives of the deceased assailing the impugned judgment on the ground that the compensation awarded is very meagre and niggardly and that the Claims Tribunal erred in rejecting the deceased's salary as ₹12,000/- per month.
4. For the sake of convenience, the Appellant in MAC.APP.287/2012 shall be referred to as the owner, whereas the Appellants in MAC.472/2012 shall be referred to as the Claimants.
5. Although the finding on negligence is challenged by the owner in the grounds of Appeal, the same, however, is not agitated during the course of the hearing. Otherwise also, the Claims Tribunal referred to the testimony of PW4 an eye witness of the accident who deposed about the manner of the accident. His testimony that the driver of Maruti Wagon R

No. DL-3C-BC-1790 caused the accident by his rash and negligent driving and escaped from the spot could not be shattered in cross-examination. His testimony is corroborated by registration of the criminal case bearing FIR No.11/2009 in Police Station Sarita Vihar. The driver-owner in his written statement as the Respondent No.1 denied the negligence, but preferred not to enter the witness box either to rebut PW4's account of accident or to give his own version. Thus, culpable negligence on the part of the driver owner is duly proved.

6. Mr.S.K. Katriar, learned Senior Counsel appearing on behalf of the owner raised the following submissions:

- (i) Admittedly, the owner possessed a learner's licence to drive a motor car, this licence entitled the Appellant to drive the Wagon R involved in the accident. The learned Senior Counsel urges that Rule 3(b) of the Central Motor Vehicles Rules, 1989(hereinafter referred to as "1989 Rules") mandates a person who is yet to be issued a learner's licence to be accompanied by an instructor holding an effective driving licence to drive the vehicle. There is no requirement of any provision in the statute or in the 1989 Rules obligating a person holding a learner's licence to be accompanied by an instructor.
- (ii) The learned Senior Counsel argues that even if there was any infraction of Rule 3(b) of the 1989 Rules, the owner may be criminally liable for the same, but the Insurance Company who received the premium cannot avoid its statutory liability.

Reliance is placed on the three Judge Bench decision of the Supreme Court in *National Insurance Company Limited v. Swaran Singh & Ors.*, (2004) 3 SCC 297.

7. The learned counsel for the Claimants argues that the compensation awarded is very low. There is no reason to suspect the salary vouchers which were duly proved on record by the Claimants.
8. On the other hand, the learned counsel for the Respondent Insurance Company states that Rule 3(b) of the 1989 Rules very much applies to a person who holds a learner's licence and since there was violation of Rule 3(b) of the 1989 Rules, the provision of Section 149(2)(a)(ii) entitled the insurer to avoid the policy of insurance. It is urged that the compensation awarded is just and reasonable and the Claims Tribunal rightly rejected the deceased's salary of ₹12,000/- per month.
9. First of all, I shall deal with the quantum of compensation.
10. Section 168 of the Motor Vehicles Act, 1988(the Act) enjoins payment of just compensation. In *General Manager, Kerala Road Transport Corporation, Trivandrum v. Susamma Thomas & Ors.*, (1994) 2 SCC 176, the Supreme Court held as under: -

“5.....The determination of the quantum must answer what contemporary society "would deem to be a fair sum such as would allow the wrongdoer to hold up his head among his neighbours and say with their approval that he has done the fair thing". The amount awarded must not be niggardly since the law values life and limb in a free society in generous scales'. All this means that the sum awarded must be fair and reasonable by accepted legal standards.”

11. In order to prove the income of the deceased Pramod Srivastava, the Claimants examined Vasim Ahmed Khan (PW3) who was an Accountant working with Archage Associates, the deceased's employer. In his examination-in-chief, he testified as under:

“I have been duly authorized to depose in the present matter and my authorization in this regard is Ex.PW3/A. I have brought the summoned records pertaining to the employment of the deceased, Shri Pramod Kumar Srivastava who was working as a Foreman in our Organization, M/s Archage Associates. The deceased was working in our organization for the last more than nine years. Vol. The deceased was working prior even prior to my joining the organization in the year 2004. The copies of the salary vouchers for the year 2008 of the deceased, Shri Pramod Kumar Srivastava are exhibited as Ex.PW3/B(Colly-11) and certificate of employment of the deceased, Shri Pramod Kumar Srivastava is Ex.PW1/C. The copies of the tax returns of the proprietor of M/s Archage Associates are Mark A(Colly-20 sheets).”

12. The Claims Tribunal rejected the salary vouchers and PW3's testimony on the ground that the vouchers were not bearing the stamp of the company; the designation of the person issuing the vouchers or that of the payee. The Claims Tribunal held that the attendance record and appointment letter were also not produced. The reasoning given by the Claims Tribunal is extracted hereunder:

“The petitioners have claimed that the deceased, Late Sh. Pramod Srivastava was working as a Foreman in M/s Archage Associates and was earning ₹12,000/- per month. In this regard, the petitioners have relied upon the salary vouchers of the deceased, Ex.PW3/B(Colly). However, none of the salary vouchers bear the name or stamp of the employer firm. Even the designation of the person issuing the salary vouchers or

even that of the payee is not detailed in any of the said vouchers. The author of the said vouchers has also been got examined by the petitioners. PW3, Sh. Vasim Ahmed Khan, Accountant, M/s Archage Associates is not the author of the salary vouchers and has deposed during his cross-examination on 25.02.2011 by the Ld counsel for R-2 that he has not bought the attendance register of the deceased and that M/s Archage Associates is an proprietorship firm. However, the said proprietor has not been got examined by the petitioners. In the absence of any cogent evidence e.g. appointment letter, attendance record and particularly when the salary vouchers, Ex.PW3/B(Colly) do not bear even the name of the employer of the deceased, the monthly income of ₹12,000/- as claimed by the petitioners is not established.....”

13. Thus, while rejecting the deceased's income of ₹12,000/- per month, the Claims Tribunal awarded loss of dependency on the minimum wages of an unskilled worker.
14. At this stage, I would revert to PW3's testimony. He deposed that the deceased was working with M/s Archage Associates for the last nine years. He deposed that he (the witness) was working with this organization since the year 2004 and the deceased was working even prior to the same. During cross-examination by the Appellant(the owner), PW3 deposed that he was working as Head of the Accounts Department and the vouchers were prepared by his junior Mr. Anuj, Accounts Assistant and the same had been signed by the deceased Pramod Kumar. No suggestion was given to the witness that the vouchers were not prepared by Mr. Anuj, Accounts Assistant working with M/s. Archage Associates or that the same did not bear the signatures of the deceased Pramod Kumar. In cross-examination, a vague suggestion was given on behalf of the Respondent Insurance Company

that the vouchers were forged and fabricated. How the same were forged and fabricated was not suggested?

15. It is apparent that no suggestion was given that the signatures on the vouchers Exs. PW3/B(Colly-11) were not put by Shri Pramod Kumar Srivastava. Obviously, if these vouchers contained the deceased's signatures, these could not have been brought into existence after the accident. PW3 boldly stood the test of cross-examination. So much so that he proved the statement of the total income of M/s. Archage Associates to prove the gross income and the expenditure towards salary of the staff. As per the Income Tax Return of the deceased's employer M/s. Archage Associates (Exs.PW3/R3 and PW3/R4), an income tax of ₹23,02,713/- was paid by the deceased's employer in the A.Y. 2008-09.
16. I have before me the Trial Court record. A perusal of the Claim Petition reveals that in column No.5, the Claimants gave the name and address of the employer and in column No.6 the salary was described as ₹12,000/- per month. The Respondent Insurance Company filed the written statement on 05.02.2010. Respondent No.2 is in the business of insurance and as per its procedure it must have investigated the deceased's income. In any case, no rebuttal to the Claimant's averments or evidence was produced by the owner and insurer to rebut the income proved by the Claimants. In the face of PW3's testimony and the vouchers Exs. PW3/B(Colly-11) and in the absence of any rebuttal, I am of the considered opinion that the Claimants sufficiently established the deceased's salary as ₹12,000/- per month. The Claims Tribunal gravely

erred in disbelieving the deceased's income. No evidence was produced in regard to the deceased's future prospects.

17. This Court in *Rakhi v. Satish Kumar & Ors.* (MAC. APP. 390/2011) decided on 16.07.2012, referred to the reports of the Supreme Court in *General Manager, Kerala State Road Transport Corporation, Trivandrum v. Susamma Thomas (Mrs.) and Ors.* (1994) 2 SCC 176, *Sarla Dixit v. Balwant Yadav*, (1996) 3 SCC 179, *Bijoy Kumar Dugar v. Bidya Dhar Dutta & Ors.*, (2006) 3 SCC 242, *Sarla Verma & Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121 and *Santosh Devi v. National Insurance Company Ltd. & Ors.*, 2012 (4) SCALE 559 and held that as per *Santosh Devi* even in the absence of any evidence as to future prospects an increase of 30% in the income has to be provided where the victim has fixed income or was a self employed person.
18. Keeping in view the number of dependents and the age of the deceased as 44 years, the loss of dependency thus comes to ₹19,65,600/- (₹12,000/- x $12 + 30\% \times \frac{3}{4} \times 14$).
19. A compensation of ₹50,000/- awarded towards loss of love and affection was on the higher side. The Supreme Court in *Sunil Sharma v. Bachitar Singh* (2011) 11 SCC 425 and in *Baby Radhika Gupta v. Oriental Insurance Company Limited* (2009) 17 SCC 627 granted ₹ 25,000/- only (in total to all the claimants) under the head of loss of love and affection. Thus, I would reduce the compensation under this head to ₹25,000/- only.

20. The Claimants would be entitled to a sum of ₹10,000/- each towards funeral expenses, loss of consortium and loss to estate. The overall compensation thus comes to ₹20,20,600/-.

LIABILITY:

21. Section 2(19) of the Motor Vehicles Act, 1988 dealing with a learner's licence is extracted as under:

“2.Definitions.-.....

(19) “learner’s licence’ means the licence issued by a competent authority under Chapter II authorising the person specified therein to drive as a learner, a motor vehicle or a motor vehicle of any specified class or description;”

22. Even for grant of a learner's licence, an applicant is required to pass a test as may be prescribed by the Central Government to the satisfaction of the licensing authority. There is no dispute about the proposition that a learner's licence is as good as a regular licence. In *National Insurance Company Limited v. Swaran Singh & Ors.*, (2004) 3 SCC 297, the Supreme Court laid down that a learner's licence is also a licence within the meaning of the provisions of the Motor Vehicles Act, 1988(the Act) and that it could not be said that a person who possesses a learner's licence is not a duly licensed person. Para 93 of the report is extracted hereunder:

“93. Motor Vehicles Act, 1988 provides for grant of learner's licence. [See Section 4(3), Section 7(2), Section 10(3) and Section 14]. A learner's licence is, thus, also a licence within the meaning of the provisions of the said Act. It cannot, therefore, be said that a vehicle when being driven by a learner

subject to the conditions mentioned in the licence, he would not be a person who is not duly licensed resulting in conferring a right on the insurer to avoid the claim of the third party. It cannot be said that a person holding a learner's licence is not entitled to drive the vehicle. Even if there exists a condition in the contract of insurance that the vehicle cannot be driven by a person holding a learner's licence, the same would run counter to the provisions of Section 149(2) of the said Act.”

23. A close reading of para 93 relied upon by the learned Senior Counsel for the Appellant(owner) would reveal that holder of a learner’s licence cannot be said not “duly licensed” if a learner drives a vehicle subject to the conditions mentioned in the licence.
24. The learned Senior Counsel for the Appellant tried to persuade me to hold that Rule 3(b) of the 1989 Rules applies to a person who is driving a vehicle without even issuance of a learner’s licence. I am unable to agree with the same. A person who does not possess a learner’s licence is not entitled to sit at the steering wheel of a motor vehicle. The test as envisaged under Section 8(5) of the Act is normally not a driving test but is generally a test about awareness of the traffic rules and traffic signs. Even if some basic test regarding driving is taken for issuance of a learner’s licence such learner is not expected to be accompanied by an instructor as stated by the learned Senior Counsel. Rather, a perusal of Rule 3 of 1989 Rules would reveal that a person shall not be treated to be driving a vehicle without a licence if he/she satisfies the condition laid down in Rule 3 of the 1989 Rules. Rule 3 is extracted hereunder:

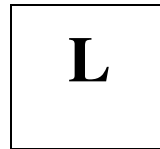
“3. General- The provisions of sub-section (1) of section 3 shall not apply to a person while receiving instructions or

gaining experience in driving with the object of presenting himself for a test of competence to drive, so long as-

(a) such person is the holder of an effective learner's licence issued to him in Form 3 to drive the vehicle;

(b) such person is accompanied by an instructor holding an effective driving licence to drive the vehicle and such instructor is sitting in such a position to control or stop the vehicle; and

(c) there is painted, in the front and the rear of the vehicle or on a plate or card affixed to the front and the rear, the letter "L" in red on a white background as under:



Note.- The painting on the vehicle or on the plate or card shall not be less than 18 centimetres squares and the letter "L" shall not be less than 10 centimetres high, 2 centimetres thick and 9 centimetres wide at the bottom:

Provided that a person, while receiving instructions or gaining experience in driving a motorcycle (with or without a side-car attached), shall not carry any other person on the motorcycle except for the purpose and in the manner referred to in clause (b)."

25. The purpose of Rule 3 of 1989 Rules is that a person with a learner's licence is expected to drive a vehicle only for a purpose of learning, and while learning how to drive a motor vehicle a holder of learner's licence must be accompanied by an instructor so as to make an effective driving licence to drive such vehicle. It is also the mandate of Rule 3 of the 1989 Rules that said instructor must be sitting in a position to control or stop the vehicle in case of any necessity. The purpose of making this Rule is

to ensure safety of not only the learner but also of other persons using the road. Thus, a person holding a learner's licence if not accompanied by an instructor as laid down in Rule 3(b) of 1989 Rules would not be holding a valid licence in consonance with the Supreme Court judgment in *Swaran Singh* where it was laid down that the vehicle must be driven by a learner subject to the conditions mentioned in the licence and only then he will be treated as a person who is duly licensed. The Claims Tribunal dealt with the issue of liability at great length and held that the Appellant (owner) was not accompanied by any instructor at the time of accident. This was the reason that the Appellant although in possession of learner's licence was prosecuted for not possessing a valid driving licence under Rule 3 of 1989 Rules but also under Section 18 of the Act apart from facing prosecution under Section 279/304A IPC. The Claims Tribunal on the issue of liability, observed as under:

“....The Central Government has framed rules for grant of driving licence including the “learners driving licence”. Under Rule 10 of the Central Motor Vehicle Rules, 1989, an application for the grant of “learners licence” is required to be made in Form II in a manner prescribed in the Rules. After a preliminary test is held by the Authority the licence under Rule 13 is issued in Form No.3. In terms of Form No.3 a warning has been issued to the holder of the “learners driving licence” drawing their attention to Rule 3 of the Central Motor Vehicles Rules, 1989 which prohibit such a driver from driving any motor vehicle unless he had besides him a person duly licenced to drive vehicle and in every case, the vehicle must carry “L” plat both in the front and rear of the vehicle. It is thus clear that a person holding a “learners driving licence” cannot drive a vehicle without having besides him a person duly licenced to drive that type of vehicle”. The Hon’ble High Court of Delhi in the case titled “Jeet Singh v. National Insurance Company Ltd.

& Ors.” (MANU/DE/0495/2008) has also held that the insurer is entitled for recovery rights from the owner/insured in case of breach of terms & conditions of the learner’s licence i.e. violation of Rule 3(b) of the Central Motor Vehicle Rules, 1989.

13. In the present case also admittedly no such person holding a valid driving licence to drive the vehicle in question has been shown to be sitting besides the R-1/driver of the offending vehicle at the time of accident and it is also admitted fact that R-1 was only holding a “learners driver licence” at the time of accident. Thus, there was a clear breach of the conditions of the “learners licence” issued by the Govt under the Rules and the R-1, therefore, cannot take protection of having the said licence to avoid his liability to pay under the award. In view of the law laid down by the Hon’ble Supreme Court in a case titled Swaran Singh and Ors. v. New India Assurance Co. 2003, SCC 2791, it is hereby held that R-2/Insurance Company will make the payment of the award amount at the first instance but it can get the recovery effected from the insured/respondent No.1. Thus, the respondent No.2/ Insurance Company is hereby granted recovery rights.”

26. The learned Senior Counsel for the owner has taken me through *Swaran Singh* in support of the proposition that the liability of the Insurance Company is statutory and that since the Respondent Insurance Company gets the premium, it was under obligation to satisfy the award.
27. It is true that liability of the Insurance Company is a statutory liability vis-à-vis the third party. The statute itself in the shape of Section 149(2) of the Act entitles the Insurance Company to avoid the policy. The harmonious construction adopted by the Supreme Court in *Swaran Singh* is that the liability of the insurer to satisfy the decree passed in favour of the third party is statutory and if there is willful breach of the terms of policy, the insurer is entitled to recover the compensation paid to the third

party. Thus, no fault can be found in the Claims Tribunal's order in making the Insurance Company liable to pay the compensation in the first instance and to recover it from the insured, that is, the Appellant herein.

28. In view of the above, the enhanced compensation of ₹12,44,408/-shall carry interest @ 7.5% per annum as awarded by the Claims Tribunal. 10% of the enhanced compensation shall be payable to each of the Appellant Nos.2 to 5 in MAC. APP.472/2012 (that is, the Claimants). Rest 60% shall be payable to the First Appellant Smt. Chander Mani Devi, the deceased's widow. The enhanced compensation payable to the Appellants No.2 to 4 shall be held in fixed deposit for a period of two years. These Appellants shall be entitled to quarterly interest and premature withdrawal of the amount if needed for their higher studies or their marriage. Compensation awarded to the Appellant No.5 Smt. Cheeta Devi, deceased's mother shall be released to her on deposit. 75% of the compensation awarded to the First Appellant shall be held in fixed deposit in UCO Bank, Delhi High Court Branch for a period of four years, six years and eight years in equal proportion, rest shall be released to her on deposit.
29. By an order of this Court dated 19.03.2012 at the time of granting stay in MAC. APP.287/2012, 50% of the award amount along with interest was ordered to be deposited with the Registrar General of this Court. This amount shall be released in favour of the Respondent Bajaj Allianz General Insurance Company Ltd. The enhanced compensation along with interest shall be deposited with the UCO Bank, Delhi High Court Branch by the Appellant (owner) within six weeks. After adjusting the

amount received by the Respondent Insurance Company rest of the amount shall be recoverable by it (the Insurance Company) in execution of this very judgment without having recourse to independent civil proceedings.

30. Both the Appeals are allowed in above terms.
31. Statutory amount of ₹25,000/- shall be released to the Appellant (owner).
32. Pending Applications stand disposed of.

(G.P. MITTAL)
JUDGE

OCTOBER 11, 2012
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