

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

Date of decision: 4th December, 2012

+ **MAC.APP. 575/2012**

M/S. THE UNITED INDIA INSURANCE COMPANY LTD... Appellant

Through: Mr. D.D. Singh, Adv. with
Mr. Navdeep Singh, Adv..

versus

SH. SURAJ BHAN & ORS.

..... Respondents

Through: Mr. Kundan Lal, Adv. for R-1 to R-5.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. The Appeal is for reduction of compensation of ₹7,72,584/- awarded by the Motor Accident Claims Tribunal (the Claims Tribunal) in favour of the Respondents No.1 to 5 for the death of Narender Kumar who died in a motor vehicle accident which occurred on 14.08.2010.
2. The finding on negligence is not challenged by the Appellant Insurance Company; thus the same has attained finality.
3. During inquiry before the Claims Tribunal it was claimed that the deceased was working as a videographer and also pursuing further studies and was a student of B.Com (First year). In order to prove deceased's income PW-1 Santosh Devi deposed that the deceased Narender Kumar was having an income of ₹7500/- per month. No cogent evidence was

produced with regard to deceased's income. However, no suggestion was given to PW-1 that the deceased was not working as a videographer. The Claims Tribunal, therefore, took the minimum wages of a skilled worker, deducted 50% towards personal and living expenses, as the deceased was a bachelor and no evidence was led that except his mother anybody else was dependent on him. The Claims Tribunal applied the multiplier of 18 as per the age of the deceased to compute the loss of dependency as ₹6,96,384/-. The compensation awarded is tabulated hereunder:-

Sl.No.	Compensation under various heads	Awarded by the Claims Tribunal
1.	Loss of Dependency	₹6,96,384/-
2.	Loss of Love and Affection	₹ 25,000/-
3.	Funeral Expenses	₹ 10,000/-
4.	Loss to Estate	₹ 10,000/-
5.	Cost of Treatment	₹ 31,200/-
	Total	₹ 7,72,584/-

4. The following contentions are raised on behalf of the Appellant Insurance Company:-

- (i) The multiplier has to be as per the age of the deceased or the Claimant whichever is higher. In the instant case, the age of the mother of the deceased was 47 years. The appropriate multiplier at this age was 13, the Claims Tribunal erred in applying the multiplier of 18.

- (ii) The Appellant successfully proved the breach of the terms and conditions of the policy. It was, therefore, liable to be exonerated. The Claims Tribunal erred in making the Appellant liable to pay the compensation in the first instance with a right to recover the same from the driver and the owner.
5. On the other hand, learned counsel for the Respondents No.1 to 5 (the Claimants) supports the judgment and urges that the compensation awarded is just and reasonable. Rather, the Claims Tribunal ought to have accepted the deceased's income as ₹7500/- per month and should have made an addition of 30% towards inflation.

INCOME OF THE DECEASED

6. In order to prove the deceased's income, the Respondents (the Claimants) filed Affidavit of Santosh Devi as Ex.PW-1/A. She testified that her son Narender Singh was working as a videographer and was pursuing Graduation by Correspondence. She testified that her son was earning ₹7500/- per month. In cross-examination, a suggestion was given to her that the deceased was earning ₹7500/- per month. She admitted that she did not have any documentary evidence with regard to deceased employment or income. It was, however, not suggested to her that the deceased was not working as a videographer.
7. In the circumstances, the Claims Tribunal rightly declined to believe the deceased's income to be ₹7500/- per month and computed the loss of dependency on the minimum wages of a skilled worker, that is, ₹6448/- per month.

8. 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 even in the absence of any evidence with regard to future prospects *Santosh Devi* provides for an increase of 30% towards inflation in the victims income in case of self employed persons and persons having fixed income. Relevant portion of *Santosh Devi* is extracted hereunder:

“14.....In our view, it will be naive to say that the wages or total emoluments/income of a person who is self-employed or who is employed on a fixed salary without provision for annual increment, etc., would remain the same throughout his life. The rise in the cost of living affects everyone across the board. It does not make any distinction between rich and poor. As a matter of fact, the effect of rise in prices which directly impacts the cost of living is minimal on the rich and maximum on those who are self- employed or who get fixed income/emoluments. They are the worst affected people. Therefore, they put extra efforts to generate additional income necessary for sustaining their families. The salaries of those employed under the Central and State Governments and their agencies/instrumentalities have been revised from time to time to provide a cushion against the rising prices and provisions have been made for providing security to the families of the deceased employees. The salaries of those employed in private sectors have also increased manifold. Till about two decades ago, nobody could have imagined that salary of Class IV employee of the Government

would be in five figures and total emoluments of those in higher echelons of service will cross the figure of rupees one lac. Although, the wages/income of those employed in unorganized sectors has not registered a corresponding increase and has not kept pace with the increase in the salaries of the Government employees and those employed in private sectors but it cannot be denied that there has been incremental enhancement in the income of those who are self-employed and even those engaged on daily basis, monthly basis or even seasonal basis. We can take judicial notice of the fact that with a view to meet the challenges posed by high cost of living, the persons falling in the latter category periodically increase the cost of their labour. In this context, it may be useful to give an example of a tailor who earns his livelihood by stitching cloths. If the cost of living increases and the prices of essentials go up, it is but natural for him to increase the cost of his labour. So will be the cases of ordinary skilled and unskilled labour, like, barber, blacksmith, cobbler, mason etc. Therefore, we do not think that while making the observations in the last three lines of paragraph 24 of Sarla Verma's judgment, the Court had intended to lay down an absolute rule that there will be no addition in the income of a person who is self-employed or who is paid fixed wages. Rather, it would be reasonable to say that a person who is self-employed or is engaged on fixed wages will also get 30 per cent increase in his total income over a period of time and if he / she becomes victim of accident then the same formula deserves to be applied for calculating the amount of compensation."

9. Thus, in the absence of any evidence with regard to the future prospects, the Claimants were entitled to an addition of 30% on account of inflation.

MULTIPLIER

10. This Court in *Vijay Laxmi & Ors. v. Binod Kumar Yadav & Ors.*, MAC APP.1148/2011 decided on 03.01.2012 noticed the Supreme Court judgments in *U.P. State Road Transport Corporation & Ors. v. Trilok*

Chandra & Ors., (1996) 4 SCC 362; G.M., Kerala SRTC v. Susamma Thomas, (1994) 2 SCC 176; New India Assurance Company Ltd. v. Shanti Pathak (Smt.) & Ors., (2007) 10 SCC 1; National Insurance Company Ltd. v. Shyam Singh & Ors., (2011) 7 SCC 65, decided on 04.07.2011 and Manam Saraswathi Sampoorana Kalavathi & Ors., v. The Manager, APSRTC, Tadepalligudem A.P. & Anr., (2010) 5 SCC 785, and held that the multiplier has to be as per the age of the deceased or that of the Claimant/Claimants whichever is higher. Paras 4 to 9 of the report are extracted hereunder:-

“4. As far as the selection of multiplier is concerned, the law is settled that the choice of multiplier is determined by the age of the deceased or that of the claimants whichever is higher. There is a three Judges Bench judgment of the Supreme Court in U.P. State Road Transport Corporation & Ors. v. Trilok Chandra & Ors., (1996) 4 SCC 362, where the Supreme Court relied on G.M., Kerala SRTC v. Susamma Thomas, (1994) 2 SCC 176 and reiterated that the choice of the multiplier is determined by the age of the deceased or that of the claimants whichever is more. Para 12 of the report is extracted hereunder:-

“12. For concluding the analysis it is necessary now to refer to the judgment of this Court in the case of General Manager, Kerala State Road Transport, v. Susamma Thomas: (1994) 2 SCC 176. In that case this Court culled out the basic principles governing the assessment of compensation emerging from the legal authorities cited above and reiterated that the multiplier method is the sound method of assessing compensation. The Court observed:

“The multiplier method involves the ascertainment of the loss of dependency or the multiplicand having regard to the circumstances of the case and capitalizing the multiplicand by an appropriate multiplier. The choice of the multiplier is determined by the age of the deceased (or that of the claimants,

whichever is higher) and by the calculation as to what capital sum, if invested at a rate of interest appropriate to a stable economy, would yield the multiplicand by way of annual interest. In ascertaining this, regard should also be had to the fact that ultimately the capital sum should also be consumed-up over the period for which the dependency is expected to last.

The principle was explained and illustrated by a mathematical example:

“The multiplier represents the number of Years' purchase on which the loss of dependency is capitalised. Take for instance a case where annual loss of dependency is Rs. 10,000. If a sum of Rs.1,00,000 is invested at 10% annual interest, the interest will take care of the dependency, perpetually. The multiplier in this case works out to 10. If the rate of interest is 5% per annum and not 10% then the multiplier needed to capitalise the loss of the annual dependency at Rs.10,000 would be 20. Then the multiplier i.e., the number of Years' purchase of 20 will yield the annual dependency perpetually. Then allowance to scale down the multiplier would have to be made taking into account the uncertainties of the future, the allowances for immediate lump sum payment, the period over which the dependency is to last being shorter and the capital feed also to be spent away over the period of dependency is to last etc. Usually in English Courts the operative multiplier rarely exceeds 16 as maximum. This will come down accordingly as the age of the deceased person (or that of the dependents, whichever is higher) goes up.”

5. There is another three Judges' decision of the Supreme Court in New India Assurance Company Ltd. v. Shanti Pathak (Smt.) &

Ors., (2007) 10 SCC 1, where in the case of the death of a bachelor, who was aged only 25 years, the multiplier of 5 was applied according to the age of the mother of the deceased, who was about 65 years at the time of the accident. Para 6 of the report is extracted hereunder:-

“6. Considering the income that was taken, the foundation for working out the compensation cannot be faulted. The monthly contribution was fixed at Rs.3,500/-. In the normal course we would have remitted the matter to the High Court for consideration on the materials placed before it. But considering the fact that the matter is pending since long, it would be appropriate to take the multiplier of 5 considering the fact that the mother of the deceased is about 65 years at the time of the accident and age of the father is more than 65 years. Taking into account the monthly contribution at Rs.3,500/- as held by the Tribunal and the High Court, the entitlement of the claim would be Rs.2,10,000/-. The same shall bear interest @ 7.5% p.a. from the date of the application for compensation. Payment already made shall be adjusted from the amount due.”

6. Learned counsel for the Appellant referred to Sarla Verma (supra 1) in support of the proposition that age of the deceased is to be taken into consideration for selection of the multiplier. As an example the multiplier taken in various cases such as in Susamma Thomas (supra), U.P. SRTC v. Trilok Chandara, (1996) 4 SCC 362 as clarified in New India Assurance Co. Ltd. v. Charlie, (2005) 10 SCC 720 and the multiplier as mentioned in Second Schedule to the Motor Vehicles Act were compared and it was held that the multiplier as per Column No.4 in the said table was appropriate for application. Sarla Verma (supra) related to the death of one Rajinder Prakash who had left behind his widow, three minor children apart from his parents and the grandfather. Obviously, the age of the deceased was taken into consideration for the purpose of selection of the multiplier as the deceased left behind a widow younger to him, apart from three minor children. It was not laid down as a proposition of law that irrespective of the age of the claimants, the age of the deceased is to be taken into consideration for selection of the multiplier for calculation of the loss of dependency. It is true that in Mohd. Ameeruddin (supra 2) and

P.S. Somanathan (supra 3) and National Insurance Company Ltd. v. Azad Singh (supra 5), the Hon'ble Supreme Court applied the multiplier according to the age of the deceased, yet in view of Trilok Chandra (supra) and Shanti Pathak (supra) decided by the three Judges of the Supreme Court, the judgment in Mohd. Ameeruddin (supra 2), P.S. Somanathan (supra 3) and Azad Singh (supra 5) cannot be taken as a precedent for selection of the multiplier.

7. In the latest judgment of the Supreme Court in National Insurance Company Ltd. v. Shyam Singh & Ors., (2011) 7 SCC 65, decided on 04.07.2011, the Supreme Court referred to Ramesh Singh & Anr. v. Satbir Singh & Anr., (2008) 2 SCC 667 and held that the multiplier as per the age of the deceased or the claimant whichever is higher would be applicable. Para 9 and 10 of the report are apposite:-

“9. This Court in the case of Ramesh Singh & Anr. v. Satbir Singh & Anr., (2008) 2 SCC 667, after referring to the earlier judgments of this Court, in detail, dealt with the law with regard to determination of the multiplier in a similar situation as in the present case. The said findings of this Court are as under:-

“6. We have given anxious consideration to these contentions and are of the opinion that the same are devoid of any merits. Considering the law laid down in New India Assurance Co. Ltd. v. Charlie, AIR 2005 SC 2157, it is clear that the choice of multiplier is determined by the age of the deceased or claimants whichever is higher. Admittedly, the age of the father was 55 years. The question of mother's age never cropped up because that was not the contention raised even before the Trial Court or before us. Taking the age to be 55 years, in our opinion, the courts below have not committed any illegality in applying the multiplier of 8 since the father was running 56th year of his life.”

10. In our view, the dictum laid down in Ramesh Singh (supra) is applicable to the present case on all fours.

Accordingly, we hold that the Tribunal had rightfully applied the multiplier of 8 by taking the average of the parents of the deceased who were 55 and 56 years.”

8. Similarly in Manam Saraswathi Sampoorna Kalavathi & Ors., v. The Manager, APSRTC, Tadepalligudem A.P. & Anr., (2010) 5 SCC 785, decided on 26.03.2010, the multiplier of 13 was applied in case of death of a young bachelor where the mother was 47 years of age.”

9. Thus, there is no escape from the conclusion that the multiplier has to be selected as per the age of the deceased or that of the claimants whichever is higher.”

11. The loss of dependency thus comes to ₹6,53,827/- (3224/- + 30% x 12 x 13) as against a sum of ₹6,96,384/- awarded by the Claims Tribunal.
12. The compensation awarded is re-computed as under:-

Sl.No.	Compensation under various heads	Awarded by the Claims Tribunal	Awarded by this Court
1.	Loss of Dependency	₹6,96,384/-	₹6,53,827/-
2.	Loss of Love and Affection	₹ 25,000/-	₹ 25,000/-
3.	Funeral Expenses	₹ 10,000/-	₹ 10,000/-
4.	Loss to Estate	₹ 10,000/-	₹ 10,000/-
5.	Cost of Treatment	₹ 31,200/-	₹ 31,200/-
	Total	₹ 7,72,584/-	₹ 7,30,027/-

LIABILITY

13. The issue of liability was dealt with by the Claims Tribunal in Paras 70 to 72 of the impugned judgment which are extracted hereunder:-

“70. The driving license of the driver was for Motorcycle and LMV Private. The offending vehicle was Milk Tanker which is a Commercial Vehicle. As such, there is a violation of conditions of policy. Insurance company has proved statutory defence available to it under Section 149 (2) of M.V. Act, 1988.

71. Inspite of serving a notice under Order 12 Rule 8 of CPC the insurer and driver failed to produce driving license in favour of respondent no. 1 to drive the category of offending vehicles.

72. However, present petitioners being third parties the liability to pay the compensation would still be of respondent no. 3, the insurance company who will be entitled to recover the decretal amount from the driver/insurer jointly and severally.”

14. The owner and the driver have not preferred any Appeal against grant of recovery rights. However, the Appellant’s plea is that since the breach of the terms and conditions of the policy was established, the Appellant was not at all liable to pay the compensation.
15. The issue of satisfying the third party liability in case of breach of the terms of insurance policy is settled by three Judge Bench report in *Sohan Lal Passi v. P. Sesh Reddy*, (1996) 5 SCC 21. As per Section 149(2) of the Motor Vehicles Act (the Act), an insurer is entitled to defend the action on the grounds as mentioned under Section 149(2)(a)(i)(ii) of the Act. Thus, the onus is on the insurer to prove that there is breach of the condition of the policy. It is well settled that the breach must be conscious and willful. Even if a conscious breach on the part of the insured is established, still the insurer has a statutory liability to pay the compensation to the third party and will simply have the right to recover the same from the insured/tortfeasor either in the same proceedings or by independent proceedings as the case may be, as ordered by the Claims Tribunal or the Court. The question of statutory liability to pay the

compensation was discussed in detail by a two Judge Bench of the Supreme Court in *Skandia Insurance Company Limited v. Kokilaben Chandravadan*, (1987) 2 SCC 654 where it was held that exclusion clause in the contract of Insurance must be read down being in conflict with the main statutory provision enacted for protection of victim of accidents. It was laid down that the victim would be entitled to recover the compensation from the insurer irrespective of the breach of the condition of policy. The three Judge Bench of the Supreme Court in *Sohan Lal Passi* analyzed the corresponding provisions under the Motor Vehicles Act, 1939 and the Motor Vehicles Act, 1988 and approved the decision in *Skandia*. In *New India Assurance Co., Shimla v. Kamla and Ors.*, (2001) 4 SCC 342, the Supreme Court referred to the decision of the two Judge Bench in *Skandia*, the three Judge Bench decision in *Sohan Lal Passi* and held that the insurer who has been made liable to pay the compensation to third parties on account of issuance of certificate of insurance, shall be entitled to recover the same if there was any breach of the policy condition on account of the vehicle being driven without a valid driving licence. The relevant portion of the report is extracted hereunder:

“21. A reading of the proviso to sub-section (4) as well as the language employed in sub-section (5) would indicate that they are intended to safeguard the interest of an insurer who otherwise has no liability to pay any amount to the insured but for the provisions contained in Chapter XI of the Act. This means, the insurer has to pay to the third parties only on account of the fact that a policy of insurance has been issued in respect of the vehicle, but the insurer is entitled to recover any such sum from the insured if the insurer were not otherwise liable to pay such sum to the insured by virtue of the conditions of the contract of insurance indicated by the policy.

22. To repeat, the effect of the above provisions is this: when a valid insurance policy has been issued in respect of a vehicle as evidenced by a certificate of insurance the burden is on the insurer to pay to the third parties, whether or not there has been any breach or violation of the policy conditions. But the amount so paid by the insurer to third parties can be allowed to be recovered from the insured if as per the policy conditions the insurer had no liability to pay such sum to the insured.

23. It is advantageous to refer to a two-Judge Bench of this Court in *Skandia Insurance Company Limited v. Kokilaben Chandravadan*, (1987) 2 SCC 654. Though the said decision related to the corresponding provisions of the predecessor Act (Motor Vehicles Act, 1939) the observations made in the judgment are quite germane now as the corresponding provisions are materially the same as in the Act. Learned Judge pointed out that the insistence of the legislature that a motor vehicle can be used in a public place only if that vehicle is covered by a policy of insurance is not for the purpose of promoting the business of the insurance company but to protect the members of the community who become sufferers on account of accidents arising from the use of motor vehicles. It is pointed out in the decision that such protection would have remained only a paper protection if the compensation awarded by the courts were not recoverable by the victims (or dependants of the victims) of the accident. This is the *raison d'être* for the legislature making it prohibitory for motor vehicles being used in public places without covering third-party risks by a policy of insurance.

24. The principle laid down in the said decision has been followed by a three-Judge Bench of this Court with approval in *Sohan Lal Passi v. P. Sesh Reddy*, (1996) 5 SCC 21.

25. The position can be summed up thus:

The insurer and the insured are bound by the conditions enumerated in the policy and the insurer is not liable to the insured if there is violation of any policy condition. But the insurer who is made statutorily liable to pay compensation to third parties on account of the certificate of insurance issued shall be entitled to recover from the insured the amount paid to the third parties, if

there was any breach of policy conditions on account of the vehicle being driven without a valid driving licence.....”

16. Again in *United India Insurance Company Ltd. v. Lehu & Ors.*, (2003) 3 SCC 338, in para 18 of the report the Supreme Court referred to the decision in *Skandia, Sohan Lal Passi* and *Kamla* and held that even where it is proved that there was a conscious or willful breach as provided under Section 149(2)(a) (ii) of the Motor Vehicle Act, the Insurance Company would still remain liable to the innocent third party but may recover the compensation paid from the insured. The relevant portion of the report is extracted hereunder:

“18. Now let us consider Section 149(2). Reliance has been placed on Section 149(2)(a)(ii). As seen, in order to avoid liability under this provision it must be shown that there is a “breach”. As held in Skandia and Sohan Lal Passi cases the breach must be on the part of the insured. We are in full agreement with that. To hold otherwise would lead to absurd results. Just to take an example, suppose a vehicle is stolen. Whilst it is being driven by the thief there is an accident. The thief is caught and it is ascertained that he had no licence. Can the insurance company disown liability? The answer has to be an emphatic “No”. To hold otherwise would be to negate the very purpose of compulsory insurance.....”

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20.....If it ultimately turns out that the licence was fake, the insurance company would continue to remain liable unless they prove that the owner/insured was aware or had noticed that the licence was fake and still permitted that person to drive. More importantly, even in such a case the insurance company would remain liable to the innocent third party, but it may be able to recover from the insured. This is the law which has been laid

down in Skandia, Sohan Lal Passi and Kamla cases. We are in full agreement with the views expressed therein and see no reason to take a different view.”

17.The three Judge Bench of the Supreme Court in *National Insurance Company Limited v. Swaran Singh & Ors.*, (2004) 3 SCC 297 again emphasized that the liability of the insurer to satisfy the decree passed in favour of the third party was statutory. It approved the decision in *Sohan Lal Passi, Kamla and Lehu*. Paras 73 and 105 of the report are extracted hereunder:

“73. The liability of the insurer is a statutory one. The liability of the insurer to satisfy the decree passed in favour of a third party is also statutory.

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105. Apart from the reasons stated hereinbefore, the doctrine of stare decisis persuades us not to deviate from the said principle.”

18.This Court in *Oriental Insurance Company Limited v. Rakesh Kumar and Others*, 2012 ACJ 1268 and other Appeals decided by a common judgment dated 29.02.2012, noticed some divergence of opinion in *National Insurance Company Limited v. Kusum Rai & Ors.*, (2006) 4 SCC 250, *National Insurance Company Limited v. Vidhyadhar Mahariwala & Ors.*, (2008) 12 SCC 701; *Ishwar Chandra & Ors. v. The Oriental Insurance Company Limited & Ors.*, (2007) 10 SCC 650 and *Premkumari & Ors. v. Prahalad Dev & Ors.*, (2008) 3 SCC 193 and held that in view of the three Judge Bench decision in *Sohan Lal Passi(supra)*

and *Swaran Singh*, the liability of the Insurance Company vis-à-vis the third party is statutory. If the Insurance Company successfully proves the conscious breach of the terms of the policy, then it would be entitled to recovery rights against the owner or driver, as the case may be.

19. Thus, the Appellant Insurance Company cannot avoid its statutory liability to satisfy the award vis-a-viz the third party. The Claims Tribunal rightly made the Appellant Insurance Company liable to pay the compensation with the right to recover the same from the owner and the driver.
20. In view of the above discussion, the Appeal is allowed to the extent that the compensation amount is reduced from ₹7,72,584/- to ₹ 7,30,027/- which shall carry interest @ 9% per annum as awarded by the Claims Tribunal.
21. The excess compensation of ₹42,557/- along with proportionate interest and the interest accrued, if any, during the pendency of the Appeal shall be refunded to the Appellant Insurance Company.
22. The compensation awarded shall be disbursed/held in fixed deposit in favour of the Claimants in terms of the order passed by the Claims Tribunal.
23. The statutory deposit of ₹25,000/- be refunded to the Appellant Insurance Company.
24. Pending Applications also stand disposed of.

(G.P. MITTAL)
JUDGE

DECEMBER 04, 2012/vk