

**Court No. - 2**

**Case :-** FIRST APPEAL FROM ORDER No. - 615 of 2006

**Appellant :-** The Oriental Insurance Company Ltd.

**Respondent :-** Smt. Rekha Devi And Others

**Counsel for Appellant :-** Subhash Chandra Srivastava

**Counsel for Respondent :-** Sudhir Bharti, Ram Singh

**Hon'ble Saral Srivastava, J.**

**Order on appeal**

1. Heard learned counsel for the appellant and learned counsel for the respondents.

2. The present appeal has been preferred by the appellant-insurance company challenging the award dated 26.11.2005 passed by the Motor Accident Claims Tribunal/District Judge, Kanpur Dehat (hereinafter referred to as 'Tribunal') in C.P. No.34 of 2000.

3. Challenging the aforesaid award, learned counsel for the appellant has contended that once Tribunal has recorded a finding that offending vehicle i.e. motorcycle/ TYS Suzuki UAI 1096 was driven by its driver not holding a valid driving licence, Tribunal should have absolved the insurance company from paying any compensation. It is contended that direction of the Tribunal that insurance company shall pay the award and thereafter, recover it from the owner is illegal and not sustainable in law.

4. Be that as it may, the law on the point that if the owner has committed breach of insurance policy, the insurance company is liable to pay award and thereafter, recover it from the owner, is settled by the judgement of Apex Court in the case of ***National Insurance Company Ltd. Vs. Swaran Singh & Others, AIR 2004 SC 1531*** wherein Apex Court has held that in case of breach of terms and conditions of policy, the insurance company should pay

the award and thereafter recover it from the owner of the vehicle.

5. Thus, the contention of learned counsel for the appellant is misconceived in view of the judgement of Apex Court in the case of ***Swaran Singh (supra)***.

6. Accordingly, the appeal lacks merit and is accordingly, ***dismissed*** with no order as to costs.

### **Order on Cross Objection**

1. Heard learned counsel for the claimant/cross objector and learned counsel for the respondents.

2. The claimant/cross objector being dissatisfied with the quantum of compensation have preferred the present cross appeal with a prayer for enhancement of compensation.

3. It is contended by learned counsel for the claimant/cross objector that no amount towards future prospect has been awarded to the claimant/cross objector whereas claimant is entitled to 40% towards future prospect in view of the judgement of Apex Court in the case of **National Insurance Company Limited Vs. Pranay Sethi and Others 2017 (16) SCC 680**. It is submitted that Tribunal has erred in law in applying the multiplier of 10 whereas considering the age of the claimant the Tribunal should have applied the multiplier of 17 in view of the judgement of the Apex Court in the case of **Sarla Verma and others Vs. Delhi Transport Corporation and others 2009 (6) SCC 121** in computing the compensation.

4. Per contra, learned counsel for the respondents has contended that compensation awarded by the Tribunal is just and proper and

cross objection of the claimant/cross objector deserves to be dismissed.

5. I have considered the rival submissions of the parties and perused the record.

6. The submission of learned counsel for the claimant/cross objector in respect of future prospect has got force in view of the judgement of Apex Court in the case of **Pranay Sethi (supra)** and thus, following the aforesaid judgment of Apex Court, claimant/cross objector is entitled to 40% towards future prospect considering the age of the deceased.

7. The submission of learned counsel for the claimant/cross objector in respect of wrong application of multiplier has got substance in view of the judgement of Apex Court in the case of **Sarla Verma (supra)**. Thus, it is provided that the enhanced amount of compensation should be computed by applying the multiplier of 17 instead of 10.

8. It is also provided that enhanced amount of compensation shall carry 6% simple interest from the date of institution of claim petition till the date of its payment.

9. Thus, for the reasons given above, the cross objection is partly **allowed** and the award of the Tribunal is modified to the extent indicated above. The insurance company is directed to pay the enhanced amount of compensation to the claimant/cross objector within a period of three months from the date of production of a certified copy of this order. There shall be no order as to costs.

**Order Date :- 13.10.2023**  
R.S. Tiwari