

Neutral Citation No. - 2024:AHC-LKO:43597

Reserved

Court No. - 5

Case :- FIRST APPEAL FROM ORDER No. - 123 of 2012

Appellant :- Smt. Meena And 3 Others

Respondent :- Sri Anil Kumar Gupta And Another

Counsel for Appellant :- Balendu Shekhar

Counsel for Respondent :- S.C. Gulati

With

Case :- FIRST APPEAL FROM ORDER No. - 148 of 2012

Appellant :- National Insurance Company Ltd. Thr. Its Asstt. Manager

Respondent :- Smt. Meena And 4 Others

Counsel for Appellant :- S.C.Gulati,Balendu Shekhar

Hon'ble Manjive Shukla,J.

1. Since the order and award dated 11.11.2011 passed by the learned Motor Accident Claims Tribunal/Additional District Judge, Court No.2, Lucknow in M.A.C.P. No.190 of 2009 (Smt. Meena and others Vs. Anil Kumar and others) is under challenge in both the aforesaid appeals therefore, they are being decided by the common judgment.

2. Heard Sri Balendu Shekhar, learned counsel appearing for the appellants/claimants and Ms. Pooja Arora, Advocate holding brief of Sri S.C. Gulati, learned counsel appearing for Opposite Party No.2 in F.A.F.O. No. 123 of 2012. Ms. Pooja Arora, Advocate holding brief of Sri S.C. Gulati, learned counsel has appeared for the appellant and Sri Balendu Shekhar, learned counsel has appeared for Opposite Parties No. 1 to 4 in F.A.F.O. No. 148 of 2012.

3. Facts of the case, in brief, are that on 12.5.2006 at about 7.00 A.M. while Mr. Sunder Lal was moving on his moped bearing Registration No. UP-32-AB/8094, one Tanker bearing Registration No. UP32-T/6251 which was being driven negligently by the driver, collided with the moped near Neelam Traders, Devpur Tara, Police Station Talkatora, District Lucknow and as a result of the said accident, Mr. Sundar Lal suffered serious injuries and he remained admitted in the hospital since 12.5.2006 till 15.5.2006 and ultimately succumbed to injuries and died on 15.5.2006. The deceased Sundar Lal at the time of accident was

wearing helmet and the accident in question was seen by many persons including Mr. Ram Gopal who was also on moped at the time of the accident.

4. The claimants filed Claim Petition No. 190 of 2009 and they claimed Rs.30,00,000/- as compensation from the opposite parties. The claimants led evidence by producing eye witnesses who categorically deposed before the learned Tribunal that deceased Sundar Lal was moving on his moped on the left side of the road and due to negligence on the part of the driver of the Tanker, the accident took place. At the time of the accident one Mr. Ram Gopal was also on the moped who also suffered injuries and his testimony was recorded in which he categorically stated before the learned Tribunal that there was no negligence on the part of the deceased Sundar Lal and the accident took place only because of the negligence on the part of the driver of the Tanker.

5. Learned Tribunal though did not record any infirmity in the testimony of the eye witnesses produced by the claimants but only relied on the site plan prepared by the police during the investigation of the accident in question and concluded that since as per the site plan it is a head-on collision, there is only 50% negligence on the part of the driver of the Tanker and remaining 50% negligence is of deceased Sundar Lal and thereby on the basis of contributory negligence, has held that only 50% of the total compensation admissible to the claimants is liable to be paid by the owner of the Tanker. Learned Tribunal has also concluded that since the Tanker was insured with the National Insurance Company Limited on the date of accident therefore, compensation has to be paid by the Insurance Company. Learned Tribunal while deciding the claim petition has held that since the valid driving licence of the driver of the Tanker has not been produced, the Insurance Company shall pay the compensation to the claimants and thereafter will have a right to recover it from the owner of the Tanker.

6. Learned Tribunal while calculating the income of the deceased available for the dependent family members took his total monthly income as Rs.8841/- but from that income Rs.650/- was deducted towards V.P.F. and festival advance. Learned Tribunal while calculating the income of the deceased available for the dependent family members has not included any amount towards future prospects.

7. Learned Tribunal vide order and award dated 11.11.2011 has directed the Insurance Company to pay compensation amounting Rs.4,26,880/- to the claimants along with simple interest of 6% per annum from the date of filing of the claim petition till the date of actual payment.

8. It has been contended on behalf of the appellants/claimants that there was no evidence before the learned Tribunal to infer that there was 50% negligence of the deceased Sundar Lal in the accident in question, rather there was clinching evidence of the eye witnesses that Mr. Sundar Lal was moving on his moped on the left side of the road, he was also wearing helmet and at the time of accident he was not at all negligent but learned Tribunal has placed reliance on the site plan prepared by the police during the investigation of the accident in question and has concluded that in the said site plan accident has been termed as 'head-on collision' therefore, it is a case of contributory negligence and there is 50% negligence on the part of the driver of the Tanker and 50% negligence on the part of the deceased Sundar Lal.

9. Sri Balendu Shekhar, learned counsel appearing for the claimants/appellants has argued that once there was clinching evidence of the eye witnesses that the accident took place only due to negligence on the part of the driver of the Tanker, there was no occasion for the learned Tribunal to rely on the site plan of the accident prepared by the police authorities that too when the said site plan has not been proved by calling upon the concerned police officers who prepared the said site plan. It has further been argued that even the site plan which has been relied on by the learned Tribunal to conclude that it is a case of contributory negligence, nowhere suggests that the accident in question was head-on collision. In the site plan, only direction of the Tanker has been shown by marking arrows (←←) and direction of the moped has been shown by marking arrows (→→) and place of the accident has been marked as 'X' therefore, the site plan nowhere suggests the accident to be a head-on collision and possibility of side-on collision cannot be ruled out. Once there is clinching evidence of the eye witnesses without any infirmity that deceased Sundar Lal was moving on his moped on the left side of the road and there was no negligence on his part, there was no occasion for the learned Tribunal to conclude it as a case of contributory negligence.

10. Sri Balendu Shekhar, learned counsel appearing for the claimants/appellants has relied on judgment rendered by the Hon'ble Supreme Court in the case of ***Saroj Devi and Ors. Vs. Narendra Singh and Ors. 2023 (2) T.A.C. 707 (S.C.)*** and has submitted that Hon'ble Supreme Court has categorically held that once there is clinching oral evidence before the Motor Accident Claims Tribunal that deceased was not negligent while driving his vehicle, the Tribunal cannot hold the deceased responsible for 50% negligence only on the basis of sketch/site plan. He further submits that in the present case P.W.-2 was the eye-witness and he in his testimony has deposed before the learned Tribunal that there was no negligence on the part of the deceased as he was driving his vehicle on the left side of the road and when he saw the Tanker coming from opposite side, he took all precautions and move to his left side but since driver of the Tanker was negligent, the accident in question took place therefore, once there is categorical testimony of the eye-witness before the learned Tribunal regarding 100% negligence on the part of the driver of the Tanker there was no occasion for the Tribunal to hold the deceased responsible for 50% negligence only on the basis of sketch/site plan of the accident particularly keeping in view that opposite parties did not led any evidence contrary to the testimony of P.W.-2.

11. It has been contended on behalf of the claimants/appellants that learned Tribunal has accepted monthly salary of the deceased to the tune of Rs. 8,841/- but in most arbitrary manner while calculating compensation an amount of Rs. 500/- towards V.P.F. and Rs. 150 towards festival advance taken by the deceased have been deducted from the gross monthly salary though it is well settled that the amount which was being deducted towards Voluntary Provident Fund (V.P.F.) and amount deducted towards festival advance cannot be deducted from the gross salary while determining the income of the deceased available for the dependent family members.

12. It has further been contended on behalf of the claimants/appellants that the deceased was a government servant and therefore there was every possibility of enhancement in his salary in future and even a document was produced before the learned Tribunal to show that pay revision took place and it was made effective w.e.f. 01.01.2006 i.e. prior to the date of accident which is 12.05.2006 but learned Tribunal has not added any amount in the salary of the deceased towards his future prospects. It has been argued that the Hon'ble Supreme Court vide its

judgment rendered in the case of ***National Insurance Company Limited Vs. Pranay Sethi and Ors. 2017 (4) T.A.C. 673 (S.C.)*** has held that while determining the income of the deceased the addition of 30% of the present salary should be made if the age of deceased was between 40 to 50 years but learned Tribunal while determining the income of the deceased available to the dependent family members has not added even a single rupee towards future prospects of the deceased and thus the compensation awarded by the learned Tribunal needs to be redetermined by this Court.

13. Sri Balendu Shekhar, learned counsel appearing for the claimants/appellants has also submitted before this Court that all the four claimants are entitled for the Rs. 50,000/- each towards loss of love and affection and Rs. 40,000/- towards loss of filian. It has further been submitted that claimants are entitled for the Rs. 21,000/- towards funeral expenses and Rs. 21,000/- towards loss of estate.

14. Per contra, Ms. Pooja Arora Advocate holding brief of Mr. S.C. Gulati, learned counsel appearing for the appellant in F.A.F.O. No. 148 of 2012 and for Opposite Party No. 2 in F.A.F.O. No. 123 of 2012 has submitted that the site plan prepared by the police regarding accident in question has been filed by the claimants before the learned Tribunal which categorically demonstrates that there was head-on collision in between the moped of the deceased and the Tanker, and once it was a head-on collision, learned Tribunal has rightly fixed 50% negligence on the part of the deceased and 50% negligence on the part of the driver of the Tanker. She further submits that once the site plan of the accident in question was filed by the claimants themselves before the learned Tribunal there was no necessity for the insurance company to lead evidence to prove that site plan and accordingly learned Tribunal while holding the driver of the Tanker responsible only for 50% negligence has acted strictly in accordance with law.

15. Learned counsel appearing for the insurance company has placed reliance on the judgment rendered by the Hon'ble Supreme Court in the case of ***Bijoy Kumar Dugar Vs. Bidya Dhar Dutta & Ors. (2006) 3 SCC 242*** and judgment rendered by the High Court of Karnataka at Bangalore in the case of ***United India Insurance Company Limited Vs. Hussain Sab & Ors. 2006 A.C.J. 1352*** and has submitted that in the said judgments it has categorically been held that once site plan of the accident has been filed before the learned Tribunal by the claimants themselves, there was no necessity for the insurance company to lead any evidence to prove the said site plan and further if the site plan

demonstrates the accident in question to be head-on collision the principle of contributory negligence shall apply and 50% negligence shall be attributed to the deceased and remaining 50% to the driver of the offending vehicle. She further submits that since the site plan of the accident in question was filed by the claimants before the learned Tribunal therefore, learned Tribunal finding it to be a head-on collision has determined negligence of the driver of the offending Tanker only to the extent of 50% thus on the said issue there is no infirmity in the award of the Tribunal.

16. Learned counsel appearing for the insurance company has argued that driving license of the driver of the Tanker has not been produced either by the claimants or by the owner of the Tanker before the learned Tribunal and therefore, in absence of the valid driving license with the driver of the Tanker, insurance company cannot be forced to pay the amount of compensation to the claimants as the insurance company becomes liable to pay compensation only if the vehicle was being driven as per terms of the insurance policy i.e. there was a valid license with the driver but in the instant case learned Tribunal though has accepted that there was no valid licence with the driver of the Tanker but even then has directed the insurance company to pay compensation to the claimants with a right to recover it from the owner.

17. Ms. Pooja Arora Advocate holding brief of Mr. S.C. Gulati, learned counsel appearing for the insurance company has vehemently argued that once learned Tribunal found that there was no valid driving license with the driver of the Tanker, there could not have been any occasion for the learned Tribunal to direct the insurance company to pay the compensation awarded to the claimants.

18. Learned counsel appearing for the appellants in F.A.F.O. No. 148 of 2012 has vehemently argued that the learned Tribunal in its order and award dated 11.11.2011 has recorded a categorical finding that the driving license of the driver of the Tanker has not been produced by either of the parties and therefore, it is presumed that the driver was not having valid driving license and once there is such presumption that amounts to breach of the terms and conditions of the insurance policy therefore, the liability for payment of compensation cannot be fastened on the insurer.

19. Learned counsel appearing for the insurer has placed reliance on the judgment rendered by the Hon'ble Supreme Court in the case of ***United India Insurance Company Limited through its Divisional Manager Vs.***

Sujata Arora & Ors 2013 (3) T.A.C. 29 (S.C.) and has submitted that Hon'ble Supreme Court in the said judgment has categorically held that if the driver of the offending vehicle does not possess valid driving license, liability for payment of compensation cannot be fastened on the insurer.

20. Ms. Pooja Arora, learned counsel appearing for the insurance company has also opposed redetermination of the compensation awarded by the learned Tribunal by adding 30% of the income of the deceased in his income towards his future prospects and has also opposed the argument advanced by the learned counsel appearing for the claimants that deductions under the Voluntary Provident Fund (V.P.F.) and festival advance may not be deducted from the income of the deceased to calculate the income available to the dependent family members of the deceased. Ms. Pooja Arora, learned counsel appearing for the insurance company has also opposed enhancement of the amount of the compensation awarded under different heads by learned Tribunal.

21. I have considered the rival arguments advanced by the learned counsels appearing for the parties.

22. This Court first proceeds to consider the arguments advanced by the learned counsel appearing for the appellants in F.A.F.O. No. 148 of 2012. This Court finds that the insurer while filing F.A.F.O. No. 148 of 2012 has challenged the order and award dated 11.11.2011 passed by the learned Motor Accident Claims Tribunal in M.A.C.P. No. 190 of 2009 on the ground that learned Tribunal in its order has recorded categorical finding that either of the parties could not produce the driving license of the driver of the offending vehicle i.e. Tanker, therefore presumption is that the driver of the Tanker was not having valid driving license, accordingly in view of the judgment of the Hon'ble Supreme Court rendered in the case of United India Insurance Company Limited (supra) the liability for payment of compensation could not have been fastened on the insurer.

23. It has further been argued on behalf of the insurer that once it is admitted by the learned Tribunal that driver of the Tanker was not having valid driving license, that amounts to breach of the terms and conditions of the insurance policy and accordingly insurer cannot be held responsible for payment of compensation to the claimants.

24. I find that learned Tribunal in its order and award dated 11.11.2011 has recorded a finding that the driver of the Tanker does not possess valid driving license and has directed the insurer to pay compensation

awarded under the award to the claimants and further insurer has been given right of recovery of the compensation paid by it from the insured i.e. owner of the Tanker.

25. The Hon'ble Supreme Court in its judgment rendered in the case of ***United India Insurance Company Limited through its Divisional Manager Vs. Sujata Arora & Ors. 2013 (3) T.A.C. 29 (S.C.)*** has held that if the driver of the offending vehicle does not possess valid driving license, that amounts to breach of the terms and conditions of the insurance policy and therefore, liability for payment of compensation cannot be fastened on the insurer. Relevant paragraphs of the judgment rendered by the Hon'ble Supreme Court in the Case of United India Insurance Company Limited (supra) are extracted as under :-

“6. However, learned Single Judge of the High Court proceeded on wrong assumption and held it otherwise giving rise to filing of the present appeal. The findings of learned Single Judge that even if driver was having a fake licence, would not exonerate the Insurance Company as he was not negligent in driving, are certainly erroneous. Driving without licence or with a fake licence as driving a vehicle negligently are two different aspects of the matter. Holding a valid driving licence is a requirement of law, was being driven by a person holding a valid licence, but rashly and negligently, is a matter of evidence. The very fact which stood established that licence of driver Jagdish was a fake one, would completely exonerate Insurance Company.

7. In the light of the aforesaid we are of the considered opinion that the impugned judgment, insofar as it fastens the liability on the Appellant Insurance Company, cannot be upheld. The same is to be set aside. We accordingly do so.

8. We are also fortified in our view in the light of the two judgment of this Court reported in 2007 (4) SCALE 36: 2007 (2) T.A.C. 398, "*National Insurance Company Ltd. v. Laxmi Narain Dhut*" and 2011 (5) SCALE 494: 2011 (3) T.A.C. 12, "*Jawahar Singh v. Bala Jain and other*", where in it has been held that in case it is found that the offending vehicle was driven by driver who was either holding no licence or a fake licence, then it amounts to violation of terms and conditions of policy and in that circumstances, no liability can be fastened on the Insurance Company.”

26. This Court finds that after the judgment rendered by the Hon'ble Supreme Court in the case of United India Insurance Company Limited (supra), Hon'ble Supreme Court again considered the effect of vehicle being driven by the driver having no driving license viz-a-viz liability of the insurer for payment of compensation to the third party and after considering the entire law on the point has rendered its judgment in the case of ***S. Iyyapan Vs. M/s. United India Insurance Company Limited & Anr. 2013 (3) T.A.C. 392 (S.C.)*** and has held that even if the offending vehicle was being driven by the driver having no valid driving license, insurer is liable to pay compensation to the claimants and further insurer has a right to recover the amount of compensation from the insured i.e. owner of the offending vehicle. Relevant paragraphs of the judgment

rendered by the Hon'ble Supreme Court in the case of S. Iyyapan (supra) are extracted as under :-

“14. In the case of National Insurance Co. Ltd. v. Swaran Singh & Ors., (2004) 3 SCC 297 : 2004 (1) T.A.C. 321, a 3-Judge Bench of this Court held as under:-

“47. If a person has been given a licence for a particular type of vehicle as specified therein, he cannot be said to have no licence for driving another type of vehicle which is of the same category but of different type. As for example, when a person is granted a licence for driving a light motor vehicle, he can drive either a car or a jeep and it is not necessary that he must have driving licence both for car and jeep separately.

48. Furthermore, the insurance company with a view to avoid its liabilities is not only required to show that the conditions laid down under Section 149(2)(a) or (b) are satisfied but is further required to establish that there has been a breach on the part of the insured. By reason of the provisions contained in the 1988 Act, a more extensive remedy has been conferred upon those who have obtained judgment against the user of a vehicle and after a certificate of insurance is delivered in terms of Section 147(3). After a third party has obtained a judgment against any person insured by the policy in respect of a liability required to be covered by Section 145, the same must be satisfied by the insurer, notwithstanding that the insurer may be entitled to avoid or to cancel the policy or may in fact have done so. The same obligation applies in respect of a judgment against a person not insured by the policy in respect of such a liability, but who would have been covered if the policy had covered the liability of all persons, except that in respect of liability for death or bodily injury.

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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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110. The summary of our findings to the various issues as raised in these petitions is as follows:

(i) Chapter XI of the Motor Vehicles Act, 1988 providing compulsory insurance of vehicles against third-party risks is a social welfare legislation to extend relief by compensation to victims of accidents caused by use of motor vehicles. The provisions of compulsory insurance coverage of all vehicles are with this paramount object and the provisions of the Act have to be so interpreted as to effectuate the said object.

(ii) An insurer is entitled to raise a defence in a claim petition filed under Section 163-A or Section 166 of the Motor Vehicles

Act, 1988, inter alia, in terms of Section 149(2)(a)(ii) of the said Act.

(iii) The breach of policy condition e.g. disqualification of the driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of Section 149, has to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards the insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by a duly licensed driver or one who was not disqualified to drive at the relevant time.

(iv) Insurance companies, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish “breach” on the part of the owner of the vehicle; the burden of proof wherefor would be on them.

(v) The court cannot lay down any criteria as to how the said burden would be discharged, inasmuch as the same would depend upon the facts and circumstances of each case.

(vi) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards the insured unless the said breach or breaches on the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply “the rule of main purpose” and the concept of “fundamental breach” to allow defences available to the insurer under Section 149(2) of the Act.

(vii) The question, as to whether the owner has taken reasonable care to find out as to whether the driving licence produced by the driver (a fake one or otherwise), does not fulfil the requirements of law or not will have to be determined in each case.

(viii) If a vehicle at the time of accident was driven by a person having a learner's licence, the insurance companies would be liable to satisfy the decree.

(ix) The Claims Tribunal constituted under Section 165 read with Section 168 is empowered to adjudicate all claims in respect of the accidents involving death or of bodily injury or damage to property of third party arising in use of motor vehicle. The said power of the Tribunal is not restricted to decide the claims inter se between claimant or claimants on one

side and insured, insurer and driver on the other. In the course of adjudicating the claim for compensation and to decide the availability of defence or defences to the insurer, the Tribunal has necessarily the power and jurisdiction to decide disputes inter se between the insurer and the insured. The decision rendered on the claims and disputes inter se between the insurer and insured in the course of adjudication of claim for compensation by the claimants and the award made thereon is enforceable and executable in the same manner as provided in Section 174 of the Act for enforcement and execution of the award in favour of the claimants.

(x) Where on adjudication of the claim under the Act the Tribunal arrives at a conclusion that the insurer has satisfactorily proved its defence in accordance with the provisions of Section 149(2) read with sub-section (7), as interpreted by this Court above, the Tribunal can direct that the insurer is liable to be reimbursed by the insured for the compensation and other amounts which it has been compelled to pay to the third party under the award of the Tribunal. Such determination of claim by the Tribunal will be enforceable and the money found due to the insurer from the insured will be recoverable on a certificate issued by the Tribunal to the Collector in the same manner under Section 174 of the Act as arrears of land revenue. The certificate will be issued for the recovery as arrears of land revenue only if, as required by sub-section (3) of Section 168 of the Act the insured fails to deposit the amount awarded in favour of the insurer within thirty days from the date of announcement of the award by the Tribunal.

(xi) The provisions contained in sub-section (4) with the proviso thereunder and sub-section (5) which are intended to cover specified contingencies mentioned therein to enable the insurer to recover the amount paid under the contract of insurance on behalf of the insured can be taken recourse to by the Tribunal and be extended to claims and defences of the insurer against the insured by relegating them to the remedy before regular court in cases where on given facts and circumstances adjudication of their claims inter se might delay the adjudication of the claims of the victims.”

15. In the case of *National Insurance Co. Ltd. v. Kusum Rai and Others*, (2006) 4 SCC 250 : 2006 (3) T.A.C.1, the respondent was the owner of a jeep which was admittedly used as a taxi and thus a commercial vehicle. One Ram Lal was working as a Khalasi in the said taxi and used to drive the vehicle some times. He had a driving licence to drive light motor vehicle. The taxi met with an accident resulting in the death of a minor girl. One of the issues raised was as to whether the driver of the said jeep was having a valid and effective driving licence. The Tribunal relying on the decision of this Court in *New India Assurance Co. v. Kamla* (supra) held that the insurance company cannot get rid of its third party liability. It was further held that the insurance company can recover this amount from the owner of the vehicle. Appeal preferred by the insurance company was dismissed by the High Court. In appeal before this Court, the insurance company relying upon the decision in *Oriental Insurance Co. Ltd. v. Nanjappan*, 2004 (13) SCC 224 : 2004 (2)

T.A.C. 12, argued that the awarded amount may be paid and be recovered from the owner of the vehicle. The Insurance Company moved this Court in appeal against the judgment of the High Court which was dismissed.

16. In the case of National Insurance Company Ltd. v. Annappa Irappa Nesaria alias Nesaragi and Others, 2008 (3) SCC 464, the vehicle involved in the accident was a matador having a goods carriage permit and was insured with the insurance company. An issue was raised that the driver of the vehicle did not possess an effective driving licence to drive a transport vehicle. The Tribunal held that the driver was having a valid driving licence and allowed the claim. In appeal filed by the insurance company, the High Court dismissed the appeal holding that the claimants are third parties and even on the ground that there is violation of terms and conditions of the policy the insurance company cannot be permitted to contend that it has no liability. This Court after considering the relevant provisions of the Act and definition and meaning of light goods carriage, light motor vehicles, heavy goods vehicles, finally came to conclusion that the driver, who was holding the licence duly granted to drive light motor vehicle, was entitled to drive the light passenger carriage vehicle, namely, the matador. This Court observed as under:

“20. From what has been noticed hereinbefore, it is evident that “transport vehicle” has now been substituted for “medium goods vehicle” and “heavy goods vehicle”. The light motor vehicle continued, at the relevant point of time to cover both “light passenger carriage vehicle” and “light goods carriage vehicle”. A driver who had a valid licence to drive a light motor vehicle, therefore, was authorized to drive a light goods vehicle as well.”

17. The heading “Insurance of Motor Vehicles against Third Party Risks” given in Chapter XI of the Motor Vehicles Act, 1988 (Chapter VIII of 1939 Act) itself shows the intention of the legislature to make third party insurance compulsory and to ensure that the victims of accident arising out of use of motor vehicles would be able to get compensation for the death or injuries suffered. The provision has been inserted in order to protect the persons travelling in vehicles or using the road from the risk attendant upon the user of the motor vehicles on the road. To overcome this ugly situation, the legislature has made it obligatory that no motor vehicle shall be used unless a third party insurance is in force.

18. Reading the provisions of Sections 146 and 147 of the Motor Vehicles Act, it is evidently clear that in certain circumstances the insurer’s right is safeguarded but in any event the insurer has to pay compensation when a valid certificate of insurance is issued notwithstanding the fact that the insurer may proceed against the insured for recovery of the amount. Under Section 149 of the Motor Vehicles Act, the insurer can defend the action inter alia on the grounds, namely, (i) the vehicle was not driven by a named person, (ii) it was being driven by a person who was not having a duly granted licence, and (iii) person driving the vehicle was disqualified to hold and obtain a driving licence. Hence, in our considered opinion, the insurer cannot disown its liability on the ground that although the driver was holding a licence to drive a light motor vehicle but before driving light motor vehicle used as commercial vehicle, no endorsement to drive commercial vehicle was obtained in the driving licence. In any case, it is the statutory right of a third party to recover the amount of compensation so awarded from the insurer. It is for the insurer to proceed against the insured for recovery of the amount in the event there has been violation of any condition of the insurance policy.”

27. The Hon'ble Supreme Court vide its judgment rendered in the case of S. Iyyapan (supra) has categorically held that if the driver of the vehicle does not possess valid driving license, insurer is liable to pay compensation to the claimants and further it can recover the amount of compensation from the insured i.e. owner of the vehicle. In the present case learned Tribunal in its order and award dated 11.11.2011 has recorded a finding that the driver of the Tanker was not having valid driving license and thereby has directed the insurer to pay compensation to the claimants and further has given right of recovery to insurer for recovery of the compensation paid to the claimants from the insured i.e. owner of the Tanker.

28. This Court is of the view that F.A.F.O. No. 148 of 2012 filed by the insurer is liable to be dismissed in the light of the law laid down by the Hon'ble Supreme Court in the case of S. Iyyapan (supra).

29. Now this Court proceeds to consider the F.A.F.O. No. 123 of 2012 filed by the claimants.

30. This Court finds that P.W.-2 in his testimony categorically deposed before the learned Tribunal that the deceased was driving moped on his left side and after realizing that driver of the Tanker was negligently driving the Tanker, he further took his moped to the left side of the road and there was no negligence on the part of the deceased regarding accident in question but the learned Tribunal merely relying on the site plan/sketch of the accident prepared by the police authorities has concluded that the accident in question was head-on collision and therefore, 50% negligence is attributable to the deceased and thereby has fastened liability of 50% of the compensation on the insurer of the Tanker.

31. Learned counsel appearing for the insurer has relied on judgment rendered by the High Court of Karnataka at Bangalore in the case of ***United India Insurance Company Ltd. Vs. Hussain Sab & Ors. 2006 ACJ 1352*** and has submitted that once the site plan of the accident prepared by the police authorities has been produced by the claimants which clearly demonstrates that the accident in question was a head-on collision, there was no necessity for insurer to prove that site plan by producing oral witnesses and therefore, the learned Tribunal has rightly relied on the site plan and has held that the deceased was responsible for 50% negligence and thereby the driver of the Tanker has been held responsible for only 50% negligence and accordingly only 50% compensation has been awarded. For ready reference paragraph 6 of the

aforesaid judgment rendered by the High Court of Karnataka at Bangalore is extracted as under :-

“6. In the decision cited, it is not clear as who produced a copy of F.I.R. marked evidence. In the present case, petitioners have produced the F.I.R. and marked it as their evidence. It is the salutary principle of law that the documents and its contents produced as evidence will bind the party who has produced the same. There is no duty on the part of the opponent to prove the contents of the documents produced by the other side. In the instant case, the first information report and the other documents relating to criminal case have been produced by the petitioners as their evidence. The said document binds the petitioners. Had the first information report and the other documents are produced by the respondents perhaps there is a duty on the part of the respondents to prove the documents produced by them by examining the competent witness. Therefore, the contention that the first information report and other documents relating to criminal case are inadmissible and that the respondent has not proved the contents is untenable. It is to be noted that the strict rules of evidence do not apply to trials and inquiry relating to the Motor Accidents Claims Tribunal. The only criteria to accept the documentary evidence would be to see whether the document is genuine and whether its veracity is acceptable. If these two conditions are satisfied the court can rely on such documentary evidence to adjudicate the rights of the parties, it cannot be said in this case that Exh. P1 is not a genuine document and that its veracity cannot be believed. More so when the document is produced by the petitioners in support of their case. In view of the adverse documentary evidence placed by the petitioners, it is not proper for the Tribunal to have held that the deceased were pedestrians. Therefore, the finding of the Tribunal to that effect is set aside. Since the deceased are passengers in a goods vehicle in view of the ruling of Apex Court cited above, the insurer is not liable to answer the claim. However, the owner is liable to pay the compensation.”

32. Learned counsel appearing for the insurer has also relied on the judgment rendered by the Hon'ble Supreme Court in the case of ***Bijoy Kumar Dugar Vs. Bidya Dhar Dutta & Ors. (2006) 3 S.C.C. 242*** wherein Hon'ble Supreme Court has held that once deceased noticed that the offending vehicle was being driven by its driver negligently, as a prudent person he should have taken extra precaution and could have taken his vehicle on the left side of the road but if he failed to do so and it was a case of head-on collision, the Motor Accident Claims Tribunal has rightly held it to be a case of contributory negligence. For ready reference relevant paragraph of the judgment rendered by the Hon'ble Supreme Court in the case of Bijoy Kumar Dugar (supra) is extracted as under :-

“12. Adverting to the next contention of the claimants, no doubt the High Court has not dealt with the point in issue. However, we have noticed the reasoning and finding of the MACT recorded under Issue No.2. It is the evidence of Rajesh Kumar Gupta-P.W.2 who was travelling in the Maruti car along with the deceased Raj Kumar Dugar on the day of the accident that he also suffered some injuries in the said accident. He stated that while coming from Digboi, the Maruti car being driven by the deceased met with an

accident at a place near Kharjan Pol. Before the accident, Raj Kumar Dugar noticed a passenger bus coming from the opposite direction and the movement of the bus was not normal as it was coming in a zigzag manner. The Maruti car being driven by the deceased Raj Kumar Dugar and the offending bus had a head-on collision. The MACT has not accepted the evidence of P.W. 2 to prove that the driver of the offending bus was driving the vehicle at abnormal speed. If the bus was being driven by the driver abnormally in a zigzag manner, as P.W. 2 wanted the Court to believe, it was but natural, as a prudent man, for the deceased to have taken due care and precaution to avoid head-on collision when he had already seen the bus coming from the opposite direction from a long distance. It was head-on collision in which both the vehicles were damaged and unfortunately, Raj Kumar Dugar died on the spot. MACT, in our view, has rightly observed that had the knocking been on one side of the car, the negligence or rashness could have been wholly fastened or attributable to the driver of the bus, but when the vehicles had a head-on collision, the drivers of both the vehicles should be held responsible to have contributed equally to the accident. The finding on this issue is a finding of fact and we do not find any cogent and convincing reason to disagree with the well-reasoned order of the MACT on this point. MACT has awarded interest at the rate of 10% per annum on the amount of compensation from the date of filing of the claim application till the date of payment. It is a discretionary relief granted by MACT and, in our view, the discretion exercised by MACT cannot be said to be inadequate and inappropriate.”

33. Learned counsel appearing for the claimants has relied on the latest judgment of the Hon’ble Supreme Court rendered in the case of ***Saroj Devi & Ors. Vs. Narendra Singh & Ors. 2023 (2) T.A.C. 707 (S.C.)***, wherein it has been held that if there is credible testimony of the eye-witnesses of the accident that there was no negligence on the part of the deceased then the Motor Accident Claims Tribunal is not justify in drawing certain assumptions based on the sketch/site plan of the accident prepared by the police authorities. For ready reference relevant paragraphs of the judgment rendered by the Hon’ble Supreme Court in the case of Saroj Devi (supra) are extracted as under :-

“5. The appellants were before the High Court. However, the High Court except holding that the Insurance Company is liable has not determined any other aspect of the matter. Therefore, the only aspect which arises for determination is with regard to the consideration as made by the MACT regarding the aspect of contributory negligence. In that regard a perusal of the Award would indicate that the evidence of AW-3 who was the eye-witness to the accident was reliable.

6. Though the same has been recorded, the MACT has not given much credence to the said evidence but has relied on the sketch which was available to conclude that there was 50% negligence. The MACT in fact noted that no evidence has been tendered on behalf of the respondents. In such circumstance, we are of the view that when the evidence of AW- 3 was available before the MACT and also the FIR which has been marked was also on record, when there was no contrary evidence, the MACT was not justified in merely drawing certain assumptions based on the sketch.

7. In any event, to satisfy ourselves we have also referred to the sketch which is available as Annexure P-1. From the perusal of the same, it is seen that the point of impact indicates that the bus travelling from Jaipur to Pulsana is on the right half of the road in which the Jeep was travelling from Pulsana to Jaipur. If that be the position, even the assumption on noting the sketch was not justified.”

34. This Court finds that P.W.-2 who was also on the moped and was an eye-witness categorically deposed in his testimony before the learned Motor Accident Claims Tribunal that deceased was driving his moped on the left side of the road and when he noticed that the driver of the Tanker is driving the Tanker negligently he further took turn to his left side. P.W.-2 in his testimony has categorically stated that the deceased was not at all negligent while driving moped. The said testimony of the P.W.-2 remained intact even in his cross-examination.

35. Learned Tribunal in spite of there being consistent testimony of the P.W.-2, relied on the site plan/sketch of the accident prepared by the police authorities and concluded that since accident in question is a head-on collision, deceased is responsible for 50% of the negligence and driver of the Tanker is responsible for 50% negligence.

36. I have perused the site plan/sketch of the accident prepared by the police authorities available in the file and I find that in the site plan only direction of the moped has been shown by putting arrows (→→) and direction of the Tanker has been shown by putting arrows (←←) and further the place of accident on the road has been marked as ‘X’. The site plan nowhere discloses that the accident in question was a head-on collision and further the place of accident marked by ‘X’ is also on the left side of the road which suggests that deceased was on the left side of the road.

37. This Court is of the view that once there was consistent testimony of the P.W.-2 before the learned Tribunal wherein he has categorically stated that deceased was not at all negligent while driving the moped, there was no occasion for the learned Tribunal to discard the testimony of P.W.-2 and hold the accident in question to be result of the contributory negligence on the basis of site plan/sketch which too nowhere provides that the accident in question was a head-on collision.

38. In view of the aforesaid reasons this Court finds that the accident in question took place due to 100% negligence of the driver of the Tanker and therefore, claimants are entitled for payment of 100% compensation by the insurer.

39. Learned Tribunal has considered monthly income of the deceased to be Rs. 8,841/- and out of that has deducted an amount of Rs. 500/- towards deduction under Voluntary Provident Fund (V.P.F.) and Rs. 150/- deduction against festival advance.

40. This Court is of the view that the aforesaid amounts i.e. Rs. 500/- towards V.P.F. and Rs. 150/- towards festival advance were the part of the income of the deceased and therefore the said amounts could have been deducted while calculating the income of the deceased available for the dependent family members.

41. Learned Tribunal while calculating the income of the deceased has not added any amount in his income towards his future prospects though the document regarding pay revision was filed with the claim petition to demonstrate that pay of the Central Government employees was revised w.e.f. 01.01.2006. The Hon'ble Supreme Court in the case of ***National Insurance Company Limited Vs. Pranay Sethi and Ors. 2017 (4) T.A.C. 673 (S.C.)*** has categorically held that if the deceased was a government servant and his age was between 40 to 50 years then 30% of his income should be added towards future prospects and thereafter the income of the deceased available for the dependent family members should be calculated. For ready reference paragraph 61 of the judgment rendered by the Hon'ble Supreme Court in the case of Pranay Sethi (supra) is extracted as under :-

“61. In view of the aforesaid analysis, we proceed to record our conclusions:-

(i) The two-Judge Bench in Santosh Devi should have been well advised to refer the matter to a larger Bench as it was taking a different view than what has been stated in Sarla Verma, a judgment by a coordinate Bench. It is because a coordinate Bench of the same strength cannot take a contrary view than what has been held by another coordinate Bench.

(ii) As Rajesh has not taken note of the decision in Reshma Kumari, which was delivered at earlier point of time, the decision in Rajesh is not a binding precedent.

(iii) While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.

(iv) In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where

the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.

(v) For determination of the multiplicand, the deduction for personal and living expenses, the tribunals and the courts shall be guided by paragraphs 30 to 32 of Sarla Verma which we have reproduced hereinbefore.

(vi) The selection of multiplier shall be as indicated in the Table in Sarla Verma read with paragraph 42 of that judgment.

(vii) The age of the deceased should be the basis for applying the multiplier.

(viii) Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years.”

42. This Court finds that Hon’ble Supreme Court in the case of Pranay Sethi (supra) decided on 31.10.2017 has quantified the amount payable under conventional heads, namely, loss of estate, loss of consortium and funeral expenses to be Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively with an enhancement at the rate of 10% in every three years. Since the case of Pranay Sethi (supra) was decided by the Hon’ble Supreme Court on 31.10.2017 and the accident in question took place on 12.05.2006, therefore this Court finds it fit to award Rs. 5000/- towards loss of estate, Rs. 5,000/- towards funeral expenses and Rs. 20,000/- towards the loss of consortium to Claimant No. 1.

43. Learned Tribunal, apart from the amount of compensation, has also directed for payment of 6% simple interest over the amount of compensation from the date of filing of the claim petition till the date of actual payment but I find that the rate of interest needs to be increased from 6% to 7%.

44. In view of the aforesaid reasons **F.A.F.O. No. 148 of 2012 is dismissed** and **F.A.F.O. No. 123 of 2012 is partly allowed**. The appellants /claimants of F.A.F.O. No. 123 of 2012 shall be paid the compensation calculated as under :-

Serial No.	Particulars	Amount
1.	Monthly income of the deceased	Rs. 8,841/-
2.	30% addition towards future prospects	Rs. 2653/-

3.	Total income of the deceased (Rs.8,841 + Rs. 2653)	Rs. 11,494/-
4.	Income after deduction of $\frac{1}{4}$ th amount towards personal expenses of the deceased (Rs. 11494-Rs. 2873)	Rs. 8621
5.	Annual loss of income to the dependents (Rs. 8621 X 12)	Rs.103,452/-
6.	Multiplier applicable '13'	
7.	Total loss of income Rs. (Rs.103,452 X 13)	Rs.13,44,876/- -
8.	Loss of consortium to Claimant No. 1	Rs. 20,000/-
9.	Funeral expenses	Rs. 5,000/-
10.	Loss of estate	Rs. 5,000/-
11.	Total Compensation payable to the claimants (7+8+9+10)	Rs. 13,74,876/-

45. Thus the award dated 11.11.2011 passed by the learned Motor Accident Claims Tribunal in M.A.C.P. No. 190 of 2009 is modified and the Claim Petition is awarded for an amount of Rs. 13,74,876/- along with 7% simple interest from the date of filing of the Claim Petition till the date of actual payment. The insurer i.e. National Insurance Company Limited is directed to pay the entire compensation amount along with interest [after excluding the amount already paid (if any)] to the claimants within three months from today. The insurer i.e. National Insurance Company Limited is also given right of recovery to recover the amount of compensation paid to the claimants from the owner of the vehicle i.e. Mr. Anil Kumar Gupta.

46. This Court further provides that out of the total compensation Claimant No. 2 Mr. Surendra, Claimant No. 3 Mr. Virendra and Claimant No. 4 Renu shall receive Rs. 1,00,000/-, Rs. 1,00,000/- and Rs. 2,00,000/- respectively. The Claimant No. 1 Smt. Meena shall be paid remaining amount of compensation i.e. (Rs. 13,74,876- Rs. 4,00,000 = Rs. 9,74,876) out of which Rs. 2,00,000/- shall be deposited in the name of Smt. Meena in the fixed deposit account in any nationalized bank for a period of two years.

Order Date :- 18.6.2024

Salim/Gaurav