

**HON'BLE SRI JUSTICE A. SHANKAR NARAYANA**

**CIVIL MISCELLANEOUS APPEAL No.257 OF 2004**

**JUDGMENT:**

Heard Mrs. A. Malathi, learned standing counsel for the appellant - respondent No.2 - Insurer.

2. The learned standing counsel would fairly come out that in view of the change in law by virtue of the decisions rendered by the Hon'ble Supreme Court in **Sarla Verma v. Delhi Transport Corporation**,<sup>1</sup> and subsequent rulings in **Amrit Bhanu Shali v. National Insurance Company Limited**<sup>2</sup> and **Munna Lal Jain v. Vipin Kumar Sharma**<sup>3</sup>, the ground that the younger parent's age ought to be taken for determining the multiplier factor is not now available and so also the ground agitated that the multiplier factor ought to have taken from the table mentioned in **Bhagwan Das v. Mohd. Arif**<sup>4</sup>.

2. One more ground, which is agitated in regard to the driver of the accident vehicle was not possessing the license is also not now available for the reason that, somehow in the Tribunal though, RW.1 was examined and Ex.B-1 was marked, but the relevant witness i.e., official from the office of Road Transport Authority was not examined.

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<sup>1</sup>. 2009 ACJ 1298

<sup>2</sup>. 2012 AIR SCW 3901

<sup>3</sup>. (2015) 6 SCC 347

<sup>4</sup>. 1987 ACJ 1052

3. What all submitted by the learned standing counsel is true.

In fact, a perusal of the order of the Tribunal would show that one Stenographer from M/s. United India Insurance Company Limited's local branch office at Srikakulam examined himself as RW.1 and no other witnesses were examined to prove that the driver of the accident vehicle was not possessing valid driving license at the relevant time. Mere examination of a Stenographer from the local branch office of the Insurer would not suffice and the letter, Ex.B-1, even. Therefore, the entire onus resting on respondent No.2 is not discharged, affirmatively to prove that the driver was not possessing valid driving license at the relevant time, and that burden certainly, cannot be cast on the petitioners. Therefore, there is no merit in the present appeal.

4. The present appeal is, accordingly, dismissed, confirming the order and decree passed by the Tribunal. There shall be no order as to costs.

As a sequel thereto, miscellaneous applications, if any, pending in the appeal, stand disposed of.

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**A. SHANKAR NARAYANA, J**

**August 10, 2017.**

Mgr