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IN THE HIGH COURT OF DELHI AT NEW DELHI

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*Reserved on: 19.04.2023**Pronounced on: 14.07.2023*

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MAC.APP. 925/2014, CM APPL. 16964/2014, 16998/2019 & 35409/2021

NATIONAL INSURANCE CO.

..... Appellant

Through: Ms. Archana Gaur, Advocate.

versus

SURENDER SINGH ANAND & ORS.

..... Respondents

Through: Mr. Navneet Goyal, Advocate for R-1 & 2.

Mr. Ravi Chandra Prakash,
Advocate for R-4.**AND**

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MAC.APP. 447/2015, CM APPL. 9823/2015, 9825/2015, 17000/2019 & 35565/2021

M/S LAULS LIMITED

..... Appellant

Through: Mr. Ravi Chandra Prakash,
Advocate.

versus

NATIONAL INSURANCE CO. & ORS.

..... Respondents

Through: Ms. Archana Gaur, Advocate for R-1.
Mr. Navneet Goyal, Advocate for R-2 & 3.



**CORAM:
HON'BLE MR. JUSTICE GAURANG KANTH**

J U D G M E N T

GAURANG KANTH, J.

1. In MAC.APP. 925/2014, the Insurance Company and in MAC.APP. 447/2015, the owner of the offending vehicle, are assailing the Award dated 13.08.2014 passed by the Court of Sh. S.C. Malik, Judge, Motor Accident Claims Tribunal, (Central- District), Delhi (**"Claims Tribunal"**) in Suit No. 77/2011 titled as *Sh. Surendra Singh Anand v. Smt. Gurvinder Kaur & Ors.* (**"Impugned Award"**), whereby the learned Claims Tribunal awarded an amount of Rs. 33,75,000/- as compensation to the Claimants with an interest @ 9% per annum, from the date of filing the petition, i.e. 07.02.2011, till its realization. Both the Insurer and the Insured (Owner) *vide* both the appeals are seeking the dismissal of the Impugned Award.
2. The facts germane to both the appeals as noted by the learned Tribunal are hereunder:

"2. Brief facts of this case giving rise to the present claim petition are that as on 18.06.2009 deceased Sh. Amarpreet Singh was coming from Sector 7, Faridabad, Haryana to his house along with his two friends namely Pankaj Yadav and Ishan Bhutani on his Bajaj Discover motorcycle bearing registration No.HR 51 V8639. When they reached near Prompt Company in front of Shri Ganesh Dharam Kanta, Sector-4, Faridabad, Haryana. then the driver of the offending Tata Trola vehicle bearing registration No.HR 38 N8483 who was reversing his vehicle without any indication in a rash and negligent manner hit the motorcycle of the deceased. As a result thereof all the occupants of the motorcycle fell down on the road and deceased Sh. Amarpreet Singh was crushed under the rear wheels of the offending vehicle. He was rushed to Sarvoday Hospital, Sector-8, Faridabad, Haryana, where during his treatment he died on 19.06.2009. FIR No.227/2009 dated



19.06.2009 U/s 227,337,304-A IPC was registered at Police Station Sector-7, Faridabad Haryana.”

3. Subsequently, the Claimants preferred an application under Sections 166 and 144 of the Motor Vehicles Act, 1988 (“Act”) praying for a compensation of Rs. 2,00,000,000/- (Two Crores only) on various counts before the learned Claims Tribunal. It is pertinent to note here that at the time of accident, Sh. Amarpreet Singh /deceased was aged 21 years (D.O.B 17.06.1988). The deceased was doing his Engineering Course (B-tech third year) in Electronics & Instrumentation from Manav Rachna College of Engineering.
4. The Driver and Owner of the offending vehicle did not contest the case and were proceeded ex-parte *vide* order dated 11.07.2011. Pertinently, the Claim petition was contested by the Insurer of the offending vehicle.
5. The Insurer in its written statement stated that the accident took place because of the rash and negligent driving by the deceased/Amarpreet Singh. It was further stated by the Insurer that the amount claimed by the Claimants was highly exorbitant, unjust and unfair. Pertinently, it was admitted by the Insurer that the offending vehicle bearing registration No.HR 38 N8483 was insured with them *vide* policy No. 361100/31/08/6700004708 w.e.f. 07.01.2009 to 06.01.2010 in the name of the owner – M/s Lauls Ltd. clearly covering the date of accident.
6. Vide order dated 11.07.2011, following issues were framed by the learned Claims Tribunal for adjudication:



“(i) Whether the deceased Shri Amarpreet Singh had died due to the injuries sustained by him in an accident which took place on 18.06.2009 because of rash and negligent driving of vehicle bearing registration No.HR 38 N8483 by Respondent No. 1?

(ii) Whether the petitioners are entitled to any compensation, if so, to what amount and from whom?

(iii) Relief.”

7. In support of the Claim Petition, the Claimants have examined three witnesses namely Sh. Surendra Singh Anand as PW-1, Sh. Angel Roy as PW-2 and Sh. Ram Nivas as PW-3.
8. The Insurer examined two witnesses i.e Ms. Rachna, Administrative Officer of the National Insurance Company Ltd. as R3W1 and Sh. Bharat Saraswat, Junior Assistant from the Office of RTO, Agra, Uttar Pradesh as R3W2.
9. The learned Claims Tribunal decided the issues in favor of the Claimants by holding that they are entitled to get a total compensation of Rs. 33,75,000/- as compensation to the Respondent No.1 with an interest @ 9% per annum, from the date of filing the petition, i.e. 07.02.2011, till its realization with the right to Insurer to recover the same from the Driver and Owner.

S. No.	Head	Compensation awarded
Pecuniary Damages		
1.	Loss of Dependency	Rs. 32,40,000/-
Non- Pecuniary Damages		
2.	Loss of love and affection etc.	Rs.1,00,000 /-
3.	Funeral charges	Rs. 25,000/-



4.	Loss of estate	Rs. 10,000/-
Total Compensation awarded		Rs. 33,75,000/-

10. Aggrieved by the Impugned Award of the learned Claims Tribunal, the Insurer herein filed an appeal MAC.APP. 925/2014 and the Owner of the vehicle filed an appeal in MAC.APP. 447/2015 under Section 173 of the Act, against the order of learned Claims Tribunal before this Court praying for setting aside the Impugned Award passed by the learned Claims Tribunal in Suit No. 77/2011. This Court issued notice in both the matters which have jointly been heard by this court.

SUBMISSIONS OF THE INSURER

11. Ms. Archana Gaur, learned counsel for the Insurer initiated her arguments by submitting that the learned Claims Tribunal erred in awarding Rs.33,75,000/- as compensation being unreasonable and unjust.
12. It is the case of learned counsel for the Insurer that at the time of the accident, the motorcycle bearing registration No.HR 51 V8639 was being driven by the deceased with two of his friends and thus the deceased himself contributed towards the negligence.
13. It is contended by the learned counsel that the income of the deceased has been wrongly taken in equivalence to the income of PW2 without appreciating the fact that the earning of the students of the same Degree will differ and cannot be same even though they are from the same University. It is contingent upon the professional



caliber and opportunities received by them. Hence, the learned Claims Tribunal erred in determining the income of the deceased at par with PW2. Learned Claims Tribunal ought to have taken the notional income provided under the Second Schedule or at most the minimum wages of matriculate for determining the income of the deceased.

14. She further argued that there was no proof as to increment in income of the deceased. Hence, the Trial Court erred in granting 50% towards 'future prospects' to the family of the deceased.
15. With regard to the multiplier applied by learned Claims Tribunal, it was the contention of the learned counsel for the Insurer that multiplier should have been taken based on age of the mother of the deceased, who is the only dependent in the present case, and not on the basis of the age of the deceased. It was her submission that as per the judgment of the Hon'ble Supreme Court in the case of *Sarla Verma v. DTC* reported as **2009 6 SCC 121**, in case of death of a bachelor, where there are two dependants being mother and father, age of the mother has to be considered. She furthered her contention by submitting that as per the judgment of Hon'ble Apex Court in the matter of *Amrit Bhanu Shali v. National Insurance Company* reported as **(2012) 11 SCC 738**, it was observed that the selection of multiplier should be based on the age of the deceased and not on the basis of the age of dependent where there may be a number of dependents of the deceased whose age may be different however, in the instant case, there is only one dependent i.e. mother and,



therefore, the learned Claims Tribunal erred in taking the age of deceased instead of age of the mother.

16. It was further contended that the deceased had only one dependant i.e., mother of the deceased and the father of deceased has categorically deposed that he was not dependant on the deceased and was working as a Maintenance Supervisor in Groz Engineering Tools Pvt. Ltd., Gurgaon and was earning Rs. 20,000/- per month.
17. As regards liability, learned counsel for the Insurer submitted that it was proved before the learned Claims Tribunal that the Driver of the offending vehicle was not holding a valid driving license at the time of the accident. Hence, the learned Claims Tribunal erred in fastening the liability on the Insurer.
18. Based on these submissions, Ms. Gaur prayed for the setting aside of the Impugned Award.

SUBMISSIONS OF THE CLAIMANTS

19. It was contended by Mr. Navneet Goyal, learned counsel for the Claimants that the accident of the deceased Shri Amarpreet Singh happened when he was coming from Sector 7, Faridabad, towards his house along with his friend on a motorcycle and when they reached in front of Ganesh Dharamkanta, the motorcycle was hit by the offending vehicle i.e. Tata Trolla bearing registration No. HR 38 N 8483 which was suddenly reversed by its driver without giving any indication. As a result of the sudden reverse movement,



the offending vehicle hit the motorcycle which fell and the deceased was crushed under rear wheels.

20. Further, he submitted that it is no one's case that the accident was not caused by the offending vehicle Tata Trola. It is also no one's case that the offending vehicle did not hit the motorcycle of the deceased when the offending vehicle was being reversed. A police case was registered against driver of the offending vehicle after due investigation. Both, the driver as well as the owner of the offending vehicle, neither filed written statement on record nor did they enter the witness box to dispute the negligence. Hence, there is no case of contributory negligence made out on part of the deceased.
21. It was averred by learned counsel for the Claimants that challenge of the Insurer with regard to quantum of compensation is not sustainable as the learned Claims Tribunal considered only Rs.20,000/- as monthly income of the deceased after considering that the deceased was a 3rd year student of Engineering, which is on the lower side. Further, learned Claims Tribunal added 50% towards future prospects, deducted 50% for personal expenses and applied a multiplier of 18 on the basis of the age of deceased. It is further his contention that the compensation awarded for loss of dependency is as per directions given by the Hon'ble Supreme Court in the matter of *National Insurance Company Ltd. v. Pranay Sethi* reported as (2017) 16 SCC 680. With regard to the income of deceased for computation of compensation, it is his contention that as per the judgment of this Hon'ble Court in the matter of *Bharti Axa General Insurance Company Ltd. v.*



Upender Kr. Shashtri & Ors. reported as *2018 SCC OnLine Del 7855*, wherein income of deceased student of B.A. (Hons.) was taken as Rs.27,600/- per month. He further relied on another decision of this Hon'ble Court in the matter of *Oriental Insurance Co. Ltd. v. Rajpal Sharma*, reported as *2023 SCC OnLine Del 123*, wherein income of deceased student of B. Pharma was taken as Rs.27,600/- per month, whereas the income taken by learned Claims Tribunal is only Rs.20,000/- per month.

22. Further, it is also his contention that the compensation awarded by learned Claims Tribunal with respect to the non-pecuniary head is already on the lower side as nothing has been awarded under the head of 'loss of consortium'. Hence, the compensation awarded is reasonable and calls for no reduction. He further contended that the interest awarded was on the basis of the prevalent rate of interest as was being awarded by the Hon'ble Courts during that relevant period.
23. Lastly, Mr. Goyal submitted that the issue of driver of offending vehicle having valid driving licence or offending vehicle being driven in violation of rules, is a dispute inter-se between the insurer and the insured. The Claimants are entitled to recover from the Insurance Company, as in case of breach of policy condition also the Insurance Company is liable to pay compensation at the first instance which can be recovered from the insured as per the orders of learned Claims Tribunal.



24. Based on these submissions, learned Counsel for the Claimants prays for the enhancement of compensation awarded by learned Claims Tribunal.

SUBMISSIONS ON BEHALF OF THE OWNER OF THE OFFENDING VEHICLE

25. Mr. Ravi Chandra Prakash, learned counsel for the owner of the offending vehicle initiated his arguments by submitting that he has been proceeded *ex parte* before the learned Claims Tribunal *vide* order dated 11.07.2011 as he did not contest the suit bearing no. 77/11. It is his contention that he was under the impression that as his vehicle was insured with the Insurance Company/insurer and all the documents were provided to the insurer, and hence the claim petition will be contested by the Insurer.
26. Learned counsel for the owner argued that learned Claims Tribunal *vide* its Impugned Award held that the owner and the driver along with the Insurer are jointly and severely liable to make payment to the Claimants and accordingly granted recovery to the Insurer against the owner and driver of the offending vehicle.
27. He submitted that it has been admitted by the Insurer of the offending vehicle that the offending vehicle bearing registration No.HR 38 N 8483 was insured with them *vide* policy No.361100/31/08/6700004708 w.e.f. 07.01.2009 to 06.01.2010 in the name of M/s Lauls Ltd. clearly covering the date of accident. He further argued that learned Claims Tribunal erred in holding that the



offending vehicle was not having a permit as on date, therefore recovery rights against the owner has been granted to the Insurer. However, the fact is that the offending vehicle was having legal permit from 20.11.2007 to 19.11.2012 issued by the Regional Transport Authority, Government of Haryana. Learned counsel argued that the driver of the offending vehicle was hired after the examination of his licence, which on the face of it looked genuine. Further, he argued that a test of driving was also taken by the owner and the driver was competent to drive the vehicle, and accordingly he was hired.

28. Another limb of his contention is that as per Section 149 (2)(a)(ii) of the Act, to avoid liability, it must be shown that there is a breach and the breach must be on the part of insured. The owner himself would be an innocent sufferer. It is for this reason that the Legislature, in its wisdom, has made insurance, at least third party insurance, compulsory.
29. He further submitted that the Insurance Company has nowhere averred that there is a wilful breach of any of conditions on the part of owner. The situation would be different when the employer/owner was told that the driving licence of its employee/driver is fake or false and yet the employer/driver was not taking appropriate action to get the same duly verified from the issuing Authority. He further submitted that no plea of wilful negligence on the part of the owner has been taken by the Insurer and it has not been established by the Insurer that the insured did not take reasonable and adequate care and caution to verify the



genuineness or otherwise of the licence held by the driver. He furthered his contention by submitting that 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 third party. To avoid the liability, insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care.

30. He further bolstered his submission by relying on the judgment of the Hon'ble Supreme Court in the matter of ***Nirmala Kothari v. United India Insurance Co. Ltd.***, reported as (2020) 4 SCC 49 wherein it was held as follows:

“8. Breach of conditions under Section 149(2)(a) of the Motor Vehicles Act, 1988 absolves the insurer of its liability to the insured. Section 149(2)(a)(ii) deals with the conditions regarding driving licence. In case the vehicle at the time of accident is driven by a person who is not duly licenced or by a person who has been disqualified from holding or obtaining a driving licence during the period of disqualification, the insurer is not liable for compensation. In the instant case it is a matter of fact that no record of the licence bearing No. P03041288753070 was found with the licensing authority.

9. Having set forth the facts of the present case, the question of law that arises for consideration is what is the extent of care/diligence expected of the employer/insured while employing a driver? To answer this question, we shall advert to the legal position regarding the liability of the insurance company when the driver of the offending vehicle possessed an invalid/fake driving licence. In *United India Insurance Co. Ltd. v. Lehu* [United India Insurance Co. Ltd. v. Lehu, (2003) 3 SCC 338 : 2003 SCC (Cri) 614] a two-Judge Bench of this Court has taken the view that the insurance company cannot be permitted to avoid its liability on the ground that the person driving the vehicle at the time of the accident was not duly licenced. It was further held that the wilful breach of the conditions of the policy should be established. The law with this respect has been discussed in detail in *PEPSU RTC v. National*



Insurance Co. [PEPSU RTC v. National Insurance Co., (2013) 10 SCC 217 : (2013) 4 SCC (Civ) 713 : (2013) 4 SCC (Cri) 768 : (2014) 1 SCC (L&S) 750] . We may extract the relevant paragraph from the judgment : (PEPSU case [PEPSU RTC v. National Insurance Co., (2013) 10 SCC 217 : (2013) 4 SCC (Civ) 713 : (2013) 4 SCC (Cri) 768 : (2014) 1 SCC (L&S) 750] , SCC p. 223, para 10)

“10. In a claim for compensation, it is certainly open to the insurer under Section 149(2)(a)(ii) to take a defence that the driver of the vehicle involved in the accident was not duly licensed. Once such a defence is taken, the onus is on the insurer. But even after it is proved that the licence possessed by the driver was a fake one, whether there is liability on the insurer is the moot question. As far as the owner of the vehicle is concerned, when he hires a driver, he has to check whether the driver has a valid driving licence. Thereafter he has to satisfy himself as to the competence of the driver. If satisfied in that regard also, it can be said that the owner had taken reasonable care in employing a person who is qualified and competent to drive the vehicle. The owner cannot be expected to go beyond that, to the extent of verifying the genuineness of the driving licence with the licensing authority before hiring the services of the driver. However, the situation would be different if at the time of insurance of the vehicle or thereafter the insurance company requires the owner of the vehicle to have the licence duly verified from the licensing authority or if the attention of the owner of the vehicle is otherwise invited to the allegation that the licence issued to the driver employed by him is a fake one and yet the owner does not take appropriate action for verification of the matter regarding the genuineness of the licence from the licensing authority. That is what is explained in Swaran Singh case [National Insurance Co. Ltd. v. Swaran Singh, (2004) 3 SCC 297 : 2004 SCC (Cri) 733] . If despite such information with the owner that the licence possessed by his driver is fake, no action is taken by the insured for appropriate verification, then the insured will be at fault and, in such circumstances, the insurance company is not liable for the compensation.”

10. While the insurer can certainly take the defence that the licence of the driver of the car at the time of accident was invalid/fake,



however, the onus of proving that the insured did not take adequate care and caution to verify the genuineness of the licence or was guilty of wilful breach of the conditions of the insurance policy or the contract of insurance lies on the insurer.”

31. Based on these submissions, learned Counsel for the owner concluded that no recovery right is to be granted to the insurer.

LEGAL ANALYSIS

32. This Court has heard the arguments advanced by learned counsel for the parties and further perused the records.
33. With regard to the issue of negligence, it is the contention of the learned counsel for the Claimants that the accident occurred due to the sudden reverse done by the driver of the offending vehicle without giving any indication. On the contrary, learned counsel for the Insurer argued that the accident of the deceased was due to the negligence of the deceased himself as he was driving the motorcycle with two of his friends and thus the deceased himself contributed towards the negligence.
34. From the material on record and as per the testimony of PW-1, read with the copies of the certified copied of the criminal record produced, there is no iota of doubt that the deceased sustained fatal injuries on the unfortunate day of 18.06.2009, due to the rash and negligent driving of the driver of the offending vehicle. As regards the contention of the Insurer that deceased himself contributed to the accident as he was driving the motorcycle with two of his friends, is flawed in the opinion of this Court. The fact that the deceased was riding on a motorcycle along with his two friends, may not, by itself, without anything more, make him guilty of



contributing towards the negligence. At the most, it would make him liable for punishment under the relevant provisions of Law. However, such violation by itself, without any further evidence in this regard, cannot lead to a finding of contributory negligence. The Insurer has not placed on record any evidence to substantiate their claims. Therefore, in the absence of any evidence to show that the wrongful act on the part of the deceased victim contributed to the accident, the deceased could not be held guilty of contributing towards the negligence. Hence, this Court finds no ground to interfere with the findings of learned Claims Tribunal in this regard.

35. Another quintessential issue which needs to be adjudicated is the issue of income of the deceased. The contention of the learned counsel for the insurer was that learned Claims Tribunal ought to have taken the notional income provided under the second schedule or at most the minimum wages of matriculate for determining the income of the deceased. Au Contraire, learned Counsel for the Claimants argued that learned Claims Tribunal has considered only Rs.20,000/- as monthly income of the deceased after considering that the deceased was a 3rd year student of Engineering, which is on the lower side. He further contended that this Hon'ble Court in both *Bharti Axa General Insurance Company Ltd.* (supra) and *Rajpal Sharma* (supra) has considered the income of the deceased student of B.A. (Hons.) and B. Pharma as Rs. 27,600/- per month.
36. As per the testimony of PW-1/father of the deceased, the deceased was 21 years old and was pursuing B.E. Applied Electronics &



Instrumentation Engineering (3rd Year) from Manav Rachna College of Engineering. According to him, the deceased was having a bright and excellent future and career and if the deceased was alive, then his earning would have been Rs. 30,000/- p.m. The Claimants also examined PW-2, Sh. Angel Roy, who was one of the classmates of the deceased Amarpreet Singh at Manav Rachna College of Engineering. PW-2 testified that deceased was his classmate in the course B.E. Applied Electronics & Instrumentation Engineering in Manav Rachna College of Engineering. PW-2 further testified that after completion of his degree of B.E. Applied Electronics & Instrumentation Engineering from Manav Rachna College of Engineering he is getting salary of Rs. 2,40,000/- p.a. He placed on record his appointment letter. Hence, based on the said evidence of PW-2, learned Tribunal fixed the notional income of the deceased as Rs. 2,40,000/- p.a.

37. The reliance of learned Claims Tribunal on the income of PW-2, Sh. Angel Roy who was a classmate of the deceased was not justified. Each student is different, and it is not correct to fix the notional salary of the deceased as equal to his batchmates without comparing their academic records and proficiency in the extracurricular activities. The claimants failed to produce any document showing the merit of the deceased. The only document produced was a certificate showing that the deceased was a bona fide student studying in 3rd year of B.E- Applied Electronics & Instrumentation Engineering from Manav Rachna University. The said certificate is not enough to prove his caliber. Hence this Court



has no hesitation in holding that learned Claims Tribunal erred in fixing the notional income of the deceased as Rs. 2,40,000/- p.a.

38. However, it cannot be ignored that the deceased was pursuing a professional course. In this regard, the observation of the Hon'ble Supreme Court in **Arvind Kumar Mishra v. New India assurance Company Ltd.** reported as **2010 (10) SCC 254** is relevant:

“On completion of Bachelor of Engineering (Mechanical) from the prestigious institute like B.I.T., it can be reasonably assumed that he would have got a good job. The appellant has stated in his evidence that in the campus interview he was selected by Tata as well as Reliance Industries and was offered pay package of Rs. 3,50,000/- per annum. Even if that is not accepted for want of any evidence in support thereof, there would not have been any difficulty for him in getting some decent job in the private sector. Had he decided to join government service and got selected, he would have been put in the pay scale for Assistant Engineer and would have at least earned Rs. 60,000/- per annum. Wherever he joined, he had a fair chance of some promotion and remote chance of some high position. But uncertainties of life cannot be ignored taking relevant factors into consideration. In our opinion, it is fair and reasonable to assess his future earnings at Rs. 60,000/- per annum taking the salary and allowances payable to an Assistant Engineer in public employment as the basis.”

39. In **Arvind Kumar Mishra** (Supra) case, the Hon'ble Supreme Court was dealing with an accident that happened in the year 1993 and hence notional income was fixed as Rs. 5000/- p.m. In the present case, the accident happened in the year 2009. Learned Single Judge of the Hon'ble Bombay High Court, for an accident happened in the year 2014, fixed the notional income of a B.E. Mechanical Engineering Student as Rs. 10,000/- p.m. (**Bhimsen Taneja Gawade v. State of Goa**, reported as **2022 SCC online Bom 1542**). In another occasion, learned Single Judge of Hon'ble Madras High Court, for



an accident occurred in the year 2009, fixed the notional income of a 20 year old 3rd year B.E. Electricals & Electronics Engineering Student as Rs.10,000/- p.m. [*Nirmal Kumar & Ors v. Ganesha Murthy* (CMA No.2502/2011)]. Hon'ble Kerala High Court, for an accident occurred in the year 2009, fixed the notional income of a B-Tech final year student as Rs. 8000/- p.m. (*Ranjeev E.A v. Road Carrier of India* reported as *2014 SCC Online Ker 19147*). Hon'ble Punjab & Haryana High Court, for an accident happened in the year 2012, fixed the notional income of 2nd year student of 3 Years Diploma Course in Electronics at Ryat Bhara Polytechnic College, SBS Nagar, Mohali as Rs.10,000/- p.m. (*Taluka Devi v. Ravinder Singh & Ors, FAO 8053/2014*). Hence considering the various case laws in this field, this Court deems it appropriate to fix the notional income of the deceased as Rs.10,000/- p.m.

40. Learned Counsel for the Claimants placed high reliance on *Bharti Axa General Insurance Company Ltd. (supra)* and *Rajpal Sharma (supra)*. This Court is of the considered opinion that the said judgments can be distinguished in the facts and circumstances of the present case. In the former judgment, it is seen that the deceased was a brilliant student with extraordinary talent in sports and hence the earning capacity of the deceased was based on by relying on the certificate of merit and various achievements in sports and education. However, in the present case, no such document was placed on record to establish the merit and achievement of the deceased. Whereas, in the judgment of *Rajpal Sharma (supra)*, the deceased was undergoing a specialized technical course of D.Pharm. Even



though the Court has considered the contention of the Claimants with regard to granting income on the basis of ***Bharti Axa General Insurance Company Ltd.*** (*supra*) as Rs. 27,600/- p.m., however, this Court awarded the income of the deceased by taking into account the minimum wages of a skilled workman. Hence, both these case laws are not applicable to the present case.

41. As regard the number of dependents, it is the contention of the learned counsel for the Insurer, that the deceased had only one dependent i.e., mother, and father of the deceased has categorically deposed that he was not dependant on the deceased and was working as a Maintenance Supervisor in Groz Engineering Tools Pvt. Ltd. Gurgaon and was earning Rs. 20,000/- p.m. This Court in the matter of ***Sukhdev Prasad v. Sunil Kumar (Iffco Tokio General Insurance Co. Ltd.)*** and Others reported as **2021 SCC OnLine Del 2469** has categorically held that even if the parents are not dependent on their children at the time of the accident, they will certainly be dependent, both financially and emotionally, upon their children at the later stage of their life, as the children were dependent upon their parents in their initial years. Relevant part of the aforesaid judgment is reproduced hereunder:

“5. This case is squarely covered by the recent judgment of this Court in Indirawati (supra) in which this Court had held that the parents of the deceased are considered in law as dependent on their children, considering that the children are bound to support their parents in their old age, when the parents would be unable to maintain themselves and the law imposes a responsibility on the children to maintain their parents. Even if the parents are not dependent on their children at the time of the accident, they will certainly be dependent, both financially and



emotionally, upon their children at the later stage of their life, as the children were dependent upon their parents in their initial years. It would be unfair as well as inequitable to deny compensation for loss of dependency to a parent, who may not be dependent on his/her child at the time of accident per se but would become dependent at his/her later age...”

42. In view of the above judgment, this Court is of the view that the parents of the deceased are always considered as dependent upon their children and are entitled to compensation.
43. Further, it is also the argument of learned counsel for the insurer that multiplier should have been taken based on age of the mother who is the only dependent in the present case and not on the basis of the age of the deceased. The Hon'ble Supreme Court in the matter of ***Pranay Sethi*** (*supra*) has categorically held that the age of the deceased should be taken into consideration while applying the multiplier. Hence, the multiplier to be applied in the present case would be 18 as the age of the deceased at the time of the accident was 21 years.
44. Moving forward with the issue of future prospects, relying on Para **59.4** of ***Pranay Sethi*** (*supra*), while determining the income, an addition of 40% of actual salary to the income of the deceased towards future prospects, where the deceased had a fixed salary and was below the age of 40 years, should be made. In the present case, the age of the deceased was 21 years and the nature of his employment, if he was alive, would be fixed salary hence an addition of **40%** of actual salary to the income of the deceased ought to have been awarded by the learned Claims Tribunal.



45. Further, learned Claims Tribunal has deducted 50% towards the personal expenses on the basis of the *Sarla Verma (supra)*. This Court is in full agreement with learned Claims Tribunal and this issue needs no further interference.
46. Learned Claims Tribunal has awarded compensation of Rs.1,00,000/- towards loss of love and affection, Rs. 25,000/- towards funeral charges and Rs. 10,000/- towards loss of estate. In view of the law laid down by the Hon'ble Supreme Court in *United India Insurance Company Limited v. Satinder Kaur Alias Satwinder Kaur and Ors.* reported as (2021) 11 SCC 780 and *Magma General Insurance Co. Ltd v. Nanu Ram* reported as (2018) 18 SCC 130 and *Pranay Sethi (supra)*, the Claimants are entitled for compensation under the head for 'Funeral expenses' and 'Loss of Estate' @ Rs. 16,500/- each and Filial consortium @ Rs. 44,000 X 2. The Claimants will not be entitled for any compensation under the head 'Loss of love & affection'. Hence, the Award of the learned Claims Tribunal is modified on these counts.
47. In light of the above discussion, the Claimants are awarded compensation as follows:

S.No.	Head	Compensation Awarded
1.	Income	Rs.10,000/- X 12= Rs. 1,20,000/- p.a
2.	Deduction towards personal expenditure	50% of 1,20,000/- = Rs. 60,000/-
3.	Future prospects	40%



4.	Multiplicand	Rs.1,200,000-60,000=Rs. 60,000/- 60,000/- +40% of 60,000/- = Rs.60,000/- + Rs. 24,000/- = Rs. 84,000/-.
5.	Multiplier (As per <i>Sarla Verma</i>)	18
6.	Loss of dependency	Rs. 15,12,000/- (84,000 X 18)
7.	Funeral expenses	16,500/-
8.	Loss of estate	16,500/-
9.	Loss of consortium (a) Filial consortium 44,000/- X 2	88,000 /-
Total Compensation awarded		Rs.16,33,000/-

48. The compensation granted by the learned Tribunal is reduced from **33,75,000/-** to **16,33,000/-**. The Award of interest @ 9% is maintained as per the judgment of this Hon'ble Court in the matter of *New India Assurance Co. Ltd. v. Dinesh Devi* reported as **2017 SCC OnLine Del 8614**.
49. With regard to liability, learned counsel for the insurer submitted that it was proved before the learned Claims Tribunal that the Driver was not holding a valid driving license at the time of accident. On the other hand, it is the contention of the owner before this court that the learned Claims Tribunal erred in holding that the offending vehicle was not having a permit as on date, therefore



recovery rights against the owner has been granted to the Insurer. In this regard, this Hon'ble Court in the matter of *New India Assurance Co. Ltd. v. Sanjay Kumar & Ors.* reported as *ILR (2007) II Delhi 733*, has held that although the onus is on the insurer to prove that there was breach of condition of policy, but once the record for the Licensing Authority is summoned to prove that the driver did not possess a valid driving license, the onus would shift on the insured who must then step into the witness box and prove the circumstances under which he acted and handed over the vehicle to the driver.

50. In the present case, the Insurer with the help of R3W1 and R3W2 has proved that the Insured had violated the conditions of the insurance policy with regard to the offending vehicle. Further, it also proved that the driving license of driver is fake and has not been issued by RTO Agra, Uttar Pradesh. It is also pertinent to note that, the insurer had also issued notice under Order 12 Rule 8 CPC to the Owner as well as the Driver to produce certain documents and the said notice was duly served upon the Owner/Insured as well as the Driver. However, despite the above notice, the insured has neither produced the documents as mentioned in the notice nor has come to court to adduce his evidence. Further, the evidence of R3W2, Sh. Bharat Saraswat, Junior Assistant from the Office of RTO, Agra, Uttar Pradesh, proves that the Driving License No. 17199/Ag/05 has not been issued in the name of any Ravi/Driver. The Owner was not present before the learned Claims Tribunal to lead any evidence to either prove the skills of the driver or to prove



that reasonable care before employing the driver was taken and further also about the genuineness of his driving licence, therefore, the Owner cannot absolve himself of his liability. Further, despite notice under Order 12 Rule 8 CPC, the Owner or Driver failed to reply to the same. Applying the ratio of *Sanjay Kumar* (supra) this Court hold that the owner was guilty of willful breach of the conditions of policy.

51. It is noted that in compliance of the order of this Court dated 25.05.2015 in MAC Appeal No. 447/2015, the Insured had deposited 25% of the principal awarded amount with the Registrar General of this Court. The said amount along with interest accrued thereon shall be released to the Insurer. The Insurer is granted recovery rights against the Insured for the balance decretal amount. The statutory amount deposited by the Insurer shall be released to them, whereas the statutory amount deposited by the Insured shall be released to the Claimants.
52. In MAC Appeal 925/2014, this Court vide order dated 14.10.2014, noted the submission of the learned Counsel for the Insurer that the awarded amount has been attached by the learned Claims Tribunal and perhaps released to the Claimants. This Court observed that if the said amount is not released, 50% is to be released to the Claimant and balance 50% is to be kept in an FDR. If the learned Claims Tribunal kept 50% of the awarded amount in an FDR, the same shall be released to the Insurer. If it is not available, the Insurer will be at liberty to recover the same from the Claimants.



53. In view of the above, the MAC Appeal No. 447/2015 (Appeal filed by the Insured) is dismissed. MAC Appeal No. 925/2014 (Appeal filed by the Insurer) is partly allowed to the above extent. No orders as to cost.

GAURANG KANTH, J.

JULY 14, 2023
PS

