2025:AHC:189998

HIGH COURT OF JUDICATURE AT ALLAHABAD

FIRST APPEAL FROM ORDER No. - 3471 of 2010

New India Assurance Co. Ltd.

.....Appellant(s)

Versus

Dashrath Lal Kesarwani And Others

.....Respondent(s)

Counsel for Appellant(s)	:	Amaresh Sinha
Counsel for Respondent(s)	:	Amit Kumar Singh, Amit Kumar Sinha, Ram Singh

AFR

Court No. - 38

HON'BLE SANDEEP JAIN, J.

1. The instant appeal under Section 173 of the Motor Vehicles Act, 1988 has been filed by the insurer of the offending vehicle UP-70-9020, against the impugned judgment and award dated 27.08.2010 passed by the Motor Accident Claims Tribunal/Special Judge, E.C. Act, Allahabad, in Motor Accident Claim Petition No. 616 of 2004 (Dashrath Lal Keserwani and others vs. Rajkumar and another), whereby, for the untimely death of Sanjay Kumar Keserwani on 23.08.2004 due to the injuries sustained in a motor accident that occurred on 07.08.2004, a compensation of Rs.7,62,289/- along with interest at the rate of 6% per annum has been awarded to the claimants, which has been ordered to be indemnified by the insurer of the offending vehicle.

2. The claimants have also filed F.A.F.O. No. 3738 of 2010 (Smt. Kalpana Devi vs. The New India Assurance Company Limited and another), challenging the inadequate amount of compensation awarded to them by the Tribunal.

3. Since, both the appeals arise from of the same impugned judgment and award, as such, they are being heard and decided together by this common judgment.

4. Factual matrix is that on 07.08.2004 at about 4:15 P.M., Sanjay Kumar Keserwani (deceased) was driving Motorcycle No.UP70-AC-6985 at the time of the accident, then on GT Road, near fish market, near Nehru Park

Bus Stand, the offending mini Truck No.UP70-9020, which was being driven in a rash and negligent manner, without blowing the horn came from the wrong side and hit the above motorcycle causing grievous injuries to Sanjay Kumar Keserwani, who was admitted for treatment to the Swarooprani Nehru Hospital, Bharat Hospital, Jeevan Jyoti Hospital and Sanjay Gandhi Post Graduate Medical College, Lucknow and King George Medical College, Lucknow but he died during treatment on 23.08.2004. At the time of his death, the deceased was aged about 28 years and was an agent of the Life Insurance Corporation of India (LIC) and was earning about Rs.10,000/- per month from the above job. He was also running a small kirana merchant shop and was earning about Rs.5,000/- per month. In all, he was earning about Rs.15,000/- per month. The Tribunal has assessed his income at the rate of Rs.4,000/- per month(Rs.48,000 per annum), deducted 1/3rd towards personal expenses, applied multiplier of 18, awarded Rs. 2,500/- towards loss of estate and Rs. 2,000/- towards funeral expenses, Rs.5,000/- towards loss of consortium, Rs.1,76,789/- towards treatment expenses. In this way, the Tribunal has awarded a total compensation of Rs. 7,62,289/- along with interest at the rate of 6% per annum to the claimants, which has been ordered to be indemnified by the insurer of the offending vehicle.

5. In the above factual matrix, learned counsel for the appellant-Insurance Company submitted that on the date of the accident, the offending driver was not having a valid and effective driving licence, as such, the Insurance Company was not liable to indemnify the claimants. It was further submitted that the alleged eye witness PW-3 Phool Chandra was not mentioned in the final report as a witness of the accident, as such, his testimony was unreliable.

6. Learned counsel submitted that since there was no documentary proof of the income of the deceased, as such, the Tribunal has not erred in awarding the compensation of Rs. 7,62,289/- to the claimants, which does not warrant any enhancement from this Court.

7. Learned counsel also submitted that since the offending driver Ramesh Chandra examined himself as DW-1 before the Tribunal and has denied the accident, as such, the factum of accident and negligence of offending

driver was not proved by the claimants, but the Tribunal has not appreciated this evidence.

8. Per contra, learned counsel for the claimants-respondents submitted that PW-3 is an eye witness of the accident, who has duly proved the factum of accident and negligence of the offending driver and even if, the chargesheet has not been submitted against the offending driver, even then, it is not binding on the Tribunal and on that basis, it cannot be presumed that no accident took place and there was no negligence on the part of the offending driver. It was further submitted that the deceased was an LIC agent who was paid commission on the insurance policies sold by him and tax was deducted at source (TDS) from the commission paid to him by the LIC, a certificate of which was submitted by the claimants before the Tribunal in order to prove the income of the deceased, but the Tribunal has ignored that evidence.

9. Learned counsel further submitted that on the basis of that documentary evidence, the claimants are entitled to enhanced compensation. It was also submitted that the Tribunal has not awarded any future prospects to the claimants, which is also erroneous and has also awarded less amount towards loss of consortium, funeral expenses, loss of estate and interest, keeping in view the dictum of the Apex Court in the case of ***National Insurance Company Limited vs. Pranay Sethi and others, 2017 (16) SCC 680***.

10. I have heard the learned counsel of both the sides and perused the record of the lower court.

11. The Apex Court in the case of ***Ram Chandra Singh vs. Raja Ram and others, (2018) 8 SCC 799*** has held that it is well established that if the owner was aware of the fact that the licence was fake and still permitted the driver to drive the vehicle, then the insurer would stand absolved. However, the mere fact that the driving licence is fake, per se, would not absolve the insurer.

12. The Apex Court in the case of ***Nirmala Kothari vs. United India Insurance Co. Ltd. (2020) 4 SCC 49***, held as under:-

"*12. While hiring a driver the employer is expected to verify if the driver has a driving*

licence. If the driver produces a licence which on the face of it looks genuine, the employer is not expected to further investigate into the authenticity of the licence unless there is cause to believe otherwise. If the employer finds the driver to be competent to drive the vehicle and has satisfied himself that the driver has a driving licence there would be no breach of Section 149(2)(a)(ii) and the insurance company would be liable under the policy. It would be unreasonable to place such a high onus on the insured to make enquiries with RTOs all over the country to ascertain the veracity of the driving licence. However, if the insurance company is able to prove that the owner/insured was aware or had notice that the licence was fake or invalid and still permitted the person to drive, the insurance company would no longer continue to be liable."

13. The Apex Court in the case of ***Hind Samachar Ltd.*** (supra) has held as under:-

"7. ***United India Insurance Co. Ltd. vs. Lehru & Others (2003) 3 SCC 338*** *was a case in which though an allegation of the driving licence produced being fake was raised, the same was not proved before the Tribunal. The trite law was noticed that even if the licence is fake, the insurance company is liable to pay compensation, if they fail to prove that the insured had deliberately committed breach in entrusting the vehicle to a driver who had a fake licence.* ***New India Assurance Co. v. Kamla (2001) 4 SCC 342*** *wherein despite finding breach, the insurer was directed to pay compensation to the third parties, but, enabled recovery from the insured was noticed. It was categorically held that whether the insured would be protected by such an order was left open to be considered on the facts of each case. It was held in* ***Lehru*** *(supra) that:-*

"*18……we are thus in agreement with what is laid down in the aforementioned cases viz. that in order to avoid liability it is not sufficient to show that the person driving at the time of accident was not duly licensed. The Insurance Company must establish that the breach was on the part of the insured."*

8. In ***National Insurance Co. Ltd. vs Swaran Singh & Others (2004) 3 SCC 297****, a three Judge Bench of this Court, considered the purported conflict in* ***Kamla*** *(supra) and* ***Lehru*** *(supra) to hold as under:—*

"99. So far as the purported conflict in the judgments of Kamla(supra) and Lehru(supra)is concerned, we may wish to point out that the defence to the effect that

the licence held by the person driving the vehicle was a fake one, would be available to the insurance companies, but whether despite the same, the plea of default on the part of the owner has been established or not would be a question which will have to be determined in each case."

9. In ***Pepsu Road Transport Corporation vs. National Insurance Company (2013) 10 SCC 217,*** *it was held so on the facts arising in the said case, as under:—*

"*11. On facts, in the instant case, the appellant employer had employed the third respondent Nirmal Singh as driver in 1994. In the process of employment, he had been put to a driving test and he had been imparted training also. The accident took place only after six years of his service in PRTC as driver. In such circumstances, it cannot be said that the insured is at fault in having employed a person whose licence has been proved to be fake by the Insurance Company before the Tribunal. As we have already noted above, on scanning the evidence of the licensing authority before the Tribunal, it cannot also be absolutely held that the licence to the driver had not been issued by the said authority and that the licence was fake. Though the appellant had also taken a contention that the compensation is on the higher side, no serious attempt has been made and according to us justifiably, to canvas that position."*

10. In ***IFFCO Tokio General Insurance Co. Ltd. vs. Geeta Devi & Ors.(2024) 13 SCC 755****, this Court deprecated the practice of the insurance companies blithely claiming that the deceased vehicle owner did not conduct due diligence while employing a driver; which is not a condition prescribed either in the statute or in the insurance policy, despite the wealth of precedents. It was held so in paragraph 15, as under:—*

"15. Applying the afore-stated edicts to the case on hand, it may be noted that the petitioner-insurance company did not even raise the plea that the owner of the vehicle allowed Ujay Pal to drive the vehicle knowing that his licence was fake. Its stand was that the accident had occurred due to the negligence of the victim himself. Further, the insurance policy did not require the vehicle owner to undertake verification of the driving licence of the driver of the vehicle by getting the same confirmed with the RTO. Therefore, the claim of the petitioner-insurance company that it has the right to recover the compensation from the owners of the vehicle, owing to a willful breach of the condition of the insurance policy, viz., to ensure that the vehicle was driven by a licenced driver, is without pleading and proof."

14. The Apex Court in the case of ***Mathew Alexander vs. Mohammed Shafi & Another (2023) 13 SCC 510***, held as under:-

11. Insofar as the claim petition filed by the appellant herein is concerned, alleged negligence on the part of the driver of the tanker lorry and pickup van in causing the accident has to be proved. That is a matter which has to be considered on the basis of preponderance of the possibilities and not on the basis of proof beyond reasonable doubt. It is left to the parties in the claim petitions filed by the appellant herein or other claimants to let in their respective evidence and the burden is on them to prove negligence on the part of the driver of the Alto car, the tanker lorry or pickup van, as the case may be, in causing the accident. In such an event, the claim petition would be considered on its own merits. It is needless to observe that if the proof of negligence on the part of the drivers of the three vehicles is not established then, in that event, the claim petition will be disposed of accordingly.

12. In this context, we could refer to the judgments of this Court in N.K.V. Bros. (P) Ltd. v. M. Karumai Ammal [(1980) 3 SCC 457 : 1980 SCC (Cri) 774] , ***wherein the plea that the criminal case had ended in acquittal and that, therefore, the civil suit must follow suit, was rejected.*** *It was observed that culpable rashness under Section 304-A IPC is more drastic than negligence under the law of torts to create liability. Similarly, in Bimla Devi v. Himachal RTC [(2009) 13 SCC 530 : (2009) 5 SCC (Civ) 189 : (2010) 1 SCC (Cri) 1101], it was observed that in a claim petition filed under Section 166 of the Motor Vehicles Act, 1988, the Tribunal has to determine the amount of fair compensation to be granted in the event an accident has taken place by reason of negligence of a driver of a motor vehicle.* ***A holistic view of the evidence has to be taken into consideration by the Tribunal and strict proof of an accident caused by a particular vehicle in a particular manner need not be established by the claimants. The claimants have to establish their case on the touchstone of preponderance of probabilities.*** *The standard of proof beyond reasonable doubt cannot be applied while considering the petition seeking compensation on account of death or injury in a road traffic accident. To the same effect is the observation made by this Court in Dulcina Fernandes v. Joaquim Xavier Cruz [Dulcina Fernandes v. Joaquim Xavier Cruz, (2013) 10 SCC 646 : (2014) 1 SCC (Civ) 73 : (2014) 1 SCC (Cri) 13] which has referred to the aforesaid judgment in Bimla Devi [Bimla Devi v. Himachal RTC, (2009) 13 SCC 530 : (2009) 5 SCC (Civ) 189 : (2010) 1 SCC (Cri) 1101] .*

13. In that view of the matter, it is for the appellant herein to establish negligence on the part of the driver of the tanker lorry in the petition filed by him seeking compensation on account of death of his son in the said accident. ***Thus, the opinion in the final report would not have a bearing on the claim petition for the aforesaid reasons.*** *This is because the appellant herein is seeking compensation for the death of his son in the accident which occurred on account of the negligence on the part of the driver of the tanker lorry, causing the accident on the said date. It is further observed that in the claim petitions filed by the dependents, in respect of the other passengers in the car who died in the accident, they have to similarly establish the negligence in accordance with law.*

(emphasis supplied)

15. Before the Tribunal, the claimants examined the widow of the deceased Kalpana Devi as PW-1, the deceased's brother Ghanshyam Das Keserwani as PW-2 and eye witness, Phool Chandra as PW-3, whereas the offending driver Ramesh Chandra examined himself as DW-1. PW-1 Kalpana Devi and PW-2 Ghanshyam Das Keserwani have accepted that they had not seen the accident. Phool Chandra, PW-3 has deposed in his examination-in-chief that on 07.08.2004 at about 4:00 P.M., he was present near Nehru Park Bus Stand, within the jurisdiction of Police Station Cantt., District Allahabad, then he saw the deceased driving his Motorcycle, who was going from Sulem Sarai towards city, then Truck No.UP70-9020, which came from Sulem Sarai and was going towards the city, which was being driven in a rash and negligent manner hit the rear part of the motorcycle of the deceased, causing him grievous injuries. After the accident, the truck stopped for a moment. He further deposed that at the time of the accident, the deceased was driving his motorcycle towards the left of the road in a slow speed. He further deposed that Sanjay Kumar Keserwani died due to the injuries sustained in the accident after 25-26 days. In the cross-examination, he further deposed that he saw the number of the truck. He did not knew the deceased, no one died in that accident. Sanjay Kumar Keserwani sustained injuries when the wheels of the offending vehicle ran over his right leg. He also suffered injuries to his head and other parts of his body. He saw the accident from a distance of about 10–15 feet.

16. Ramesh Chandra, DW-1 deposed in his examination-in-chief that the accident was not caused from his vehicle and after the accident, his vehicle has been fraudulently involved in the accident. He was driving vehicles since the year 1988 and possessed a driving licence for driving transport vehicle since the year 1996, which was valid till the year 2011. In the cross-examination, he accepted that he was driving the offending truck, which was coming from Manauri to Allahabad at about 4:00-4:15 PM and he was near Nehru Park at that time with two labourers. He also admitted that at that time, the truck was loaded with bricks. He also admitted that when he was coming, suddenly a Vikram Tempo stopped in front of his truck, he tried to apply the brakes of his truck, but they failed.

He turned his vehicle towards left and the truck stopped after hitting a tree, when he jumped out of the truck, then people caught him, assaulted him due to which he suffered serious injuries in his head. He admitted that when the brakes of his vehicle failed then at that time, Vikram Tempo was at a distance of 15 feet. He admitted that about half and hour after the accident, the police arrived, but the labourers on his truck had fled.

17. The certified copy of the autopsy report of the deceased dated 24.08.2004 is on record, which discloses that he died due to septicemia, as a result of ante-mortem injuries. It is also apparent that FIR regarding the accident was registered on 10.08.2004 at Police Station Cantt., District Allahabad, being Case Crime No.65 of 2004, under Sections 279, 337, 338, 427 IPC against the unknown driver of Mini Truck No.UP70-9020, in which after investigation a final report has been submitted on the ground that the accident occurred coincidentally, but it is well settled that even if, in a criminal case, the offending driver is acquitted, even then if the involvement of vehicle and the negligence of the offending driver is proved in the motor accident case, then that acquittal is not fatal, insofar as the claim petition is concerned.

18. In view of the above evidence on record, it is proved that the accident occurred, when the offending truck hit the motorcycle of deceased from behind due to which he suffered grievous injuries, who died later on during treatment.

19. In the aforesaid facts, it is also apparent that the offending driver has appeared in the witness box and has deposed that he was having a valid and effective driving licence on the date of the accident.

20. Learned counsel for the appellant-Insurance Company submits that the accident occurred on 07.08.2004 and on this date, the driving license of the offending driver Ramesh Chandra was not valid, but from the documents submitted by the owner of the offending truck, it is evident that the license was valid for driving LMV (PE) and transport vehicle, which was renewed from 16.08.2001 to 15.08.2004 and 8.2.2008 to 14.02.2011. Learned counsel further submitted that the driving license was got verified from the Licencing Authority, Motor Vehicles Department, Allahabad, whose report is available on the lower court

record, which discloses that the licence was only valid from 04.02.1995 to 03.02.1998 and after that no record of renewal is available, as such, the renewal of the licence effected in the year 2001 and 2008, were forged and fabricated and on this basis, it is apparent that the offending driver was not having a valid and effective driving license on the date of the accident, as such, the insurance company was not liable to indemnify the claimants.

21. It is apparent that there is no evidence on record to prove that the owner of the offending vehicle was aware that the driving license of the offending driver was forged and fabricated, and after knowing this, he had handed the vehicle to the offending driver. It is well settled that the owner is not required to make due diligence and get the driving licence verified from the licensing authority, and if the owner is prima facie satisfied that the driving license was valid and the driver knows how to drive the vehicle, then even if, the driving license is found fake after verification, even then the Insurance Company is not absolved from its liability.

22. In the instant case, the Insurance Company has not discharged it's burden to prove that the owner of the offending vehicle was aware that on the date of the accident i.e 07.08.2004 the driving license of the offending driver was not valid and still he handed the vehicle to be driven by that driver. In the absence of the above evidence, the Insurance Company cannot be absolved from its legal liability to indemnify the claimants regarding the compensation awarded to them by the Tribunal.

23. It is apparent that the claimants have filed the Form-16A of the Income Tax Act of the deceased for the financial year 2003–04, which discloses that he was paid a gross commission of Rs.49,209.67/- by the LIC from which a TDS @10% of Rs. 4,921/- was deducted in accordance with the statutory provisions of the Income Tax Act, 1961. Since the income of the deceased was below the taxable limit, as such, no income tax was required to be deducted from the commission paid to him by the LIC. The Tribunal has only taken the income of the deceased at Rs.4,000/- per month and has also not awarded compensation for future prospects to the claimants, which is erroneous. The Tribunal has also awarded less amount towards loss of estate, funeral expenses and

consortium, keeping in view, the Apex Court decision in the case of ***Pranay Sethi*** *(supra)* and ***Magma General Insurance Co. Ltd. vs. Nanu Ram @Chuhru Ram & Ors. (2018) 18 SCC 130.***

24. The claimants are entitled to get compensation on the basis of commission paid by LIC to the deceased for the financial year 2003-04, as disclosed in his Form 16-A of the Income Tax Act,1961. According to this form, the annual income from commission of the deceased was Rs.49,210/-

25. ***Rule 220-A of the UP Motor Vehicle Rules,1998*** w.e.f. 26.09.2011, mandates that when the deceased was aged below 40 years on the date of accident, the claimants are also entitled to compensation on future prospects @50% of his income. This Rule also mandates that interest @7% per annum be paid on the compensation awarded to the claimants.

26. A Division Bench of this Court in ***FAFO No.2581 of 2011, Sushil Kumar & Another vs. M/S Sampark Lojastic Pvt. Ltd. & Another***, decided on 26.04.2017 has held that even if the accident occurred prior to 26.09.2011, the claimants are entitled to compensation on future prospects as per amended Rule 220-A of the UP Motor Vehicle Rules, 1998, since it is a beneficial legislation.

27. The Constitutional Bench of the Apex Court in the case of ***National Insurance Co. Ltd. vs. Pranay Sethi & Ors.(2017) 16 SCC 680*** has awarded loss of consortium of Rs.40,000/- and Rs.15,000/- each towards loss of estate and funeral expenses, which is to be enhanced at the rate of 10% after every three years.

28. The Apex Court in the case of ***Magma General Insurance Company Ltd. Vs. Nanu Ram @ Chuhru Ram & others, (2018) 18 SCC 130***, has awarded Rs.40,000/- each towards spousal consortium, parental consortium and filial consortium.

29. In view of the above legal position, the compensation payable to the claimants is redetermined as under:-

S.No.	**Compensation Heads**	**Amount Awarded(in Rs.)**	**In Accordance with.**

1.	Annual Income of deceased	49,210/-	***Form 16-A statement issued by the LIC***
2.	Less 1/3rd deduction towards self expenses	16,403/-	***Pranay Sethi*** *(supra)*
3.	Net annual income on which claimants were dependent	32,807/-	***Pranay Sethi*** *(supra)*
4.	Add future prospects @50% since deceased was below 40 years	16,403/-	***UP Motor Vehicle Rules,1998***
5.	Total annual dependency of claimants on deceased	49,210/-	***Pranay Sethi*** *(supra)*
6.	Multiplier applied since age of deceased was 28 years	17	***Pranay Sethi*** *(supra)*
7.	Total loss of dependency to the claimants	49,210X17=8,36,570/-	***Pranay Sethi*** *(supra)*
8.	Loss of consortium @Rs.40,000/-each, increased by 10% after every 3 years	48,400X3=1,45,200/-	***Pranay Sethi*** *(supra)* and ***Magma General Insurance Co. Ltd.*** *(supra)*
9.	Loss of estate @ Rs.15,000/- increased by 10% after every 3 years.	18,150/-	***Pranay Sethi*** *(supra)*
10.	Funeral Expenses@ Rs.15,000/- increased by 10% after every 3 years.	18,150/-	***Pranay Sethi*** *(supra)*
11.	Treatment expenses(same as awarded by Tribunal)	1,76,789/-	-
12.	Total compensation	11,94,859/-	

30. In this way, the claimants are entitled to enhanced compensation of Rs.11,94,859/- along with interest at the 7% per annum from the date of filing of the claim petition till its actual payment. The Tribunal has awarded interest at the rate of 6% per annum, which is enhanced to 7% per annum, keeping in view, the rate of inflation prevalent at that time.

31. **FAFO No.3738 of 2010 Smt. Kalpana Devi vs. The New India Assurance Co. Ltd. and others is allowed**. The impugned judgment and award dated 27.08.2010 is modified to the above extent.

32. **FAFO No.3471 of 2010 New India Assurance Co. Ltd. vs. Dashrath Lal Kesarwani(Deceased) & Others is dismissed**.

33. If any amount has been paid by the insurance company previously, then the insurance company is entitled to adjust it accordingly. The insurance company is directed to deposit the enhanced amount of compensation before the concerned tribunal within two months. The tribunal will be at liberty to proportionally award the enhanced amount of compensation to the claimants keeping in view their age and dependency.

34. The original record of the lower court be sent back, forthwith.

35. Office is directed to remit back the statutory deposit made by the insurance company to the tribunal concerned, forthwith.

(Sandeep Jain,J.)

October 29, 2025
Mayank

Digitally signed by :-
MAYANK KUMAR SHARMA
High Court of Judicature at Allahabad