2025:AHC:183143

HIGH COURT OF JUDICATURE AT ALLAHABAD

FIRST APPEAL FROM ORDER No. - 4129 of 2011

The New India Assurance Co. Ltd.

.....Appellant(s)

Versus

Smt. Vidya Devi Alias Masnahi And Others

.....Respondent(s)

Counsel for Appellant(s)	:	P.K. Sinha, Pradeep Kumar Sinha
Counsel for Respondent(s)	:	Mohd. Asim Zulfiquar

AFR

Court No. - 38

HON'BLE SANDEEP JAIN, J.

1. The instant appeal under Section 173 of the Motor Vehicles Act, 1988 has been preferred by the insurer of Crane No. UP-70-AT-4932 against the impugned judgment and award dated 23.08.2011 passed by the Motor Accident Claims Tribunal/Additional District Judge, Court No.10, Allahabad, in MACP No.100 of 2008, Smt. Vidya Devi @ Masnahi and others vs. Navyug Engineering Company Limited and another, whereby, for the untimely death of Ramkishore Bhartiya in a motor accident that occurred on 02.11.2007, a compensation of Rs.1,70,000/- along with interest at the rate of 6% per annum, has been awarded to the claimants and the insurer of the offending vehicle i.e. the appellant has been ordered to indemnify the above compensation.

2. Factual matrix is that on 02.11.2007 at about 8:00 A.M., when the deceased Ramkishore was returning after attending the call of nature, then he was hit by Crane No. UP-70-AT-4932, which was being driven in a rash and negligent manner resulting in serious injuries to him and due to which, he subsequently died. At the time of the accident, the deceased was approximately 32 years of age and was engaged in pig farming and agricultural activities, as his primary occupation. He was earning about ₹5,000/- per month from these activities. The Tribunal assessed his income to be notional by assuming he was earning Rs.15,000/- per year, applied multiplier of 16, made deduction of 1/3rd towards self expenses, awarded Rs.5,000/- each for funeral expenses and loss of consortium. In all, the Tribunal awarded Rs.1,70,000/- compensation to the claimants along with interest @ 6% per annum which was ordered to be indemnified by the insurer of the offending vehicle.

3. Learned counsel for the appellant Insurance Company submitted that there is no dispute regarding the accident, but the only disputed issue is that the driver of the offending vehicle was not having a valid and effective driving licence on the date of the accident and the driving

licence produced by the owner of the offending vehicle before the Tribunal was found forged after verification from the concerned RTO, as such, the Insurance Company was not liable to indemnify the compensation awarded by the Tribunal, to the claimants. Learned counsel submitted that, if the original driving licence was fake, then its subsequent renewal cannot cure the defect and in view of this, the Insurance Company cannot be saddled with the liability of paying the compensation to the claimants.

4. Per contra, learned counsel for the claimants-respondents submitted that the owner of the offending vehicle was not aware that the driver was having a forged driving licence, as such, the owner cannot be entrusted with the liability of verifying the licence from the concerned RTO.

5. Learned counsel further submitted that the Insurance Company failed to take the plea of forged and fake licence in the written statement submitted by it before the Tribunal and further, no oral evidence was adduced by the Insurance Company to substantiate the above plea.

6. Learned counsel submitted that the burden was upon the Insurance Company to prove that when the driver was employed by the owner, he was aware that the driver was having a fake and forged driving licence, as such, in the absence of the above evidence on record, the Insurance Company is liable to indemnify under the Motor Vehicles Act, 1988.

7. Learned counsel in support of his above submissions relied upon the case law of ***Hind Samachar Ltd. (Delhi Unit) vs. National Insurance Company Ltd. and others, 2025 SCC OnLine SC 2185.***

8. I have heard the learned counsel of both the sides and perused the record.

9. For appreciating the controversy in issue, it will be appropriate to examine the pleas taken in the written statement filed by the owner. The owner of the offending vehicle Navyug Engineering Company Limited filed its written statement before the Tribunal, in which it submitted in para 17 that on the day of the alleged accident, the offending vehicle was being driven by the driver, who was having valid driving licence no.E-35435/2003, which was issued on 06.03.2003 by the Licensing Authority, District Seedhi, Madhya Pradesh, which was renewed from 05.03.2006 till 04.03.2009. It was further pleaded that the vehicle was insured with the appellant, was having a valid permit and the vehicle was being operated according to the terms and conditions of the insurance policy, as such, if any, liability to pay compensation was imposed on him, then the Insurance Company was liable to indemnify it.

10. The Insurance Company in it’s written statement before the Tribunal,

denied that the offending vehicle was insured with it, denied that the driver was having a valid and effective driving licence and also submitted that the vehicle was being operated in violation of the conditions of insurance policy. It was further pleaded that the burden was upon the vehicle-owner to prove that he handed the vehicle to a driver, who was having a valid and effective driving licence, for driving in a public place.

11. Before the Tribunal, the widow of the deceased Smt. Vidya Devi @ Masnahi as PW-1 and eye witness Jeetlal as PW-2 were examined but neither the owner of the offending vehicle nor the Insurance Company adduced any oral evidence.

12. The Tribunal framed issue no.3, regarding the validity of the driving licence to the following effect:-

Whether the driver of the concerned crane vehicle was having a valid driving licence at the time of the accident? If so, its effect?

13. The Tribunal considered the above issue and, after perusing the driving licence of the driver, Islam Mohammad Ansari, concluded that it was renewed by the Assistant Transport Officer, District Seedhi, Madhya Pradesh, for the period 05.03.2006 to 04.03.2009, whereas the accident occurred on 02.11.2007 at about 8:00 A.M., as such, the driver of the offending vehicle was having a valid driving licence at the time of the accident. Aggrieved against this finding, the Insurance Company has filed the instant appeal.

14. 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.

15. 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."

16. 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 Co. 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."

17. It is apparent from the above law laid down by the Apex Court that there must be pleading on the part of the Insurance Company to prove that there was no due diligence at the time, when the driver was employed by the owner and the vehicle was entrusted to him. The owner of a vehicle employing a driver can only look at the licence produced by the person seeking employment and is not expected to verify from the licence issuing authority, whether the licence is effective or not. It is apparent that the Insurance Company, from the totality of the circumstances, has to establish that the owner failed to exercise due diligence in the employment of the driver or in the entrustment of the vehicle, in order to

prove breach by the insured.

18. When the evidence in the instant case is examined in light of the law laid down by the Hon'ble Apex Court, it is evident that the owner, in his written statement, has stated that the driver employed by him possessed a valid and effective driving licence at the time of the accident and the owner has also mentioned the details of the driving licence and the office from which the driving licence was issued. The written statement also discloses that the licence was renewed from 05.03.2006 to 04.03.2009.

19. In view of the above facts, the burden was upon the Insurance Company to prove that when the offending vehicle was entrusted to the driver, then the owner was well aware that the driving licence produced by the driver was a forged and fabricated one.

20. It is well settled that the owner is not required to make due diligence regarding the genuinity and authenticity of the driving licence. It is well settled that the owner has to only prima facie examine the driving licence produced by the driver and if the owner is satisfied that it is valid, then no additional burden is cast upon the owner.

21. In view of the above facts, even if the driving licence of the offending driver was fake, even then as per the law laid down by the Apex Court in the case of ***Hind Samachar Ltd. (Delhi Unit)*** (supra), the Insurance Company of the offending vehicle is liable to indemnify the claimants, in respect of the compensation awarded to them, by the Tribunal.

22. Accordingly, this appeal has got no merit and is liable to be dismissed.

23. **The appeal is hereby dismissed.**

Order on Cross Objection No.56 of 2021

1. This cross objection has been filed by the claimants on 22.03.2021 for enhancement of compensation awarded in Motor Accident Claims Petition No.100 of 2008, Smt. Vidya Devi @ Masnahi and others vs. Navyug Engineering Company Limited and another.

2. The delay in filing the cross objection is condoned.

3. According to the claimants, the deceased Ramkishore was aged about 32 years at the time of the accident and was doing pig farming and agriculture and was earning Rs.5,000/- per month, but there is no documentary proof of his income. Further, the deceased was married and had three minor children, namely Mukesh, Sandeep and Deepak. The Tribunal has awarded compensation on the annual notional income of Rs.15,000/-, taking the age of deceased to be 35 years, applied multiplier of 16 and after deducting 1/3rd amount towards self expenses, awarded compensation of Rs.1,60,000/-.

4. Besides this, the Tribunal has awarded Rs.5,000/- each towards funeral expenses and loss of consortium. In all, the Tribunal awarded Rs.1,70,000/- compensation to the claimants, for the untimely death of Ramkishore.

5. The Apex Court in the case of ***Gurpreet Kaur and Others vs. United India Insurance Company Ltd. and Others 2022 SCC OnLine SC 1778***, held as under:-

"*8. Though, there is no evidence on record regarding the income of deceased Pyara Singh, however, from the testimony of P.W.4 - Amar Kumar, Assistant Manager, Kotak Mahindra Bank Limited, it is clear that the deceased - Pyara Singh was regularly making the payment of Rs. 11,550/- as instalment to discharge his loan liability towards the tractor. At this rate, the entire loan was paid back within a year or so. That clearly establishes the earning capacity of the deceased. It is also the case of the appellants-claimants that the deceased was working as a contractor and was earning Rs. 50,000/- per month. The Tribunal adopted a balanced approach and keeping in view factors like : (i) the payment of monthly instalment of Rs. 11,550/- towards loan of the tractor; (ii) Maintaining a family comprising of wife, two minor children and parents; (iii) Affording tractor and motorcycle; (iv) that the deceased was working as a contractor; assessed his income at Rs. 25,000/- per month.*

9. In our considered view, the Tribunal's approach is quite justified in law as well as on facts. In the summary proceedings where the approach of the Tribunal's determination must be in conformity with the object of the welfare legislation, it was rightly held that the monthly income of the deceased could not be less than Rs. 25,000/-. The reason assigned by the High Court to reduce the monthly income of the deceased is totally cryptic and has no rationale. ***The Notification of Minimum Wages Act can be a guiding factor only in a case where there is no clue available to evaluate monthly income of the deceased.*** *Where positive evidence has been led, no reliance on the Notification could be placed, particularly when it was nobody's case that the deceased was a labourer as presumed by the High Court. "*

(emphasis supplied)

6. The Apex Court in the case of ***Jitendra vs. Sadiya & Others 2025 SCC OnLine SC 261***, held as under:-

"*10. We have heard the learned counsel for the Appellant. We are unable to agree with the view taken by the Tribunal and High Court on the income of the Appellant and the functional disability suffered by him. At the outset, we must refer to the exposition of this Court in Gurpreet Kaur v. United India Insurance Company Ltd. 2022 SCC OnLine SC 1778., wherein it was stated the notifications under the Minimum Wages Act can be a guiding factor in cases where there is no evidence available to evaluate monthly income."*

7. The accident happened on 02.11.2007 and at that time, the minimum

wages for unskilled labour prevalent in the State of Uttar Pradesh was Rs.3,000/- per month as such, it will be appropriate that in the absence of any documentary evidence of income, the income of the deceased is calculated on the basis of minimum wages of Rs.3,000/-per month. Since, the deceased was aged about 35 years, and was not having fixed income, he is entitled to get future prospects at the rate of 40% as determined by the Apex Court in the case of ***National Insurance Co.Ltd. vs. Pranay Sethi (2017) 16 SCC 680***. Since the number of dependents were 4, only 1/4th amount is to be deducted towards personal expenses and since the deceased was aged about 35 years, as per the decision of the Apex Court in the case of ***Sarla Verma(SMT) & Ors vs Delhi Transport Corp.& Anr, (2009) 6 SCC 121***, a multiplier of 16 is to be applied.

8. As per the decision of the Constitution Bench of the Apex Court in ***Pranay Sethi****(supra),* and ***Magma General Insurance Co. Ltd. vs. Nanu Ram @ Chuhru Ram & Ors. (2018) 18 SCC 130*** the claimants are entitled to loss of consortium of Rs.40,000/- per head. Besides this, the claimants are also entitled to get Rs.15,000/- each towards funeral expenses and loss of estate, which is to be increased @10% after every three years.

9. The claimants are entitled to the following compensation:-

S.No.	**Compensation Heads**	**Amount Awarded(in Rs.)**	**In Accordance with.**
1.	Monthly income of deceased as per minimum wages of un-skilled workman	3,000/-	***Gurpreet Kaur*** (*supra)* & ***Jitendra*** *(supra)*
2.	Annual Income of deceased	3,000X12=36,000/-	***Pranay Sethi*** *(supra)*
3.	Less 1/4th deduction towards self expenses	9,000/-	***Pranay Sethi*** *(supra)*
4.	Net annual income on which claimants were dependent	27,000/-	***Pranay Sethi*** *(supra)*
5.	Add future prospects @40% since deceased was not having fixed income	10,800/-	***Pranay Sethi*** *(supra)*
6.	Total annual dependency of	37,800/-	***Pranay Sethi***

	claimants on deceased		*(supra)*
7.	Multiplier applied since age of deceased was 35 years	16	***Pranay Sethi*** *(supra)*
8.	Total loss of dependency to the claimants	37,800X16=6,04,800/-	***Pranay Sethi*** *(supra)*
9.	Loss of consortium to widow and 3 minor children @Rs.40,000/-each, increased by 10% after every 3 years	48,400X4=1,93,600/-	***Pranay Sethi*** *(supra)* and ***Magma General Insurance Co. Ltd.*** *(supra)*
10.	Loss of estate @ Rs.15,000/- increased by 10% after every 3 years.	18,150/-	***Pranay Sethi*** *(supra)*
11.	Funeral Expenses@ Rs.15,000/- increased by 10% after every 3 years.	18,150/-	***Pranay Sethi*** *(supra)*
12.	Total compensation	8,34,700/-	

10. The claimants/cross-objects are entitled to enhanced compensation of Rs.8,34,700/- alongwith interest @6% per annum, from the date of filing of the claim petition till the amount is deposited. **The cross-objection is allowed, accordingly**. **The impugned judgment and award dated 23.08.2011, passed in MACP No.100 of 2008, stands modified accordingly.**

11. In the instant case, the impugned judgment was passed by the Tribunal on 23.08.2011, whereas the cross-objection was filed belatedly on 22.03.2021. As such, the claimants/cross-objectors are not entitled to get any interest on the enhanced amount of compensation awarded by this Court for the period 24.08.2011 till 22.03.2021. If any amount of compensation has already been paid to the claimants, the same shall be adjusted by the Tribunal.

12. Since the minor children of the deceased have now attained majority, the amount of enhanced compensation awarded by this Court need not be deposited in fixed deposits. The Tribunal shall be at liberty to disburse the enhanced amount of compensation in favour of the dependents of the deceased in accordance with law.

13. The appellant insurance company is directed to deposit the enhanced amount of compensation before the tribunal concerned, within two months.

14. Office is directed to remit back the statutory deposit made by the Insurance Company to the Tribunal concerned, forthwith.

15. Interim order, if any, stands vacated.

(Sandeep Jain,J.)

October 10, 2025
Mayank

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