2025:AHC:203783

HIGH COURT OF JUDICATURE AT ALLAHABAD

FIRST APPEAL FROM ORDER No. - 2987 of 2007

Oriental Insurance Co Ltd

.....Appellant(s)

Versus

Sirajulhasan And Ors

.....Respondent(s)

Counsel for Appellant(s)	:	Bhartendu Pathak
Counsel for Respondent(s)	:	Abhishek Kumar Srivastava, Mohd. Asim Zulfiquar, Vijay Kant Dwivedi

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 the offending Auto No.UP-73-A-0171 against the impugned judgment and award dated 18.07.2007 passed by the Motor Accident Claims Tribunal/District Judge, Kaushambi in Claim Petition No.741 of 1999 (Sirajulhasan Vs. Shivendra Kumar Vishwakarma and others), whereby for the untimely death of Sebu Hasan in an accident that occurred on 03.07.1999, a compensation of Rs.2,25,000/- has been awarded to claimants(father and mother) which has been ordered to be indemnified by the insurer of the offending Auto No.UP-73-A-0171.

2. Learned counsel for the appellant insurance company submitted that the offending Auto No. UP-73-A-0171 was a transport(commercial) vehicle and for it's driving, a driving license having an endorsement to drive transport vehicle was required, which was not there in the driving license of Shivendra Kumar Vishwakarma, who was the owner-cum-driver of the offending Auto No.UP-73-A-0171, as such, the auto was being driven in violation of the terms and conditions of the insurance policy, as such, the insurance company was not liable to indemnify the claimants regarding the compensation awarded to them.

3. Per contra, learned counsel for the respondent-claimants submitted that since the gross vehicle weight (GVW) of the offending auto was below 7500 KG it falls in the category of Light Motor Vehicle (LMV) and for

driving it, no endorsement of transport vehicle in the driving license was required as per the law laid down by the Apex Court in ***M/S Bajaj Alliance General Insurance Co. Ltd. v. Rambha Devi & Ors. (2025) 3 SCC 95 (By 5 Judges).*** He further submitted that the driver was having a license to drive a light motor vehicle(LMV) who was competent to drive the offending auto, as such, no breach of the insurance policy was committed by the insured and in view of this, the tribunal has rightly fastened the liability to pay compensation on the insurer of the offending Auto No.UP-73-A-0171.

4. I have heard learned counsel for the parties, perused the impugned judgment and the record of the lower court.

5. The owner-cum-driver of the offending Auto No.UP-73-A-0171 Shivendra Kumar Vishwakarma has filed his written statement before the tribunal in which he has stated that his vehicle was insured with The Oriental Insurance Company Limited from 19.03.1999 till 18.03.2000 and he was himself driving the vehicle at the time of the alleged accident and was having valid and effective driving license, as such, if any compensation is awarded against him, then the insurance company will be liable to indemnify it. The owner has filed the Registration Certificate(RC) of the offending Auto vehicle and his driving license, which discloses that the unladen weight of the offending vehicle was only 370 KG which is below 7500 KG, as such, it would fall within the definition of Light Motor Vehicle (LMV) as per Section 2(21) of the Motor Vehicles Act,1988. Further, the driving license discloses that it was valid for driving LMV (transport) and HGV (PE) w.e.f. 28.04.1993 which was valid from 03.08.1996 to 02.08.1999, whereas the accident occurred on 03.07.1999.

6. Further, the appellant insurance company has filed a driving license verification report from the Licensing Authority, Motor Vehicles Department, Kaushambi which discloses that the license was only valid for driving LMV (pvt. vehicle) from 19.02.1999 till 18.02.2019 and on the basis of this report, learned counsel for the insurance company submitted that the license was not valid for driving the offending Auto No.UP-73-A-0171 which was a transport(commercial) vehicle, but was valid for only driving a LMV(private vehicle). Learned counsel submitted that for driving the Auto, a driver must have a driving license for driving

transport vehicles, which was absent in this case, as such, the insured has committed breach of the conditions of the insurance policy, since the auto was insured as a passenger carrying commercial vehicle.

7. It is evident that since the unladen weight of the offending Auto was below 7500 KG, as such, it was a light motor vehicle(LMV) as per section 2(21) of the Motor Vehicles Act,1988 and for driving it, only license having an endorsement of LMV was sufficient. The driver was not required to possess the driving license for driving transport vehicle in the light of the law laid down by the Apex Court in ***M/S Bajaj Alliance General Insurance Co. Ltd*** *(supra),* as such, the contention of learned counsel for the appellant, that offending driver was not having a valid and effective driving license on the date of the accident, is rejected**.** It is further evident that the offending Auto was comprehensively insured for the period 19.03.1999 till 18.03.2000 with the appellant, as such, the tribunal has not erred in fastening the liability to pay compensation on the insurer of the offending Auto.

8. No other issue was pressed by learned counsel for the appellant.

9. In view of the aforesaid facts, this appeal has no merit and is liable to be dismissed.

10. **Accordingly, this appeal is dismissed.**

11. Office is directed to remit back the statutory deposit made by the appellant insurance company at the time of filing of the appeal to the concerned Tribunal, forthwith.

Order on Cross Objection No.12 of 2021

1. The office report discloses that there is a delay of 1008 days in filing the cross-objection. However, since the appeal of the Insurance Company, FAFO No. 2987 of 2007, is pending, the delay in filing the cross-objection is condoned.

2. The instant cross-objection has been filed for enhancement of compensation by the claimants in FAFO No.2987 of 2007.

3. Learned counsel for the claimants-cross objectors submits that the deceased Sebu Hasan was a minor boy of about 15 years age, who had a bright and promising future, but the Tribunal has only awarded a compensation of Rs.2,25,000/-, which is inadequate.

4. Learned counsel submitted that the claimants are entitled to enhanced compensation of Rs. 5,00,000/-, as well as compensation towards loss of estate, consortium, funeral expenses, and interest on compensation. However, the Tribunal has not awarded any compensation under the non-pecuniary heads, which is erroneous.

5. Learned counsel for the respondent-Insurance Company has submitted that since the deceased was only a minor, who was not earning, as such, the Tribunal has rightly awarded compensation by assessing his income on notional basis, which warrants no enhancement from this Court in exercise of its appellate jurisdiction.

6. Learned counsel further submitted that the claimants are also not entitled to compensation under non pecuniary heads since the claim petition was filed under section 163-A of the Motor Vehicles Act,1988 and the Tribunal has also not committed any illegality in not awarding interest on the compensation awarded to the claimants.

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

8. The Apex Court in the case of ***Ram Murti and others v. Punjab State Electricity Board, 2023 ACJ 631*** has held that under Section 164 of the Motor Vehicles Act, 1988, the claimants are entitled to compensation of Rs.5,00,000/- in death cases. It was further held that since Section 164 of the Act is a beneficial provision enacted by Parliament, as such, even if the accident occurred prior to the enforcement of the provision in the year 2019, even then the claimants are entitled to enhanced amount of compensation @ Rs.5,00,000/-. In this case, the accident occurred prior to the year 1994.

9. Further, the Apex Court in the case of ***New India Assurance Company Limited vs. Urmila Halder 2024 SCC OnLine SC 4983*** in a claim petition filed under Section 163-A of the Motor Vehicles Act, 1988, regarding an accident that occurred on 11.12.2004, has upheld the award of compensation of Rs.5,00,000/- by the High Court in a death case and has held that Section 163-A was amended with effect from 22.05.2018, and since it is a beneficial legislation, the claimants are entitled to receive enhanced compensation, even in respect of accident that occurred prior to that date.

10. This Court in the case of ***National Insurance Company Limited vs. Smt. Sudha Kumari and others, 2025:AHC:187154*** while analysing award of non-pecuniary damages in claim cases filed under Section 163-A of the Motor Vehicles Act,1988, has held that keeping in view Rule 220-A of the UP Motor Vehicle Rules,1998, as amended w.e.f. 26.9.2011, there is no differentiation insofar as the payment of non pecuniary damages is concerned in claim cases filed under Section 166 or 163-A or 164 of the Motor Vehicles Act,1988. There is no specific bar that non pecuniary damages are not to be awarded in claim cases filed under Section 163-A or 164 of the Motor Vehicles Act,1988. It was further held that:-

"15. It is apparent that as per Rule 220-A(4) of the above Rules, in all cases, non pecuniary damages shall also be payable in the compensation, as follows-
(i) Compensation for loss of estate: Rs. 5000 to Rs. 10,000.

(ii) Compensation for loss of consortium: Rs. 5000 to 10,000.

(iii) Compensation for loss of love and affection: Rs. 5000 to Rs. 15,000.

(iv) Funeral expenses, costs of transportation of body; Rs. 5000 or actual expenses whichever is less.

(v) Medical expenses : actual expenses proved to the satisfaction of the Claims Tribunal.

17. The Apex Court in the case of ***Magma General Insurance Co. Ltd. vs. Nanu Ram @ Chuhru Ram & Ors.(2018) 18 SCC 130*** *has awarded Rs.40,000/- each towards loss of spousal consortium, parental consortium and filial consortium, following the Constitutional Bench decision of the Apex Court in* ***National Insurance Co. Ltd. vs. Pranay Sethi (2017) 16 SCC 680****."*

11. In view of the above authoritative pronouncement of the Apex Court, in this case also, in which the accident occurred on 03.07.1999, the claimants are entitled to get enhanced compensation in accordance with Section 164 of the Motor Vehicles Act, 1998 of Rs.5,00,000/- alongwith interest under Rule 220-A of the U.P. Motor Vehicle Rules, 1998 at the rate of 7% per annum from the date of filing of the claim petition, till its actual payment.

12. The claimants are also entitled to get Rs.10,000/- towards loss of estate, Rs.10,000/- each towards loss of consortium, Rs.5,000/- towards funeral expenses, a total of Rs.35,000/- towards non pecuniary compensation.

13. In this way, the claimants are entitled to total compensation of Rs.5,35,000/- alongwith interest @ 7% per annum from the date of filing of the claim petition till it's actual payment, which is to be indemnified by the insurer of the offending offending Auto No.UP-73-A-0171.

14. **The cross objection is allowed. The award of the Tribunal is modified to the above extent.**

15. 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.

(Sandeep Jain,J.)

November 15, 2025
Himanshu

Digitally signed by :-
HIMANSHU YADAV
High Court of Judicature at Allahabad