
(2010) 04 P&H CK 0260
In the Punjab And Haryana At Chandigarh

Mahender Singh and Others

APPELLANT

Vs

Usha Rani and Others

RESPONDENT

Date of Decision : 09-04-2010

Acts Referred:

Insurance Act, 1938 — Section 64
Motor Vehicles Act, 1988 — Section 170
Penal Code, 1860 (IPC) — Section 279, 304A, 427

Citation : (2010) 04 P&H CK 0260

Hon'ble Judges : Vinod K. Sharma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Vinod K. Sharma, J.—This judgment shall dispose of five FAOs & cross-objections i.e. (1) FAO No. 237 of 1992 titled Mahender Singh and Ors. v. Usha Rani and Ors., (2) FAO No. 202 of 1992 titled Oriental Insurance Company Ltd. Gurgaon v. Usha Rani and Ors., (3) FAO No. 203 of 1992 titled Oriental Insurance Company Ltd. Gurgaon v. Miss Anjula Batra and Ors., (4) FAO No. 204 of 1992 titled Oriental Insurance Company Ltd., Gurgaon v. Miss Anjula Batra and Ors. (5) FAO No. 238 of 1992 titled Mahender Singh and Ors. v. Miss Anjula Batra and Ors., cross-objections No. 38-CII of 1992 in FAO No. 202 of 1992 and cross-objections No. 40-CII of 1992 in FAO No. 203 of 1992, as the common questions of law and facts are involved.

2. For the sake of brevity facts are being taken from FAO No. 237 of 1992 titled Mahender Singh and Ors. v. Usha Rani and Ors.

3. The claimant/respondents filed a claim petition u/s 110A of the Motor Vehicles Act, 1939 for grant of compensation in respect of death of Suresh Kumar, in a motor vehicular accident.

4. The facts leading to filing of the claim petition were, that on 20.6.1987 at about 10.30 P.M. Suresh Kumar deceased was coming from Delhi to Panipat in a

Maruti Van No. DDA 1365. Mr. Ram Sarup Batra uncle of Suresh Kumar and Ms. Asha Batra, aunt of Suresh Kumar were also travelling in the same van. When the van reached near Haryana State Electricity Board Office G.T. Road, Samalkha truck bearing No. HRU 1477, driven by Mahender Singh appellant No. 1, came from Panipat side, and collided with Maruti Van driven by Ram Kumar.

5. The case set up by the claimants was, that the accident had occurred due to the rash and negligent driving of drivers of both the vehicles. Ram Sarup died at the spot, whereas Suresh Kumar and Smt. Asha Batra died on their way to Civil Hospital, Panipat. A case under Sections 279, 304A & 427 IPC was registered against driver of the truck for causing the accident. Suresh Kumar deceased was aged 28 years and was in the Handloom business. He was the sole proprietor of a firm M/s Suresh Kumar Batra and was said to be earning Rs. 2,000/- (Rupees two thousand only) per month. The claimants claimed, that they were dependent on the income of the deceased.

6. Jagat Singh, respondent No. 2 is the owner of the truck. The truck was insured with the United Insurance Co. Ltd., Panipat, whereas Maruti Van owned by Sh. Ramesh Kumar and was insured with the Oriental Insurance Co. Ltd. Gurgaon.

7. As already referred to above, Ram Kumar son of Sh. Mansa Ram was the driver of the Maruti Van No. DDA-1365.

8. The claim petition was contested by the appellants, the owner, Driver and the Insurance Companies. The driver and owner of the truck filed a joint written statement, denying all the allegations in the claim petition, and denied the occurrence, as pleaded by the claimants.

9. It was the pleaded case of the Driver and owner of the truck, that the accident had occurred due to the rash and negligent driving of Maruti Van by Sh. Ram Kumar, who had struck his Maruti Van against the slow moving truck by coming on the wrong side abruptly.

10. It was the pleaded case of the appellants, that driver of the truck was driving the truck on the road vigilantly by observing the traffic rules. It was not possible for the driver to foresee every extremity of folly which occurred on the road.

11. It was the pleaded case of the appellants, that it was the driver of the Maruti Van, who violated the traffic rules and thus owner and driver of the truck denied their liability.

12. United India Insurance Company Ltd., Guragon, the Insurance Company of the truck, also pleaded the negligence of Maruti Van Driver, who was said to be responsible for the accident.

13. It was pleaded by the Insurance Company, that the driver of the Maruti Van, in a desperate attempt to avoid the impact with the tanker, parked on the left side of the road while going towards Samalkha from Delhi, abruptly swerved the Maruti Van to its wrong side, and thus rammed in the truck in question coming

from the opposite direction. The truck was said to be at a slow speed, and coming on its correct side of the road.

14. It was the case of the Insurance Company, that the conduct of the driver of the Maruti Van in swerving to the wrong side so abruptly and suddenly left no chance for the truck driver to stop or avoid the unfateful accident. It was pleaded that the road where the accident took place was straight road, therefore, the driver of the Maruti Van could easily see the truck coming from the opposite side.

15. It was further the case of the Insurance Company, that act of suddenly coming to the wrong side, is itself sufficient to prove that the driver of the Maruti Van was coming at a fast speed, and was unmindful of the traffic on the road.

16. The Oriental Insurance Company, the insurer of the Maruti Van, on the other hand, took a plea that the accident took place due to the rash and negligent driving of truck No. HRU-1477 by its driver, and that the driver of the Maruti Van was not responsible for causing the accident, in any manner.

17. The owner and driver of the Maruti Van were proceeded against ex parte.

18. In the replication, the averments made in the claim petition were reiterated, and those in the written statement were denied.

19. On the pleadings of the parties, the learned Tribunal framed the following issues:

1. Whether the accident in question took place due to the contributory negligence of Respondent No. 1 Mahender Singh driver of truck No. HRU 1477 and Respondent No. 6 Ram Kumar Driver of Maruti Van No. DDA-1365 as alleged? OPP

2. If issue No. 1 is proved to what amount of compensation the claimants were entitled to and from whom? OPP

3. Relief.

20. Issue No. 1 was thereafter re-casted on 19.4.1988, which reads as under:

Whether the accident in question took place due to the negligence of Respondent No. 1 driver of truck No. 1477 or respondent No. 6, the driver of Maruti Van No. DDA 1365 or both? OPP

21. On the same facts, legal representatives and dependents of Ram Sarup Batra filed another claim petition u/s 110A of the Motor Vehicles Act, in respect of death of their father and mother namely Ram Sarup Batra and Mrs. Asha Batra. It was claimed by the dependents of late Sh. Ram Sarup Batra and Smt. Asha Batra, that at the time of death Ram Sarup Batra was 43 years and Smt. Asha Batra was 39 years of age, and both of them were in service in United States of America, and their monthly income was Rs. 90,000/- (Rupees ninety thousand only) and Rs. 20,000/- (Rupees twenty thousand only) respectively. Mr. Ram Sarup Batra was said to be employed in Smith Industry in United States of

America, whereas Smt. Asha Batra was employed in Federal Deposit Insurance Corporation U.S.A.

22. In the said claim petition the respondents i.e. the owner and driver of the truck, and Insurance Company of the Truck as well as the Maruti Van, took similar pleas to oppose the claim petition.

23. Same issues were framed in the said claim petition also. The claim petitions were consolidated.

24. The evidence was recorded in the claim petition titled Usha Rani v. Mahender Singh and Ors..

25. The learned Tribunal, on issue No. 1 on appreciation of evidence, and on the pleadings of the parties, recorded a finding, that though the Insurance Company of the truck had taken a plea, that the accident occurred due to the fact, that one tanker was standing on the lefts side of the road, if one comes from Delhi to Panipat side. The Maruti Van in order to cross that standing tanker, swerved on the wrong side, and hit against the truck, but owner and driver of the truck took no such plea, and merely pleaded, that the accident had taken place due to the rash and negligent act of Maruti Van driver.

26. The learned Tribunal, therefore, observed that the question to be decided was "as to whether the accident had taken place due to the fault of Maruti Van driver or truck driver or due to the negligence of both the drivers".

27. In support of the claim petition, PW-1 Jagdish Chander, an eye witness to the accident, deposed that he runs a tea shop near the H.S.E.B. Office, Samalkha, and the accident had taken place in his presence. According to his deposition, the truck No. HRU-1477 came from Panipat side and Maruti Van No. DDA 1365 was coming from the Delhi side and was going to Panipat. The truck was said to be coming in a zigzag manner, and the driver of the van went on the wrong side to avoid the accident. He further deposed, that the truck was moving at a fast speed. He further deposed, that out of four persons, who were travelling in the Maruti Van, one died at the spot and other three received serious injuries. One car and Matador reached at the spot. The witness was sent to the Police Station to lodge the report in the said car, and the FIR Ex.P-1 was lodged by him, which bore his signatures.

28. In the cross-examination, he deposed that no other vehicle was seen coming on the road from either side. He also gave minute details of the accident, as to how the truck was driven. He specifically deposed that no tanker was parked in the damaged condition on the left side of the road, while coming from Delhi to Panipat. His statement Ex. R-5 was said to have been wrongly recorded on dictation of one Sh. Sharma. He further deposed, that he was induced to make the statement, on the promise of employment with the Insurance Company. He also denied, that Maruti van was coming on the fast speed and it swerved on the wrong side to avoid the impact with the oil tanker.

29. PW-4 Chander Parkash, another eye witness to the accident, who was said to be travelling with his family from Delhi. He also deposed that truck No. HRU-1477 was coming from the opposite side at a very high speed. The truck was said to be driven in a zigzag manner. His deposition was on the same terms as that of PW-1.

30. The respondents examined the truck driver in their evidence, who supported the version given in the written statement, but he admitted that an FIR was registered against him. He further admitted, that no complaint was made to higher authorities about the negligence of the driver of the Maruti Van. The learned Tribunal took note of the photographs Ex. R-1 to Ex. R-4, which showed, that it was almost a head-on-collision between the two vehicles. The learned Tribunal did not believe the story of damaged tanker, standing on the road, as the owner and driver of the offending truck did not take this plea in the written statement, and furthermore the eye witnesses specifically denied the presence of any tanker on the road.

31. The learned Tribunal also did not give any importance to the evidence of RW-5 D.C. Sharma, who investigated the case on behalf of the Insurance Company of the truck, and submitted report Ex. R-5. In view of the specific stand taken by the witness, that he was allured to make this statement. Similarly, the evidence of RW-3 Ranbir, who was said to have repaired the tanker, was not believed. The reason for non-believing him was, that he had not issued any receipt, and claimed himself to be illiterate, but while deposing he gave the number of the tanker by deposing, that he orally remembered the number of the tanker, but did not reduce it into writing. The learned Tribunal did not believe his story. The learned Tribunal also held, that the truck was coming in a zigzag manner, as in cross-examination the eye witness account was not shattered.

32. In view of the evidence referred to above, the learned Tribunal, held both the drivers to be negligent, and finding was recorded, that the accident in question took place due to the negligence of both the drivers namely driver of the truck No. HRU-1477 and driver of Maruti Van No. DDA 1365.

33. On issue No. 2, on account of death of Suresh Kumar, the claimants were held entitled to compensation of Rs. 1,92,000/- (Rupees one lac and ninety two thousand only), whereas, qua the claim of Miss Anjula and Ajay Batra, keeping in view the income of the deceased, the learned Tribunal assessed the dependency of the claimants at Rs. 50,40,000/- (Rupees fifty lac and forty thousand only). The claimants were also granted interest @ 12% per annum from the date of filing of claim petition till realization.

34. The Oriental Insurance Company, had disputed its liability to make the payment, on the plea, that there was no insurance policy under which the company could be held liable to indemnify the owner. It was asserted, that the policy was cancelled with the consent of the owner. In support of this plea the Oriental Insurance Company, examined RW-4 Jaswant Rai Miglani, Assistant

Manager of the Oriental Insurance Company, Faridabad, who was posted as Branch Manager, Gurgaon in the year 1986. In his deposition, he deposed that Ramesh Kumar, the owner of the Maruti Van, had lodged a damage claim of his vehicle, and that the claim was settled on cash loss basis, and thereafter the policy was cancelled by an endorsement.

35. As already observed above, the policy was said to have been cancelled with the consent of the parties, which was in writing. The writing was said to have taken place in presence of the witnesses. The document was placed on record as Mark "A". The document, thus, was merely marked and not exhibited, and the question of exhibiting the document was kept open. The witness claimed, that he identifies the signatures of Ramesh Kumar, as he signed the proposal papers in his presence. He had taken back the policy from the party, which was placed on record as Ex. R-10. The certificate of insurance was exhibited as Ex. R-11. The endorsement made by him to cancel the policy was Ex. R-12. It was further deposed by him, that the party surrendered the document Ex. R-11 and Ex. R-10, at the time of cancellation of the policy. The endorsement Mark-B was made by the party at the back of Ex. R-11, which was signed by Ramesh Kumar, in the presence of the witness. The policy was cancelled w.e.f. 27.1.1987. The learned Tribunal held, that according to this witness the policy was got cancelled on 11.5.1987, but the said cancellation was operative w.e.f. 27.1.1987. Thus, the Oriental Insurance Company was not liable to pay any amount, as the accident took place on 20.6.1987 after the lapse of the policy of the Maruti Van.

36. The learned Tribunal did not accept this plea for the reason, that Ramesh Kumar was not produced in the witness box although he was alive. Therefore, the learned Tribunal came to the conclusion, that adverse inference was required to be drawn against the Oriental Insurance Company, as in the event of his examination, he would have not supported the version of the Insurance Company. The learned Tribunal further held, that it could not be proved, that the policy could have been cancelled on 11.5.1987 with retrospective effect from 27.1.1987. In examination witness admitted, that Mark-A and Mark-B were different, although, writing mark-B was written by Ramesh Kumar, in his presence, but he was unable to tell the author of the writing Mark-A.

37. The learned Tribunal observed, that while cross-examining the witness, it appeared that originally the date written was 8.3.1985, but lateron it was changed to 8.3.1987. Mark-A was an application, said to have been written by Ramesh Kumar. Therefore, the change in the date from 8.3.1985 to 8.3.1987 assumed significance. The witness was also not able to tell, whether the documents were surrendered at the time of request of cancellation of the policy or prior to it. He admitted the fact, that cancellation of the policy was required to be accompanied with the document. The witness admitted, that the document Ex.R-10, premium receipt and Ex. R-11 Cover Note, were submitted at the time of settlement of the claim. These documents were not submitted with the application. No intimation of cancellation was submitted to the Regional Transport

Authority, regarding cancellation of the Insurance Policy in terms of Section 105 of the Motor Vehicles Act 1939, which was required to be notified within 7 days.

38. In order to prove, that the intimation was given by the Company to the Regional Transport Authority, a dispatch register was produced, showing that the intimation was sent to the Regional Transport Authority on 13.5.1987, and the copy of the intimation was Ex. R-13. The letter is dated 11.5.1987. Though, it was mentioned that the intimation was sent through the registered cover, but the witness admitted, that it was not sent through the registered cover, but by way of ordinary post. The entry regarding sending of intimation through registered post was subsequently cancelled. The witness also admitted, that in the register on the top of the page there was a over-writing in the date, which has been mentioned as 13.5.1987. Similarly there was over writing in date on the previous page. The learned Tribunal, thus, held that date was changed from 12.5.1987 to 13.5.1987. Similarly, there was cutting in the figure of receipt of column, wherein it was mentioned Rs. 52-85 paise. Another cutting was also noticed, where the figure was changed from 82 to 52. The cutting was noticed as the amount was changed from Rs. 82-85 Paise to Rs. 52-85 paise. The company did not produce the Dispatch Clerk to explain these cuttings. The learned Tribunal, thus, held that an attempt was made by the Insurance Company to absolve itself of its liability by creating false evidence.

39. The learned Tribunal held, that as per the statement of RW-4 Jaswant Rai, the cancellation of Insurance Policy did not stand proved.

40. The learned Tribunal also considered the evidence of RW-6 Ashok Kumar Gupta, Development Officer, with regard to the cancellation of the policy. He admitted that document Mark-A was already written, when it was brought to him by Ramesh Kumar. But he deposed that Ramesh Kumar signed the same in his presence, but there was no endorsement by RW-6 in writing. The learned Tribunal held that document Mark-A could not be exhibited in absence of witness Ramesh Kumar. Similarly, the learned Tribunal held, that even on Ex. R-11 at Mark-B there was no endorsement of any officer of the company, that Ramesh Kumar discharged the policy in favour of the Oriental Insurance Company. In Ex. R-12, it was mentioned, that Branch Manager cancelled the policy w.e.f. 27.1.1987 without refunding any amount to the insured.

41. The learned Tribunal, thereafter placed reliance on the judgment of the Hon"ble Orissa High Court in the case of New India Assurance Co. v. Prafulla Kumar, 1989 ACJ 852 to hold, that the Insurance Company was liable to pay the amount irrespective of the fact whether the policy once granted had been cancelled in the meantime. This finding was based on the interpretation of Section 96 (1) of the Motor Vehicles Act, 1939 which declared, that even if the policy had been cancelled, yet the insurer is liable to pay the compensation, as if it was a judgment debtor.

42. The learned Tribunal also placed reliance on the judgment of this Court in the

case of Sant Kaur v. Nazir Singh 1987 ACJ 797, wherein the policy, which was valid upto 9.8.1981 and the accident had taken place on 14.6.1981, but the policy was cancelled on 16.6.1981 w.e.f. 10.6.1981, it was held to be of no consequence, as the cancellation letter was issued after the accident. However, this judgment has been wrongly applied as this is not the case here.

43. The learned Tribunal on appreciation of evidence held, that cancellation documents were prepared to avoid the liability of the company, as there were over writings, cuttings in their register and the basic document Mark-A was not legally proved.

44. The learned Tribunal, further held that the Insurance Company did not summon the record of the Regional Transport Authority to show, that the intimation regarding cancellation of the policy was given much before the accident. The learned Tribunal also held, that the Insurance Premium for the unexpired period of 11 months was not refunded, although there was a statutory requirement for refunding the premium, as laid down in Section 64(v) of the Insurance Act.

45. The learned Tribunal held, that the Insurance Company has failed to prove the cancellation of the policy. Thus, both the Insurance Companies were held liable to indemnify the owners of the vehicles.

46. The learned Tribunal further ordered, that the claimants could recover the entire amount from either of the company, and the company thereafter would be entitled to recover the amount of the share from the second company.

47. Mr. Ashwani Talwar, learned Counsel appearing on behalf of respondent No. 4- Oriental Insurance Co. Ltd. and Mr. Ashok Aggarwal, Sr. Advocate with Mr. D. Khanna and Mr. Rajat Khanna, Advocates appearing on behalf of appellant No. 3, United India Insurance Co. Ltd., Gurgaon, challenged the finding of the learned Tribunal on issue No. 1, holding both the drivers to be negligent.

48. While the contention of Mr. Ashwani Talwar, Advocate was that it was proved, that the accident was caused due to the negligence of the truck driver, therefore, no liability could be fixed on the Driver of the Maruti Van, especially when the F.I.R. was registered against the driver of the truck and not of Maruti Van.

49. It was also the contention of the learned Counsel for appellant, that the witnesses produced categorically attributed the negligence on the part of the truck driver, therefore, the learned Tribunal committed an error in holding both the drivers to be jointly responsible.

50. Mr. Ashok Aggarwal, Sr. Advocate appearing on behalf of appellant No. 3, United India Insurance Co. Ltd., Gurgaon, on the other hand, contended that the learned Tribunal wrongly disbelieved the statement of the witnesses, that it was the driver of the Maruti Van, who was negligent, as it suddenly swerved on the wrong side and hit the slow moving truck.

51. The contention of learned senior counsel appearing on behalf of appellant No. 3, United India Insurance Co. Ltd. was, that the Maruti Van, which was coming at fast speed, in order to avoid the oil tanker, which was standing on the road, came on the wrong side and hit the truck, therefore, the negligence was on the part of driver of the Maruti Van and not that of the truck.

52. On consideration, I find no force in this contention. The learned Tribunal rightly appreciated the evidence to record the finding, that it was the result of contributory negligence. The learned Tribunal did not agree with the stand of the United India Insurance Co. Ltd., that the Maruti Van came on the wrong side to save the oil tanker standing on the road, for the reason that no such plea was raised by the Driver of the truck, and it was imagination of the Insurance Company, which was disproved by the evidence led before the learned Tribunal. Even otherwise, once it was proved, that there was head-on-collision between the truck and the Maruti Van, negligence was to be attributed to both the drivers. The Hon"ble Supreme Court in the case of T.O. Anthony Vs. Karvarnan and Others, , was pleased to lay down, that the fact of head-on-collision would show, that both the drivers were not diligent. The factum of head-on-collision, in this case which resulted in death of three persons, clearly shows, that neither of the drivers showed diligence to save head-on-collision, therefore, the finding of the learned Tribunal holding both the drivers to be responsible by way of contributory negligence, cannot be faulted with. The finding on issue No. 1, therefore, is affirmed.

53. Mr. Ashwani Talwar, learned Counsel appearing on behalf of respondent No. 4- Oriental Insurance Co. Ltd. mainly challenged the finding of the learned Tribunal in rejecting the stand of the Oriental Insurance Co. Ltd. qua cancellation of the policy. The contention of the learned Counsel for respondent No. 4- Oriental Insurance Co. Ltd. was, that the learned Tribunal wrongly discarded the evidence produced to prove, that the Insurance Policy of Maruti Van stood cancelled. The contention of the learned Counsel for respondent No. 4- Oriental Insurance Co. Ltd. was, that the learned Tribunal committed an error in drawing adverse inference against the Oriental Insurance Co. Ltd. for non-examining Ram Kumar, the owner of the Maruti Van. The contention of the learned Counsel for appellant was, that once Ram Kumar was party to the claim petition, it was for him to have appeared, and once he was proceeded ex parte, no adverse inference could be drawn against the appellant. Though, there is force in this contention, however, it may be noticed, that the finding of the learned Tribunal is not based on adverse inference alone, but on appreciation of evidence led, to hold that the cancellation of the Insurance Policy was not proved.

54. The learned Counsel for the appellant, thereafter challenged the finding of the learned Tribunal in rejecting the cancellation of the Insurance Policy, for want of intimation to the Regional Transport Authority, by placing reliance on the judgment of the Hon"ble Calcutta High Court in the case of Bir Singh and Another Vs. Sm. Hashi Rashi Banerjee and Others, . It was contended, that the

omission to notify the cancellation or suspension of a policy required by Section 105 of the Act does not keep alive the rights of the third parties to claim, the benefits under the third party risk policies. In a case filed under the Fatal Accidents Act, 1855 the Hon"ble Calcutta High Court in the judgment, referred to above, was pleased to lay down as under:

71. We do not overlook the fact that S. 105 of the Motor Vehicles Act casts the duty on the insurer to notify the Registering Authority the cancellation or suspension of a policy once issued. Omission to notify such cancellation or suspension does not, under the present statute, keep alive the rights of the third parties to claim the benefits under the third party risk policies.

55. This contention of the learned Counsel for the appellant deserves to be noticed to be rejected, in view of the judgment of the Hon"ble High Court of Orissa at Cuttack in the case of New India Assurance Co. Ltd. v. Prafulla Kumar Das and Ors. 1989 ACJ 852, wherein the Hon"ble High Court of Orissa at Cuttack while dealing with the Motor Vehicles Act, 1939 has been pleased to lay down as under:

2. Mr. Roy, the learned Counsel for the insurance company, however, seriously contends that unless serious notice is taken of these factors, the insurance company will suffer, inasmuch as though there would not be a valid insurance policy on the date of accident, yet the insurance company would be made liable for payment of the compensation in question. This is a matter which can hardly be remedied by any court in view of the specific provision in the statute in no uncertain terms. The statute had made the insurance company liable to pay the amount irrespective of the fact whether the policy once granted has been cancelled in the meantime. The use of the expression "notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy, the insurer shall, subject to the provisions of this section, pay to the person entitled to the benefit of the decree...." in Section 96(1) of the Act unequivocally declares that even if the policy had been cancelled, yet the insurer is liable to pay the compensation in question, as if it were the judgment-debtor. This being the position in law, the Tribunal was fully justified in directing the appellant to pay the compensation awarded in favour of the claimant. Mr. Roy for the insurer contends that unless courts protect the insurer as against the fraudulent action of the insured, the insurer which is an institution in public sector will suffer irreparable loss. I am afraid, this is a matter for consideration of the law makers. The Court has the solemn duty only to interpret the law and not to make any new law. I also do not agree with the submission of Mr. Roy for the appellant that the insurer has no remedy. The provision under the Motor Vehicles Act making the insurance company liable is a beneficial one purposely engrafted into the statute for providing an efficacious remedy to the claimant so that an award passed by the Tribunal can easily be satisfied. But at the same time, if the insured does not pay the premium for which the policy could be or has been cancelled and yet the insurer is being made liable to pay the compensation,

certainly the insurer will have the liberty to take such legal action as against the insured for realising the amount in question. It cannot be said that the insurer is without any remedy. It would be open for the insurer to take such legal action for the remedy in question as available to it under law. In my view, the present appeal is devoid of merits and is accordingly dismissed, but without any orders as to costs.

56. Mr. Ashwani Talwar, learned Counsel appearing on behalf of respondent No. 4-Oriental Insurance Co. Ltd., thereafter relied upon the judgment of the Hon''ble Supreme Court, in the case of Deddappa and Others Vs. The Branch Manager, National Insurance Co. Ltd., to contend, that once the contract of insurance stood rescinded than the Insurance Company was not liable to compensate the third party for the accident.

57. The contention of the learned Counsel for the respondent No. 4-Oriental Insurance Co. Ltd. was, that due to the cancellation of the Insurance Policy, the Oriental Insurance Company could not be held liable to pay the compensation.

58. However, this contention of the learned Counsel for respondent No. 4-Oriental Insurance Co. Ltd. again cannot be accepted. Firstly, the cancellation of the policy was not proved for want of intimation to the Regional Transport Authority as envisaged u/s 105 of the Motor Vehicles Act, and also for the reason, that the cancellation was not proved in accordance with law. The document was merely marked and not exhibited. The learned Tribunal also found interpolation in the register to come to the conclusion, that this document was prepared to avoid the liability. The Hon''ble Supreme Court in the case of Deddappa and Ors. v. Branch Manager, National Insurance Co. Ltd. (supra), on which reliance was placed also held as under:

24. We are not oblivious of the distinction between the statutory liability of the insurance company vis-a-vis a third party in the context of Sections 147 and 149 of the Act and its liabilities in other cases. But the same liabilities arising under a contract of insurance would have to be met if the contract is valid. If the contract of insurance has been cancelled and all concerned have been intimated thereabout, we are of the opinion, the insurance company would not be liable to satisfy the claim.

59. Thus, without intimation to all the concerned, it was not possible for the Insurance Company to take a plea, that the policy stood cancelled. The learned Tribunal, therefore, was right in coming to the conclusion, that the cancellation was not proved, and the stand of the appellant could not be accepted for want of intimation to the Regional Transport Authority.

60. The learned Counsel for the appellant thereafter placed reliance on the judgment of the Hon''ble Supreme Court in the case of National Insurance Co. Ltd. Vs. Seema Malhotra and Others, to contend, that the contract of insurance is reciprocal promise and if the insured fails to pay the promised premium than the Insurance Company is under no obligation to perform its part of the contract,

except in relation to the statutory liability in respect of third party.

61. The contention of the learned Counsel for the appellant was, that the liability, therefore, could be limited under the Act, and furthermore in view of the cancellation of the policy no liability could be fastened.

62. This contention of the learned Counsel for the appellant is again misconceived. It is not a case where the premium was not paid rather the finding recorded is, that there was a valid insurance policy, which was not proved to have been cancelled, as the Insurance Company failed to prove the refund of the premium for the unexpired period of 11 months. The judgment of the Hon''ble Supreme Court in the case of National Insurance Co. Ltd. v. Seema Malhotra and Ors. (supra), therefore, does not advances the case of the Insurance Company to deny its liability.

63. Though, attempt was also made to challenge the quantum of compensation awarded, but the same is not permissible, as the Insurance Company cannot question the quantum of compensation or finding on contributory negligence of the offending vehicle, as the Insurance Company cannot avoid its liability, on any ground except those mentioned under the Act, as Section 110(C)(2-A) of the Motor Vehicles Act ,1939 corresponds to Section 170 of the Motor Vehicles Act, 1988, this being the settled law, as laid down by the Hon''ble Supreme Court in the case of National Insurance Co. Ltd., Chandigarh Vs. Nicolletta Rohtagi and Others, . In view of the authoritative pronouncement of the Hon''ble Supreme Court in the case of National Insurance Co. Ltd. v. Nicolletta Rohtagi and Ors. (supra) the appellant again cannot take any benefit from the judgment of the Hon''ble Supreme Court in the cases of The Divisional Controller, KSRTC Vs. Mahadeva Shetty and Another, , Mrs. Helen C. Rebello and Others Vs. Maharashtra State Road Transport Corpn. and Another, and State of Haryana and Another Vs. Jasbir Kaur and Others, , on which reliance was placed by the learned Counsel for the appellant to challenge the quantum of compensation.

64. The claimants also filed cross-objections No. 38-CII of 1992 in FAO No. 202 of 1992 and cross-objections No. 40-CII of 1992 in FAO No. 203 of 1992, claiming enhancement of compensation.

65. Mr. Pritam Saini, learned Counsel appearing on behalf of the cross-objectors contended, that Suresh Kumar deceased was 28 years of age and proved to be earning Rs. 2025/- (Rupees two thousand twenty five only) per month. He was income tax payee and his income was shown to be Rs. 19,000/- (Rupees nineteen thousand only) per annum in the income tax return, but the learned Tribunal wrongly took the income to be Rs. 16,000/- (Rupees sixteen thousand only) per annum, and dependency was assessed at Rs. 12,000/- (Rupees twelve thousand only) per month, whereas the multiplier of 16 was applied. The contention of the learned Counsel for the cross-objectors was that the multiplier of 17 should have been applied, and the total amount of compensation deserves to be enhanced.

66. I find no force in this contention. The claimants, in the case of death of Suresh Kumar, were parents and not widow or children, therefore, the multiplier was required to be applied keeping in view the age of the parents and not of the deceased. Further more with the passage of time after marriage dependency was to reduce, therefore, no fault can be found with the compensation awarded. The Cross-objections, therefore, deserves to be rejected.

67. The learned Counsel for the cross-objectors also challenged the grant of compensation of Rs. 50,40,000/- (Rupees fifty lac and forty thousand only) along with interest to the claimants Miss Anjula Batra and Ajay Batra on the plea, that deceased were earning in dollars, therefore, the deduction could not be made towards income tax. The contention of the learned Counsel for the cross-objectors, therefore, was that no deduction on account of income tax or lump sum payment could have been allowed.

68. The learned Counsel for the cross-objectors challenged the multiplier of 10 in grant of compensation. It was also the contention of the learned Counsel for the cross-objectors, that future prospects were not taken note of.

69. This contention of the learned Counsel for the cross-objectors cannot be accepted. It has been authoritatively laid down by the the Hon'ble Supreme Court in the cases of Divisional Controller, KSRTC v. Mahadeva Shetty and Anr. (supra), as under:

The damages for vehicular accidents are in the nature of compensation in money for loss of any kind caused to any person. The main principles of law on compensation for injuries were worked out in 19th Century, where railways accidents were becoming common and all actions were tried by Jury. It has to be borne in mind that compensation for loss of limbs or life can hardly be weighed in golden scales. Bodily injury is nothing but a deprivation which entitles the claimant to damages. The quantum of damages fixed should be in accordance with the injury. An injury may bring about many consequences like loss of earning capacity, loss of mental pleasure and many such consequential losses. A person becomes entitled to damages for the mental and physical loss, his or her life may have been shortened or that he or she cannot enjoy life, which has been curtailed because of physical handicap. The normal expectation of life is impaired. But at the same time it has to be borne in mind that the compensation is not expected to be a wind fall for the victim. Statutory provisions clearly indicate that the compensation must be "just" and it cannot be a bonanza; not a source of profit but the same should not be a pittance. The Courts and tribunals have a duty to weigh the various factors and quantify the amount of compensation, which should be just. What would be "just" compensation is a vexed question. There can be no golden rule applicable to all cases for measuring the value of human life or a limb. Measure of damages cannot be arrived at by precise mathematical calculations. It would depend upon the particular facts and circumstances, and attending peculiar or special features, if any. Every method or mode adopted for assessing compensation has to be

considered in the background of "just" compensation which is the pivotal consideration. Though by use of the expression "which appears to it to be just" a wide discretion is vested in the Tribunal, the determination has to be rational, to be done by a judicious approach and not the outcome of whims, wild guesses and arbitrariness.

70. By applying the principles laid down by the Hon''ble Supreme Court the compensation of Rs. 50,40,000/- (Rupees fifty lac and forty thousand only) along with interest @ 12% per annum cannot be said to be inadequate, as claimed by the learned Counsel for the cross-objectors.

71. For the reasons stated above, the appeals as well as the objections, are ordered to be dismissed, but with no order as to costs.