

(2012) 03 RAJ CK 0132

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No's. 1097 of 2011, 1629 of 2011 and 1098 of 2011 and Civil Cross Objection No's. 42 of 2011, 44 of 2011 and 41 of 2011

New India Assurance Co. Ltd. and Others

APPELLANT

Vs

Smt. Dhani Devi and Others
 Smt. Dhani Devi and Others Vs New India Assurance Co. Ltd. and Others

RESPONDENT

Date of Decision : 28-03-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27, 41
Income Tax Act, 1961 — Section 80C
Motor Vehicles Act, 1988 — Section 133, 166, 170

Citation : (2013) 1 WLN 330

Hon'ble Judges : Vineet Kothari, J

Bench : Single Bench

Advocate : Jagdish Vyas, for the Insurance Company, for the Appellant; Anil Bhandari, Advocate, for the Claimants, for the Respondent

Judgement

Vineet Kothari, J.—The aforesaid appeals by Insurer-New India Assurance Company and cross objections by claimants are filed against the award of the Motor Accident Claims Tribunal-I, Jodhpur dt. 15.04.2011 deciding claim petition No. 762/2008 (Smt. Kanta W/o Late Rajendra Gulecha), claim petition No. 282/2010 (Sanjana Kothari vs. Dhool Singh) and claim petition No. 33/2009 (Dhani Devi W/o Late Vijay Singh vs. Dhool Singh) under Sec. 166 of the Motor Vehicles Act. 1988. In an accident which took place on 02.08.2008 at about 8.30 pm in the night near Village Bhavi on Bilara to Jodhpur road, two persons in Honda Car No. HR 26-AF-5280 being driven by Vijay Singh and accompanied by one Rajendra Gulecha rammed from back side in truck No. RJ 19-G-7257 being driven by owner-cum-driver Dhool Singh, non-applicant No. 1. The said truck was insured with appellant-non-applicant No. 2-New India Assurance Company, Jodhpur. On account of said accident, the occupants of the car, namely driver-Vijay Singh and occupant-Rajendra Gulecha died on the spot. Driver Vijay Singh was aged about 40 years and occupant Rajendra Gulecha was aged about 45

years. They were coming from Delhi to Jodhpur in the said car. On account of said death claimants-Smt. Kanta W/o Rajendra Gulecha and others filed claim petition No. 762/2008 and for the death of Vijay Singh, Smt. Dhani Devi and others filed claim petition No. 33/2009 and for the loss of property i.e. Car, owner-Sanjana Kothari filed claim petition No. 282/2010 and all the three claim petitions were decided by the learned Tribunal on 15.04.2011.

2. The insurer-New India Assurance Company has filed three appeals: CMA No. 1097/2011 (NIA vs. Smt. Chani Devi & Ors.), CMA No. 1629/2011 (MA vs. Smt. Sanjana Kothari & Anr.) & CMA No. 2098/2011 (MA vs. Smt. Kanta & Ors.), whereas. Cross Objection No. 42/2011 (Smt. Dhani Devi & Ors. vs. MA), Cross Objection No. 44/2011 (Smt. Sanjana Kothari vs. NIA) and Cross Objection No. 41/2011 (Smt. Kanta & Ors. vs. NIA) have been filed by the claimants seeking enhancement of compensation awarded by the learned Tribunal.

3. Learned Tribunal awarded compensation for the death of Rajendra Gulecha to the extent of Rs. 26,16,900/- while deciding claim case No. 762/ 2008 (Smt. Kanta & Ors. vs. Dhool Singh), Rs. 5,81,800/- for loss of property (Car No. HR 26-AF-5280) while deciding claim case No. 282/2010 (Smt. Sanjana Kothari vs. Dhool Singh and Rs. 17,12,750/- for the death of Vijay Singh while deciding claim case No. 33/2009 (Dhani Devi & Ors. vs. Dhool Singh). The claim petition No. 33/2009 was filed seeking compensation to the extent of Rs. 66,87,000/- for the death of driver Vijay Singh, claim petition No. 762/ 2008 was filed seeking compensation for the death of Rajendra Gulecha to the extent of Rs. 4,35,75,000/- and claim petition No. 282/2010 was filed seeking compensation for loss of property (Honda Car No. HR-26-AF-5280) to the extent of Rs. 8,04,651/-.

4. The appellant Insurance Company in CMA No. 1097/2011 (NIA vs. Dhani Devi) has also filed an interim application under Order 41 Rule 27 CPC for taking on record additional documents, which was not opposed and, therefore, same is allowed and the additional documents filed along with the said application were considered by this Court during the course of hearing.

5. Mr. Jagdish Vyas, learned counsel appearing for the appellant Insurance Company mainly raised the following contentions and grounds to assail the impugned award dt. 15.04.2011:

(i) that since the car No. HR 26-AF-5280 being driven by Vijay Singh deceased rammed into the insured truck No. RJ-19-G-7257 from the back side and from the site plan produced along with the application under Order 41 Rule 27 CPC, it would appear that the driver of the car himself was solely responsible for the said accident, therefore, the claimants could not get any compensation in respect of death of driver of the car. However, this submission would not apply as far as occupant of the car, Rajendra Gulecha, is concerned as he was a third party for which the truck was insured.

(ii) that there was no involvement of the truck No. RJ-19-G-7257 in the said

accident, which took place at about 8.30 pm on 02.08.2008 since in the FIR registered on the same date at about 10.30 pm with Police Station Bilara by the son of deceased Rajendra Gulecha, one Mr. Abhishek Gulecha, there was no mention of the insured truck No. RJ-19-G-7257, whereas, admittedly lot of people had gathered at the site of accident which took place on the national highway and, therefore, it was not be believable that nobody could note the truck number and, therefore, the appellant Insurance Company is not liable to pay any compensation.

(iii) That the amount of compensation awarded is excessive and the same deserves to be suitably reduced to the extent of contributory negligence of the driver of the car.

6. Learned counsel Mr. Jagdish Vyas relied upon the following judgments in support of his contentions:

(i) United India Insurance Co. Ltd. Vs. Pawan Tikkiwal and Others,

(ii) RSRTC & anr. vs. Jile Singh & Ors., 2010 ACJ 2386.

(iii) New India Assurance Co. and Others Vs. Kheta Ram and Others,

(iv) United India Insurance Co. Ltd. vs. Hamu Ram & Ors., 2004 RAR 308 (Raj.)

(v) The Oriental Insurance Company Limited Vs. Meena Variyal and Others, .

(vi) Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, .

7. On the other hand, Mr. Anil Bhandari, learned counsel appearing for the claimants made the following submissions in support of cross objections seeking enhancement of compensation and in opposition of the appeals filed by the Insurance Company.

8. That the accident in question took place on 02.08.2008 at about 8.30 pm in the night on the national highway when the driver cum owner of the insured truck No. RJ-19-G-7257, while plying his truck between Bilara to Jodhpur near village Bhavi, about 60 kms before Jodhpur, suddenly applied brakes and stopped the truck in the middle of the road and started conversation & talk with the driver of another truck coming from opposite direct on and on account of said sudden stoppage of the truck No. RJ-19-G-7257, the Honda Car No. HR-26-AF-5280 coming from Bilara to Jodhpur rammed into the said truck from the back side and two persons in the car, driver-Vijay Singh and occupant-Rajendra Gulecha lost their lives on the spot and the factum of this sudden and negligent stoppage of the truck by the non-applicant No. 1-Dhool Singh, who is also the owner of the said truck, is nothing but rash and negligent driving and since two persons lost their lives, the claim petitions were properly instituted and eye witnesses were produced along with the other documentary evidence for the said accident, therefore, claim petitions have rightly been allowed by the learned Tribunal. However, he submitted that the compensation awarded by the learned Tribunal is grossly inadequate and nothing towards the possible increase in the

income in view of future prospects of both the deceased persons, who were income tax assesses also and their income tax returns were also produced in evidence, has been awarded by the learned Tribunal in the light of Supreme Court decision in the case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, and consequently, the compensation deserves to be enhanced suitably while allowing the cross objections filed by the claimants.

9. Mr. Anil Bhandari, learned counsel for the claimants also submitted that there was no contributory negligence on the part of the driver of the car, Vijay Singh, and the accident occurred only on account of sudden brakes applied & stoppage of the insured truck by the owner cum driver of the truck, Dhool Singh and, therefore, there is no question of reduction of compensation on the ground of contributory negligence and irrespective of this, as far as occupant Rajendra Gulecha is concerned, he is entitled to full compensation in case of composite negligence of the two drivers and for the loss of his life, the compensation cannot be denied by the appellant Insurance Company.

10. Learned counsel Mr. Anil Bhandari relied upon the following case laws in support of his submissions, which would also be discussed hereinafter.

CASE LAWS IN SUPPORT OF JUST COMPENSATION

- (i) National Insurance Company Ltd. Vs. Indira Srivastava and Others,
- (ii) Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another,
- (iii) Shyamwati Sharma and Others Vs. Karam Singh and Others,
- (iv) Sri Sri. K.R. Madhusudhan and Others Vs. The Administrative Officer and Another,
- (v) Sanjay Batham Vs. Munnalal Parihar and Others,

CASE LAWS ON THE POINT OF INTEREST FROM THE DATE OF CLAIM APPLICATION

- (i) Dr K.R. Tandon (Mrs) Vs. Om Prakash and Another,
- (ii) Paramjeet Kaur and Others Vs. Rajasthan State Road Transport Corporation and Others,

CASE LAWS ON THE POINT OF NEGLIGENCE

- (i) Usha Rajkhowa and Others Vs. Paramount Industries and Others,
- (ii) United India Insurance Co. Ltd. Vs. Rambabu Singh and Others,
- (iii) T. Subramaniam & Ors. vs. Banwari Gurjar & Ors., MACD 2009 (1) (M.P.) 72

CASE LAWS ON THE POINT OF COMPOSITE NEGLIGENCE

- (i) Smt. Sushila Bhadoriya and Others Vs. M.P. State Road Transport Corporation and Another,

- (ii) Said Peer Asraf Shah Jilani vs. Indra Jeet & Ors., 2005 (10) RDD) 4556 (Raj.)
- (iii) A.P.S.R.T.C. vs. K. Hemalatha & Ors., MACD 2008 (SC) 302

CASE LAWS ON THE POINT OF ACCIDENT PROVED

- (i) Ravi Vs. Badrinarayan and Others,
- (ii) Kusum Lata and Others Vs. Satbir and Others,
- (iii) Parmeshwari Vs. Amir Chand and Others,
- (iv) Bimla Devi and Others Vs. Himachal Road Transport Corporation and Others,
- (v) National Insurance Co. Ltd. vs. Parmeshwar & 13 Ors., 2009 RAR 179 (Raj.)
- (vi) National Insurance Co. Ltd. vs. Surjan Singh & Ors., 2009 RAR 313 (Raj.)

11. Mr. Anil Bhandari also submitted that as far as cross objection No. 44/2011 (Smt. Sanjana Kothari vs. New India Assurance Co. Ltd.) filed in CMA No. 1629/2011 (NIA vs. Sanjana Kothari) in respect of loss of property i.e. Honda Car No. HR-26-AF-5280 is concerned, on account of dismissal of appeal filed by the insurer ICICI Lombard General Insurance, by the State Consumer Commission and the suitable compensation having been paid, he does not press his cross objection No. 44/2011. Accordingly S.B. Civil Cross Objection No. 44/2011 (Sanjana Kothari vs. New India Assurance Co. Ltd.) for seeking enhancement of compensation in respect of damage to the property, namely Honda Car No. HR-26-AF-5280 is dismissed as not pressed.

12. I have heard the learned counsels at length and perused the record, impugned award dt. 15.04.2011 and the judgments cited at the bar.

13. The accident in question took place at about 8.30 pm in the night of 02.08.2008 and in support of claim petitions, besides documentary evidence in the form of police record, statements of AW/1- Dhani Devi widow of Vijay Singh. AW/2- Kanta widow of Rajendra Gulecha, AW/3- Abhishek S/o. Rajendra Gulecha, AW/4 Shaitana Ram, eye witness, AW/5- Rajesh Gulecha, brother of Rajendra Gulecha, were produced by the claimants, whereas; NAW/1- Dhool Singh, driver of the truck, and NAW/2- Ashok Kumar of New India Assurance Company were examined by the learned Tribunal. The police record produced before the learned Tribunal, inter alia, included the FIR-Ex. 1, challan-Ex. 2, Panchnama-Ex. 4, Notice under Sec. 133 of the Motor Vehicles Act-Ex. 11, Mechanical Inspection Report of the truck-Ex. 10, Inspection Cover Note of the truck-Ex. 14, Income tax return of deceased Rajendra Gulecha-Ex. 21, Bank Statement-Ex. 32-A etc. The application under Sec. 170 of the Motor Vehicles Act to dispute the quantum of compensation was earlier rejected on 19.01.2010, however, upon direction of this Court in writ petition filed by the Insurance Company, this was allowed vide order dt. 12.05.2010 and Insurance Company also cross-examined the witnesses of the claimants on all grounds.

14. The contention of the learned counsel for the Insurance Company, Mr.

Jagdish Vyas, that there was contributory negligence of the driver of the car, Mr. Vijay Singh, is not acceptable in view of the statement of eye witness Shaitana Ram (AW/4), who is neither interested witness for claimants nor has any enmity with the non-applicant-Dhool Singh, driver cum owner of the insured truck, who in his statement recorded by the learned Tribunal on 03.08.2010 has clearly stated that at about 8.00 pm on the date of accident, he was going from his agricultural field at Bhavi to nearby village when he saw that one truck coming from Bilara to Jodhpur was stopped in the middle of the road and both the drivers, namely driver of this truck and of other truck coming from opposite direction were talking to each other when the car coming from Bilara to Jodhpur hit from the back side of the truck and there was no back light switched on of the said truck and the car rammed the said truck from back side and two persons lost their lives on the spot. In his statement, the said eye witness has given the truck No. 7257. In his cross-examination, he stated that he was about 50-60 ft. away from the site of the accident and at the time of accident 15-20 persons gathered on the spot and all the three vehicles in question were there, however, he did not notice the number of another truck. The statement of said eye witness, which has not been falsified during the cross-examination by the learned counsel for the Insurance Company as well as non-applicant-owner & driver of the insured truck, is sufficient to hold that the accident in question took place because of rash, negligent & sudden stoppage of the truck No. RJ-19-G-7257 by the non-applicant-Dhool Singh in the middle of the national highway road and the driver of the car-Vijay Singh cannot be said to have made any contributory negligence for such accident and on account of such sudden stoppage of the truck with no back lights on at about 8.30 pm, even if the car driver could have seen the truck in question, could not have imagined that it would suddenly stop in the middle of the road and it cannot be said that the driver of the car could be negligent in driving the car to any extent. Therefore, the contention of the learned counsel for the Insurance Company about contributory negligence of the driver of the car, who himself died in the said accident, cannot be accepted and same deserves to be rejected and is accordingly rejected.

15. The use of insured truck No. RJ-19-G-7257 and consequently filing of claim petitions under Sec. 166 of the Act proving the negligence of the driver of the truck-Dhool Singh, who was also owner of the said truck is further fortified by his own reply to the notice under Sec. 133 of the Act (Ex. 12) dt. 26.12.2008 in which he has clearly stated that on the date of accident i.e. 02.08.2008 he himself was driving the said truck near village Bhavi and his subsequent denial before the Tribunal in his statement recorded on 12.04.2010 is a bald denial and cannot be believed in view of his first version given in reply to the notice under Sec. 133 of the Motor Vehicles Act. Therefore, as far as the finding of the learned Tribunal that accident occurred on account of rash and negligent driving of the non-applicant No. 1- Dhool Singh is concerned, the same deserves to be affirmed and is accordingly affirmed.

16. The contention of the learned counsel for the Insurance Company, Mr.

Jagdish Vyas, that insured truck No. RJ-19-G-7257 was not at all involved in the accident as the same is neither named in the FIR nor is shown to be lying parked in the site map prepared by the Investigating Officer on 04.08.2008 after two days also deserves to be rejected on the same ground, as aforesaid. His further contention that from the point of accident "x" in the site plan produced by him before this Court, the damaged car HR-26-AF-5280 was 125 ft. away at point "B" on the road, which had 48 ft. of width, is also sufficient to hold that the truck in question was not there at the site, is also a contention which is not acceptable.

17. The accident in question took place at the middle of the road & if after two days at the time of preparation of site plan, the insured truck was removed from the site in question as the same cannot be parked there for two days and, therefore, even if the accident took place at point "X", it cannot be said that the said accident did not take place with the involvement of the said truck in question. The statement of eye witness AW/4- Shaitana Ram is sufficient to prove this fact and admission of NAW/1- Dhool Singh in his reply to notice under Sec. 133 of the Act further corroborates the same. The contentions of learned counsel for the appellant Insurance Company to arouse doubt about accident having been taken place with the involvement of insured truck are simply suspicions and surmises and based on no evidence and, therefore, cannot be accepted and same are accordingly rejected.

CONSIDERATION OF QUESTION REGARDING QUANTUM OF COMPENSATION

18. The claimants have sought enhancement of compensation for both the deaths in question. Learned counsel for the claimants, Mr. Anil Bhandari mainly submitted two grounds for enhancement of compensation.

(i) that at least 50% increase in the compensation deserves to be allowed keeping in view the future prospects of increase in income on the basis of income determined as per the Income Tax return filed before the learned Tribunal in view of judgment of Supreme Court in the case of Sarla Verma vs. Delhi Transport (supra); &

(ii) That income reported in the case of deceased Rajendra Gulecha showed constant increase in his income for the last three years and even the income reported for the quarter 01.04.2008 to 31.07.2008 before his death on 02.08.2008 also showed substantial increase in his income, which has not been fully considered while computing the compensation and since the deceased Rajendra Gulecha was also serving in a limited company known as M/s. Naman Overseas Ltd., his monthly income was about Rs. 72,500/- as per the statement of his wife Smt. Kanta, AW/1, and the age of the deceased was 46 years at the time of his death, therefore, the net yearly income computed by the learned Tribunal only at Rs. 2,61,838/- is very less. He submitted that out of the gross total income, only the income tax portion could be deducted, whereas, the learned Tribunal has taken the net income disclosed in the Income Tax return after deductions under Sec. 80C of the Income Tax Act. He also submitted that

the amount of compensation on account of loss of companionship awarded in favour of claimant wife Smt. Kanta is also very less and so also for children & parents, therefore, the compensation on this count also deserves to be suitably enhanced for both the deaths, namely of Shri Vijay Singh, driver of the car and Shri Rajendra Gulecha, occupant of the car.

19. The judgments relied upon by learned counsel for the appellant Insurance Company, Mr. Jagdish Vyas, are dealt with hereunder:-

In *United India Insurance Co. Ltd. Vs. Pawan Tikkiwal and Others*, , the coordinate bench of this Court held in para 7 of the judgment that the settled principle of law of evidence is that the first version of an incident contains the kernel of truth as it is the tendency of human beings to speak the truth immediately. Subsequently, after due deliberations, the facts can be changed, the story can be embroidered and a fictional version can be treated. On the facts of that particular case where after six months of accident the injured wrote to Superintendent of Police that alleged jeep hit him and an eye witness was also introduced by the injured. The Court held that the same did not inspire any confidence and the claim petition was liable to be dismissed.

The facts of the case relied upon by the learned counsel Mr. Jagdish Vyas are clearly distinguishable and do not apply to the facts of present case where FIR was lodged after an hour or so of the accident and eye witness available on the site had deposed before the learned Tribunal about the facts & circumstances of the accident. Therefore, there is no delay in introducing any sort of accident or the eye witness in the present case.

In *RSRTC vs. Jile Singh & Ors.*, 2010 ACJ 2386 the coordinate bench of this Court held that while man may lie, circumstances do not and in order to verify the truthfulness of a testimony, the Court should sieve the testimony through the documentary evidence and on the basis of photographs of the accident placed before the Court, the Court found that there was contributory negligence of the jeep driver and bus driver to the extent of 25% of bus driver and 75% of jeep driver respectively.

The facts of the present case are different. Since in the present case the ill fated car rammed the insured truck from the back side as the same was suddenly stopped in the middle of the road by no back lights on and the driver of the car simply rammed into it and could not have avoided the accident even if he had taken reasonable care while driving.

In *New India Assurance Co. and Others Vs. Kheta Ram and Others*, , the learned Single Judge of this Court held that where the Tribunal has recorded the finding of contributory negligence of the driver of the jeep upto the extent of 50% then it does not lie in the mouth of the Tribunal to say that the Tribunal is not in position to give finding with respect to the contribution of the driver of the jeep while deciding the claim case of the other claimants.

This ratio relied upon by the learned counsel for the appellant Insurance Company, Mr. Jagdish Vyas, is also of little avail in the present case since there is no finding of contributory negligence of the car driver by the Tribunal. In the present case, the Tribunal and this Court has held on the basis of evidence, which came before the Tribunal that there was no contributory negligence on the part of driver of the ill fated car, which rammed into the suddenly stopped truck on the middle of the road from the back side.

In *United India Insurance Co. Ltd. vs. Hamu Ram & Ors.* - 2004 RAR 308 (Raj.), another learned Single Judge of this Court held that the documents prepared by the Police or Doctor while discharge of their official duty are admissible in evidence without there being any formal proof. This judgment has been relied upon by the learned counsel Mr. Jagdish Vyas for taking on record the additional documents with his application under Order 41 Rule 27 CPC, which has already been allowed as aforesaid and, therefore, no further discussion in this regard is required.

Learned counsel for the appellant Insurance Company also relied upon *Oriental Insurance Company Ltd. vs. Meena Variyal & Ors.* - MACD 2007 (1) SC 390 in support of his contention that since the deceased (driver of the car-Vijay Singh) was himself driving the vehicle at the time of accident, the accident occurred due to the negligence of the deceased himself and hence insurer is not liable for the compensation.

In *Meena Variyal (supra)*, the Hon''ble Supreme Court held that the policy of insurance did not cover such an employee and the deceased driver of the car, who was not even holding valid driving license when he drove the car and, therefore, he was not third party.

The aforesaid judgment is not applicable to the facts of the present case as no such facts have come on record in the present case that the driver Vijay Singh was not holding a valid driving license to drive the car.

20. Now let us take up the judgments relied upon by the learned counsel for the claimants, Mr. Anil Bhandari.

CASE LAWS ON THE QUESTION OF NEGLIGENCE:

In *Usha Rajkhowa and Others Vs. Paramount Industries and Others*, the Hon''ble Supreme Court held that where eye witness of the occurrence stated that the offending truck was coming from the opposite direction in high speed and hit the car, whereas, the Maruti car was going in its own side, the Hon''ble Supreme Court reversing the decision of High Court, which affirmed the judgment of Tribunal, held that there was no question of restricting the claim to the extent of 50% of the assessed amount of compensation and claimant would be entitled to full compensation.

In the present case also it has been held by the Tribunal as well as by this Court, as above, that in view of statement of AW/4-Shaitana Ram, eye witness, the

accident in question took place due to sole negligence of driver of the insured truck, who stopped the truck suddenly on the National Highway and ill fated car rammed into it from back side as the said truck stopped without giving any signal with no back light on and it has been held that there was no contributory negligence on the part of the driver of the car.

In *United India Insurance Co. vs. Rambabu & Ors.*, MACD 2009 (1)(M.P.) 19, the Division Bench of Madhya Pradesh High Court held that where tractor trolley was parked on the road without switching on any indicator and at about 10.00 pm the motor cycle dashed against the tractor trolley from back side, the findings of the Tribunal that only the driver of the Tractor Trolley was negligent and the driver of the motor cycle could not be held to be guilty of contributory negligence were correct finding and could not be interfered with.

This case is similar to the circumstances of the present case and clearly supports the case of the claimants.

Similarly in *Smt. Sushila Bhadoriya and Others Vs. M.P. State Road Transport Corporation and Another*, , the Full Bench of M.P. High Court held that in case of composite negligence the claimant may implead owner, driver and insurance company of both the vehicles or any one of them and it is not necessary to apportion inter se liability of the joint tortfeasors.

In *said Peer Asraf Shah Jilani & Anr. vs. Indra Jeet & Ors.* - A 2005 (10) RDD 4556, this Court has also similarly held that in case of composite negligence, the passengers of the vehicle, who have not actively contributed in any manner and the other vehicle truck was comprehensively insured then the Insurance Company was responsible to make good the entire amount awarded by the Tribunal qua those claimants and the Tribunal, though erred in reducing the compensation to the extent of 50% in the case of such composite negligence of both the drivers.

CASE LAWS ON THE POINT OF FACTUM OF ACCIDENT PROVED.

In *Ravi Vs. Badrinarayan and Others*, , the Hon''ble Supreme Court held that where accident took place on 07.10.2000 and FIR was lodged after about three months on 16.01.2002 and the Tribunal dismissed the claim on the ground of delay in filing FIR & the High Court affirmed the same, the Supreme Court held that delay in filing FIR was explained satisfactorily and, therefore, same cannot be a ground to doubt the claimant's case. The said case was also decided like the present one on the basis of reply to the notice under Sec. 133 of the Motor Vehicles Act in which the owner admitted that he was informed about the accident on phone on the very same day and the Supreme Court itself awarded the compensation to the injured claimant.

In *Kusum Lata and Others Vs. Satbir and Others*, , the Hon''ble Supreme Court held that under mental strain if the brother of the deceased forgot to take down the registration number of vehicle, it is not unnatural and, therefore, the claim

could not have been dismissed by the Tribunal and High Court on this ground.

In the present case, learned counsel for the Insurance Company tried to submit that since in the FIR truck number was not mentioned and even though eye witness informed the truck number on the next day, the police did not give it in the challan filed. In the opinion of this Court, the same cannot be a ground to oust the claimants in the present case as well in view of admission of the owner cum driver of the truck-Dhool Singh, about the said accident and statement of eye witness AW/4- Shaitana Ram.

In National Insurance Company Ltd. vs. Parmeshwar & Ors., 2009 RAR 179, the coordinate bench of this Court held that in the FIR bus No. RJ 3P-638 was mentioned, whereas, police seized the bus No. RJ 03P-776 of the same owner, which fact was supported by oral evidence also. It was held that finding of the Tribunal that involvement of bus No. RJ-03P-776 was there in the accident was liable to upheld as there was an error committed by the owner in giving bus number in the FIR.

In National Insurance Company Ltd. vs. Surjan Singh & Ors., 2009 RAR 313 (Raj.) the learned Single Judge held that where passenger in tractor-AW-1 victim's mother stated before the Tribunal that tractor had hit the deceased when she was going with the deceased, there was no reasons to disbelieve the statement of mother of the deceased.

ON THE ISSUE OF JUST & FAIR COMPENSATION

In National Insurance Co. Ltd. vs. Indira Srivastava & Ors., MACD 2008 (SC) 58, the Hon''ble Supreme Court while interpreting the word "income" in para 17 and 18 of the judgment observed that the entire taxable income of the deceased including the income by way of perks should be included in the computation of monthly income as that would have added to his monthly income by way of contribution to the family and only the tax payable upon such income can be deducted to compute the dependency benefit.

In Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , the Hon''ble Supreme Court in para 22 of the judgment held that 50% of the income can be added to the actual salary by taking note of the future prospects of increase in such income of the deceased.

Learned counsel for the claimants in the present case also prayed for similar relief that 50% increase in the income be added to the income of deceased persons in view of their future prospects of increase to compute the compensation as they were in their early 40s.

In Shyamwati Sharma and Others Vs. Karam Singh and Others, , the Hon''ble Supreme Court again reiterated that deduction towards income tax and surcharge alone could be considered to arrive at the net income of the deceased.

In Sri. K.R. Madhusudhan and Others Vs. The Administrative Officer and

Another, ; the Hon''ble Supreme Court explaining the judgment of Supreme Court in Sarla Verma & further held in para 9 that rule of thumb evolved in Sarin Verma (supra) is to be applied to those cases where there was no concrete evidence on record of definite rise in income due to future prospects, as obviously the said rule was based on assumption and to avoid uncertainties and inconsistencies in the interpretation of different Courts and to overcome the same, 50% increase is to be applied in cases where deceased was less than 50 years of age.

In Sanjay Batham Vs. Munnalal Parihar and Others, , the Hon''ble Supreme Court again reiterating the ratio of Raj Kumar Vs. Ajay Kumar and Another, in para 12 of the judgment held that the award must be just, which means that compensation should, to the extent possible, fully and adequately restore the claimant to the position prior to the accident and object of awarding damages is to make good the loss suffered as a result of wrong done as far as money can do so, in a fair, reasonable and equitable manner.

In Sri Laxman @ Laxman Mourya Vs. Divisional Manager, Oritl. Ins. Company Ltd. and Another, , the Hon''ble Supreme Court reiterated the need of award of compensation under two broad heads; pecuniary and non-pecuniary damages.

In Dr K.R. Tandon (Mrs) Vs. Om Prakash and Another, , the Hon''ble Supreme Court held that there was no justification for not awarding interest on the compensation from the date of filing of claim petition itself and Supreme Court proceeded to award interest @ 12% p.a.

In Paramjeet Kaur & Ors. vs. RSRTC & Ors., 2005 RAR 196, the coordinate bench of this Court awarded interest @ 9% p.a. even on the enhancement in compensation awarded by the Court.

The Court in Murlidhar Purohit & Anr. vs. United India Insurance Company Ltd. & Anr., SBCMA No. 183/1999 held as under:

9. Thus, the aforesaid provision itself clearly envisages profit of 40% of the gross amount of contract and going by that, the income to the firm of these two persons could have been in the range of Rs. 80,00,000/- but as already aforesaid continuous high income could not be presumed as the contract could only be there for one year as per the documents brought on record under Sec. 41 Rule 27 CPC. On the other hand, ignoring the said aspect of the matter and not estimating any loss of income,. Which could have been accrued to the deceased from this business, would also be a folly. Therefore, even taking a conservative view of as against the claim of Rs. 20,00,000/- in this regard, this Court is inclined to grant enhancement in the award by a sum of Rs. 10,00,000/- (Rs. Ten Lacs) on this ground in the hands of deceased Virendra in favour of the appellants.

10. The learned Tribunal has also estimated the income from the agriculture at Rs. 5000/- and also Rs. 5000/- from the business in the name and style of M/s.

Gayatri Traders, but after deduction for personal expenses, the Tribunal has applied the multiplier of 18 and has awarded 50% compensation from such loss of income only in favour of appellant No. 2, mother of the deceased. This income from the business as well as from agriculture sources also does not take into account, the future prospects of increased in the said income. In view of the recent decision in the case of Smt. Urmila Karnawat (supra), an amount of 50% of the compensation on this account also deserves to be enhanced. However, in view of the decision of Hon''ble Supreme Court in the case of Sarla Verma (supra), the father of the deceased cannot be said to be dependent in the present case and, therefore, that part of the order of the Tribunal cannot be successfully assailed.

The third aspect of the matter is for grant of compensation for loss of love and affection to the extent of Rs. 1,25,000/- each also calls for adhoc enhancement to the extent of Rs. 1,00,000/- for both the parents jointly. Thus, the appellants are entitled to total enhancement in the award to the extent of Rs. 10,00,000/- on account of loss of total income from the liquor business + Rs. 22,500/- (50% of Rs. 45,000/- awarded by the Tribunal) on account of loss of income from other business and agriculture sources + Rs. 1,00,000/- enhancement on account of loss of love and affection totaling to Rs. 11,22,500/-. The appellants shall be entitled to said enhancement of compensation with interest @ 9% per annum from the date of filing of the claim petition till the date of payment. The respondent-Insurance Company shall pay such enhanced compensation to the appellants within a period of 3 months from today interest.

11. The appeal is thus allowed to the extent indicated above with no order as to costs.

21. In light of the aforesaid judgments, the enhancement of compensation to be awarded in the present cases can be computed as under to arrive at just and fair compensation payable on the death of two persons; Vijay Singh, driver of the car and Shri Rajendra Gulecha, occupant of the car.

FOR THE DEATH OF DRIVER OF CAR, VIJAY SINGH :

22. the learned Tribunal has applied the multiplier of 15 in the case of deceased Vijay Singh on the basis of his age of 40 years after computing the net annual income at Rs. 1,47,000/- and after deducting 1/4 amount against his personal expenses, awarded compensation of Rs. 16,53,750/-. Loss of companionship for the wife of Vijay Singh and children and for loss of dependency, compensation of Rs. 20,000/- on each category has been awarded. The dependency benefit to the extent of 50% increase in view of future prospects of increase in income of the deceased deserves to be allowed in view of the judgment of Supreme Court in case of Sarla Venna (supra) and affirmed by the Apex Court in later decisions also, enhancement to the extent of Rs. 8,25,000/- under the head loss of income would be payable to the claimants of deceased Vijay Singh. The amount of Rs. 20,000/- for loss of companionship for the widow and children, namely; Dhani

Devi aged 39 years, Vikram Singh aged 12 years, Ms. Shobha aged 12 years, Karan Singh aged 12 years and Ms. Simran aged 10 years is also on the lower side and said amount of Rs. 20,000/- each totaling Rs. 40,000/- also deserves to be increased by a sum of Rs. 4,00,000/-. Even though as held by Hon''ble Supreme Court and well known that no amount of monetary compensation can compensate the loss caused to the family, still this Court is of the view that award of Rs. 20,000/- for widow and Rs. 20,000/- for children for this loss is on very lower side, therefore, amount of Rs. 40,000/- is enhanced to Rs. 4,40,000/-. Remaining compensation on other heads is maintained. The enhanced compensation for the death of Vijay Singh, driver of the car, would be to the tune of Rs. 12,25,000/- (Rs. 8,25,000 + Rs. 4,00,000/-) which would be distributed in the same ratio amongst the claimants as already directed by the learned Tribunal. The enhanced amount of compensation would also bear interest @ 9% p.a. from the date of application till the date of payment by the appellant Insurance Company.

DEATH OF OCCUPANT OF CAR, RAJENDRA GULECHA

23. While deciding the claim case No. 762/2008 for the death of Rajendra Gulecha, who left behind the claimants; Smt. Kanta (wife) aged 43 years, Abhishek (son) aged 20 years, Kumari Pooja (daughter) aged 17 years, Kumari Shraddha (daughter) aged 12 years, Shri G.C. Gulecha (father) aged 75 years and Smt. Nidhyan (mother) aged 71 years, the learned Tribunal has awarded loss of income/ dependency benefit to the extent of Rs. 26,16,900/- after applying the multiplier of 13 years to the net annual income of Rs. 2,61,838/- and after deducting Vi amount towards personal expenses. The Tribunal has also awarded Rs. 20,000/- for loss of companionship for widow Smt. Kanta and Rs. 25,000/- for three children and parents @ Rs. 5000/- each. Since the deceased Rajendra Gulecha was also having monthly salary income of Rs. 1,20,000/- per year as per Income Tax Return of Assessment Year 2006-2007 from a Limited Company, namely; M/s. Naman Overseas Ltd. and besides that had also business income as per income tax returns filed regularly, which had shown constant increase in the business income of the deceased.

The enhancement to the extent of 50% in view of future prospects of increase in income would be payable to his claimants in view of Supreme Court decision in the case of Sarla Verma as aforesaid and thus, a sum of Rs. 13,10,000/- (50% of Rs. 26,16,900/-) would be additionally payable under this head.

24. Since deceased Rajendra Gulecha had also income from his business and profession in the form of consultancy charges which for the Assessment Year 2006-2007 was shown at Rs. 1.75 lacs and for Assessment Year 2007-2008 at Rs. 2.72 lacs and for Assessment Year 2008-2009 at Rs. 3 lacs, which show consistent increase in his business income also & the Tribunal has also ignored the return for four months income prior to his death and, therefore, under the head "Loss of Income" payable to the claimants on account of said death of Rajendra Gulecha, in view of ratio laid down by this Court in Murlidhar Purohit vs.

United India Insurance Co. (supra) an adhoc sum of Rs. 20 lacs also deserves to be awarded taking average annual business income of Rs. 2 lacs with multiplier of 10, though the normal multiplier as per the age would be 13. Though business income can fluctuate to a large extent & can be much more besides fixed consultancy charges, taking a conservative view additional business income to the extent of Rs. 2 lacs is taken. However, the excess left out, if multiplier of 13 was to be applied, would balance out against tax liability & personal expenses deduction.

The compensation under the head loss of companionship also deserves to be suitably increased looking to his age, status of the family and looking to the income earned by him and nature of business, a sum of Rs. 5,00,000/- under this head is considered appropriate to be enhanced.

Thus, the net enhanced compensation for the death of Rajendra Gulecha is computed as under:

- (i) Rs. 13,10,000/- for Loss of income in view of 50% increase as per the decision of Hon"ble Supreme Court in Sarla Verma case (supra)
- (ii) Rs. 20,00,000/- on account of future prospects of business income, as aforesaid.
- (iii) Rs. 5,00,000/- for loss of companionship to the widow, three children and both the parents.

25. Thus, total enhanced sum of Rs. 38,10,000/- would be additionally payable to the claimants of deceased Rajendra Gulecha. The said amount shall also bear interest @ 9% p.a. from the date of application and said sum would be distributed in the same ratio and manner as directed by the learned Tribunal. The appeals of the Insurance Company are accordingly dismissed and cross objections filed by the claimants for two deaths are allowed to the extent indicated above. No order as to costs.