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**(1985) 03 AHC CK 0058**  
**In the Allahabad High Court**  
**Case No : F.A.F.O. No. 76 of 1978**

Oriental Fire and General Insurance Co. Ltd., Bombay and  
Others

APPELLANT

Vs

Baldeo Prasad and Others

RESPONDENT

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**Date of Decision :** 21-03-1985

**Acts Referred:**

Motor Vehicles Act, 1939 — Section 110B, 110D, 96(2)

**Citation :** (1986) ACJ 91 : AIR 1985 All 220

**Hon'ble Judges :** O.P. Saxena, J;I.P. Singh, J

**Bench :** Division Bench

**Advocate :** A.B. Saran, for the Appellant; R.P. Srivastava, for the Respondent

**Final Decision :** Partly Allowed

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## Judgement

O.P. Saxena, J.—This is an appeal u/s 110-D of the Motor Vehicles Act against the order dt. 14th Oct., 1977 passed by the Motor Accidents Claims Tribunal, (Additional District Judge Court No. 1), Jhansi awarding Rs. 45,000/- as compensation against the opposite parties making them jointly and severally liable to pay the amount along with pendente lite and future interest @ 6% per annum from the date of petition till the date of payment,

2. On 9th June 1973 at 6.45 p.m. a motor accident took place near the bus station Nabina on Jhansi Lalitpur Road. The Bus No. U.S.G. 4181 was driven by opposite party 1, Ashok Kumar. It is said that he drove the bus rashly and negligently causing serious injuries to Sita Ram, who was going on a cycle. Sita Ram succumbed to the injuries.

3. Sardari Lal was the owner of the bus. Opposite parties 3 and 4 are his widows. Opposite parties 5 to 12 are his sons.

4. Claimant 1, Baldeo Prasad, is father claimant 2, Srimati Kesar, is widow, and claimants 3 to 5, Ramji, Biren and Kumari Kamlesh Kumari are minor children of Sita Ram deceased

5. The claimants filed a petition for Rs. 60,000/- compensation. It was said, accident took place due to rashness and negligence of the driver of the bus, that Sita Ram was 34 years old and he was employed on a salary of Rs. 197/- per mensem, and that he used to earn Rs. 50/- per mensem from other sources.

6. The claim petition was contested by opposite party 2, the insurer as well as by opposite parties 1, 3 to 8, 10 and 11. It was denied that the accident took place due to negligence of opposite party No. 1. The amount of compensation was assailed.

7. The Tribunal held that the accident took place due to the rash and negligent driving of the bus by opposite party No. 1. This finding has not been assailed before us. The Tribunal held that the deceased was 35 or 36 years old at the time of the accident and that his income was Rs. 180/- per mensem. The Tribunal found no satisfactory evidence to prove that the deceased used to earn Rs. 50/- per mensem from Panditai. The Tribunal awarded a sum of Rs. 45,000/- as compensation. Hence, this appeal.

8. Sri R. P. Srivastava, learned counsel for the claimants respondents submitted that the appeal is not maintainable as the insurer is not entitled to assail the award except on the grounds mentioned in Section 96(2) of the M.V. Act. He placed reliance on : --

1. British India General Insurance Co. Ltd. Vs. Captain Itbar Singh and Others, .  
2. New India Insurance Co. Ltd., Bombay Vs. Smt. Molia Devi and Others, 3.  
Vanguard Insurance Co. v. Shefali Mukerji, 1970 ACJ 245 (All). 4. National Insurance Co. Vs. Magikhaia Das (After him) Mst. Laxmi Dibya and Others, . 5. Ramesh Chandra Vs. Randhir Singh and Others, . 6. Kantilal & Brothers v. Ramarani Debi AIR 1978 Cal 152 , and 7. Vanguard Co. Ltd. Vs. Rabinder Kaur and Others, .

9. Sri A. B. Saran, learned counsel for the appellants submitted that it is true that the insurer is not entitled to set up a defence other than the one referred to in Section 96(2) of the M.V. Act. He, however, pointed out that the appeal has been filed by some of the sons of Sardari Lal also and they are appellants 2 to 6 -- Mangal Chhabra, Kishan Chhabra, Om Chhabra, Vijai Chhabra and Vinay Chhabra. It is open for these appellants to take pleas other than those mentioned in Section 96(2) of the M.V. Act. He placed reliance on the case of The Motor Owners' Insurance Co. Ltd. and Another Vs. Hrishikesh Das and Others, .

10. In case of British India General Insurance Co. Ltd. Vs. Captain Itbar Singh and Others, , it was held by the Supreme Court in para 12 page 1334 that Sub-section (2) of Section 96 of the M.V. Act, in fact, deals with defences other than those based on the conditions of the policy. In para 16 page 1335, it was held that the insurer has the right, provided he has reserved it by the policy to defend the action in the name of the assured and if he does so, all defences open to the assured, can then be urged by him. Another exception to Sub-section (2) Section 96 has been provided in Section 110(2-A) (ii) of the M. V. Act. The insurer has

the right to contest claim on all or any of the grounds that are available to the person against whom the claim has been made in case the person against whom the claim is made has failed to contest the claim. These two exceptions are not available to the appellant 1, the insurer. The appellant 1 is not entitled to challenge the amount of compensation awarded to the claimants.

11. The award in this case, however, has been made jointly and severally against all the opposite parties. It is not a case in which opposite party 2, the insurer alone, may have been made liable for compensation. In such circumstances, the appellants 2 to 6 have a right to challenge the award

12. In *Kantilal and Bros. and Another Vs. Ramarani Debi and Others, and U.I.F. & G.I. Co. Ltd., Kanpur v. Gulab Chander* 1985 All 44, there was a specific direction of the Tribunal that the amount of compensation awarded would be payable by the insurer. In view of this direction it was held in both these cases that the appeal by the insured was not maintainable. As the insurer was not entitled to contest the appeal on any grounds except those mentioned in Section 96(2) of the Act and the insured was not competent to file the appeal, it was held that the appeal was not maintainable.

13. The case of *The Motor Owners' Insurance Co. Ltd. and Another Vs. Hrishikesh Das and Others*, was referred to in the case of *Kantilal and Bros. and Another Vs. Ramarani Debi and Others*, . It was held in para 11, page 156 in the case of *Kanti Lal* that had the appeal of one of the appellants, been maintainable in law then certainly the same would have been heard, although the appeal by the other appellant in a joint appeal was not maintainable in law or was incompetent.

14. As the decree in this case is joint and several we hold that the appeal by appellants 2 to 6 is competent and they are entitled to challenge the award.

15. Sri A. B. Saran, learned counsel for the appellants, submitted that the Tribunal awarded a sum of Rs. 45,000/- without any proper consideration of the evidence adduced in this case. Sri R. P. Srivastava learned counsel for the claimants respondents submitted that the amount awarded is inadequate.

16. The Tribunal accepted the statement of P.W. 2 Baldeo Prasad, the father, that Sita Ram was about 35 or 36 years old at the time of the accident and he was employed on a salary of Rs. 180/- per mensem in M.E.S., Babina. The Tribunal also fixed the age of longevity of Sita Ram as about 70 years. These findings have not been assailed before us.

17. Sita Ram would have continued in service up to the age of 58 years. He had a wife and three minor children. He could not afford to spend more than Rs. 20/- per mensem on himself and a sum of Rs. 160/- per mensem would have been available to the family for a period of 22 years. The annual dependency comes to Rs. 1,920/-. The total benefit that the family would have earned during the period of 22 years comes to Rs. 42,240/-. A sum of Rs. 10,560/- has to be

deducted for 25% deduction on account of lump sum payment. The amount payable to the claimants comes to Rs. 31,680/-.

18. The claimants adduced no evidence to prove the amount of pension that the deceased would have earned after his retirement. In the absence of any such evidence it is not possible to determine the pecuniary loss to the family in this regard

19. We are, thus, of the opinion that the Tribunal should have awarded a compensation of Rs. 31,680/-. The sum of Rs. 45,000/-awarded by the Tribunal is rather arbitrary.

20. The appeal is partly allowed and the award passed by the Tribunal is modified. The amount of compensation payable by the opposite parties is reduced to Rs. 31,680/- along with interest at 6% per annum from the date of petition till the date of payment. The claimants-respondents will also get the costs awarded by the Tribunal. In the circumstances of the case the costs of the appeal shall be easy.