
(1989) 12 PAT CK 0012

In the Patna High Court

Case No : Misc. Appeal No's. 7 and 8 of 1981 (R) and 18 of 1984 (R)

Oriental Fire and Genl. Ins. Co. Ltd.

APPELLANT

Vs

Sudha Devi and Others

RESPONDENT

Date of Decision : 19-12-1989

Acts Referred:

Motor Vehicles Act, 1988 — Section 85, 94, 95(2)(b)(i)

Citation : (1991) ACJ 4

Hon'ble Judges : S.B. Sinha, J

Bench : Single Bench

Advocate : V. Shivnath, for the Appellant; N.K. Prasad, P.K. Prasad, B.P. Jaiswal, N.P. Lal, M.Y. Eqbal, S.N. Lal and Alok Lal, for the Respondent

Judgement

S.B. Sinha, J.—These three miscellaneous appeals involving common questions of fact and law were, with the consent of the parties, heard together and are being disposed of by this common judgment.

2. Misc. Appeal No. 7 of 1981 (R) arises out of a judgment and award passed in M.J.C. No. 72 of 1980, whereas Misc. Appeal No. 8 of 1981 (R) arises out of M.J.C. No. 54 of 1980. The aforementioned two applications were heard and disposed of together by Mr. AP. Sinha, Judicial Commissioner-cum-Motor Accidents Claims Tribunal, by his judgment dated 14th October, 1980.

3. So far as Misc. Appeal No. 18 of 1984 (R) is concerned, the same arises out of the judgment and order dated 6.12.1983 passed by Mr. Om Prakash, Judicial Commissioner, Ranchi (Accidents Claims Tribunal, Ranchi) in M.J.C. No. 478 of 1980.

4. The aforementioned M.J.C. No. 54 of 1980 was filed by Bina Devi and her two minor children with regard to the death of Ramnarayan Prasad alias Ramnarayan Agrawal, husband of Bina Devi.

5. M.J.C. No. 72 of 1980 was filed by Sudha Devi and her one minor son, Bijay Prasad and one minor daughter, Bharti claiming compensation on account of

death of Sheo Mohan Prasad, husband of the applicant Sudha Devi.

6. M.J.C. No. 478 of 1980 was filed by Rameshwar Sao and Saraswati Devi, claiming compensation for their son's death, namely, Kishore Prasad.

7. The material facts of the case leading to filing of the aforementioned three applications, are not in much dispute. On 18.1.1980, the aforementioned deceased persons, namely, Ramnarayan Prasad, Sheo Mohan Prasad and Kishore Prasad were coming to Ranchi from Lohardagga on a motor cycle bearing registration No. ASU 6650. It is alleged that while they reached near village Kokar Patratoli, a bus bearing registration No. ORN 475 came from the opposite side in a high speed and dashed against the motor cycle, as a result whereof all the three occupants of the aforementioned motor cycle were killed at the spot and the motor cycle was dragged to a distance of 100 yards on the road and ultimately the bus stopped after falling into a ditch and after dashing with a tree.

8. The appellant in all the appeals being the insurer in relation to the said bus was noticed. According to the appellant and the owner of the aforementioned bus, when the bus arrived near village Kokar, a Trekker (motor car) had been coming from opposite direction and the bus took side to give pass to the Trekker and when the Trekker had not covered completely the space after having been given the pass, suddenly the motor cycle appeared at the scene and dashed against the bus.

9. In M.J.C. No. 54 of 1980 and M.J.C. No. 72 of 1980 which proceedings, as mentioned hereinbefore, were heard analogously, the applicants in their respective cases besides other witnesses examined themselves. In the said case, a copy of the F.I.R. which had been lodged in relation to the aforementioned incident was proved, which was marked as Exh. 1. Exh. 3 is the copy of the post-mortem report. On behalf of the applicants a certificate was produced for the purpose of showing that Ramnarayan Prasad, who was a government contractor, had obtained some training in electrical engineering, which was marked as Exh. 2. A certificate was also proved to show the salary drawn by the deceased Sheo Mohan Prasad at the relevant time, which was marked as Exh. 4.

10. On behalf of the opposite parties, the duplicate copy of the insurance policy was filed, which was marked as Exh. A.

11. On behalf of the applicants, apart from the respective claimants one Chandra Mohan Prasad, who was travelling in the aforementioned bus, was examined as PW 3. He alleged that near Kokar, he saw a motor cycle coming from the side of Lohardagga at a distance of 100 yards. The said witness further stated that at that moment, the bus took a turn towards right after giving pass to a motor car and thereafter dashed against the motor cycle. It was further stated that the bus dragged the motor cycle and three dead bodies to a distance of 100 yards and it stopped on the right side of road only after falling in a ditch.

12. On behalf of the opposite parties, Abay Kumar, the Sub-Inspector of Police,

then attached with the Kokar Police Station under whose jurisdiction the place of occurrence falls, was examined as PW 2. He stated that he had found skid mark on the road. He had also found a tree towards the left side of the road. In cross-examination, he stated that the bus was over the motor cycle and the bus, motor cycle and three dead bodies were in a ditch.

13. According to the said witness, the bus had dragged the motor cycle and the dead bodies to a distance of about 80 yards. He further stated that one of the dead bodies was completely defaced whereas the other two dead bodies were also nearly defaced.

14. On behalf of the opposite parties, one Aqil Ahmad was examined, who alleged that the bus was running at a very slow speed and was being driven at the relevant time on the left side of the road. The said witness accepted that he came to depose at the instance of Naimuddin, the owner of the bus. He further denied that the motor cycle and the dead bodies were dragged to a distance of about 100 yards.

15. The learned Tribunal below upon consideration of the evidence on record, came to the conclusion that the bus in question was being driven rashly and negligently. The learned Tribunal below further found that at the time of his death, Ramnarayan Prasad was aged about 25 years and at the relevant time, his income was about Rs. 500/- per month.

16. The learned Tribunal below, therefore, concluded that grant of an award of a sum of Rs. 72,000/- to his wife and minor children would be just and proper.

17. In the other case, the learned Tribunal below found that deceased Sheo Mohan Prasad was aged about 30 years at the time of his death and was a service-holder drawing a salary of Rs. 600/- per month. He, therefore, held that compensation to the extent of Rs. 90,000/- should be awarded to the applicants of the said case.

18. In M.J.C. No. 478 of 1980, which, as stated hereinbefore, was filed by one Rameshwar Sao and Saraswati Devi, parents of the deceased Kishore Prasad, was tried separately. Similar evidence was adduced on behalf of the parties and in that case also the Tribunal came to the conclusion that bus in question was being driven rashly and negligently.

19. In that case also the Motor Accidents Claims Tribunal did not believe the evidence of Aqil Ahmad and came to the conclusion that the bus in question was being driven rashly and negligently. With regard to the amount of compensation, the learned Tribunal below found that at the relevant time, the deceased Kishore Prasad was aged about 24 years and he was drawing a monthly salary of Rs. 400/- and taking into consideration the fact that he was not married and the claimants were his parents, he awarded a compensation of Rs. 40,000/- to the applicants of the said case.

20. In M.A No. 18 of 1984 (R), arising out of the aforementioned M.J.C. No. 478

of 1980, a cross-objection has been filed on behalf of the respondent Nos. 1 and 2 and the said objection was admitted for hearing by this court by an order dated 3.8.1989.

21. The claimant-respondents, in their cross-objection, prayed for enhancement of the compensation amount to the extent of Rs. 1,00,000/- and have further submitted that the interest should be awarded at the rate of 9 per cent per annum.

22. Mr. V. Shivnath, the learned counsel appearing on behalf of the appellants in all the appeals, submitted that in view of the insurance policy, the statutory liability of insurance company could not have exceeded Rs. 50,000/- in each case. The learned counsel drew my attention to the fact that the limits of liability in respect of any one of the claims was Rs. 50,000/- in terms of the schedule appended to the said policy.

23. The liability of the insurer in relation to third parties in the said insurance policy reads as follows:

Subject to the limits of liability the company will indemnify the insured against all sums including claimant's costs and expenses which the insured shall become legally liable to pay in respect of:

(i) death of or bodily injury to any person caused by or arising out of the use (including the loading and/or unloading) of the motor vehicle.

(ii) damage to property caused by the use (including the loading and/or unloading) of the motor vehicle.

24. The limits of liability as stated in the said policy are as follows:

Limit of the amount of the company's liability u/s II-1 (i) in respect of any one accident: such amount as is necessary to meet the requirements of the Motor Vehicles Act, 1939.

Limit of the amount of the company's liability u/s II-1 (ii) in respect of any one claim or series of claims arising out of one event: Rs. 50,000/-.

25. Learned counsel for the respondents, however, submitted that although Section 95 (2) (b) (i) of the Motor Vehicles Act is attracted in the case of third parties, in view of the fact that additional premiums have been paid liability of the insurer is unlimited and in that view of the matter, the insurer, as has been held by the learned Tribunal below, is liable to pay the entire awarded amount to the respondents.

26. Mr. N.K. Prasad, the learned counsel appearing on behalf of the respondent No. 4 (owner of the vehicle) in M.A. No. 7 of 1981 (R) and 8 of 1981 (R), submitted that in the event, if it be held that the owner of the vehicle is also liable in view of the limited liability of the insurance company, this court should also take into consideration the fact that as there had been violation of Section

85 of the Motor Vehicles Act, inasmuch as none of the aforementioned three deceased persons was having a driving licence and, further, in view of the fact that three persons were riding a motor cycle which was illegal, it should be held that there had been a contributory negligence in relation to the said accident on the part of the aforementioned deceased persons and as such they were not entitled to the amount of compensation granted to them by the learned Tribunal below.

27. Mr. M.Y. Eqbal, the learned counsel appearing on behalf of the owner of the bus in question in Misc. Appeal No. 18 of 1984 (R), while adopting the argument advanced by Mr. N.K. Prasad further submitted that once a violation of the Motor Vehicles Act or Rules framed thereunder is proved, a contributory negligence on the part of the deceased must be assumed and in that case, the liability of the owner and driver of the bus should be calculated on that basis.

28. The learned counsel, in this connection, has relied upon in Oriental Fire and General Insurance Co. Ltd. and Others Vs. Manjit Kaur and Others, Maharashtra State Road Transport Corporation Vs. Babalal Daud Mulani and Others, Kusum Konverba and Others Vs. Umarbhai Kamaluddin Sipoy and Others, Sanaulla Vs. Sanjiva Anna Shetty and Others Aminakhatun and Others Vs. Fakrusha Bismillahshah Fakir and Another, and Bachan Singh alias Gurbachan Singh and Others Vs. Dharam Pal and Others, .

29. The learned counsel further submitted that in any event, the learned Tribunal below ought not to have granted compensation in M.J.C. No. 54 of 1980 [Misc. Appeal No. 8 of 1981 (R)] to the extent of Rs. 90,000/- as therein merely a claim for a sum of Rs. 80,000/- was made.

30. Mr. M.Y. Eqbal further submitted that driving of a vehicle without getting it insured being in contravention of Section 94 of Motor Vehicles Act and punishable u/s 125 thereof, in absence of any proof that motor cycle in question was insured, the deceased persons were not entitled to any compensation whatsoever.

31. He further submitted that in any event, in Misc. Appeal No. 18 of 1984 (R), the compensation awarded was just and proper, in view of the fact that the claimants were aged parents of the deceased and as such the amount of compensation has rightly been calculated by using multiplier system.

32. Mr. Lal, the learned counsel appearing on behalf of the claimant-respondents in each of the appeals, on the other hand, submitted that negligence is not required to be proved in a case of this nature, in view of insertion of Section 92-A in the Motor Vehicles Act. He submitted that in any event, in this case, in view of the materials on record, the doctrine of res ipsa loquitur must be applied so as to hold that the bus in question was being driven rashly and negligently, as otherwise, according to the learned counsel, there was no reason as to why the bus could not be stopped by the driver thereof even after the accident took place and in fact, it dragged the motor cycle and the dead bodies to a distance of 84 yards, there having been a skidding mark for about 100 yards, and, further,

stopped only after falling in a ditch and after dashing against a tree.

33. He further submitted that in any event, only because more than two persons were riding a motor cycle, it does not ipso facto prove contributory negligence. In this connection, the learned counsel has relied upon a decision of Gujarat High Court in S.M. Vyas and Another Vs. Sudhaben Sukethu Sutaria and Another, .

34. The learned counsel further submitted that merely driving of a motor cycle without driving licence would not amount to contributory negligence and in support of this proposition, reliance has been placed upon a decision in Raju Basumatary v. Bipin Chandra Deka 1987 (2) TAC 215.

35. The learned counsel further submitted that it was for the insurance company to prove that the driver had no driving licence and as no evidence was adduced on behalf of the insurance company, the question of holding that none of the three occupants and that too in absence of any proof as to who was driving the motor cycle, was not having a driving licence, is wholly irrelevant.

36. In this connection, the learned counsel has placed reliance upon a decision of this court in Jogindra Kuer v. Jagdish Singh 1958 ACJ 288 and also the decision in Bhairon and Others Vs. Nandram and Others, and in Vijaya Chakravarthy Vs. B. Manivannan, .

37. The learned counsel further submitted that in a given case, a Tribunal in exercise of its power conferred upon it u/s 110-B of the Motor Vehicles Act can award more compensation than claimed by the claimants.

38. In this connection, the learned counsel has relied on Kela Devi v. Ram Chand 1986 ACJ 818 and on Sharifunnisa v. Basappa Ramchandra Date 1986 ACJ 792.

39. In support of the cross-objection filed on behalf of the respondent Nos. 1 and 2, in Misc. Appeal No. 18 of 1984 (R), Mr. Lal submitted that in view of the fact that the deceased was a young boy and the age of father of the deceased at the relevant time was merely 46 years, the compensation should have been awarded by the learned Tribunal below taking into consideration the expectancy of life of the parents.

40. He, therefore, submitted that on the basis of the finding arrived at by the learned Tribunal below itself, the applicant- respondents were entitled to a higher amount of compensation.

41. In view of the rival contentions of the parties, as noticed hereinbefore, the following questions arise for consideration in these appeals:

(A) Whether in view of the insurance policy (Exh. A) the appellant has a limited liability to pay a maximum sum of Rs. 50,000/- to claimants in each case?

(B) Whether in view of the fact that there has been a violation of Section 85 and Section 94 of the Motor Vehicles Act and, further, in view of the fact that three persons were riding the motor cycle in question, a case of contributory

negligence has been made out?

(C) Whether compensation can be awarded more than what has been claimed by the claimant?

(D) Whether in the facts and circumstances of the case in Misc. Appeal No. 18 of 1984 (R), the claimants are entitled to a higher amount of compensation?

(E) Whether in the facts and circumstances of these cases, the learned Tribunal ought to have granted interest at the rate of 9 per cent per annum?

Re: Question (A)

42. Section 95 (2) (b) of the Motor Vehicles Act, 1939, reads as follows:

Where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment-

(i) in respect of persons other than passengers carried for hire or reward, a limit of fifty thousand rupees in all;

(ii) in respect of passengers, a limit of fifteen thousand rupees for each individual passenger.

43. In terms of the Section 94 of the said Act, the owner of the motor vehicle is liable to get the vehicle insured. It is further true that in terms of Section 95 thereof, the Parliament has fixed a statutory limit so far as the liability of the insurer, in certain cases, is concerned.

44. However, it is a settled law that the liability of the insurer as contained in various sub-sections of Section 95 of the said Act is a minimum one and on payment of additional premiums, a contract of insurance can be entered into by and between the insurer and insured as a result whereof, the liability of insurer may be enhanced.

45. However, in the instant case, from a perusal of the insurance policy, as contained in Exh. A, it appears that additional premium has been paid for flood risk. Additional premiums have also been paid for liability to the passengers and strike and riot. So far as the wider legal liabilities of the insurer are concerned, the same are confined to the driver and the cleaner of the vehicle.

46. In terms of the said policy, the aforementioned additional premium of Rs. 855/- was taken in respect of passengers excluding the liability for accidents to employees of the insured arising out of and in course of their employment.

47. It is, therefore, clear from the aforementioned provisions contained in the insurance policy that the liability of the insurer in relation to the third party was not an unlimited one but limit of the said liability in relation thereto was limited for the purpose of meeting the requirements of Motor Vehicles Act, 1939.

48. In National Insurance Co. Ltd., New Delhi Vs. Jugal Kishore and Others, in

similar circumstances, the Supreme Court held that no additional amount of premium having been paid, the liability of the insurer was limited.

49. In this view of the matter, the submission of the learned counsel for the appellants to the effect that the liability of the insurance company was to the extent of Rs. 50,000/- in each case must be upheld.

Re: Question (B)

50. In the instant case, it has not been contended either by the insurer or by the owner of the bus in question that any of the three occupants of the motor cycle did not have any licence or they had no knowledge of driving a motor cycle.

51. In fact, from the judgment of learned Tribunal below, it does not appear that such a case was put forth on behalf of the appellants or on behalf of the owner of the bus before it. In fact, in the instant case, it could not be ascertained as to who was driving the motor cycle.

52. It is true, as has been contended by Mr. N.K. Prasad, that Section 85 of the Motor Vehicles Act enjoins a duty upon the driver of a two-wheeler to carry not more than one person in addition to himself. It is further true, as has been contended by Mr. Prasad that the driving licence of none of three passengers was produced.

53. Section 3 of the Motor Vehicles Act prohibits any person from driving a motor vehicle unless he holds an effective driving licence.

54. It is further true, as has been contended by Mr. Eqbal, the learned counsel appearing on behalf of the owner of the bus in question in M.A. No. 18 of 1984 (R), that there was nothing to show that the motor cycle in question was insured.

55. However, in my opinion, the violation of the provisions of the Motor Vehicles Act may not have anything to do with the theory of contributory negligence unless the vehicle is driven in violation of traffic regulations. The liability to pay compensation by an owner and driver of a motor vehicle and consequently upon the insurer arises when death or bodily injury occurs to a person owing to negligence on the part of driver in driving the motor vehicle in question.

56. As noticed hereinbefore, so far the negligence on the part of the driver of bus concerned is evident and in order to prove the same, no further evidence was required to be brought on record by the applicants and in this case, the doctrine of *res ipsa loquitur* can certainly be invoked.

57. A case of contributory negligence arises when an accident occurs not only owing to a negligent act on the part of the driver of the concerned vehicle, the owner and insurer in respect whereof become liable for payment of compensation, but also owing to acts of negligence on the part of the victims thereof meaning thereby if the deceased or the driver of the vehicle wherein he was travelling was also negligent to a certain extent as a result whereof the accident occurred.

58. In *Laxmi and Company Vs. Savitri Devi Agarwal (Loyalka) and Others*, it has been held that the question of contributory negligence must be decided taking into consideration the facts and circumstances of each case. It has further been held therein that the burden of proof of contributory negligence is on the defendant and not upon the claimant. What then will be the acts of contributory negligence in such a case?

59. It was not the case of the appellant or the owner of the vehicle that the person who was driving the motor cycle had no knowledge of driving the same. If the deceased was driving the motor cycle with due care and caution at the relevant time he would not be guilty of contributory negligence only because it has not been proved that he had no licence or for that matter, he was riding the motor cycle in violation of Section 85 of the Motor Vehicles Act. It is also not the case of the insurer and owner of the motor vehicle that the accident occurred owing to the violation of provisions of the traffic regulations framed under the Motor Vehicles Act.

60. The decisions cited by Mr. Eqbal are not attracted in the facts and circumstances of this case.

61. In *Oriental Fire and General Insurance Co. Ltd. and Others Vs. Manjit Kaur and Others*, it was found as of fact that the deceased scooterist violated the traffic rules resulting in the accident.

In that case, it was found as of fact that the accident occurred at 10.30 p.m. on a wide G.T. Road and the driver of the car involved in the accident was driving at a speed of 20 to 30 kmph which in the facts and circumstances of that case, was held to be not an act of rash and negligent driving. In that case, it was held that the deceased Harbans Singh was himself totally negligent in causing the accident, as he could not have missed the car which was being driven with its headlights on.

62. In *Sanaulla Vs. Sanjiva Anna Shetty and Others* it was held that when the accident occurred between a lorry and a motor cycle at a junction of side-lane with the main road when the motor-cyclist, who was a learner, did not keep his motor cycle close to the left side end of the road and as he entered from the side-lane to the main road without keeping a look-out as to whether any vehicle was coming from the main road and giving way to the vehicles proceeding along the main road, the motor-cyclist was guilty of contributory negligence, although the lorry was also coming at a high speed.

63. In *Kusum Konverba and Others Vs. Umarbhai Kamaluddin Sipoy and Others*, a Division Bench of the Gujarat High Court was dealing with a case of composite negligence. In that case, the court held that the tortfeasor was the agent of the deceased and in that view of the matter the learned Judges directed for reduction in the amount of compensation by 25 per cent as the deceased was responsible for the accident.

64. In *Aminakhatun v. Fakrasha Bismillah Shah Fakir* 1982 ACJ 8 a collision took place between a scooter and State bus and it was held in that case that the scooterist was guilty of contributory negligence, inasmuch as he was entering the cross-section, it was necessary for him to give precedence to the vehicle coming from his right hand side but despite the same the scooter was continued to be driven ahead.

65. *Bachan Singh alias Bachan Singh alias Gurbachan Singh and Others Vs. Dharam Pal and Others*, again was a case where an accident occurred when a car hit a cycle while he was crossing the road and the cyclist did not take care and caution to see that the road was clear before crossing it.

66. In *Maharashtra State Road Transport Corporation Vs. Babalal Daud Mulani and Others*, the Bombay High Court, itself while upholding a case of contributory negligence on the facts thereof, stated the law thus, which would be apparent from the following para:

(9) It appears that the deceased Moula at the relevant time had no driving licence. But from that an inference cannot be drawn that he was not knowing as to how to drive a motor cycle. From the evidence of Shinde and Moula's widow, it is quite clear that the deceased Moula was owning a motor cycle of the Rajdoot model for the last 5 to 7 years. Therefore, simply because his driving licence could not be produced or he was not holding a driving licence, it cannot be presumed that he had no knowledge of driving. The bus driver was driving the bus in the middle of the road and, therefore, was obliged to drive the vehicle with reasonable care, strictly observing the traffic regulations and rules of the road. The accident took place near the curve. As the curve was ahead, there was a further obligation upon the driver to drive the vehicle more cautiously. The duty to be careful and diligent increases proportionately with the danger involved. If two persons are driving vehicles on a turn, each owes to the other a duty and are obliged to drive the vehicle with due care and caution. A person driving a motor vehicle on a public road must drive the vehicle with reasonable care, strictly observing the traffic regulations and the rules of the road so as not to imperil the safety of others, who have a similar right to use the public road. From the recitals in the panchnama, it is quite clear that the bus was being driven in a rash and negligent manner and so also the motor cycle. Both the drivers had not taken proper precaution or care. In this view of the matter, we have no hesitation in confirming the finding recorded by the learned Member of the Tribunal that both were equally responsible for the accident. Equal apportionment of the contributory negligence is also justified by the facts and circumstances of the case. Hence, it is not possible for us to accept the contention of Mr. Hegde that the contributory negligence on the part of the deceased should have been apportioned at 75 per cent. In our opinion, the learned Member has rightly apportioned it equally. Hence, the finding recorded in that behalf is hereby confirmed.

67. In *Kuldip Singh Kohli Vs. Gurmail Singh and Others*, again an accident took

place between a motor cycle and truck at road intersection where the motor-cyclist did not slow down his vehicle nor cared to see whether it was safe to enter into the crossing and also did not give way to truck driver, who came from the right side. In the facts and circumstances of this case, it was held that motor-cyclist was more negligent than the truck driver.

68. It will thus be seen from the decisions aforementioned which have been relied upon by Mr. Eqbal that in these cases, in fact a case of contributory negligence was made out and there had been violation of the mandatory provisions of the traffic regulations on the part of the deceased for whose death the compensation was claimed by his legal representatives.

69. In the instant case, as noticed hereinbefore, the accident occurred owing to acts of rashness and negligence on the part of driver of the bus in driving the same.

70. Under the provisions of Motor Vehicles Act, a driver is also liable for payment of compensation. In a case like the present one, the driver himself, who is in the category of the party to a lis, only could have stated with clarity as to how the accident occurred. The driver, for the reasons best known to the owner of the bus, did not examine himself.

71. It is not the case of the owner of the bus that the driver of the bus who was driving the bus in question at the material time is no longer working with him or his whereabouts are not known. The owner of the bus also did not examine himself.

72. The OPW 1, Aqil Ahmad, has rightly been disbelieved by the learned Tribunal below.

73. In such a situation, it is difficult for this court to hold that a case of contributory negligence has been made out.

74. In S.M. Vyas and Another Vs. Sudhaben Sukethu Sutaria and Another, it has been held that owing to the negligence of car driver, the scooter driver cannot be held to be guilty of contributory negligence merely because the scooter carried four persons though permissible limit was two including the driver.

75. In Bhairon and Others Vs. Nandram and Others, it has been held that it is for the insurance company to plead and prove that the driver did not hold a driving licence.

76. In Raju Basumatary v. Bipin Chandra Deka 1987 (2) TAC 215 it was held that driving of the motor cycle without a valid licence by itself would not amount to contributory negligence irrespective of the place, speed and attending circumstances of the accident.

77. As noticed hereinbefore, even that is the view of the Bombay High Court, as has been held in Maharashtra State Road Transport Corporation Vs. Babalal Daud Mulani and Others, . In Mohinder Singh Sohal and Another Vs. Ramesh Kumar

and Others, D.S. Tewatia, J. (as his Lordship then was) held that when accident was caused by rash and negligent driving of a jeep, contributory negligence is not to be presumed merely from the facts that the deceased did not hold a driving licence and that he was carrying more passengers on the vehicle than permitted under law.

78. As noticed hereinbefore, the onus of proof that the driver of the motor cycle was also guilty of contributory negligence was upon the owner and the driver of the bus in question.

79. In the facts and circumstances of these cases, it, therefore, must be held that it has not been proved that the driver of the motor cycle was also guilty of contributory negligence resulting in the accident.

Re: Questions (C) & (D)

80. It is now well-known by various decisions of the court that compensation awarded by a Motor Accidents Claims Tribunal must be just and reasonable. Before awarding compensation a Tribunal must bear in mind the age of the deceased, his income at the relevant time, his chance of promotion in life, inflation in market and other relevant factors.

81. Reference in this connection may be made in Hindustan Concrete Pipe Vs. Anjali Devi and Others, where I observed as follows:

(13) Mr. M.Y. Eqbal, the learned counsel appearing on behalf of the insurer, however, submitted that in a case of this nature, the compensation should be awarded on multiplier system, i.e., by multiplying the annual income by 15 or 16. The learned counsel, in this connection, has placed strong reliance upon Bihar State Road Transport Corporation and Others Vs. Chandreshwar Mishra and Others, Om Prakash Dalmia Vs. Smt. Bina Saha and Others, and Sheikhpura Transport Co. Ltd. Vs. Northern India Transport Insurance Co., .

(14) In the matter of determination of compensation, in my opinion, there cannot be any hard and fast rule. The amount of compensation to be awarded in the estimate of the court must be reasonable one. While awarding the compensation to a widow having a number of dependants of the deceased, one must not forget that a monetary compensation is never a real substitute for calamity that had befallen the family.

(15) In the instant case, as noticed hereinbefore, the basic salary of the deceased was Rs. 270/- per month and he was also entitled to bonus at the rate of Rs. 22.50. It is, therefore, clear that he has been earning about a sum of Rs. 300/- per month, even if his some overtime as also the amount which he had allegedly been earning by doing his job of tailoring on part-time basis are not taken into consideration.

82. In Misc. Appeal No. 8 of 1981 (R), the deceased at the relevant time was having a monthly income of Rs. 500/-.

83. The learned Tribunal below itself came to the conclusion that the income was an estimated one. At the time of death, Ramnarayan Prasad was aged about 25 years. However, in assuming that he would have been in a position to spend Rs. 200/- per month on his family, in such an event also, the amount of compensation should be Rs. 1,00,000/-.

84. The learned Tribunal below has granted compensation taking into consideration that compensation should be calculated at the rate of Rs. 300/- per month for a period of 20 years.

85. However, in view of the fact that exact income of deceased was not known, in my opinion, in the facts and circumstances of the case and taking into consideration that the amount is being paid in lump sum, a sum of Rs. 72,000/- as has been awarded by the learned Tribunal below should be held to be a fair amount of compensation.

86. However, in Misc. Appeal No. 7 of 1981 (R), it has been held that the income of the deceased was Rs. 600/- per month.

87. Even assuming that he was in a position to spend Rs. 300/- per month, taking into consideration that at the time of death, the deceased was aged about 30 years, in my opinion, the amount of compensation should have been fixed at Rs. 80,000/-, in view of the fact that that was the amount the applicants claimed.

88. In this case, the learned Tribunal below awarded a compensation of Rs. 90,000/-.

89. Mr. Eqbal submitted that the court had no jurisdiction to grant compensation higher than that claimed by the applicant.

90. For that proposition, he relied upon Satya Wati Pathak Vs. Hari Ram and Others, .

91. On the other hand Mr. S.N. Lai, the learned counsel appearing on behalf of the claimants, relied upon decisions referred in (1986) ACC 50 and 1986 (1) TAC 184.

92. The decisions cited by Mr. Lal have been rendered in peculiar facts and circumstances of those cases. The said decisions cannot be said to have laid down a proposition of law.

93. So far as Misc. Appeal No. 18 of 1984 (R) is concerned, it appears that the income of the deceased at the relevant time has been held to be Rs. 400/- per month. At the time of death, the deceased Kishore Prasad was aged about 24 years. Even the said deceased had been in a position to spend Rs. 200/- per month towards his family and, further, taking into consideration that the claimants are the parents, the compensation of Rs. 60,000/- ought to have been awarded by way of compensation.

94. In this view of the matter, Misc. Appeal No. 7 of 1981 (R) is allowed and

Misc. Appeal No. 8 of 1981 (R) is allowed in part and it is held that the applicants, Bina Devi and others are entitled to a compensation of Rs. 72,000/- and applicants Sudha Devi and others are entitled to Rs. 80,000/- and out of the aforementioned amount in each case, the insurance company is liable to pay to the extent of Rs. 50,000/- and the liability of the balance sum would be that of the owner of the bus in question.

95. The Misc. Appeal No. 18 of 1984 (R) is dismissed and the cross-objection filed on behalf of the applicants is allowed in part and it is held that the applicants are entitled to a sum of Rs. 60,000/- by way of compensation. Out of which a sum of Rs. 50,000/- is payable by the insurer appellant and the owner of the bus jointly and severally and the rest by the owner of the vehicle.

Re: Question (E)

96. In all these appeals, the applicant-respondents must be held to be entitled to interest on the awarded sum at the rate of 9 per cent per annum from the date of the filing of the applications till realisation.

97. However, in view of the divided success, all parties shall bear their own costs of these appeals.