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**(1984) 11 AHC CK 0065**  
**In the Allahabad High Court**

Raj Govind Rai

APPELLANT

Vs

Thakuri

RESPONDENT

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**Date of Decision :** 27-11-1984

**Acts Referred:**

Motor Vehicles Act, 1988 — Section 110A(1)(b)

Motor Vehicles Act, 1988 — Section 110A(1)(b)

Motor Vehicles Act, 1988 — Section 110A(1)(b)

**Citation :** (1985) 1 ACC 454 : (1986) ACJ 1038

**Hon'ble Judges :** A. Banerjee, J

**Bench :** Single Bench

**Final Decision :** Disposed Off

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## Judgement

A. Banerjee, J.—One Sri Ram Nagina Rai received serious injuries of his head and person while sitting by the side of a road on being hit by a Mini Bus on 28-6-1974 at about 2.30 p.m. He died some thirty hours later. His widow Smt. Thakuri Devi and a minor daughter Km. Satwati filed a claim petition before the Motor Accidents Claims Tribunal, Ballia on 30-7-1974. They claimed Rs. 60,000/- as compensation on account of the death having taken place due to rash and negligent act in driving Mini Bus. The claim petition was contested by the owner of the vehicle Sri Raj Govind Rai. He denied that the vehicle was at all involved in the accident for it was detained in a police station on the very day of the accident between 10.30 a.m. to (SIC) p.m. The further plea was that the driver of the Mini Bus was not Bachcha Rai, son of the owner of the vehicle. In any event rash and negligent act o(SIC) the driver was denied and the claim was said to be excessive. The Insurance Company( Respondent No. 3 was impleaded and notice issued to it also. The(SIC) Claims Tribunal by its judgment dated 18-12-1978 allowed the Claim Petition(SIC) and awarded Rs. 7,500/- as damages in all to the widow and the minor(SIC) daughter. The Claims Tribunal held that the Mini Bus was involved in the accident which resulted in the death of Sri Ram Nagina Rai and which was being driven rashly and negligently. In the matter of awarding compensation the Claims Tribunal held that the deceased was aged about 61

years and hi(SIC) contribution to the family was about Rs. 150/- per month and, therefore, (SIC) sum of Rs. 9,000/- in all would be payable to the claimants but out of which 20 per cent was deducted for lump sum payment Rs. 100/- which are claimed as taxi fare, was allowed but out of Rs. 500/- claimed for medicines only Rs. 200/- were allowed.

2. Aggrieved by the above decision the owner of the vehicle, Raj Govind Rai has filed this appeal in this Court. He has challenged the factum of accident by the Mini Bus, the quantum of compensation awarded, and also against the decree being passed against the owner appellant.

3. The claimants-respondents have filed a cross-objection challenging the quantum of compensation awarded as much too low and they have claimed Rs. 52,500/- as additional compensation.

4. When the appeal was called out for hearing today, no one appeared for the appellant. The Court waited for the learned Counsel for the appellant to appear and the case was taken up on the list being revised. Even then learned Counsel for the appellant did not appear. Consequently, there is no other option but to dismiss the appeal for want of prosecution. I order accordingly.

5. The cross-objection was pressed by the learned Counsel for the respondents-claimants and I heard the learned Counsel. Of course, no one appeared for the appellant to raise any contention of behalf of the appellant in the cross-objection.

6. The principal contention in the cross-objection is that the amount of Rs. 7,500/- awarded is much too low and does not take into consideration the loss suffered by the claimants. One thing may be clarified at this stage. Apart from the widow and the minor daughter, 7 other persons who were related to Sri Brij Narain Rai, brother of the deceased, were arrayed as claimants. Section 110-A(1) (b) of the Motor Vehicles Act makes it clear that the application for compensation can be made by all or any of the legal representatives of the deceased. The personal law applicable to the deceased would apply. The deceased being a Hindu and the death having taken place after 1965, only the widow and the minor daughter would be deemed to be legal representatives entitled to make the application for compensation. It has come in evidence that the deceased left two other major sons and a daughter who had already been married. The two major sons had separated from their father. One of them appeared as a witness on behalf of the claimants and they have not joined the claimants to claim any compensation. Consequently, the Tribunal was justified in not treating them as claimants or awarding any compensation. It is evident that none of the respondents Nos. 3 to 9 were entitled to make the claim petition u/s 110-A of the Act or to be awarded any compensation. Only the widow Smt. Thakuri Devi and the minor daughter Satwati are entitled to the amount which has been awarded or any amount that may be awarded in this cross-objection.

7. In the Claim Petition the age of the deceased was given as 50 years. Oral evidence was also led to the same effect but the appellant contended that the

deceased was about 65 years of age at the time of his death. A paper school leaving certificate produced by the claimants, however, mentions the date of birth which, the Tribunal held, supported the stand taken by the appellant rather than the claimants. The Tribunal, therefore, came to the conclusion that the age of the deceased at the time of the accident was 65 years. Nothing can be shown that this finding is vitiated by an error in appreciation of the evidence or any error of law. It is, therefore, well established that the age of the deceased at the time of his death was about 65 years.

8. In the Claim Petition it was stated that the deceased was earning Rs. 500/- per month. He had a parchun shop and had 8 bighas of land. The evidence led on behalf of the claimants showed that he had an income of Rs. 300/- per month. The stand of the appellant, in the court below, however, was that his income was not more than Rs. 40/- per month. The Tribunal rejected this contention and held that the income of the deceased was Rs. 200/- per month out of which Rs. 50/- were spent on him and the balance on his family.

9. The Tribunal came to the conclusion that there was good evidence to show that the deceased had an income of Rs. 300/- per month from cultivation. The Tribunal felt that the amount of Rs. 300/- per month may be a bit exaggerated and if a physically fit person takes interest in his own cultivation and renders advice, his removal from scene will definitely mean a loss to the family equal to the wages of the labourer. I am not able to appreciate the above observation. A man with vast experience in agricultural operation would contribute greater than an ordinary agricultural labourer. The Tribunal then came to the conclusion that the death of Ram Nagina Rai had certainly caused a loss of Rs. 200/- per month to the family. The Tribunal, however, reduces this amount by Rs. 50/- per month as expense incurred on himself. The Tribunal thus held that the net loss to the family by his death was to the tune of Rs. 150/- per month. The Tribunal held that since the deceased was 65 years of age, the expectancy of life in his case would be by another five years. It is not possible to predicate as to how long a man would live and continue to contribute to the family. Whether he would be physically fit to do any labour or supervision so as to make a contribution would depend on his physical fitness. The Tribunal has, however, recorded that the deceased Ram Nagina Rai was in good health and physically fit. It is, therefore, possible to draw an inference that he would have lived for another 8 or 10 years, but then this would be in the realm of speculation. In my opinion, the proper method to be applied in such cases is to adopt a multiplier system in calculating the amount of compensation.

10. It is well-settled that instead of calculating the expectancy of life in number of years and the amount that the person was liable to earn during his life time there is another method, viz, the actual contribution by the deceased is to be multiplied by number of years purchase. It is well settled that the multiple of 16 is used for a person aged between 20 to 35 years who has died in a motor vehicle accident. The multiple is gradually reduced as the age of the deceased

increases. I think for a person who is about 65 years of age the proper multiple to be used would be 8.

11. Since the Tribunal has found that the contribution of the deceased who has family dependants, was Rs. 150/- per month i.e. Rs. 1,800/- per annum. By using the multiple of 8 the total sum would be Rs. 14,400/-. In this method no amount is deducted for lump sum payment. I would, therefore, allow compensation for loss of life at Rs. 14,400/-.

12. The claimants claimed Rs. 500/- as the expenses for medicine etc. and Rs. 100/- towards taxi fare" to rush the deceased to the hospital. The Tribunal allowed the claim for the taxi fare but has substantially reduced the medicinal expense to Rs. 200/-. In my opinion, the entire amount claimed for medicinal expense in this case should have been allowed for in an emergency case where the person has been knocked down by a motor vehicle and has received head injuries, one has to rush to the hospital and purchase all the medicines, blood, plasma, injections etc. asked for by the doctors. There is not occasion to keep the receipts of such items for no one is thinking at that state for making a claim under the Motor Vehicles Act, at the time when tending the person injured in an accident is for his recovery. Therefore, the claim for taxi and medicines both should have been allowed. This would amount to Rs. 600/-.

13. Adding Rs. 600/- to Rs. 14,400/-, it would amount in all to Rs. 15,000/-. The tribunal has allowed in all Rs. 7,500/-. Therefore, the cross-objection is liable to allowed and decreed for a further amount of Rs. 7,500/-.

14. In the result, therefore, the appeal is dismissed for non-prosecution. The cross-objection is allowed. The compensation awarded is enhanced to Rs. 15,000/- in all i.e. for an additional sum of Rs. 7,500/- together with interest at 6 per cent per annum till the date of payment. This amount is payable only to the widow, Smt. Thakuri Devi and the minor daughter Km. Satwati.