

(2017) 10 AHC CK 0009
In the Allahabad High Court
Case No : 398 of 2014

Reliance General Insurance Company Ltd.	APPELLANT
Vs	
Rekha Devi and others	RESPONDENT

Date of Decision : 12-10-2017

Acts Referred:

[Indian Penal Code, 1860](#), [Section 279](#) - Rash driving or riding on a public way
[Motor Vehicles Act, 1988](#), [Section 166](#),
[Section 166](#), [Section 184](#), [Section 184](#), [Section 158\(6\)](#), [Section 158\(6\)](#) - Application for compensation - Driving dangerously - Production of certain certificates, licence and permit in certain cases

Citation : (2017) 10 AHC CK 0009

Hon'ble Judges : Shabihul Hasnain, Sheo Kumar Singh

Bench : Division Bench

Advocate : Dinesh Kumar, Mukesh Singh

Judgement

1. Both the appeals have been filed against judgment and order dated 31.1.2014 passed by Motor Accident Claims Tribunal District Faizabad in Claim Petition No. 272 of 2013 whereby on application for award of compensation after the death of Om Prakash Yadav the learned Tribunal has awarded an amount of Rs. 21,76,556/- in favour of the claimants. Aggrieved by the order, the appellants Rekha Devi and others have filed First Appeal From Order for the enhancement of the amount of compensation with the assertion that the multiplier has not been properly applied by the learned court below and the future prospect has not been considered.

2. Appellant Reliance General Insurance Company Limited has also filed an appeal on the ground that the said accident did not occur due to rash and negligent driving of driver of Bulero vehicle No. U.P.-42-R-1541 and thus the insurance company has been wrongly held responsible for the payment of the award amount. The perusal of the Judgment and Award in question reveals that

on 7.8.2013 when Om Prakash was coming from office to his house with his motorcycle No. U.P.-42-U-3980 and reached near Abhishekh Honda Service Centre, vehicle Bulero mentioned above coming from the Faizabad side collided with motorcycle due to rash and negligent driving of the driver and due to that accident, the deceased was seriously injured and brought to the District Hospital Faizabad where he was referred to Medical College, Lucknow and during the transit in the way to medical college, he died. The deceased was working in the irrigation department and getting the amount of Rs. 15,049/- per month. Learned court below after hearing both the parties and after appraisal of the evidence documentary and oral decided the claim petition and awarded the amount as above.

3. Learned counsel for appellant on behalf of Reliance General Insurance Company Limited has submitted that the vehicle Bulero was not involved in the accident while replying the learned counsel for respondent-appellant in the second appeal has submitted that the police department investigated the offence after registration of the first information report and submitted the charge sheet before the court, wherein it was found that the aforesaid vehicle was involved in the accident. The fact was supported by The New India Assurance Company Limited versus Lekhraj and others reported in 2009(74) ALR 65 Allahabad.

4. In addition to the above investigation report the fact was proved by PW-2 Santosh Kumar who was eye witness and as narrated by Santosh Kumar it was witnessed by Vinay Kumar and Shiv Ram who had seen the occurrence whereby the accident occurred due to rash and negligent driving of Bulero causing injury to the deceased. Thus the contention of the learned counsel for Reliance General Insurance Company Limited is not tenable.

5. The version of the learned counsel for Reliance General Insurance Company Limited that the number of vehicle was not mentioned in panchnama or vehicle number was not reported in first information report is also not tenable for the reason that it is not necessary that the number of vehicle be recorded in panchnama. So far as First information Report is concerned, it is clearly mentioned that the said accident occurred due to rash and negligent driving of Bulero vehicle on 7.8.2013 and later on after investigation the involvement of the said vehicle was found by the investigating officer. In light of above facts, we are of the view that learned Tribunal has properly assessed the evidence on record and correctly found the vehicle involved in the accident and accordingly held that insurance company is responsible to pay the amount of award. Accordingly the FAFO No. 398 of 2014 deserves to be dismissed.

6. The first contention of the learned counsel for appellant in Smt. Rekha Devi and others versus Reliance General Insurance Company Limited and others, FAFO No. 406 of 2014 is that multiplier has not been properly applied by the learned court below. We have examined the record. It is admitted case that the age of the deceased was about 29 years at the time of accident. The amount of "just compensation" has been properly dealt with in several decisions.

7. The expression "just compensation" has been explained in Sarla Verma's case - AIR 2009 SC 3104, holding that the compensation awarded by a Tribunal does not become just compensation merely because the Tribunal considered it to be just. "Just Compensation" is adequate compensation which is fair and equitable, on the facts and circumstances of the case, to make good the loss suffered as a result of the wrong, as far as money can do so, by applying the well-settled principles relating to award of compensation. After surveying almost all the previous decisions, the Court almost standardized the norms for the assessment of damages in Motor Accident Claims.

8. At paragraph 24, it has been held as follows: "24. In Susamma Thomas, this Court increased the income by nearly 100%, in Sarla Dixit, the income was increased only by 50% and in Abati Bezbaruah the income was increased by a mere 7%. In view of imponderables and uncertainties, we are in favour of adopting as a rule of thumb, an addition of 50% of actual salary to the actual salary income of the deceased towards future prospects, where the deceased had a permanent job and was below 40 years. (Where the annual income is in the taxable range, the words "actual salary" should be read as "actual salary less tax"). The addition should be only 30% if the age of the deceased was 40 to 50 years. There should be no addition, where the age of deceased is more than 50 years. Though the evidence may indicate a different percentage of increase, it is necessary to standardize the addition to avoid different yardsticks being applied or different methods of calculations being adopted. Where the deceased was selfemployed or was on a fixed salary (without provision for annual increments etc.), the courts will usually take only the actual income at the time of death, A departure therefrom should be made only in rare and exceptional cases involving special circumstances."

9. In a recent decision, in Santosh Devi v. National Insurance Co. Limited and Ors. (2012) 6 SCC 421, Sarla Verma's case has further been explained with regard to the settled norms. It has been held in Paragraph 11 as follows: "11. We have considered the respective arguments. Although, the legal jurisprudence developed in the country in last five decades is somewhat precedent-centric, the judgments which have bearing on socioeconomic conditions of the citizens and issues relating to compensation payable to the victims of motor accidents, those who are deprived of their land and similar matters needs to be frequently revisited keeping in view the fast-changing societal values, the effect of globalisation on the economy of the nation and their impact on the life of the people."

10. Consequently, it has been held at Paragraphs 14 to 18, as follows: "14. We find it extremely difficult to fathom any rationale for the observation made in paragraph 24 of the judgment in Sarla Verma's case that where the deceased was self-employed or was on a fixed salary without provision for annual increment, etc., the Courts will usually take only the actual income at the time of death and a departure from this rule should be made only in rare and exceptional

cases involving special circumstances. In our view, it will be nave to say that the wages or total emoluments/income of a person who is self-employed or who is employed on a fixed salary without provision for annual increment, etc., would remain the same throughout his life.

15. The rise in the cost of living affects everyone across the board. It does not make any distinction between rich and poor. As a matter of fact, the effect of rise in prices which directly impacts the cost of living is minimal on the rich and maximum on those who are selfemployed or who get fixed income/emoluments. They are the worst affected people. Therefore, they put in extra efforts to generate additional income necessary for sustaining their families.

16. The salaries of those employed under the Central and State Governments and their agencies/ instrumentalities have been revised from time to time to provide a cushion against the rising prices and provisions have been made for providing security to the families of the deceased employees. The salaries of those employed in private sectors have also increased manifold. Till about two decades ago, nobody could have imagined that salary of Class IV employee of the Government would be in five figures and total emoluments of those in higher echelons of service will cross the figure of rupees one lakh.

17. Although, the wages/income of those employed in unorganized sectors has not registered a corresponding increase and has not kept pace with the increase in the salaries of the Government employees and those employed in private sectors but it cannot be denied that there has been incremental enhancement in the income of those who are self-employed and even those engaged on daily basis, monthly basis or even seasonal basis. We can take judicial notice of the fact that with a view to meet the challenges posed by high cost of living, the persons falling in the latter category periodically increase the cost of their labour. In this context, it may be useful to give an example of a tailor who earns his livelihood by stitching cloths. If the cost of living increases and the prices of essentials go up, it is but natural for him to increase the cost of his labour. So will be the cases of ordinary skilled and unskilled labour, like, barber, blacksmith, cobbler, mason etc.

18. Therefore, we do not think that while making the observations in the last three lines of paragraph 24 of Sarla Verma's judgment, the Court had intended to lay down an absolute rule that there will be no addition in the income of a person who is self-employed or who is paid fixed wages. Rather, it would be reasonable to say that a person who is self-employed or is engaged on fixed wages will also get 30 per cent increase in his total income over a period of time and if he/she becomes victim of accident then the same formula deserves to be applied for calculating the amount of compensation."

11. Since, the Court actually intended to follow the principle in the case of salaried persons as laid in Sarla Verma's case and to make it applicable also to the self-employed and persons on fixed wages, it is clarified that the increase in

the case of those groups is not 30% always; it will also have a reference to the age. In other words, in the case of self-employed or persons with fixed wages, in case, the deceased victim was below 40 years, there must be an addition of 50% to the actual income of the deceased while computing future prospects. Needless to say that the actual income should be income after paying the tax, if any. Addition should be 30% in case the deceased was in the age group of 40 to 50 years.

12. In Sarla Verma's case (supra), it has been stated that in the case of those above 50 years, there shall be no addition. Having regard to the fact that in the case of those self-employed or on fixed wages, where there is normally no age of superannuation, it will only be just and equitable to provide an addition of 15% in the case where the victim is between the age group of 50 to 60 years so as to make the compensation just, equitable, fair and reasonable. There shall normally be no addition thereafter.

13. Whether the Tribunal is competent to award compensation in excess of what is claimed in the Application under Section 166 of the Motor Vehicles Act, 1988, is another issue arising for consideration in this case. "Section 168 empowers the Claims Tribunal to "make an award determining the amount of compensation which appears to it to be just". Therefore, only requirement for determining the compensation is that it must be "just". There is no other limitation or restriction on its power for awarding just compensation."

14. The principle was followed in the later decisions in Oriental Insurance Co. Limited v. Mohd. Nasir and Anr. AIR 2009 SC 1219 and in Ningamma and Anr. v. United Indian Insurance Co. Limited (2009) 13 SCC 710.

15. Underlying principle discussed in the above decisions is with regard to the duty of the Court to fix a just compensation and it has now become settled law that the Court should not succumb to niceties or technicalities, in such matters. Attempt of the Court should be to equate, as far as possible, the misery on account of the accident with the compensation so that the injured/the dependants should not face the vagaries of life on account of the discontinuance of the income earned by the victim.

16. There is another reason why the Court should award proper compensation irrespective of the claim and, if required, even in excess of the claim. After the amendment of the Act by Act No. 54 of 1994 with effect from 14.11.1994, the Report on motor vehicle accident prepared by the police officer and forwarded to the Claims Tribunal under Sub-section (6) of Section 158 has to be treated as an Application for Compensation.

17. Section 158 (6) of the Act reads as follows: "158. Production of certain certificates, licence and permit in certain cases.-

(1) to (5) xxx

(6) As soon as any information regarding any accident involving death or bodily

injury to any person is recorded or report under this section is completed by a police officer, the officer-in-charge of the police station shall forward a copy of the same within thirty days from the date of recording of information or, as the case may be, on completion of such report to the Claims Tribunal having jurisdiction and a copy thereof to the concerned insurer, and, where a copy is made available to the owner, he shall also within thirty days of receipt of such report, forward the same to such Claims Tribunal and insurer."

18. Section 166(4) of the Act reads as follows: "166(4) The Claims Tribunal shall treat any report of accidents forwarded to it under Sub-section (6) of Section 158 as an application for compensation under this Act."

19. Prior to the amendment in 1994, it was left to the discretion of the Tribunal as to whether the report be treated as an application or not. The pre-amended position under Sub-section (4) of Section 166 of the Act, read as under: "(4) Where a police officer has filed a copy of the report regarding an accident to a Claims Tribunal under this Act, the Claims Tribunal may, if it thinks it necessary so to do, treat the report as if it were an application for compensation under this Act."

20. Rash and negligent driving has to be examined in light of the facts and circumstances of a given case. It is a fact incapable of being construed or seen in isolation. It must be examined in light of the attendant circumstances. A person who drives a vehicle on the road is liable to be held responsible for the act as well as for the result. It may not be always possible to determine with reference to the speed of a vehicle whether a person was driving rashly and negligently. Both these acts presuppose an abnormal conduct. Even when one is driving a vehicle at a slow speed but recklessly and negligently, it would amount to "rash and negligent driving" within the meaning of the language of Section 279 Indian Penal Code. That is why the legislature in its wisdom has used the words "manner so rash or negligent as to endanger human life". The preliminary conditions, thus, are that (a) it is the manner in which the vehicle is driven; (b) it be driven either rashly or negligently; and (c) such rash or negligent driving should be such as to endanger human life. Once these ingredients are satisfied, the penalty contemplated Under Section 279 Indian Penal Code is attracted.

21. "Negligence" means omission to do something which a reasonable and prudent person guided by the considerations which ordinarily regulate human affairs would do or doing something which a prudent and reasonable person guided by similar considerations would not do. Negligence is not an absolute term but is a relative one; it is rather a comparative term. It is difficult to state with precision any mathematically exact formula by which negligence or lack of it can be infallibly measured in a given case. Whether there exists negligence per se or the course of conduct amounts to negligence will normally depend upon the attending and surrounding facts and circumstances which have to be taken into consideration by the Court. In a given case, even not doing what one was ought to do can constitute negligence.

22. The Court has to adopt another parameter, i.e., "reasonable care" in determining the question of negligence or contributory negligence. The doctrine of reasonable care imposes an obligation or a duty upon a person (for example a driver) to care for the pedestrian on the road and this duty attains a higher degree when the pedestrian happen to be children of tender years. It is axiomatic to say that while driving a vehicle on a public way, there is an implicit duty cast on the drivers to see that their driving does not endanger the life of the right users of the road, may be either vehicular users or pedestrians. They are expected to take sufficient care to avoid danger to others.

23. The other principle that is pressed in aid by the courts in such cases is the doctrine of *res ipsa loquitur*. This doctrine serves two purposes - one that an accident may by its nature be more consistent with its being caused by negligence for which the opposite party is responsible than by any other causes and that in such a case, the mere fact of the accident is *prima facie* evidence of such negligence. Secondly, it is to avoid hardship in cases where the claimant is able to prove the accident but cannot prove how the accident occurred. The courts have also applied the principle of *res ipsa loquitur* in cases where no direct evidence was brought on record. The Act itself contains a provision which concerns with the consequences of driving dangerously alike the provision in the Indian Penal Code that the vehicle is driven in a manner dangerous to public life. Where a person does such an offence he is punished as per the provisions of Section 184 of the Act. The courts have also taken the concept of "culpable rashness" and "culpable negligence" into consideration in cases of road accidents. "Culpable rashness" is acting with the consciousness that mischievous and illegal consequences may follow but with the hope that they will not and often with the belief that the actor has taken sufficient precautions to prevent such happening. The imputability arises from acting despite consciousness (*luxuria*). "Culpable negligence" is acting without the consciousness that the illegal and mischievous effect will follow, but in circumstances which show that the actor has not exercised the caution incumbent upon him and that if he had, he would have had the consciousness. The imputability arises from the neglect of civic duty of circumspection. In such a case the mere fact of accident is *prima facie* evidence of such negligence. This maxim suggests that on the circumstances of a given case the *res* speaks and is eloquent because the facts stand unexplained, with the result that the natural and reasonable inference from the facts, not a conjectural inference, shows that the act is attributable to some person's negligent conduct.

24. In the case of *Nageshwar Shri Krishna Ghobe v. State of Maharashtra* (1973) 4 SCC 23, the Court observed that the statements of the witnesses who met with an accident while travelling in a vehicle or those of the people who were travelling in the vehicle driven nearby should be taken and understood in their correct perspective as it is not necessary that the occupants of the vehicle should be looking in the same direction. They might have been attracted only by the noise or the disturbance caused by the actual impact resulting from the accident

itself. The Court held as under: "6. In cases of road accidents by fast moving vehicles it is ordinarily difficult to find witnesses who would be in a position to affirm positively the sequence of vital events during the few moments immediately preceding the actual accident, from which its true cause can be ascertained. When accidents take place on the road, people using the road or who may happen to be in close vicinity would normally be busy in their own pre-occupations and in the normal course their attention would be attracted only by the noise or the disturbance caused by the actual impact resulting from the accident itself. It is only then that they would look towards the direction of the noise and see what had happened. It is seldom - and it is only a matter of coincidence - that a person may already be looking in the direction of the accident and may for that reason be in a position to see and later describe the sequence of events in which the accident occurred. At times it may also happen that after casually witnessing the occurrence those persons may feel disinclined to take any further interest in the matter, whatever be the reason for this disinclination. If, however, they do feel interested in going to the spot in their curiosity to know some thing more, then what they may happen to see there, would lead them to form some opinion or impression as to what in all likelihood must have led to the accident. Evidence of such persons, therefore, requires close scrutiny for finding out what they actually saw and what may be the result of their imaginative inference. Apart from the eye-witnesses, the only person who can be considered to be truly capable of satisfactorily explaining as to the circumstances leading to accidents like the present is the driver himself or in certain circumstances to some extent the person who is injured."

25. In light of above facts, we examined the calculation made by learned court below. Learned court below has applied multiplier as 18. Learned counsel for appellant on behalf of Reliance General Insurance Company Limited has submitted that in Sarla Verma's case the multiplier of M-17 is applied for the person coming with age group 25 to 30. Thus the multiplier is applicable to 17. Learned counsel for appellants Smt. Rekha Devi and others have contended that in Sarla Verma's case and other cases, there is provision of enhancement of amount of 50%.

26. In *Rajesh versus Rajbir Singh*, (2013) 9 SCC 54 (3-Judge Bench) the Supreme Court further extend more benefit to self employed and those who engaged on fixed wages, it has been clarified that the increase in the case of those groups is not 30% always; it will also have a reference to the age. In other words, in the case of self-employed or persons with fixed wages, in case, the deceased victim was below 40 years, there must be an addition of 50% to the actual income of the deceased while computing future prospects.

27. In light of above citation, we fully agree with the view that enhancement has not been calculated by the learned court below as provided in above decision. The annual income has been assessed and calculated after deduction of 1/3 as provided in *U.P.S.R.T.C. versus Trilok Chandra* 1996 (4) SCC 362 as Rs.

1,20,392/-. We calculated the amount of compensation and in view of the above citation, the learned court below has not calculated the enhancement which is applicable as 50% in case of victim below 40 years.

28. In light of above factum we calculate the admissible amount of award as follows:- (i) Admitted annual income Rs.1,20,392/-

(ii) Increase of 50% in light of Rajesh versus Rajbir Singh = 60196/-

Total= 180588/-

Multiplier of 17 = 180588 x 17

= 3069996/-

29. In addition to the above amount, the learned court below has also awarded the amount of 5000/-, 2000/- and 2500/- for loss of consortium and other heads. We are not going to interfere in these amounts. By adding these amounts, the grant of award for which the claimants deserve to be paid comes to the tune of Rs. 30,79,496/-. Accordingly the FAFO No. 406 of 2014 deserves to be allowed and the amount of compensation which has been provided by the learned court below is modified to the tune of an amount of Rs. 30,79,496/- The rate of interest provided by the court below is just and reasonable and we are not going to interfere in this matter. Accordingly, FAFO No. 406 of 2014 Smt. Rekha Devi and others versus Reliance General Insurance Company Limited is allowed. The award to the tune of Rs. 30,79,496/- is allowed in favour of claimants appellants. FAFO No. 398 of 2014 Reliance General Insurance Company Limited versus Rekha Devi and others is dismissed. The opposite party General Insurance Company Limited is directed to pay the rest of the amount within two months from today, failing which the learned Tribunal shall proceed to realize the amount in accordance with law. The distribution of the amount among the claimants shall be in ratio of the decision taken by the learned court below. 60% of the total amount distributed among the claimants shall be deposited in the form of F.D.R. in the nationalized bank in the name of claimants for a period of three years or for a period till age of majority in case of minor.