
(2025) 04 JH CK 1290
In the Jharkhand High Court
Case No : M.A. No. 97 Of 2012

Smt. Lilawati Devi

APPELLANT

Vs

Md. Afzal Khan, S/o Bhola Khan

RESPONDENT

Date of Decision : 03-04-2025

Acts Referred:

Motor Vehicle Act, 1988 — Section 149(2)(a)(ii), 166

Citation : (2025) 04 JH CK 1290

Hon'ble Judges : Gautam Kumar Choudhary, J

Bench : Single Bench

Advocate : Sachin Mahato, Alok Lal, Amrita Banerjee

Final Decision : Allowed

Judgement

Gautam Kumar Choudhary, J

Heard, learned counsel for the parties.

1. The claimants are in appeal for enhancement of compensation awarded in Claim Case No. 107 of 2004 under Section 166 of the M.V. Act by which the liability to pay the compensation amount has been fixed on the owner of the offending vehicle i.e. Opp. Party No.1 and not on the insurer of the offending vehicle i.e. Opp. Party No.2 (National Insurance Company Limited).

2. It is argued by learned counsel for the appellants/ claimants that admittedly the offending vehicle bearing Registration No.WB-03A- 7702 was under the insurance cover of Opp. Party No.2 (National Insurance Company Limited) and a finding in this regard has been recorded by the learned Tribunal in Issue No.(iv).

3. It is further argued on behalf of the claimant(s) that just compensation has not been awarded as the learned Tribunal has taken notional income of the deceased, whereas there was specific evidence led on behalf of the claimant(s) that the deceased was having a dairy business and was earning a sum of Rs. 3,000/- per month and aged 42 years at the time of accident and no contrary

evidence was led on behalf of the respondent and despite this, the learned Tribunal has discarded the oral evidence and considered notional income of Rs.15,000/- per annum for computing the annual income of the deceased.

4. It is further argued that the liability to pay compensation amount has been shifted on the owner of the vehicle, despite the owner having a valid driving licence at the time of accident. Shifting of liability on the owner of was against the settled position of law and it will also cause hardship and practical difficulty and delays in getting the award executed against the owner of the vehicle. The only ground on which the liability has been fixed on the owner is that the Driving licence (Ext.3) of the driver, Md. Imtiyaj was for the driving of light motor vehicle and not of a heavy motor vehicle like a truck.

5. Learned counsel on behalf of the Insurance-Company has defended the impugned judgment of Award. It is argued that claimants have no locus standi to assail the judgment of the learned Tribunal on the ground that right of recovery has been given to the Insurance-Company against the owner of the vehicle. It is contended that this plea could have been raised by the owner of the vehicle and not by the claimants, who are third party (s) in the accident.

6. Learned counsel on behalf of the Insurance-Company has submitted that whatever compensation is awarded, the owner of the offending vehicle should be made liable to pay the compensation amount.

7. Having heard learned counsel for the parties and perusing the materials on record, I find much force in the argument advanced on behalf of the appellants that in absence of any contrary evidence, it was not open to the learned Tribunal to take notional income of the deceased, when there is oral evidence with regard to income of Rs.3,000/- per month of the deceased and the same cannot be said by any stretch of imagination be said to be exaggerated or extravaganza. Further, compensation under the head of future prospects has also not been awarded, and the meagre amount has given under the head of conventional head.

8. Under the circumstance, the claim of the appellants for enhancement of compensation merits consideration by this Court. Accordingly, by taking the income of the deceased to be Rs. 3,000/- as the monthly income, 42 years age of the deceased and considering the number of claimants, one-fourth shall be deduction living expense of the deceased. Further, the claimants will also be entitled to compensation under the head of future prospects @ 25% and a multiplier of 14 will be applicable considering the age of the deceased.

9. The final compensation will work out as under :-

Annual income of the deceased taking Rs.3,000/- as monthly income + 25% as Future prospect

Rs.36,000/- as the Annual Income Plus 25% as Future prospect] i.e. Rs.9,000/-
= Rs.45,000/-

Annual Dependency after deducting as 1/4th

Rs.11,250/-

Rs.45,000/-Minus 11,250/- =Rs.33,750/-

Multiplier taking 14 years as the age of the deceased to be 42 years at the time of the accident

14

Rs.33,750/-X 14 =Rs.4,72,500/-

Loss of Estate, Funeral Expenses and Loss of Consortium

Rs.84,000/-

Rs.84,000/-

Total

Rs.5,56,500/-

10. So far the liability of the Insurance Company is concerned, law is settled that a fundamental breach of the terms of insurance policy shall arise, if the owner knowingly permits the driver to ply the vehicle without any valid driving licence. The same cannot be said when the owner has engaged a driver with a valid driving licence. It has been held in *Rishi Pal Singh Vs New India Assurance Company Limited* 2022 SCC OnLine SC 2119. To appreciate the contention of the appellant, the observations of this Court in *Lehru* (supra) have been reproduced as under:

"20. When an owner is hiring a driver he will therefore have to check whether the driver has a driving licence. If the driver produces a driving licence which on the face of it looks genuine, the owner is not expected to find out whether the licence has in fact been issued by a competent authority or not. The owner would then take the test of the driver. If he finds that the driver is competent to drive the vehicle, he will hire the driver. We find it rather strange that insurance companies expect owners to make enquiries with RTOs, which are spread all over the country, whether the driving licence shown to them is valid or not. Thus where the owner has satisfied himself that the driver has a licence and is driving competently there would be no breach of Section 149(2)(a)(ii). The insurance company would not then be absolved of liability. If it ultimately turns out that the licence was fake, the insurance company would continue to remain liable unless they prove that the owner/insured was aware or had noticed that the licence was fake and still permitted that person to drive.

More importantly, even in such a case the insurance company would remain liable to the innocent third party, but it may be able to recover from the insured.

Amrit Paul Singh v. TATA AIG General Insurance Co. Ltd., (2018) 7 SCC 558 :

17. The three-Judge Bench summed up its conclusions and we think it appropriate to reproduce the relevant part of the same: (Swaran Singh case [National Insurance Co. Ltd. v. Swaran Singh, (2004) 3 SCC 297 : 2004 SCC (Cri) 733] , SCC pp. 341-42, para 110)

"110. (iii) The breach of policy condition e.g. disqualification of the driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of Section 149, has to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards the insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by a duly licensed driver or one who was not disqualified to drive at the relevant time.

11. In view of the above settled position of law learned Tribunal was in clear error to fix the liability to pay the compensation amount on the owner of the vehicle, when it was being driven by a driver having a valid driving licence of LMV. There is no evidence on record that vehicle in question was a HMV and that the owner of the vehicle was negligent in engaging the driver in driving the said offending vehicle. Even though the owner has not preferred an appeal, it will not preclude this Court to correcting an error which is apparent on the face of record. Impugned order fixing the liability on the owner of the vehicle to pay compensation is accordingly set aside.

12. The Respondent No.3- Insurance Company is liable to pay the aforesaid compensation amount along with interest at the rate of 6% per annum from the date of filing of the claim application till its realization. The payment shall be made within a month from the date of this order by the Insurance Company to the learned Tribunal and thereafter the Tribunal will disburse the same as per the terms fixed to the claimants within two weeks.

13. It goes without saying that the amount already paid shall be deducted in final compensation amount.

Misc. Appeal is accordingly allowed. Pending I.A(s), if any, stands disposed of.