IN THE COURT OF THE PRINCIPAL DISTRICT JUDGE
-cum-
MOTOR VEHICLE CLAIM TRIBUNAL, BHAGALPUR

Present :- Dipankar Pandey,
Principal District Judge -cum-
Motor Vehicle Claim Tribunal
Bhagalpur (Bihar).
Date of Judgment: 17-06-2026

Claim Case No. 24/2014

U/s 166 of the Motor Vehicle Act.

IN THE MATTER OF :-

1. **Md. Ayub S/o Late Abbas**
2. **Khatija Khatoon W/o Md. Ayub**
   Both R/o Vill -Raha, P.S. Basantrai, District-Godda, Jharkhand.

………...Claimants

Versus

1. **Vijay Kumar Mandal S/o Rajendra Mandal (Owner of offending vehicle)**
   At Sanhoula, P.S Sanhoula, Dist. - Bhagalpur.
2. **Md. Shamshad Alam S/o Md. Wasir @ W Siruddin**
   (Driver of offending vehicle),
   R/o Vill- Madhopur, Tola Bhurakhab, P.S. - Amdanda, Dist. - Bhagalpur.
3. **The Branch Manager, National Insurance Co. Ltd. Munger**
   (Insurer of offending vehicle)
4. **The Branch Manager National Insurance Co. Ltd.**

…….Opposite Parties

Ld. Counsel for the claimants :- Sri Ashok Pandit, Advocate.

Ld. Counsel for the O.P. Nos. 1 & 2 : - Sri Jai Prakash Mandal, Advocate.

Ld. Counsel for the O.P. Nos. 3 & 4 :- Sri Sridhar Choubey, Advocate.

JUDGMENT

1. That the claimants named above have filed the present application under Section 166 of the Motor Vehicles Act, 1988, read with Rule 226 of the Bihar Motor Vehicle Rules, 1992, seeking compensation of Rs. 3,54,500/- on account of the death of their daughter, Rukhsana Khatoon, arising out of an accident caused by the offending motorcycle bearing Registration No. BR-08C-5482, owned by O.P. No. 1 and allegedly driven by its rider in a rash and negligent manner. The said offending vehicle was insured with O.P. Nos. 2 and 3, National Insurance Co. Ltd., Munger.

2. The case of the claimants, in brief, as stated in the First Information Report, is that on 17.05.2011 at about 3:00 P.M., the informant, Md. Ayub, received information that his daughter, Rukhsana Khatun, aged about 17 years, who had gone to her friend's house at Sanhoula, Bikhanchak, was returning home on a motorcycle. It was reported that at about 2:30 P.M., the motorcycle overturned near a bridge on the

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Sanhoula-Dhoraiya Pitch Road, situated on the southern side of Village Karharia, as a result of which the informant's daughter sustained serious injuries and succumbed to the same at the spot. Upon receiving the said information, the informant, along with his family members, proceeded to the place near the bridge and found Rukhsana Khatun lying dead there in an injured condition. It is alleged that Rukhsana Khatun was a pillion rider and that the rider of the offending motorcycle was driving the vehicle in a rash and negligent manner, due to which she fell from the motorcycle and sustained fatal injuries. According to the informant, the offending motorcycle was without registration and was found standing near the bridge, while its driver had fled from the place of occurrence.

3. On the basis of the written application submitted by the claimant, Md. Ayub, an F.I.R. was registered vide Sanhoula P.S. Case No. 27/11 dated 17.05.2011 under Sections 279 and 304(A) of the I.P.C. against of the unknown motorcycle driver. After investigation, charge-sheet was submitted against Md. Shamshad Alam, the driver of the offending motorcycle (without registration number), bearing Chassis No. MBLHA10EWBGC33284 and Engine No. HA10EDBGC07365. Accordingly, the present claim case has arisen for compensation on account of the death of Rukhsana Khatun, wherein the claimants, namely Md. Ayub and Khatija Khatoon, are the parents of the deceased, Rukhsana Khatoon.

4. The further case of the claimants is that the accident took place within the jurisdiction of Sanhoula P.S., District Bhagalpur (Bihar), whereupon Sanhoula P.S. Case No. 27 of 2011 under Sections 279 and 304A of the I.P.C. was instituted against the driver of the motorcycle. It has also been pleaded that the postmortem examination of the deceased was conducted at J.L.N.M.C.H., Bhagalpur, and the doctor conducting the postmortem examination opined that the death was caused due to ante-mortem injuries resulting from a hard and blunt substance. It has further been stated that the deceased left behind her parents and that the present claim petition has been filed by her parents, being the legal representatives of the deceased. The claimants have also asserted that the deceased was about 17 years of age at the time of her death, was healthy and laborious, and used to earn Rs.100/- to Rs.150/- per day by selling vegetables, thereby earning approximately Rs.4,000/- to Rs.4,500/- per month, out of which she used to contribute towards the maintenance of the family and assist the family members in household work. It has further been pleaded that, due to the untimely death of the deceased, the claimants have been deprived of her love, affection, and earnings. It has also been stated that the offending motorcycle bearing Registration No. BR-08C-5482 was insured with National Insurance Company Ltd. under a valid insurance policy bearing Policy No. 35100731116200027594, which remained effective from 05.04.2011 to midnight of 04.04.2012, and the said policy was valid and effective on the date of the accident, i.e., 17.05.2011.

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5. The claimants have, therefore, prayed for compensation of Rs.3,54,500/- (Rupees Three Lakhs Fifty-Four Thousand Five Hundred only) on account of the death of the deceased, Rukhsana Khatun, in the aforesaid motor vehicle accident arising out of the use of the motorcycle bearing Registration No. BR-08C-5482. The claimants have further prayed for interest at the rate of 12% per annum from the date of institution of the claim case till realization of the awarded amount, together with the costs of the proceeding and such other relief or reliefs as may be deemed fit and proper in the facts and circumstances of the case.

6. Upon service of summons, O.P. No. 1, the owner of the offending motorcycle, appeared on 02.09.2015. O.P. No. 2, the driver of the offending vehicle, appeared on 08.12.2015 but did not file any written statement to contest the claim case. Accordingly, after granting sufficient time and ample opportunities, both O.P. Nos. 1 and 2 were finally debarred from filing their written statements vide order dated 20.12.2024. Further, O.P. Nos. 3 and 4 i.e. National Insurance Company also appeared on 02.04.2016 and filed their written statement on 29.04.2016 and contested the case.

7. O.P. Nos. 3 and 4, namely the Divisional Manager, National Insurance Co. Ltd., in their written statement, have stated that the claim case, as framed, is not maintainable either in law or on facts against these opposite parties. It has been contended that the claimants have no cause of action to file the claim case against them. In paragraph 4 of the written statement, it has been stated that, as per the F.I.R., the deceased was a pillion rider of the motorcycle and, as such, she was not a third party. It has also been submitted that the claim case suffers from the defect of non-joinder of necessary parties. It has further been submitted that the owner and driver of the offending vehicle had transgressed the provisions of the Motor Vehicles Act as well as the Bihar Motor Vehicle Rules, 1992, by violating the terms and conditions of the insurance policy, as the rider of the offending motorcycle was not holding a valid and effective driving licence. It has been submitted in paragraphs 10 and 11 that no documents with regard to the age, income, occupation, and death of the deceased were furnished to the insurer in support of the claim. It has further been submitted that the claimants have not provided any heirship certificate to establish that they are the legal heirs of the deceased. The answering opposite parties have sought protection under Sections 147 and 149 of the Motor Vehicles Act. It has further been contended that, under Section 134(c) of the Motor Vehicles Act, 1988, it is the mandatory duty of the insured to furnish the particulars of the policy, date, time and place of the accident, particulars of the deceased, the name of the driver, and the particulars of the driving licence. However, according to the insurer, the insured has failed to comply with the said mandatory provisions. It has further been submitted that, under Section 158(6) of the Motor Vehicles Act, it is the mandatory duty of the concerned police station to forward all relevant documents to the concerned insurer

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within 30 days from the date of receipt of information, but Sanhoula P.S. failed to forward the documents and did not comply with the said statutory requirement. Further, the opposite parties have sought permission to contest the claim under Section 170 of the Motor Vehicles Act, 1988, and have prayed for permission from the Tribunal to raise all defences on all points other than those provided under Section 149(2) of the Motor Vehicles Act. It has also been contended that the compensation claimed is highly excessive, exorbitant and exaggerated and on these grounds a prayer has been made for dismissal of the claim petition.

8. On the basis of the pleadings of both the parties, the following issues were framed for determination in the present case:

ISSUES

1. Whether the claim case is maintainable?
2. Whether the claimants in the claim case have any cause of action for filing the present claim petition?
3. Whether the accident took place due to the rash and negligent driving of the alleged vehicle bearing Registration No. BR-08C-5482 and whether such rash and negligent driving contributed to the accident?
4. Whether the claimants are entitled to compensation and, if so, from whom and to what extent?
5. Whether the claimants are entitled to any other relief or reliefs?

FINDINGS

9. In order to prove their case, the claimants examined a total of two witnesses before the Tribunal, namely CW-1, Khatija Khatun, and CW-2, Md. Ayub, in support of their claim.

10. The following documents were filed and marked as exhibits on behalf of the claimants by way of documentary evidence:

Exhibit-1 : Certified copy of the F.I.R.

Exhibit-2 : Photocopy of the owner book of the offending motorcycle bearing Registration No. BR-08C-5482 issued in the name of Vijay Kumar Mandal, O.P. No. 1. (with objection)

Exhibit-3 : Photocopy of the Insurance Policy of the offending motorcycle bearing Registration No. BR-08C-5482 issued by National Insurance Co. Ltd. vide Policy No. 351007311162000027594, effective from 05.04.2011 to midnight of 04.04.2012.

Exhibit-4 : Photocopy of the genealogical table issued from the office of Pathargama.

Exhibit-5 : Certified copy of Charge-sheet No. 31/2011 dated 31.07.2011 submitted in connection with Sanhoula P.S. Case No. 27/11.

Exhibit-6 : Photocopy of the Postmortem Report of the deceased, Rukhsana Khatun.

Exhibit-7 : Photocopy of the Driving Licence of Md. Shamshad bearing Licence No. 1676/10/Prof/BGP. (with objection)

11. **C.W. 1, namely Khatija Khatun**, who is Claimant No. 2 in the present claim case, has stated in her affidavit-in-chief that she and her husband are the claimants in this case. She has further stated that on 17.05.2011 at about 2:30 P.M., her daughter, Rukhsana Khatun, aged about 17 years, was returning home from her friend's house situated at Sanhoula, Bhikhanchak, on a motorcycle bearing Registration No. BR-08C-5482, sitting on the pillion seat thereof. The witness further stated that due to the rash and negligent driving of the rider, her daughter fell down near a bridge on the Sanhoula-Dhoraiya Pitch Road situated on the southern side of Village Karharia, sustained serious injuries, and succumbed to the same at the spot. The witness further stated that Rukhsana Khatun was intelligent, was good in her studies, and had a bright future. In the present case, a total compensation of Rs. 3,54,000/- has been claimed along with interest. The witness has further stated that the contents of her affidavit are true to her knowledge and that she put her thumb impression thereon after the same was read over and explained to her.

In her cross-examination by O.P. Nos. 3 and 4, the witness stated that she could not say in which school her daughter was studying. She further deposed that her daughter had gone to meet her friend Bilkis, whose father had a computer. The house of her daughter's friend was situated at a distance of about 7 kilometers. She further stated that the said friend was not studying with her daughter. The police had not recorded her statement. The accident took place on 17.05.2011, but not in her presence. The witness could not state the registration number of the offending motorcycle. She also disclosed that she is illiterate. The witness further deposed that her daughter used to do stitching work from home and was earning approximately Rs. 10,000/- per month from such work.

12. **C.W. 2, namely Md. Ayub, is Claimant No. 1** in the present claim case. He has stated in his affidavit-in-chief that he and his wife are the claimants in this case. He has further stated that on 17.05.2011 at about 2:30 P.M., his daughter, Rukhsana Khatun, aged about 17 years, was returning home from her friend's house situated at Sanhoula, Bhikhanchak, on a motorcycle bearing Registration No. BR-08C-5482, sitting on the pillion seat thereof. The witness further stated that due to the rash and negligent driving of the rider, his daughter fell down near a bridge on the Sanhoula-Dhoraiya Pitch Road situated on the southern side of Village Karharia, sustained serious injuries and succumbed to the same at the spot. The witness further stated that Rukhsana Khatun was intelligent, was good in her studies, and had a bright future. In the present case, a total compensation of Rs. 3,54,000/- has been claimed along with interest. The witness has further stated that the contents of his affidavit are true to his knowledge and that he put his signature thereon after reading the same.

In his cross-examination by O.P. Nos. 3 and 4, the witness deposed that he had seen the accident. He further stated that the rider fled away in a vehicle which was moving ahead, while he himself was travelling in a vehicle coming from behind. The police apprehended the vehicle which was moving ahead. However, the witness could not remember the registration number of the said vehicle. The witness disclosed that he is uneducated. He further deposed that his daughter was earning Rs. 3,000/- per month from stitching work. According to the witness, the age of his daughter was 17 years at the time of the accident but he had no document regarding her age. He denied the suggestion that he was deposing falsely.

13. On the other hand, O.P. Nos. 3 and 4, namely National Insurance Co. Ltd., have also adduced one witness on their behalf, namely Kumar Sujit Singh. Further, the following documents were marked as exhibits during the course of his evidence:-

Exhibit-A : Investigation Report regarding Driving Licence No. 1676/10/Prof/BGP.

Exhibit-B : Report of the District Transport Office, Bhagalpur, regarding the genuineness of Driving Licence No. 1676/10/Prof/BGP.

Exhibit-C : Receipt of Challan.

14. O.P. Witness No. 1, Kumar Sujit Singh, has stated in his affidavit-in-chief that he was appointed by the Insurance Company to investigate Driving Licence No. 1676/10/Prof./BGP of the accused driver, Md. Shamshad. He conducted verification of the aforesaid driving licence from the District Transport Office, Bhagalpur, and thereafter submitted his investigation report to the Insurance Company. He further stated that during the course of verification, he found that Driving Licence No. 1676/10/Prof./BGP had not been issued by the District Transport Office, Bhagalpur, in the name of driver Md. Shamshad. In this regard, the District Transport Office, Bhagalpur, issued a written certificate to him, which was annexed to his investigation report. The witness further deposed that the statements made by him are true to his knowledge and belief and that nothing has been concealed therein. He put his signature on the said affidavit after reading and understanding the contents thereof. In his examination on behalf of O.P. Nos. 3 and 4, namely National Insurance Co. Ltd., the witness deposed that he had been appointed by the Insurance Company to verify the driving licence of the driver, which he investigated and thereafter submitted his report. The witness identified his signature on the investigation report prepared by him and, upon such identification, the same was marked as Exhibit-A. The witness further identified the certificate issued by the District Transport Office, duly signed by the competent authority, which had already been filed by him and, upon identification, the said certificate was marked as Exhibit-B. The witness also identified the bank challan deposited towards the verification fee in the Transport Office and, upon identification, the same was marked as Exhibit-C. The witness further deposed that during the course of verification of the driving licence, he found that the licence number mentioned therein was not recorded in the register in the name of the said person.

In his cross-examination on behalf of the claimants, the witness stated that he could not remember the date of the letter by which he had been directed to verify the

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driving licence, as a considerable period had elapsed. The witness further deposed that the request letter seeking verification of the driving licence was not in his possession. He also stated that he had not personally inspected the driving licence register maintained in the District Transport Office. The witness denied the suggestion that he had deposed only on the basis of facts suggested by the Insurance Company.

15. **Issue Nos. 1 to 3 :-** All these issues being interlinked are taken up together for consideration. In the present case, as per the F.I.R. (Exhibit-1), the accident took place at about 2:30 P.M. on 17.05.2011 near a bridge on the Sanhoula-Dhoraiya Pitch Road situated on the southern side of Village Karharia when the informant's daughter, Rukhsana Khatun, aged about 17 years, was returning from her friend's house situated at Sanhoula, Bhikhanchak, on a motorcycle. In the said accident, the informant's daughter sustained serious injuries and succumbed to the same at the spot. It is alleged that Rukhsana Khatun was travelling as a pillion rider on the motorcycle and that the rider of the offending motorcycle was driving the same in a rash and negligent manner, due to which the suddenly fell down, resulting in her death on the spot. Further, during police investigation, the case was found to be true against Md. Shamshad Alam (O.P. No. 2), the rider of the offending motorcycle bearing Chassis No. MBLHA10EWBGC33284 and Engine No. HA10EDBGC07365, and accordingly, the Investigating Officer submitted Charge-sheet No. 31/11 dated 31.07.2011 under Sections 279, and 304(A) of the I.P.C. (Exhibit-5) against him. In support of the present claim case, both the claimants have examined themselves as witnesses, namely C.W.1 and C.W.2.

In their testimonies, C.W.1 and C.W.2 have fully supported the contents of the F.I.R. (Exhibit-1) and have remained consistent on the material particulars regarding the date, time, place and manner of occurrence. They have categorically stated that their daughter was returning home on the offending motorcycle, which was being driven by its rider in a rash and negligent manner, due to which Rukhsana Khatun fell down and consequently sustained serious injuries and succumbed to the same. Their evidence further reveals that their daughter was earning from tailoring work. Nothing could be elicited by the O.Ps. in their cross-examination to discredit their version regarding the accident.

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Thus, the evidence of both C.W.1 and C.W.2 finds corroboration from Exhibit-1, the certified copy of the F.I.R., which was instituted in respect of the same accident, and Exhibit-6, the Postmortem Report. Further, Exhibit-5, the charge-sheet, shows that the Investigating Officer found the allegations against Md. Shamshad Alam (O.P. No. 2), the rider of the offending motorcycle bearing Chassis No. MBL-HA10EWBGC33284 and Engine No. HA10EDBGC07365, to be true. The Investigating Officer found the allegation of rash and negligent driving by the rider of the offending vehicle to be true and accordingly submitted charge-sheet against him. The said charge-sheet further lends corroboration to the oral testimony of C.W.1 and C.W.2 regarding the manner of occurrence.

16. In the present claim case, the opposite parties have not adduced any oral or documentary evidence to rebut the evidence led by the claimant witnesses. The opposite parties have also failed to adduce any oral or documentary evidence to impeach the genuineness of the claim put forward by the claimants. It is an admitted position that the offending motorcycle bearing Chassis No. MBLHA10EWBGC33284 and Engine No. HA10EDBGC07365, having Registration No. BR-08C-5482, was insured with O.P. Nos. 3 and 4, National Insurance Company Ltd., on the date of the accident. The claimants have brought on record the insurance policy relating to the offending motorcycle bearing Chassis No. MBLHA10EWBGC33284 and Engine No. HA10EDBGC07365, having Registration No. BR-08C-5482, which has been marked as Exhibit-3 without any objection. The claimants have also produced a photocopy of the Registration Card of the vehicle bearing Registration No. BR-08C-5482, having Chassis No. MBLHA10EWBGC33284 and Engine No. HA10EDBGC07365, issued in the name of Vijay Kumar Mandal, who is O.P. No. 1 herein, which has been marked as Exhibit-2 with objection. Though an objection has been raised by the Insurance Company regarding the owner book of the offending motorcycle, there is no material on record to show that the same is fake or manufactured. The Registration Card of the offending vehicle is obviously a document issued to O.P. No. 1, namely Vijay Kumar Mandal, who was under an obligation to produce its original copy, but he did not brought it on the record in the present case. Be that as it may, the insurance policy (Exhibit-3), which has been issued in the name of Vijay Kumar Mandal in respect of the said offending motorcycle, is an admitted document on behalf of the opposite parties and the said insurance policy also bears the same engine and chassis numbers as mentioned in the Registration Card of the offending vehicle (Exhibit-2). Therefore, it stands established that the offending vehicle was duly insured in the name of O.P. No. 1, Vijay Kumar Mandal, with O.P. Nos. 3 and 4 on the date of the accident and that the accident occurred within the territorial jurisdiction of this Tribunal. Accordingly, this Tribunal has jurisdiction to entertain and decide the present claim petition.

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17. In view of the oral and documentary evidence available on record, this Tribunal is satisfied that the accident in question occurred due to the rash and negligent driving of O.P. No. 2, the rider of the offending motorcycle bearing Chassis No. MBLHA10EWBGC33284 and Engine No. HA10EDBGC07365, having Registration No. BR-08C-5482, as a result of which the pillion rider, namely Rukhsana Khatun, sustained injuries and succumbed to the same at the spot. Further, in the absence of any material to the contrary and in view of Exhibit-4, which is the photocopy of the genealogical table issued from the Circle Office,

Pathargama, this Tribunal finds that the claimants are the legal heirs of the deceased. Nothing has been brought on record to disbelieve or discredit the said genealogical table. Moreover, there is no rival claim on record disputing the status of the claimants as the legal heirs of the deceased. Accordingly, the claimants have a valid cause of action for maintaining the present claim petition, and the death of Rukhsana Khatun occurred due to the rash and negligent driving of O.P. No. 2, who was driving the motorcycle belonging to O.P. No. 1. Accordingly, Issue Nos. 1, 2 and 3 are decided in favour of the claimants.

18. **Issue No. 4** :- Now the question arises as to whether the claimants are entitled to compensation and, if so, from whom and to what extent. Since Issue Nos. 1, 2 and 3 have already been decided in favour of the claimants, the claimants are entitled to compensation. So far as the question regarding liability to pay compensation is concerned, the copy of the insurance policy filed by the claimants shows that O.P. Nos. 3 and 4 are the insurers of the offending vehicle. The said opposite parties have also admitted that the offending motorcycle bearing Chassis No. MBLHA10EWBGC33284 and Engine No. HA10EDBGC07365, having Registration No. BR-08C-5482, was insured with O.P. Nos. 3 and 4 on the date and time of the accident. This fact has already been discussed while deciding Issue Nos. 1 to 3. The Insurance Company has taken a plea that the owner of the offending vehicle violated the terms and conditions of the insurance policy by permitting the vehicle to be driven by a person not holding a valid and effective driving licence and by not complying with the statutory requirements relating to the vehicle. In support of its plea, the Insurance Company examined O.P. Witness No. 1, who proved the Investigation Report regarding Driving Licence No. 1676/10/Prof./BGP as Exhibit-A, the Report of the District Transport Office, Bhagalpur regarding the genuineness of Driving Licence No. 1676/10/Prof./BGP as Exhibit-B, and the Receipt of Challan as Exhibit-C. Exhibit-B shows that the DTO, Bhagalpur, Bihar reported that, as per the original register, Driving Licence No. 1676/10/Prof./BGP had not been issued in the name of Shamshad Alam. On the other hand, the Investigating Officer found the allegations against Shamshad Alam to be true and submitted Charge-sheet No. 31/11 dated 31.07.2011 under Sections 279 and 304(A) of the I.P.C. against him vide Exhibit-5. Thus, on the basis of the evidence of O.P. Witness No. 1 and Exhibits-A, B and C, it stands established that O.P. No. 2, Shamshad Alam, was possessing a fake driving licence at the time of the accident. Accordingly, the Insurance Company has succeeded in establishing breach of the policy condition relating to the validity of the driving licence. However, such breach does not absolve the insurer from its statutory liability towards third party claimants and therefore, the principle of pay and recover is attracted in the facts and circumstances of the present case.

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19. Though an objection has been raised by the Insurance Company regarding the owner book of the offending motorcycle, there is no material on record to show that the

same is fake or manufactured. Moreover, the insurance policy (Exhibit-3), which has been issued in the name of the owner of the offending motorcycle, is an admitted document on behalf of the opposite parties. Hence, it stands established and admitted by the Insurance Company that the insurance policy of the offending vehicle stood in the name of Vijay Kumar Mandal.

20. During the course of arguments, the learned counsel appearing for O.P. Nos. 3 and 4, namely National Insurance Company, laid considerable emphasis on the point that, at the time of the accident, the rider of the offending motorcycle was not possessing a valid and effective driving licence to drive the vehicle. It was further argued that the driver of the offending motorcycle was found to be operating the vehicle on the strength of a fake licence, which, in any event, authorised only for LMV and not a motorcycle, thereby constituting a breach of the "Driver's Clause" of the policy. It was further argued that under Section 149(2)(a)(ii) of the Motor Vehicles Act, 1988, the insurer is entitled to avoid liability where the driver was not duly licensed. The opposite parties relied upon the judgment of the Hon'ble Supreme Court in Beli Ram Vs. Raj Kumar and Another, Civil Appeal Nos. 7220-7221 of 2011, decided on 23.09.2020, wherein the Hon'ble Court laid down the principle of the continuing responsibility of the owner to ensure the validity of the driving licence and held that permitting an unlicensed person to drive amounts to gross negligence, thereby exonerating the insurer from indemnification. It was, therefore, contended that in the present case the liability, if any, must rest solely upon the vehicle owner and that the claim against the Insurance Company deserves to be dismissed.

21. However, the learned counsel appearing for O.P. Nos. 3 and 4 also very fairly conceded that it is a settled principle of law that even in cases where the owner and driver have breached the terms and conditions of the insurance policy, the Insurance Company is liable to satisfy the award in favour of the claimants and thereafter recover the same from the owner and/or driver of the offending vehicle.

22. On the other hand, the learned counsel appearing for the claimants submitted that the documents relating to the vehicle were valid and up to date at the time of the accident. The learned counsel for the claimants also agreed with the submission advanced on behalf of O.P. Nos. 3 and 4 that the owner of the vehicle had breached the terms and conditions of the insurance policy.

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23. So far as the decision in **Beli Ram Vs. Raj Kumar and Another, Civil Appeal Nos. 7220-7221 of 2011, decided on 23.09.2020**, is concerned, this Tribunal is of the view that the said decision appears to have been rendered on the specific question of law as to whether, in a case where a driving licence was originally valid but had expired, the insurer could be absolved of its liability. In the present case, however, O.P. No. 2 was found to be holding a fake driving licence. Moreover, the facts and circumstances of the present case are distinguishable from those involved

in the aforesaid decision, and as such with due humbleness, the said judgment does not appear to be applicable to the facts of the present case.

24. Considering the rival submissions advanced on behalf of both sides, the discussions made hereinabove, and keeping in view the settled principle of law as laid down by the **Hon'ble Apex Court in Parminder Singh vs. New India Assurance Company Ltd., (2019) 7 SCC 217**, O.P. Nos. 3 and 4, namely National Insurance Company Ltd., are liable to pay the compensation amount to the claimants. However, the Insurance Company shall have the liberty to recover the said compensation amount from O.P. Nos. 1 and 2, i.e., the owner and driver of the offending vehicle, in accordance with law.

25. Now the question that arises is as to what should be the quantum of compensation payable on account of the death of the deceased. In the claim petition, the claimants have asserted that the deceased was self-employed and used to sell vegetables, earning a monthly income of Rs. 4,000/- to Rs. 4,500/-. However, in their evidence, C.W.1 and C.W.2 have testified that the deceased was engaged in tailoring work. C.W.1 has stated that the deceased was earning Rs. 10,000/- per month, whereas C.W.2 has stated that the deceased was earning Rs. 3,000/- per month. Be that as it may, none of the witnesses have produced any documentary evidence with regard to the income of the deceased. It further transpires that there is some inconsistency regarding the nature of the work and income of the deceased as stated in the claim petition and in the evidence of C.W.1 and C.W.2. However, it appears that the claimants are rustic and illiterate villagers, and the Motor Vehicles Act is a beneficial piece of legislation. The deceased was the unmarried daughter of the claimants, and due to her untimely death, they have suffered both economically and mentally. In such circumstances, when the claimants have neither produced nor proved any documentary evidence regarding the income of the deceased, this Tribunal, considering the facts and circumstances of the case, deems it appropriate to assess the compensation on the basis of notional income and to take the monthly income of the deceased at Rs. 3,000/- per month for the purpose of computation of compensation.

26. In the instant case, the claim petition as well as the evidence available on record suggest that the deceased was about 17 years of age at the time of the accident. Exhibit-6, which is the photocopy of the Postmortem Report of the deceased, also records her age as 17 years at the time of death. In the case of **Sarla Verma & Ors. Vs. Delhi Transport Corporation & Anr.**, it has been held that:

> *"Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on*

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himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent/s and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependent and the mother alone will be considered as a dependent. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependents, because they will either be independent and earning, or married, or be dependent on the father. Thus even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependent, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However, where family of the bachelor is large and dependent on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third".

In view of the aforesaid position, there is no material on record to suggest that the father was a non-earning member and that the entire family was solely dependent upon the income of the deceased. Hence in view of the case of Sarla Verma (Supra) only mother of the deceased would be entitled for compensation. Further, it can safely be held that the deceased, being an unmarried girl who was soon to attain majority as well as marriageable age, would have spent a substantial portion of her income on herself. Accordingly, 50% of her income is being deducted towards her personal and living expenses.

Accordingly, considering the notional monthly income of the deceased at Rs. 3,000/- per month, her annual income comes to Rs. 3,000 × 12 = Rs. 36,000/- per annum. After deducting 50% towards her personal and living expenses, the annual contribution to the family would be Rs. 18,000/-. Since the deceased was 17 years of age, the multiplier applicable for the age group of 15 to 20 years, as prescribed in Sarla Verma (supra), would be 18. Thus, the multiplier is taken as 18, as the age of the deceased has been determined to be 17 years. Accordingly, the total loss of dependency comes to Rs. 18,000 × 18 = Rs. 3,24,000/-. Further, Exhibit-6 shows that the deceased was 17 years old on the date of the accident and had she remained alive, she would have earned more in future. Therefore, in view of the decision of

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the Hon'ble Supreme Court in **National Insurance Co. Ltd. Vs. Pranay Sethi,** the claimant no.02 are entitled to future prospects at the rate of 40% for the age group below 40 years. Since the deceased was 17 years of age, 40% of the loss of dependency is added towards future prospects. Thus, 40% of Rs. 3,24,000/-, which comes to Rs. 1,29,600/-, shall be additionally payable to the claimant no.02 on account of future prospects. Further, the claimant no.02 shall be entitled to funeral expenses of Rs. 15,000/-, loss of estate of Rs. 15,000/-, and loss of consortium of Rs. 40,000/-. Accordingly, the claimant no.02 is entitled to total compensation calculated as follows: Rs. 3,24,000/- + Rs. 1,29,600/- + Rs. 15,000/- + Rs. 15,000/- + Rs. 40,000/- = Rs. 5,23,600/-. It is well settled that the Tribunal is under a statutory duty to award just compensation and is not strictly bound by the amount claimed in the claim petition. In this regard it would be relevant to mention that in ***Rajesh and others vs. Rajbir Singh and others [2013 (3) C.T.C. 883, CDJ 2013 (SC) 485}***, a three judges Bench of Hon'ble Apex Court considered this aspect and held as under:-

17. Whether the Tribunal is competent to award compensation in excess of what is claimed in the application u/s 166 of the Motor Vehicles Act. 1988, is another issue arising for consideration in this case. At paragraph10 of Nagappa's case (supra), it was held as follows:-

18. Thereafter, 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".

19. Therefore, the Hon'ble Supreme Court placing reliance on the judgment of Nagappa vs. Gurdayal Singh reported in 2003 (2) SCC 274 have held in Rajesh's case (supra) that the Tribunal can award more than the claimed amount of compensation but it should be just.

From the discussions made hereinabove, it is clear that the offending motorcycle was insured with O.P. Nos. 3 and 4, namely National Insurance Company Ltd. and the said opposite parties have admitted the insurance coverage of the aforesaid vehicle with National Insurance Company Ltd. Therefore, the insurer of the vehicle, namely O.P. Nos. 3 and 4, National Insurance Company Ltd. shall be liable to pay the compensation amount to the claimant no.02 with liberty to recover the same, in accordance with law, from the owner and driver of the offending vehicle, namely O.P. Nos. 1 and 2, as they have breached the terms and conditions of the insurance policy. Hence, Issue No. 4 is decided in favour of the claimants and against the opposite parties.

27. **Issue No. 5** :- In view of the findings recorded on the preceding issues, the claimant no.02 is entitled to receive a total compensation of Rs. 5,23,600/- (Rupees Five Lakh Twenty-Three Thousand and Six Hundred only) along with interest at the rate of 6%

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per annum from the date of framing of issues till its realization. Considering the facts and circumstances of the case and the prolonged pendency of the proceeding, interest is being awarded from the date of framing of issues till realization. The claimants are not entitled to any other relief. Accordingly, Issue No. 5 is answered.

28. In the result, the claim application is **allowed** on contest against O.P. Nos. 3 and 4. O.P. Nos. 3 and 4, namely National Insurance Company Ltd., are directed to pay a sum of Rs. 5,23,600/- (Rupees Five Lakh Twenty-Three Thousand and Six Hundred only) to the **claimant no. 02 namely, Khatija Khatoon** along with interest at the rate of 6% per annum from the date of framing of issues in this claim case till realization, within a period of two months with liberty to recover the same from the owner and driver of the offending vehicle, namely O.P. Nos. 1 and 2, as the owner breached the terms and conditions of the insurance policy. Failing such payment, the claimant no. 02 shall be at liberty to recover the compensation amount through due process of law.

29. Both parties shall bear their own costs.

30. The office is directed to prepare the award after verifying the court fee, if any, duly payable. A copy of this award be supplied to both sides for information, perusal and prompt compliance.

(Dictated and corrected)
Dipankar Pandey 17-06-26
(Dipankar Pandey)
Principal District Judge-cum-
Motor Vehicle Claim Tribunal,
Bhagalpur

Dipankar Pandey 17-06-26
(Dipankar Pandey)
Principal District Judge-cum-
Motor Vehicle Claim Tribunal,
Bhagalpur

Principal District and Sessions Judge ★ Bhagalpur ★

Date of Judgment/Order	17-06-26
Date of Reserving Judgment/Order	11-06-26
Uploading Date	17-06-26
Uploaded by	Afaque Rizwi