HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Civil Miscellaneous Appeal No. 297/2021

The Oriental Insurance Company Ltd., having its Registered Office at A-25/27, Asaf Road, New Delhi and Regional Office 10th Floor, Bima Bhawan, NBCC Cenre, Sahkar Marg, Jaipur, Jaipur Through its Regional Manager.

----Appellant

Versus

1. Smt. Sharda Joshi W/o Late Shri Lalit Mohan, R/o 314-A, Shiv Path, Sindhu Nagar, Murlipura, Jaipur (Raj.) (Deceased).
2. Shri Mathura Dutt S/o Late Kate Shri Premballabh Joshi, aged about 72 Years, R/o 314-A, Shiv Path, Sindhu Nagar, Murlipura, Jaipur (Raj.)
3. Smt. Parvati W/o Shri Matura Dutt, aged about 70 Years, R/o 314-A, Shiv Path, Sindhu Nagar, Murlipura, Jaipur (Raj.)
4. Master Yash Joshi S/o Late Shri Lalit Mohan, aged about 11 Years, Through His Natural Guardian Mother R/o 314-A, Shiv Path, Sindhu Nagar, Murlipura, Jaipur (Raj.)
5. Mahesh Chandra S/o Shri Mohanlal, R/o Rampur, Teh. Bamanwas, Distt. Sawai Madhopur (Raj.) Presently Through M/s Vijay Filling Station Piplaim Bamanwas, Dausa (Rajasthan.) (Driver Truck No. RJ25-GA-2526)
6. M/s Vijay Filling Station Piplai through Owner Shri Babulal Sharma, R/o Piplai, Teh. Bamanwas, Distt. Sawai Madhopur (Raj. (Registered Owner Truck Tanker No. RJ25-GA-2526)
7. Shri Babulal Sharma Through M/s Vijay Filling Station, R/o Piplai, Teh. Bamanwas, Distt. Sawai Madhopur (Registered Owner Truck Tanker No. RJ25-GA-2526)

----Respondents

Connected With

S.B. Civil Miscellaneous Appeal No. 298/2021

The Oriental Insurance Company Ltd., having its Registered Office, at A-25/27, Asaf Ali Road, New Delhi and Regional Office At 10th Floor, Bima Bhawan, NBCC Centre, Sahkar Marg, Jaipur Through Its Regional Manager.

----Appellant

Versus

1. Bhupendra Singh S/o Shri Shayar Singh, Resident of E-229-1-C, Khetri Nagar, Jhunjhunu (Raj.) Presently resident At 46-A, Ganesh Nagar Extension, Kalwar Road, Jhotwara, Jaipur (Rajasthan)
2. Mahesh Chandra S/o Shri Mohanlal, Resident of Rampur, Teh. Bamanwas, Distt. Sawai Madhopur (Raj.) Presently Through M/s Vijay Filling Station Piplai, Bamanwas, Dausa (Rajasthan) (Driver Truck No. RJ25-GA-2526)
3. M/s Vijay Filling Station Piplai, Through Owner Shri Babulal Sharma, Resident Of Piplai, Teh. Bamanwas, Distt. Sawai Madhopur (Raj.) (Registered Owner Truck Tanker No. Rj-25-Ga-2526)
4. Shri Babulal Sharma, Through M/s Vijay Filling Station, Resident of Piplai, Teh. Bamanwas, Distt. Sawai Madhopur (Rajasthan) (Registered Owner Truck Tanker No. RJ25-GA-2526)

----Respondents

S.B. Civil Miscellaneous Appeal No. 441/2021

Bhupendra Singh S/o Shayar Singh, aged about 41 Years, R/o E-229-1-C, Khetri Nagar, Jhunjhunu (Raj.) At Present R/o 46-A, Ganesh Nagar Extension, Kalwar Road, Jhotwara, Jaipur (Raj.)

----Appellant

Versus

1. Mahesh Chandra S/o Mohan Lal, R/o Rampur, Tehsil Bamanwas, District Sawaimadhopur (Raj.) At Present Through M/s Vijay Filling Station Piplai, Bamanwas, Sawaimadhopur (Raj.) (Driver of Vehicle Truck Tanker No. RJ-25-GA-2526)
2. M/s Vijay Filling Station Through Owner Babu Lal Sharma, R/o Piplai, Tehsil Bamanwas, Sawaimadhopur (Raj.) (Registered Owner of Vehicle Truck Tanker No. RJ-25-GA-2526)
3. Shri Babu Lal Sharma, Through M/s Vijay Filling Station Piplai, Tehsil Bamanwas, Sawaimadhopur (Raj.) (Registered Owner of Vehicle Truck Tanker No. RJ-25-GA-2526)

4. M/s Oriental Insurance Company Ltd., Through Manager, Regional Office, Jaipur (Insurer)

----Respondents

S.B. Civil Miscellaneous Appeal No. 443/2021

1. Smt. Sharda Joshi W/o Late Shri Lalit Mohan, aged about 35 Years (deceased).R/o 314-A, Shivpath, Sindhu Nagar, Murlipura, Jaipur (Raj.)
2. Shri Mathuradutt S/o Late Shri Premballabh Joshi, Aged About 73 Years, R/o 314-A, Shivpath, Sindhu Nagar, Murlipura, Jaipur (Raj.)
3. Smt Parvati W/o Shri Mathuradutta, aged about 71 Years, R/o 314-A, Shivpath, Sindhu Nagar, Murlipura, Jaipur (Raj.)
4. Master Yash Joshi S/o Late Shri Lalit Mohan., aged about 12 Years, Minor Through His Natural Guardian maternal uncle Dilip Sanguri S/o Madan Mohan Sanguri aged 32 years, R/o near Lohani Ata Chakki, Saket Colly, Malli Bamori, Haldwani, Nanital (Uttrakhand)

----Appellants

Versus

1. Mahesh Chandra S/o Mohan Lal, R/o Rampur, Tehsil Bamanwas, District Sawaimadhopur (Raj.) At Present Through M/s Vijay Filling Station Piplai, Bamanwas, Dausa (Raj.) (Driver of Vehicle Truck Tanker No. RJ-25-GA-2526)
2. M/s Vijay Filling Station Piplai Through Owner Babu Lal Sharma R/o Piplai, Tehsil Bamanwas, Sawaimadhopur (Raj.) (Registered Owner of Vehicle Truck Tanker No. RJ-25-GA-2526)
2. Rajveer Singh S/o Bhagwan Singh
3. Gopal Singh S/o Bhagwan Singh
4. Ramveer Singh S/o Bhagwan Singh
   All R/o Gadoli, Tehsil Nadbai, District Bharatpur.
5. Ramrati D/o Bhagwan Singh W/o Umesh Chand R/o Aroda, Tehsil Nadbai, District Bharatpur.
6. Vijay Pal Singh S/o Late Bhimsingh
7. Jagveer Singh S/o Late Bhimsingh
   Both resident of Gadoli, Tehsil Nadbai, District Bharatpur

----Respondents

For Appellant(s)	:	Mr. Pratap Singh Arya
For Respondent(s)	:	Mr. Devendra Kumar Bhardwaj with Mr. Shiv Ram Pareek (appellants in SBCMA Nos. 441/2021 and 443/2021 Mr. Rajiv Dwivedi

JUSTICE ANOOP KUMAR DHAND

Order

25/02/2026

1. All these appeals have been preferred against the common impugned judgment and award dated 21.11.2020 passed by the Special Judge, Printing and Stationary Embezzlement Cases-cum-Motor Accident Claims Tribunal, Jaipur (hereinafter referred to as "the Tribunal") in MAC Case Nos. 513/2017 and 514/2017 by which the death claim as well as the injury claim respectively submitted by the respondents-claimants (hereinafter referred to as the "claimants") have been partly allowed and the appellant -Insurance Company as well as the Driver and the Owner of the offending vehicle have been held liable to pay compensation jointly and severely to the claimants.

2. Aggrieved by the aforesaid judgment and award, the Insurance Company as well as the claimants have approached this Court by way of filing four different appeals.

3. Learned counsel appearing on behalf of the appellant-Insurance Company submits that the Driver of the offending vehicle which was a petroleum tanker, bearing registration No. RJ 25-GA-2526, was not in possession of a valid Driving Licence to ply the said vehicle. Counsel submits that the vehicle in question

which was a petroleum tanker, was carrying hazardous product-'petroleum'. Counsel submits that for plying such a vehicle, it is mandatory under Section 14(2)(a) of the Motor Vehicles Act, 1988 (for short, 'the Act of 1988') that the Driver of such vehicle must possess a Driving Licence with a specific endorsement, authorizing him to drive the vehicle carrying hazardous substance. Counsel submits that the accident has occurred on 03.05.2016 and at the relevant time, the Driver of the offending vehicle was not having any Driving Licence bearing any such endorsement and the said endorsement was made at a subsequent stage i.e. on 23.05.2017 which was much after the accident and that too after more than a year. Counsel submits that in this regard, a detailed cross-examination was done from the Driver of the offending vehicle i.e. NAW-1-Mahesh Chand but he has failed to establish on record that the offending vehicle was not carrying any petroleum product at the time of accident. Hence, under these circumstances, the Tribunal has erred in fastening the liability upon the appellant-Insurance Company. Under these circumstances, it is submitted that interference of this Court is warranted and the instant appeal filed by the appellant -Insurance Company is liable to be accepted and allowed.

4. Per contra, counsel appearing on behalf of the Driver and Owner of the offending vehicle opposes the arguments raised by counsel for the appellant-Insurance Company and submits that at the time of accident, the offending vehicle was not carrying any petroleum product, rather the same was carrying water and was being taken to the company for changing the system and locker

settings etc. Counsel submits that in this regard, an information was obtained under the provisions of the Right to Information Act, which was duly supplied in the form of Ex. NA-1 which indicates that the offending vehicle bearing registration No. RJ-25-GA-2526 was not carrying any petroleum product in between 02.05.2016 to 04.05.2016. Counsel submits that since the offending vehicle was not carrying any petroleum product, hence, under these circumstances, the Driver of the offending vehicle was not supposed to possess any licence, in terms of Section 14(2)(a), to ply such vehicle. In support of his contentions, counsel has placed reliance upon the judgment passed by the Co-ordinate Bench of this Court at the Principal seat at Jodhpur in the case of **Oriental Insurance Company Ltd. Vs. Smt. Jeti Devi and Ors.** reported in **2017 (1) ACTC Raj 266**. Counsel submits that no such cross-examination has been done on behalf of the Insurance Company in this regard, hence the evidence led in relation to the same has remained un-rebutted and the Tribunal has not committed any error in fastening the liability upon the Insurance Company to pay the amount of compensation along with the Driver and Owner of the offending vehicle jointly and severely by passing the impugned judgment and award dated 21.11.2020.

5. In rebuttal, counsel appearing on behalf of the Insurance Company opposes the arguments raised by counsel for the Driver and the Owner and submits that no proof has been placed on record where from it is gathered that the vehicle in question was not carrying any petroleum product but was carrying water inside the tanker. Hence, under these circumstances, the Driver and

Owner of the offending vehicle has failed to establish on record that the vehicle in question was carrying any petroleum product. Therefore, under these circumstances, there was a breach of the policy, as the Driver of the offending vehicle was not in the possession of desired Driving Licence, in terms of Section 14(2)(a) of the Act of 1988.

6. Accordingly, it is submitted that the impugned judgment and award be modified and the appellant-Insurance Company be exonerated from its liability to pay any compensation to the claimants.

7. Counsel appearing on behalf of the claimants submits that while passing the impugned judgment and award in favour of the claimants/dependents of the deceased, a separate amount under the head of 'loss of consortium' has not been granted to each of the claimants, in terms of the judgment passed by the Hon'ble Apex Court in the case of **National Insurance Company Limited vs. Pranay Sethi** reported in **2017(16) SCC 680**. Counsel further submits that in terms of the aforesaid judgment, each claimants are entitled to get a lump sum amount of Rs. 40,000/- independently. At the same time, in the case of the appeal submitted by the injured claimant, he submits that a lumpsum amount of compensation has been granted in favour of the injured claimant and the theory of multiplier has not been applied. Counsel submits that the age of the injured claimant was 38 years, at the time of the accident and in terms of the judgment passed by the Hon'ble Apex Court in the case of **Sarla Verma and Ors. Vs. Delhi Transport Corporation and Anr.**, reported

in **2009(6) SCC 121**, the multiplier of 15 ought to have been applied and an additional amount to the tune of 40% towards future prospects was also liable to be awarded in favour of the injured claimant in terms of the judgment passed by the Hon'ble Apex Court in the case of **Pranay Sethi** (Supra).

8. Heard and considered the submissions made at Bar and perused the material available on record.

9. Perusal of the record indicates that an accident has occurred on 03.05.2016 by the Truck Tanker bearing registration No. RJ-25-GA-2526. This fact is not in dispute that the aforesaid Tanker is manufactured for the purpose of carrying petroleum product and the same belongs to the Indian Oil Corporation. A legal submission has been raised by counsel appearing on behalf of the appellant-Insurance Company that in terms of Section 14(2)(a) of the Act of 1988, the Driver of the aforesaid tanker was not in possession of a valid Driving Licence at the time of the accident and there existed no endorsement in his Driving License stating that he was allowed to ply the said offending vehicle to carry hazardous products. However, such endorsement was made in his Driving Licence substantially on 23.05.2017.

10. Now the question which remains for consideration before this Court is "whether the tanker in question was carrying any hazardous product i.e. petroleum product or not at the time of accident?"

11. The vehicle was seized by the police on 04.05.2016 and no such averment has been made in the seizure memo (Ex.) 20 indicating whether the tanker in question was containing

petroleum or the same was found empty. However, contrary to the above, the Driver of the offending vehicle has stated on oath that the aforesaid vehicle was not carrying any petroleum product rather the same was carrying water, at the time of accident. An information has been obtained from the Indian Oil Corporation in the form of letter dated 04.01.2019 (Ex. NA-1), issued by the concerned Competent Officer of the petroleum company, which indicates that the vehicle bearing registration No. RJ-25-AG-2526 was not containing any petroleum product in between 02.05.2016-04.05.2016 and the accident has occurred on 03.05.2016. Hence under these circumstance with no stretch of imagination it can be believed and relied upon that the offending vehicle was carrying any petroleum product on the date of the accident.

12. The controversy involved in these appeals submitted by the Insurance Company pertaining to holding a valid Driving Licence by the Driver, has already been set at rest by the Co-ordinate Bench of this Court at Principal Seat at Jodhpur in the case **Smt. Jeti Devi (Supra)** by holding as under:-

> "A bare look at the provision reveals that the requirement of licence under the said provision is to drive a transport vehicle carrying goods of dangerous or hazardous nature. The word "carrying" is significant i.e. if at the relevant time the vehicle is filled with dangerous or hazardous nature goods, the endorsement in this regard on the licence of the driver of such vehicle is necessary, however, if at the relevant time the vehicle is empty and is not carrying dangerous or hazardous nature goods, the requirement of endorsement on the driving licence is not necessary and the driver having driving licence to drive transport vehicle is entitled to drive such a vehicle and in case at the time of accident the vehicle is empty and is not

> carrying dangerous or hazardous nature goods, a person having driving licence to drive that vehicle would not be violating the requirement of law and consequently conditions of policy of having valid and effective licence with the driver at the time of accident."

13. This Court finds no substance in the arguments raised by counsel for the Insurance Company that the vehicle was not carrying any petroleum product at the time of accident. Meaning thereby, that no goods of hazardous nature were being carried by the vehicle in question at the time of accident, hence, under these circumstances, the Driver of the offending vehicle was not supposed to carry a Driving Licence in terms of the provisions contained under Section 14(2)(a) of the Act of 1988. Therefore, it can safely be held that the Tribunal has not committed any error in holding that the Insurance Company as well as the Driver and Owner of the offending vehicle are jointly and severely liable to pay the amount of compensation to the claimants.

14. Now, this Court proceeds further to decide the issue raised by the claimants in their respective appeals.

15. This fact is not in dispute that a lump sum amount of compensation under the head of 'loss of income' has been determined by the Tribunal in the case of the injured claimant at the time of passing of the award. Indisputably, the theory of multiplier is applicable in the case of death claim as well as for the injury claim submitted by the claimants, in terms of the judgment passed by the Hon'ble Apex Court in the case of **Sarla Verma** (Supra). Looking to the fact that at the time of accident, the age of the injured claimant was 38 years, hence, under these

circumstances, the multiplier of 15 is applicable for the purpose of granting compensation to the claimant. At the same time, the injured claimant is entitled to get an additional amount of compensation under the head of future prospects to the tune of 40%, in terms of the judgment passed by the Hon'ble Apex Court in the case of **Pranay Sethi** (Supra). So far as the claim petition submitted by the other claimants is concerned, each dependent of the deceased are entitled to get separate amount of Rs. 40,000/- under the 'head of loss of consortium'. Hence in both the appeals the claimants are entitled to get the following enhanced amount of compensation.

S.B. Civil Misc. Appeal No. 441/2021:-

(Injured-Claimant)

Annual Income (Along with 40% future prospects)	Rs. 31,500 X 12 = Rs.3,78,000 + 1,51,200 = Rs. 5,29,200/-
Multiplier to be applied	15 Rs. 5,29,200 X 15 = Rs. 79,38,000/-
Loss of Income (owing to 38.50% disability)	38.50% of Rs. 7938000 =30,56,130/-
Medical bill	22,939/-
Pain and Suffering	Rs. 40,000/-
Hospitalization charges (for 13 days)	500 X 13 = 6,500/-
Nutrition	15,000/-
Transportation charges	5000/-
Cost of special care	10,000/-
Total Compensation Awardable	Rs. 31,55,569/-
Less compensation awarded by the Tribunal	Rs. 2,99,439/-
Enhanced Compensation	Rs. 28,56,130/-

16. The appeal No. 441/2021 accordingly stands allowed and the impugned award passed by the Tribunal stands modified to the extent that the appellant-claimant is entitled to get a further sum of Rs. 28,56,130/- by way of the enhanced compensation and rest of the terms and conditions of the award shall remain intact.

17. It is further ordered that out of the enhanced amount a sum of Rs.1,00,000/- be deposited in the Savings Bank Account of the claimant and the remaining amount be deposited in a fixed deposit with any Nationalized Bank initially for a period of three years and the interest accrued on the said amount shall be paid to the claimant on monthly basis.

18. The respondents are directed to deposit the enhanced amount within a period of four weeks from today with interest @ 6% per annum from the date of filing of the claim petition.

In S.B. Civil Misc. Appeal No. 443/2021
Deceased – claimants.

Annual Income (along with 40% future prospects)	38000 X 12 = 4,56,000/- Rs. 456000 + 182400 = Rs. 63,8400/-
Multiplier to be applied	15 6,38,400 X 15 = Rs. 95,76,000/-
Deduction towards personal expenses (1/4)	95,76,000 X ¾ = Rs. 71,82,000/-
Loss of consortium	40,000 X 4 1,60,000/-
Loss of estate	15,000/-
Funeral expenses	15,000/-
Total compensation awardable	Rs. 73,72,000/-
Less amount awarded by the Tribunal	Rs. 70,22,700/-
Enhanced amount of compensation	Rs. 3,49,300/-

19. The appeal No. 443/2021 accordingly stands allowed and the impugned award passed by the Tribunal stands modified to the extent that the claimants are entitled to get a further sum of Rs. 3,49,300/-by way of the enhanced compensation and the rest of the terms and conditions of the award shall remain intact.

20. It is further ordered that out of the enhanced amount a sum of Rs.50,000/- be deposited in the Savings Bank Account of the claimant/respondent No.1 and the remaining amount be deposited in a fixed deposit with any Nationalized Bank initially for a period of three years and the interest accrued on the said amount shall be paid to the claimant/respondent No.1 on monthly basis.

21. The respondents are directed to deposit the enhanced amount within a period of four weeks from today with interest @ 6% per annum from the date of filing of the claim petition.

(ANOOP KUMAR DHAND),J

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