

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

*Reserved on: 12<sup>th</sup> July, 2013*  
*Pronounced on: 30<sup>th</sup> August, 2013*

+ **MAC.APP. 185/2009**

TARA SHARMA & ANR. .... Appellants

Through: Mr. Navneet Goyal, Adv. with  
Ms. Mamta Bhardwaj, Adv.

versus

THE NEW INDIA ASSURANCE CO.LTD. & ORS..... Respondent

Through: Mr. D.D. Singh, Adv. with  
Mr. Navdeep Singh, Adv. for R-1.  
Ms. Arati Mahajan, Adv. for R-4/DTC.

+ **MAC.APP. 236/2009**

THE NEW INDIA ASSURANCE CO. LTD. .... Appellant

Through: Mr. D.D. Singh, Adv. with  
Mr. Navdeep Singh, Adv.

versus

RAKESH AHUJA & ORS. .... Respondent

Through: Mr. Navneet Goyal, Adv. with  
Ms. Mamta Bhardwaj, Adv. for R-3.

+ **MAC.APP. 238/2009**

THE NEW INDIA ASSURANCE CO. LTD. .... Appellant

Through: Mr. D.D. Singh, Adv. with  
Mr. Navdeep Singh, Adv.

versus

RAKESH AHUJA & ORS .... Respondent

Through: Mr. Navneet Goyal, Adv. with  
Ms. Mamta Bhardwaj, Adv. for R-3 to  
R-6.

**CORAM:**  
**HON'BLE MR. JUSTICE G.P.MITTAL**

**J U D G M E N T**

**G. P. MITTAL, J.**

**CM. 7068/2009 (delay) in MAC APP.238/2009**

There is a delay of 93 days in filing the Appeal.

For the reasons as stated in the Application, the delay of 93 days in filing the Appeal is condoned.

The Application is allowed.

**MAC.APP. 185/2009, MAC.APP. 236/2009 & MAC.APP. 238/2009**

1. These three Appeals arise out of a common judgment dated 27.11.2008 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) in Suit No.313/2008 titled *Ajay Popli v. New India Assurance Company Limited & Ors.* and Suit No.319/2008 titled *Smt. Tara Sharma & Ors. v. New India Assurance Company Limited & Ors.*
2. MAC APP. 185/2009 is for enhancement of compensation preferred by the legal heirs of the deceased Naveen Chandra Sharma whereas MAC APPs.236/2009 and 328/2009 have been preferred by the New India Assurance Company Limited (the Insurance Company) on the ground that although the driving licence No.7620 held by the respondent Bachan Singh, the driver of the offending vehicle was found to be fake, the Claims Tribunal still made the Insurance Company liable to pay the compensation.
3. On 18.08.1999 at about 12:40 P.M. the deceased Naveen Chandra Sharma and Ajay Popli were driving on a two wheeler No.DL-7SC-4131.

The two wheeler was being driven by Naveen Chandra Sharma (the deceased) while respondent (the claimant) Ajay Popli was sitting on the pillion. When the two wheeler reached near Todapur Picket, a bus No.DL-1P-6097 being driven by Bachan Singh in a rash and negligent manner came on the wrong side and collided against the two wheeler. Ajay Popli and Naveen Chandra Sharma suffered injuries. The injuries suffered by Naveen Chandra Sharma proved to be fatal. Two separate claim petitions were filed, that is, one by injured Ajay Popli (Suit No.313/2008) and the other (Suit No.319/2008) by the legal representatives of the deceased Naveen Chandra Sharma.

4. The Claims Tribunal awarded a compensation of ₹22,81,825/- towards pecuniary and non-pecuniary damages in favour of Ajay Popli and a sum of ₹5,53,000/- for the loss of dependency and the non-pecuniary damages in favour of the legal heirs of the deceased Naveen Chandra Sharma.

**MAC.APP. 236/2009 & MAC.APP. 238/2009**

5. The only ground of challenge raised in these appeals is that the driving licence No.7260 held by the driver Bachan Singh and purported to have been issued by Licensing Officer, Pune was proved to be fake by the Insurance Company. Although another driving licence Mark A produced by Rakesh Ahuja, who was the owner of the Bus No. DL-1P-6097 was not got verified by the Insurance Company, yet in view of the provisions of Section 6 of the Motor Vehicles Act, 1932 (the Act) a driver cannot possess two driving licences and thus, the driving licence produced by Rakesh Ahuja, the owner of the bus (the insured) was of no consequence. Referring to *Jai Parkash Goyal v. United India Insurance Company Ltd. II (2010) CPJ 183 (NC)* the learned counsel for the Insurance Company

prayed that the impugned order so far as it makes the Insurance Company liable to pay the compensation is liable to be set aside and the Insurance Company is entitled to be exonerated.

6. On the other hand, learned counsel for the claimants argues that the onus is on the Insurance Company to prove that there is a willful and intentional breach of the terms of policy on the part of the insured. Rakesh Ahuja's (insured's) testimony as R1W1 that driver Bachan Singh had produced a driving licence issued by the Transport Authority, Mathura to him and that he had employed Bachan Singh after taking a driving test and finding him to be a skilled driver, was not challenged in cross-examination. The Insurance Company never tried to verify the genuineness of the driving licence Mark A although its copy was produced when the insured received a notice to produce the driving licence. The learned counsel for the claimants, therefore, argues that the Insurance Company cannot be permitted to take a plea of breach of the terms and conditions of the policy to avoid the liability. In support of his contention, the learned counsel placed reliance on *National Insurance Company Limited v. Swaran Singh & Ors.*, (2004) 3 SCC 297 and *United India Insurance Company Ltd. v. Lehru & Ors.*, (2003) 3 SCC 338.
7. It is true that Section 6 of the Act puts restrictions on holding of a second licence by any person while he holds any driving licence which is already in force.
8. I have perused the report of the National Consumer Dispute Redressal Commission in *Jai Prakash Goyal*. In the said case on facts the State Commission had found that the claimant himself, that is the owner of the vehicle had attached the driving licence No.S/7264/Una/93 in the name of

driver Satish Kumar in the claim form filed by him with the claim. The said driving licence on verification was found to be fake. In the instant case in pursuance of the notice given by the Insurance Company, the owner of the offending vehicle (Rakesh Ahuja) produced a copy of the driving licence Mark A. He stated that he took the driving test and found him (Bachan Singh) to be a skilled driver. The owner also deposed that he had seen the driving licence (Mark A) of Bachan Singh at the time he was employed by him. Thus, it is not a case where the insured was aware of the possession of two driving licences by the driver, thus, *Jai Parkash Goyal* relied upon by the learned counsel for the Insurance Company is not attracted to the facts of the present case.

9. In the case of *National Insurance Company Limited v. Swaran Singh & Ors.* 2004 (3) SCC 297, it was held that to avoid its liability towards the insured, insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the terms and conditions of the policy regarding use of vehicles by a duly licenced driver or one who was not disqualified to drive at the relevant time. It cannot be said that the Insurance Company has been able to discharge the onus of proving the negligence on the owner's part. On the other hand, there is ample evidence to show that the owner Rakesh Ahuja exercised due care to ensure that the vehicle is driven by a duly licenced driver. As stated above, R1W1's (Rakesh Ahuja's) testimony that he employed Bachan Singh on seeing his driving licence Mark A was not challenged in cross-examination.
10. In the case of *United India Insurance Company Ltd. v. Lehru & Ors.* 2003 (3) SCC 338, it was held by the Supreme Court that owner of a

vehicle while hiring a driver is not expected to check the records of the licensing officer to satisfy himself that the driving licence is genuine. If the driver produces a driving licence which on the face of it looks genuine, the owner cannot be said to be negligent. I would extract Para 20 of the report hereunder:-

*“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 should 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 RTO's, 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 above 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 notice 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. This is the law which has been laid down in *Skiandia's Sohan Lal Passi's* and *Kamla's* cases. We are in full agreement with the views expressed therein and see no reason to take a different view.”*

11. Thus, the Insurance Company failed to prove any willful or conscious breach of the terms and conditions of the policy. It may also be noted that Section 6 of the Act puts restrictions on a person holding a second driving licence while he holds any driving licence which is in force. A fake driving licence cannot be said to be a driving licence for the time being in force. Thus, even if it is assumed that the owner was aware of the driving

licence issued by the Licensing Officer, Pune if the same was found to be fake then the said driving licence shall be deemed to be not in force. Therefore, the Claims Tribunal's order making the Insurance Company liable to pay the compensation cannot be faulted.

12. No other ground has been raised by the Insurance Company in these two appeals. Both the appeals are accordingly dismissed.

**MAC.APP. 185/2009**

13. In this appeal the appellants who are parents and siblings of the deceased Naveen Chandra Sharma seek enhancement of compensation on the following grounds:-

- (i) Deceased Naveen Chandra Sharma's income was proved as ₹8450/- per month, the Claims Tribunal ought to have computed the compensation on this amount after making addition towards future prospects;
- (ii) Keeping in view the age of the mother of the deceased, which was about 50 years, the Claims Tribunal ought to have adopted the multiplier of '13' as against '8' applied by it; and
- (iii) The compensation awarded towards non pecuniary damages is on the lower side.

14. On the other hand, the learned counsel for the Insurance Company submitted that the compensation awarded is just and reasonable and did not call for any interference.

15. During inquiry before the Claims Tribunal, the claimants put up a case that deceased Naveen Chandra Sharma had an income of ₹5500/- per month from M/s. Parkash Brassware Industries, in addition he had an income of ₹2950/- per month from M/s. Aakar Creation where he was doing part time job. The Claims Tribunal believed the deceased's income to be ₹5500/- per month on the basis of the muster roll Ex.PW-2/1 to Ex.PW-2/3, the extract of entries from the salary register Exs.PW-2/4 to PW-2/6 and the certificate Ex.PW-2/7 issued by the accountant. The Claims Tribunal held that no document had been placed on record by the claimants to prove that the deceased had an income of ₹2950/- from part time employment with M/s. Aakar Creation.
16. In order to prove the deceased's income the claimants examined Gour Charan Sharma (PW-1) the deceased's father and M.K. Sharma (PW-2) Manager M/s. Parkash Brassware Industries. Income of ₹5500/- from M/s. Parkash Brassware Industries was accepted by the Claims Tribunal. Income of ₹2950/- as part time Production Controller from M/s. Aakar Creation was rejected on the premise that no document had been placed on record by the claimants to prove this income. This finding of the Claims Tribunal cannot be accepted as it is contrary to the record.
17. Coming to the oral evidence in his Affidavit dated 20.09.2003 PW-1 swore that the deceased was getting a salary of ₹2950/- from M/s. Aakar Creation as Production Controller on part time basis. He also proved a certificate Ex.PN issued by its Proprietor Bal Kishan in this regard. Admittedly, Bal Kishan was not produced to prove the certificate Ex.PN but, at the same time, neither the certificate nor PW-1's testimony that the deceased was working as a part time Production Controller was



challenged in cross-examination by the Insurance Company. Thus, on the basis of the preponderance of probabilities the income of ₹2950/- per month as part time Production Controller was sufficiently proved by the claimants. The same ought to have been taken into account to determine the loss of dependency.

18. Coming to the multiplier to be adopted, in the ration card Ex.PM, the age of Smt. Tara Sharma, mother of the deceased was stated as 50 years. This ration card was issued in the year 1998. Thus, according to the ration card, she was about 51 years at the time of the accident. In his affidavit, PW-1 Gaur Charan Sharma stated the age of Smt. Tara Sharma to be about 58 years on 20.09.2003, that is on the date the Affidavit was sworn in. Thus, according to the ration card either way Smt. Tara Sharma was aged between 51 to 55 years on the date of the accident. As per *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121 in case of death of a bachelor, the age of the mother of the deceased is to be taken into consideration to select the multiplier to compute the loss of dependency. The appropriate multiplier in the age group of 51 to 55 years is '11'.
19. The deceased was a graduate from Punjab University. He had a good track record with his previous employers and sufficient experience. The claimants were therefore, entitled to an addition of 50% towards future prospects in view of the law laid down in *Sarla Verma* and approved by the three Judge Bench decision of the Supreme Court in *Reshma Kumari & Ors. v. Madan Mohan & Anr.* 2013 (5) SCALE 160. Although, there were four claimants, that is, two parents and two siblings, no evidence was produced by the claimants that the deceased's father was not working

or that the siblings were fully dependant on the deceased. In this view of the matter, there has been deduction of 50% towards personal and living expenses as against one-third made by the Claims Tribunal. The loss of dependency thus comes to ₹8,36,550/- (5500/- + 2950/- + 50% x 1/2 x 12 x 11) as against ₹ 5,28,000/- awarded by the Claims Tribunal.

20. The Claims Tribunal awarded a sum of ₹25,000/- in all towards loss of love and affection, funeral expenses and loss to estate. Loss of love and affection can never be measured in terms of money. Thus, uniformity has to be adopted by the Courts while granting non-pecuniary damages. The Supreme Court in *Sunil Sharma v. Bachitar Singh* (2011) 11 SCC 425 and in *Baby Radhika Gupta v. Oriental Insurance Company Limited* (2009) 17 SCC 627 granted only ₹25,000/- (in total to all the claimants) under the head of loss of love and affection. Thus, I would enhance the compensation under this head to ₹25,000/-.
21. In addition, the claimants are awarded ₹10,000/- each towards funeral expenses and loss to estate.
22. The overall compensation is re-computed as under:-

Sl.No.	Compensation under various heads	Awarded by the Claims Tribunal	Awarded by this Court
1.	Loss of Dependency	₹5,28,000/-	₹8,36,550/-
2.	Loss of Love & Affection	₹ 25,000/-	₹ 25,000/-
	Funeral Expenses	( in all)	₹ 10,000/-
	Loss to Estate		₹ 10,000/-
	<b>Total</b>	<b>₹ 5,53,000/-</b>	<b>₹ 8,81,550/-</b>

23. The compensation thus stands enhanced by ₹3,28,550/- which shall carry interest @ 7.5% per annum as awarded by the Claims Tribunal.
24. The New India Assurance Company Limited is directed to deposit the enhanced compensation along with proportionate interest with the Registrar General of this Court within six weeks.
25. The compensation already deposited shall be released in favour of the claimants, if not already released. The enhanced compensation along with proportionate interest shall be equally distributed amongst the parents of the deceased, that is, appellants/claimants no.1 and 2. Since the claimants No.1 and 2 are in the advance stage of their life, 50% of the enhanced compensation shall be deposited in UCO Bank, Delhi High Court Branch, New Delhi in the form of FDR for a period of two years. Rest 50% along with proportionate interest shall be released on deposit.
26. MAC APP.185/2009 is allowed in above terms.
27. The statutory deposit of ₹25,000/- shall be refunded to the Appellant Insurance Company in MAC APP.236/2009 and MAC APP.238/2009.
28. Pending Applications also stand disposed of.

**(G.P. MITTAL)**  
**JUDGE**

**AUGUST 30, 2013**

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