

**Amar Singh and anr. Vs. Atma Singh and anr.**

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**Court :** Delhi

**Decided On :** Aug-07-1985

**Reported in :** 2(1985)ACC451

**Judge :** Sultan Singh, J.

**Appellant :** Amar Singh and anr.

**Respondent :** Atma Singh and anr.

**Judgement :**

**Sultan Singh, J.**

1. This appeal Under Section 110-D of the Motor Vehicles Act, 1939 (hereinafter called the Act') is directed against the award of the Motor Accident claims Tribunal, Delhi dated 19th October, 1973 granting a sum of Rs. 5,000/- as compensation to the appellants against the owner, and driver of the vehicle. They were allowed two months time to deposit the amount and in default future interest @ 6 per annum was payable from the date of the award till realisation.

2. Ramesh son of Amar Singh aged about 6 years met with an accident on 18th July, 1966 at about 5.45 p.m. on the road connecting Railway Phatak and Shahdara Main Bazar, Delhi. He received injuries on head and chest etc. He was removed to hospital but he died. It has been alleged that the accident took place due to negligence, carelessness and recklessness of the driver of Motor Truck No.

DIG-1023 while driving the same in due course of his employment with the knowledge, permission, express or implied of the owner of the vehicle, that truck was coming at a fast speed from Railway Phatak side and knocked down the deceased from the front portion. The claims tribunal held that Ramesh aged 6 years died as a result of injury sustained by him in a motor vehicle accident due to rash and negligent driving on the part of the driver, that Ramesh was not guilty of contributory negligence and the appellants who are the parents of the deceased were entitled to claims compensation. The tribunal however held that the insurer M/s. Vanguard Insurance Company was not liable on the ground that the claimants-appellants had not lead any evidence to establish the insurance of the said vehicle.

3. The appellants have filed this appeal for enhancement of compensation to Rs. 15,000/- as originally claimed by them and interest from the date of the compensation application till realisation. They further claims that the insurance company is liable for the entire amount.

4. learned Counsel for the appellants submits that the claims of Rs. 15,000/- as compensation on account of the death of the minor son is a just amount of compensation. The deceased was of good health, he was admitted in a private school for education and his father was to give him higher education His father aged 43/44 at that time has been a contractor earning about Rs. 500/-600/- per month. learned Counsel submits that the sum of Rs. 5,000/- awarded by the claims Tribunal was highly inadequate. He submits that normal expectancy of life of the deceased and the mental shock suffered by the parents on account of the loss of their child, are the two criteria for determination of the compensation. He submits that the deceased was six years of age when he met with an accident and in ordinary course he was expected to live for 70 years. The father of the deceased was a contractor and was earning Rs. 500/- to Rs. 600/- per month and it would be reasonable to expect that if the deceased had survived he would have certainly gone to school and would have completed his education at the age of 21 years and thereafter he would have done some work and service. His father has been earning Rs. 500/-, 600/- and the deceased would have also earned that much. The deceased would have been much more than Rs. 15,000/- claimed by

the appellants. Moreover the appellants suffered mental shock. This aspect of the case has not been dealt by the claims Tribunal. Considering the income of the father of the deceased at Rs. 500/- per month. I am of the opinion that a sum of Rs. 5,000/- as compensation is not just but highly inadequate. I am therefore of the opinion that the claims Tribunal ought to have awarded the sum of Rs. 15,000/- to the claimants as claimed by them. In *Rashid Husain and Anr. v. Union of India*, 11(1984) ACC 458 a child of five years met with an accident. His father was drawing Rs. 480/- per month as a clerk. He was awarded Rs. 15,000/- as claimed by him.

5. The next question is about the interest on the awarded amount. The accident took place in 1966. It appears that the owner deposited the sum of Rs. 5,000/- before the Tribunal which amount has since been paid to the claimants-appellants. In view of the present economic conditions and the bank rate of interest it would be reasonable to award interest at 12 per cent per annum (See: *Narcinva v. Kamat and Anr. v. Alfredo Antonio Doe Martins and Ors.* 1985 ACJ 397 (SC)). The appellants are thus held entitled to interest Under Section 110-CC of the Act at 12 per cent per annum from date of the claims petition till the date of realisation.

6. learned Counsel next submits that the Tribunal erred in not making the insurance company liable to pay the amount of compensation. He submits that Under Section 96 of the Act when the owner insured has been held liable, the insurance company is liable to satisfy the award. He further submits that the insurance company in its written statement admitted that the vehicle was insured with it, and therefore the onus was upon the respondent insurance company to place material on record to show that it was not liable for the entire amount of compensation. He submits that the Tribunal erred in holding that it was for the appellants to place material on record to show that the vehicle in question was insured with the insurance company. I do not appreciate how the appellants are required to prove that the vehicle was insured with the insurance company, when the insurance company itself admits that the vehicle was insured. In the written statement the fact of insurance of the vehicle was admitted. The plea was that there was transfer of ownership and therefore insurance lapsed on transfer of the vehicle. The Insurance Company did not place any copy of the insurance policy.

No evidence was produced to show that the vehicle in question was ever transferred. It is admitted that the contract of insurance has not been proved. If there no insurance contract is proved its liability in respect of the accident must be held for the full amount. The remedy of the insurer, if any against the insured is provided in Section 96(4) of the Act. It has been held in *The Oriental Fire and General Insurance Co. Ltd. v. Mrs. Leelavati Radianathaya and Ors.* 1976(12) DLT 163, *Shyam Lal and Ors. v. The New India Assurance Co. Ltd. and Anr.* 1979 ACJ 208 and *National Insurance Co Ltd v. Narender Kumar and Ors.* 1981 ACJ 98 that if the insurance company failed to prove the contract of insurance it must bear the consequences and the insurance company was held liable for the full amount.

7. learned Counsel for the insurer submits that Section 95(2) of the Act prescribes the minimum requirement of insurance policy and therefore the insurer is not liable to pay more than the limit prescribed under the said section. It is correct but the insurance company has failed to prove the terms of policy. It is open to the insurer to cover the risk to a larger extent. As the insurance company did not prove the contract of insurance it must be held that the insurance company is liable for the full amount.

8. learned Counsel for the owner has argued that he is not liable and only the insurance company is liable for the full amount. I do not agree. There is joint liability. The owner has filed an application (C.M. No. 4701 of 1984) under Order 41 Rule 27 of the Code, along with a copy of the insurance policy 326715 in respect of Truck No.DLG 1023 in the name of Atma Singh valid for the period from 2nd June, 1966 to 1st June 1967. It is alleged that the original policy was filed by the owner in another litigation between the owner and the insurance company which is pending before the trial court. A copy of the insurance policy cannot be taken on record at this stage. In *State o/U.P. v. Manbodhan Lal Srivastava* : (1958)IILLJ273SC it has been held that additional evidence should not be permitted at the appellate stage in Older to enable one of the parties to remove certain lacunae in presenting its case at the proper stage and to fill in gaps. It has been further observed that the position is different where the appellate court itself requires certain evidence to be adduced in order to enable it to do justice between the parties. Similar observations have been made in *Natha Singh v. The Financial*

Commissioner : [1976]3SCR620 .This Court does not require any additional evidence. The material on record is sufficient for the disposal of the present appeal. The application for additional evidence is therefore dismissed.

9. M/s. Vanguard Insurance Co. Ltd. was the insurer of the vehicle in question. Section 16 of the General Insurance (Nationalisation) Act, 1972 provides for merger of one insurance company with another insurance company. The Central Government by Notification No. SO 803 (E) dated 31st December, 1973 Ministry of Finance (Department of Revenue and Insurance) framed a scheme amalgamating the Vanguard Insurance Company Ltd. with other companies and the business thereof was transferred to the New India Assurance Company Ltd. with effect from 1st January, 1974. This notification is published in the Gazette of India Extraordinary Part II Section 3 Sub-section (ii) dated 31st December, 1974. Thus the effect of the transfer is that New India Assurance Company Ltd. is liable to satisfy the amount awarded against Vanguard Insurance Co. Ltd.

10. This appeal is accordingly accepted. The amount of compensation is enhanced from Rs. 5,000/- to Rs. 15,000/- with interest @ 12 per cent per annum from the date of filing of the claims i.e. 16th September 1966 till payment, with costs of the proceedings before the claims Tribunal and the costs of this appeal in favor of the appellants against the respondents. The entire amount shall be payable by the New India Assurance Company Ltd. the owner Atma Singh jointly and severally. The appellants shall be entitled to realise the entire amount from the insurance company. In case the insurance company is not liable for any reason it may seek its remedy against the insured Under Section 96(4) of the Motor Vehicles Act, 1939.