THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Appellate Jurisdiction)

DATED: 8th June, 2017

Single Bench : HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE

MAC App. No. 13 of 2016

Appellant **:** Shri Binod Kumar Agarwal,
Son of late K.R. Agarwal,
R/o Singtam Bazar,
P.O. & P.S Singtam,
East Sikkim.

versus

Respondents **:** 1. Shri Ratna Kumar Chettri,
Son of late Sher Bahadur Chettri,

2. Mrs. Chandra Maya Chettri,
Wife of Ratna Kumar Chettri,

3. Shri Purna Kumar Chettri,
Son of Ratna Kumar Chettri,

All residents of Yangthang,
Martam Dochay,
P.O. Martam, P.S. Singtam,
East Sikkim.

4. The Branch Manager,
National Insurance Co. Ltd.,
National Highway,
Gangtok,
East Sikkim.

Appeal under Section 173 of the Motor Vehicles Act, 1988.

Mr. Sudesh Joshi, Advocate for the Appellant.

Mr. K.B. Chettri, Advocate for the Respondents No.1, 2 and 3.

Mr. Thupden G. Bhutia, Advocate for the Respondent No.4.

J U D G M E N T

Meenakshi Madan Rai, J.

1. The Appellant, owner of the vehicle in accident, was ordered to pay compensation of Rs.10,26,000/- (Rupees ten lakhs, twenty-six thousand) only, with interest @ 10% per annum to the Respondents 1, 2 and 3, on account of the death of the nine year old daughter of the Respondents No. 1 and 2 and sibling of the Respondent No.3, vide the impugned Judgment dated 31.8.2016, in MACT Case No. 23 of 2015, by the learned Motor Accidents Claims Tribunal, East District at Gangtok (for short 'learned Tribunal'). The Insurance Company, Respondent No.4 was exonerated, hence, this Appeal.

2. The Respondents No.1, 2 and 3 herein, were the Claimants No. 1, 2 and 3 before the learned Tribunal. The Appellant was the Opposite Party No.1 and the Respondent No.4, the Opposite Party No.2.

3. Learned Counsel for the Appellant would advance the argument that the learned Tribunal erred in directing the Appellant instead of the Respondent No.4, to pay the compensation, on the ground that the vehicle at the time of accident was driven by an unlicensed and unauthorised person, namely one Nirmal Sharma. In fact, the Appellant had handed over the vehicle to the licensed and authorised Driver, Nima Sherpa, the vehicle being duly insured with the Respondent No.4, the liability ought to have been fixed on him, there being no willful breach of statutory or

contractual obligation by the Appellant or proof furnished thereof by the Respondent No.4. Drawing the attention of this Court to the provisions of Section 149(2)(a)(ii) of the Motor Vehicles Act, 1988 (for short "M.V. Act"), it was contended that it is akin to the provisions of Section 96(2)(b)(ii) of the Motor Vehicles Act, 1939 (for short 'Act of 1939') and the Supreme Court in ***Skandia Insurance Company ltd. v. Kokilaben Chandravadan and Ors.***[1], while dealing with the said provision, on similar facts, held, that the exclusion clause in the contract of insurance, making the owner absolutely liable, irrespective of circumstances leading to an unlicensed driver driving the vehicle must be "read down", being in conflict with the main statutory provision. Further, while discussing the extent of vicarious liability of the owner, held that the owner was not liable where the accident was caused by an unlicensed person, when the licensed driver employed by the owner left the vehicle unattended, contrary to express or implied orders of the owner.

3.(a) Calling attention to the quantum of compensation, it was contended that the Respondents No. 1, 2 and 3 have failed to prove that the income of the deceased was Rs.6000/- (Rupees six thousand) only, per month, hence the claim of Rs.10,50,500/- (Rupees ten lakhs, fifty thousand and five hundred) only, is not maintainable. That, the Supreme Court in the case of ***Manju Devi and another v. Musafir Paswan and Anr.,*** has held that in a case of

1. (1987) 2 SCC 654
2. (2005) ACJ 99 (SC)

a non earning minor victim, the multiplier of '15' would have to be applied and as per the Second Schedule of the M.V. Act, a sum of Rs.15,000/- (Rupees fifteen thousand) only, must be taken as annual income. Thus, the Judgment of this High Court in ***Branch Manager, National Insurance Company Limited vs. Krishna Bdr. Chettri & Others***[3]***,*** wherein the income of the victim, a child of 15 years, was assessed at Rs.4500/- (Rupees four thousand and five hundred) only, per month, is not a binding precedent being *per incuriam*. It was further urged that the High Court of Delhi, Gauhati and Madras have followed the precedent laid down in ***Manju Devi***[2] and hence, compensation be computed accordingly in the instant matter. Relying on the decision of ***Sarla Verma (Smt) and Others v. Delhi Transport Corporation and Another***[4] and ***Rajesh & Ors v. Rajbir Singh & Ors.***[5], it was urged that the said Judgments lay down that 50% ought to be added as future income only when the person has a permanent job and in consideration of the age of the victim, no future income is to be computed herein for obvious reasons.

4. Learned Counsel for the Respondents No.1, 2 and 3, while submitting that the Judgment of the learned Tribunal requires no interference conceded that this Court in ***The Branch Manager, National Insurance Company Ltd. Vs. Pankaj Kumar Balabhai Kapadia and Others***[6], had placed the notional income of the victim,

---

3. MANU/SI/0025/2014
4. (2009) 6 SCC 121
5. (2013) 9 SCC 54
6. MANU/SI/0002/2017

an eight year old child, at Rs.30,000/- (Rupees thirty thousand) only, per annum and calculated the compensation by applying the multiplier of '15'. Therefore, the same principle ought to apply and be granted in the instant matter.

5. Learned Counsel for the Respondent No.4, refuting the submissions of the Appellant, contended that there is no dispute with regard to the Insurance Policy or the fact that the driver at the time of accident was unlicensed, as sufficiently established before the learned Tribunal. However, the Respondent No.4 is not liable to pay compensation in view of Section 149(2)(a)(ii) of the M.V. Act, which clearly provides that for an Insurance Company to be liable in respect of third party risk, the vehicle should be driven by a duly licensed person, which admittedly was not so in the matter at hand. That, the owner is vicariously liable for the act of his employee as held in the impugned Judgment, which therefore, warrants no interference. In order to buttress his submissions, reliance was placed on ***State of Maharashtra v. Kanchan Mala Vijaysingh Shirke***[7]***, Pushpabai P. Udeshi v. M.S. Rangit Ginning & Pressing Co. Pvt. Ltd.***[8] and ***S. Kaushnuma Begum v. New India Assurance Co. Ltd.***[9]***.*** The arguments of the Respondent No.4 were confined to the question of vicarious liability and did not address the issue of the quantum of compensation.

7. AIR 1995 SC 2499
8. (1977) 2 SCC 745
9. AIR 2011 SC 485

6. Having heard the rival contentions of the learned Counsel in *extenso*, what requires determination are;

> (1) Whether the Appellant is vicariously liable to indemnify the Respondents No.1, 2 and 3 or whether the liability rests on the Respondent No.4?
>
> (2) Whether the learned Tribunal computed the compensation correctly?

7. The facts are being briefly adverted to for clarity. On 4.1.2013, the Victim, Chali Maya Chettri, aged about nine years was travelling with her Aunt in the Utility vehicle bearing No. SK-01D/1263. The vehicle was duly insured with the Respondent No. 4 and was to have been driven by the licensed and authorised driver of the vehicle, Nima Sherpa. As providence would have it, the authorised driver admittedly handed over the vehicle to one Nirmal Sharma, an unlicensed and unauthorised person, who on account of his rash and negligent driving, caused the tragic accident, resulting in the fatality of the nine year old Victim. Hence, the prayers for compensation. The Appellant and the Respondent No.4 raised the same grounds before the learned Tribunal as have been urged in Appeal and reflected hereinabove.

8. The ld Tribunal framed one Issue for settlement, i.e.,

> "(1) Whether the claimants are entitled to the compensation claimed? If so, who is liable to compensate them?"

9. Pending proceedings, the Respondent No.4 under Section 140 of the M.V. Act, was directed to pay interim relief of

Rs.50,000/- (Rupees fifty thousand) only, to the Respondents No. 1, 2 and 3. Thereafter, on examination of the Respondent No.1 and the Appellant, the Respondent No.4 having no witness to examine, the final arguments were heard and the impugned Judgment pronounced.

10. Now turning to address the Issue as to whether the Appellant was vicariously liable to indemnify the Respondents No.1, 2 and 3, or did the liability rest on the Respondent No.4? It goes without saying that the employer is responsible for the tort committed by his servants, based on the maxim "respondent superior" which means that "he who employs another to do something does it himself". The fact that one person is in a legal sense the servant of another does not itself render the master liable for every tort that the servant may commit, he would however be liable for such torts as are committed in the course of employment and not without. Where the master himself has ordered the wrongful act, he would be liable for the tort, however, even where the master's order is in itself not wrongful but is executed in a wrongful manner by the servant, the act of the servant is considered within the course of such employment and falls under the doctrine of "respondent superior". We may usefully refer to the decision in ***Ricketts v. Thos. Tilling Ltd.***[10], wherein the facts were that the driver of the bus permitted the conductor to drive the bus for the purpose of turning it in the right direction for

---

10. (1915) 1 KB 644

the next journey. The driver sat by the side of the conductor. The conductor drove the bus negligently and knocked down the plaintiff. The Court held the master vicariously liable because the driver was negligent in the performance of the master's work.

11. The principle enunciated in this case was discussed in ***Sitaram Motilal Kalal v. Santanuprasad Jaishanker Bhatt***[11], the facts being that Sitaram referred to as the first defendant therein, had entrusted his car to one Mohammed Yakub Haji, the second defendant, for plying his taxi in Ahmedabad. The second defendant appointed the third defendant as a cleaner for the said taxi, trained him to drive the car and took him to the office of the Regional Transport Authority to obtain a driving license. At about 5:00 p.m., when the plaintiff was in the compound of the said office, the third defendant who was driving the car suddenly accelerated, as a consequence of which, the vehicle dashed against a pillar of the gate, pinning the plaintiff's leg between the compound wall and the gate, resulting in its amputation. The learned Civil Judge dismissed the Suit against the 4th defendant, the Insurance Company and exonerated the 1st defendant from liability. The Suit was decreed against the defendants 2 and 3, in a sum of Rs.20,000/- (Rupees twenty thousand) only. The plaintiff preferred an appeal before the High Court. The Division Bench concluded that the 2nd defendant appointed the 3rd defendant with the consent of the 1st defendant, who would thus, be liable for the

---

11. AIR 1966 SC 1697

damages caused by the defendants No. 2 and 3. So far as the 4th defendant was concerned, the High Court held that in view of Section 96(1) of the Motor Vehicles Act, 1939, no decree could be passed directly against it but the decree against the 1st defendant could be executed against it, in terms of the said Section. The Suit was thus decreed in favour of the plaintiff and against defendants 1, 2 and 3 with costs. In Appeal by the 1st defendant, before the Supreme Court, K. Subba Rao **J.** in his dissenting Judgment, while agreeing with the High Court, held that the third defendant was the employee of the first defendant in his capacity as an assistant to the 2nd defendant. In that event the first defendant i.e. the owner, would certainly be liable in damages for the accident caused by the third defendant's negligence, during the course of his employment.

12. The majority opinion authored by Hidayatulla **J.** (with Bachawat **J.**) while discussing the facts of the case found that the second defendant was a servant of the owner and the third defendant was a servant of the second defendant or at best a cleaner of the taxi. That, there was evidence to show that the second defendant was present when the vehicle was borrowed for taking the test and had willingly allowed the third defendant to drive the vehicle for the purpose. On these facts, the question was whether the owner of the vehicle can be held responsible. While discussing the vicarious liability of the owner, ***Ricketts***[10] case was considered and the learned Judges distinguished it from the aforesaid facts as under;

> *"**28.** Rickett's case, 1915-1 KB 644 at pp. 646, 650 which was relied upon by the respondent is a case in which the driver of an omnibus asked the conductor to drive the omnibus and turn it round to make it face in the right direction for the next journey The master was held liable vicariously, because the driver was negligent in the performance of the master's work. The driver in fact was seated by the side of the conductor at the time when the omnibus was turned round. In other words, the turning round of the vehicle was an act within the employer's business and not something outside it. When the driver asked the conductor to drive the omnibus for his master's business, he did the master's work in a negligent way. The master was therefore rightly held responsible."*

13. It was analysed by their Lordships that the driver in ***Ricketts***[10] case was present and had asked the conductor to carry out the work which he was employed to do, this negligence made the omnibus company liable. The case in ***Beard v. London General Omnibus Co.*** [1900-2 QB 530]***,*** was also considered, wherein the conductor attempted to turn the omnibus on his own initiative and caused an accident. Here the Company was not held liable, because it was not a part of the conductor's duty to drive the omnibus and it was not negligence in the course of his employment. The Court also went on to discuss ***Samson v. Aitchison*** [1912 AC 844], where it was observed by Lord Atkinson that it is a matter of indifference whether a person be styled a servant or agent, since it is the retention of control which makes the owner or the principal responsible. Just as the tort must be committed by a servant either under the actual control of his master or while acting in the course of his employment, the act of the agent will only make the principal liable if it is done within the scope of this authority. That, in the case of ***Engelhart vs. Farrant*** [1897-1-QB 240], two servants were engaged upon their master's business. One to drive a cart and mind the horses and the other, a boy – travelling in the

cart to deliver parcels. The driver left the cart unattended and the boy drove it to deliver the parcels and caused the accident. The master was held responsible as the driver left the cart in the charge of the boy negligently, in the course of his masters business. It was observed that in ***Ricketts***[10] and ***Engelhart's*** case (*supra*), each servant was acting on the masters business at the time.

14. A series of other English decisions were also referred to by the Supreme Court and after applying the tests to the facts of the case, the majority view was that there was no proof that the second defendant i.e. Muhammad Yakub Haji, was authorized to coach the cleaner to enable him to become a driver to drive the taxi. The majority view was that in all probability, the second defendant wanted someone to assist him, part time, in driving the taxi and was thus training the third defendant. That, the owner had on oath stated that he had not given any such authority to the second defendant and the learned Trial Judge accepted that evidence. The High Court, however, differed from the Trial Judge by relying upon inadmissible evidence. Once the inadmissible evidence was excluded it was clear that the act was done not on the owners business but either on the business of the third defendant or that of the third and the second defendants together. It was also not proved to have been impliedly authorised by the owner or to come within any of the extensions of the doctrine of scope of employment. The act of the second and the third defendant viewed separately or collectively were not within the

scope of their respective or even joint employment and the owner was therefore not responsible. The appeal was allowed.

15. In ***Skandia Insurance Company ltd.***[1] relied on by the Appellant, the Supreme Court took up the question as to whether the insurer is entitled to claim immunity from a decree obtained by the dependents of the victim of a fatal accident, on the ground that the insurance policy provided *"a condition excluding driving by a named person or persons or by any person who is not duly licensed or by any person who has been disqualified for holding or obtaining a driving license during the period of disqualification and that such exclusion was permissible in the context of Section 96(2)(b)(ii)".* The facts therein were that a truck had come from Barejadi and had been unloaded at Baroda. The driver had gone to bring snacks from the opposite shop, leaving the engine running with the key in the ignition and not in the cabin of the truck as alleged by him. The driver was grossly negligent in leaving the truck with its running engine in the control of the cleaner, which became the immediate cause of the accident. The Claims Tribunal found the owner of the car *viz;* insured, to be vicariously liable along with the driver and the cleaner. The High Court, *inter alia,* held that the owner never gave permission to the cleaner to drive and therefore, the owner even though he had become liable by reason of his vicarious liability, could not be held guilty of the breach of the contractual condition embodied in the policy of insurance. Thus, the insurer could not plead any exemption on the ground that the owner had committed breach of the specified condition. Before the Supreme Court, it was

contended on behalf of the Insurance Company that since admittedly there was an exclusion clause, the insurance company would not be liable if at the point of time when the accident occurred, the person who had been driving the vehicle was not a person duly licensed to drive the vehicle. It was immaterial that the insured had engaged a licensed driver and had entrusted the vehicle for being driven by him. Once it was established that the accident occurred when an unlicensed person was at the wheels, the Insurance Company would be exonerated from the liability. The validity of this argument advanced in order to assail the view taken by the High Court was to be tested in the light of the provisions contained in Sections 96(1) and 96(2)(b)(ii) of the Act of 1939. The Supreme Court before doing so discussed several decisions of various High Courts on the same issue *viz;* in ***Sardar Nand Singh v. Abhyabala Debi*** [AIR 1955 Ass 157], the view taken therein was that the master is undoubtedly liable for the wrongful act, conduct or negligence of his servant, where the act or conduct or negligence occurs in the course of the masters employment or in furtherance of his interest, notwithstanding the fact that the servant may have been prohibited from doing such an act. However, the High Court proceeded to absolve the Insurance Company from the liability in the light of Section 96(2) of the Act of 1939 without examining or analyzing the provisions of the said section and had taken for granted that once it is established that the vehicle was driven by an unlicensed person, the Insurance Company stood exonerated.

16. In ***Shankar Rao vs. M/s Babulal Fouzdar and Anr.*** [AIR 1980 MP 154], the High Court exonerated the Insurance Company for the reason that, according to one of the terms of the policy of insurance, the insurer's liability is subject to the condition, that, the person driving the vehicle holds a license to drive a vehicle or has held and is not disqualified from holding or obtaining such a license and provided he is in the employment of the insured and is driving on his order or with his permission. Unless the person driving the vehicle falls in that category, the insurer is not liable under the policy and is therefore exempted from indemnifying the insured. In ***Orissa State Commercial Transport Corporation, Cuttack v. Dhumali Bewa*** [AIR 1982 Ori 70], the High Court concluded that the Insurer was not liable as the vehicle was driven by a person who had no driving license and the accident did not take place in a public place. The decision in ***Dwarka Prasad Jhunjhunwala and Anr. v. Sushila Devi*** [AIR 1983 Pat 246], was also taken up for consideration, where the liability of the owner was shifted to the Insurer as the vehicle was insured.

17. After considering the aforesaid decisions as reflected hereinabove, the Supreme Court found that the Judgments were buttressed by '*ipse dixit*' rather than rationality and, *inter alia*, observed that the question therefore deserves to be examined afresh on its own merits on principle. It opined that the proposition is incontrovertible that, so far as the owner of the vehicle is concerned, his vicarious liability for damages arising out of the accident cannot be disputed, having regard to the general

principles of law, as also having regard to the violation of the obligation imposed by Section 84 of the Act of 1939, which provides that no person driving or in charge of motor vehicle shall cause or allow the vehicle to remain stationary in any public place, unless there is in the driver's seat a person duly licensed to drive the vehicle or unless the mechanism has been stopped and a brake or brakes applied or such other measures taken as to ensure that the vehicle cannot accidentally be put in motion in the absence of the driver.

18. However, in the case of ***Skandia Insurance Company ltd.***[1], the appellant had contended that the exclusion clause is strictly in accordance with the statutorily permissible exclusion embodied in Section 96(2)(b)(ii) of the Act of 1939 and that under the circumstances the appellant Insurance Company is not under a legal obligation to satisfy the judgment procured by the respondents. Being in disagreement with the argument canvassed, the Supreme Court held in Paragraph 12 as follows;

> "12. The defence built on the exclusion clause cannot succeed for three reasons, viz;-
>
> 1. On a true interpretation of the relevant clause which interpretation is at peace with the conscience of Section 96, the condition excluding driving by a person not duly licensed is not absolute and the promisor is absolved once it is shown that he has done everything in his power to keep, honour, and fulfil the promise and he himself is not guilty of a deliberate breach.
>
> 2. Even if it is treated as an absolute promise, there is substantial compliance therewith upon an express or implied mandate being given to the licensed driver not to allow the vehicle to be left unattended so that it happens to be driven by an unlicensed driver.
>
> 3. The exclusion clause has to be 'read down' in order that it is not at war with the 'main purpose' of the provisions enacted for the protection of victims of accidents so that

> the promisor is exculpated when he does everything in his power to keep the promise."

19. The Supreme Court while reflecting on the reasons for insuring against third party risk was of the opinion that the provision has been inserted in order to protect the members of the Community travelling in vehicles or using the roads, from the risk attendant upon the user of motor vehicles on the road. If an accident occurs and compensation is awarded to the victims, then there ought to be a guarantee that, the compensation, would be recoverable from the persons held liable for the consequences of the accident. Thus, the legislature has made it obligatory that no motor vehicle shall be used, unless a third party insurance is in force. Further, in order to make the protection real, the legislature has also provided that the judgment obtained shall not be defeated by incorporation of the exclusion clause other than those authorized by Section 96 of the Act of 1939 and by providing that except and save to the extent permitted by Section 96 of the Act of 1939, it will be the obligation of the Insurance Company to satisfy the judgment obtained against the persons insured against third party risks. It was thus concluded that Section 96(2)(b)(ii) of the Act of 1939, extends immunity to the Insurance Company if a breach is committed of; "*a condition excluding driving by a named person or persons or by any person who is not duly licensed or by any person who has been disqualified for holding or obtaining a driving license during the period of disqualification…..*" That, if the insured was not at fault and had not done anything he should not have, or was not amiss in any respect, how could it be conscientiously posited that he had

committed a breach. It is only when the insured himself places the vehicle in charge of a person who does not hold a driving license that it can be said that he is guilty of the breach of the promise that the vehicle will be driven by a licensed driver. Unless, the insured is at fault and is guilty of a breach, the insurer cannot escape from the obligation to indemnify the insured and successfully contend that he is exonerated, having regard to the fact that the promisor (the insured) committed a breach of his promise. Therefore, it was concluded that the exclusion clause does not exonerate the insurer.

20. On the anvil of the aforesaid exposition, while addressing the case at hand, we may briefly glance through the provisions of Section 149(2)(a)(ii) of the M.V. Act, which is similar to the provisions of Section 96(2)(b)(ii) of the Act of 1939. The relevant portion is extracted hereunder;

> "149. Duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks. – (1) ……..
>
> (2) No sum shall be payable by an insurer under sub-section (1) in respect of any judgment or award unless, before the commencement of the proceedings in which the judgment or award is given the insurer had notice through the Court or, which the case may be, the Claims Tribunal of the bringing of the proceedings, or in respect of such judgment or award so long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely;
>
> (a) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely:-
>
> (i)…..
>
> (ii) a condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been

> disqualified for holding or obtaining a driving license during the period of disqualification; or
>
> (iii)….
> (b)….
> (3)……"

21. It may be reiterated that this Section provides an exclusion clause, inasmuch as the insurer will not be liable if there is a breach of the condition that the vehicle is driven by a named person or persons or by any person who is not duly licensed or has been disqualified from holding or obtaining a driving license during the period of disqualification. In the instant case at hand, it is clear that the insured had given the vehicle in the hands of his authorized and licensed driver, Nima Sherpa. The insured though not travelling in the same vehicle was of the firm belief that his employee would be driving the vehicle. As held in ***Skandia Insurance Company ltd.***[1], when the insured has done everything within his power *inasmuch* as he had engaged a licensed driver and placed the vehicle in charge of the said driver with the express or implied mandate that it would be driven by him, it cannot be said that the insured is guilty of any breach. That, it is only in case of a breach or a violation of the promise on the part of the insured that the insurer can hide under the umbrella of the exclusion clause. In Paragraph 14 of ***Skandia Insurance Company ltd.***[1], it was succinctly pointed out that in view of this provision, apart from the implied mandate to the licensed driver not to place an unlicensed person in charge of the vehicle, there is also a statutory obligation on the said person not to leave the vehicle unattended and not to place it in charge of an unlicensed driver. What is prohibited by

law must be treated as a mandate to the employee and should be considered sufficient in the eye of law for excusing non-compliance with the conditions. It cannot therefore in any case be considered as a breach on the part of the insured. It would be apposite to note here that the decision in ***Skandia Insurance Company ltd.***[1] was affirmed by a three Judge Bench in ***Sohan Lal Passi vs. P. Sesh Reddy and Others***[12], which in turn came up for discussion before a three Judge Bench of the Supreme Court in ***National Insurance Co. Ltd. vs. Swaran Singh and Ors.***[13], where it was observed that; as has been held in ***Sohan Lal Passi***[12], the Insurance Company cannot shake off its liability to pay compensation only by saying that at the relevant point of time, the vehicle was driven by a person having no license.

22. In view of the preceding discussions and applying it to the facts of the case at hand, I find that the exclusion clause does not exonerate the insurer and consequently, the Respondent No.4 is liable to pay the compensation.

23. Coming to the second aspect i.e. the quantum of compensation, in this context, notice may be taken of the Judgment of this Court in ***Pankaj Kumar Balabhai Kapadia***[6], wherein it is held, *inter alia,* as follows;

> ***"(7)*** In ***Lata Wadhwa's*** case (supra), while considering compensation for children who had died during celebrations within the Tata Iron and Steel Company (TISCO) factory in a devastating fire which had engulfed

---

12. (1996) 5 SCC 21
13. (2004) 3 SCC 297

the VIP Pandal, the assessment of compensation to children was made after dividing them into groups based on their age. The first group was between the age of 5 to 10 years and the second group between the age of 10 to 15 years. In case of children between the age group of 5 to 10 years, a uniform sum of Rs.50,000/- was held to be payable by way of compensation to which the conventional figure of Rs.25,000/- was added and as such a consolidated sum of Rs.75,000/- each was awarded. These amounts had been arrived at on calculations made by Shri Justice Y. V. Chandrachud. The Hon'ble Apex Court while considering the said compensation was of the opinion that the amount for the children between the age group of 5 to 10 years should be three times over the suggested amount, in other words, it should be Rs.1.5 lakhs to which the conventional figure of Rs.50,000/- was added making it a total of Rs.2 lakhs for each of the children.

(8) So far as the children between the age group of 10 to 15 years were concerned, they were all students of Class 6 to Class 10 and children of employees of TISCO, which has a tradition of employing one child of its employee, in the Company. Having regard to these facts, in their case, the contribution of Rs.12,000/- per annum was found to be on the lower side and the contribution was calculated to be Rs.24,000/-. The multiplier of '15' was found to be appropriate. What is apparent from the decisions supra is that the amount of compensation for children between the age of 5 to 10 years was assessed at a total amount of Rs.2,00,000/- (Rupees two lakhs) only, while for children between the age group of 10 to 15 years, another assessment was made.

(9) In ***Kishan Gopal*** (supra), consideration was taken of the fact that the Rupee value has come down drastically from the year 1994 since the decision in ***Lata Wadhwa*** (supra) and hence, the notional income of the ten year old victim was placed at Rs.30,000/- (Rupees thirty thousand) only. Similarly, in the case at hand, despite the age of the victim being 8 years and not 10, but considering the fall of the Rupee value from 2014 (the year of the decision in ***Kishan Gopal***), and as the loss of a child cannot be compensated in pecuniary terms, as held in ***Lata Wadhwa***, it would be appropriate to place the yearly notional income of the victim at Rs.30,000/- (Rupees thirty thousand) only, as was done in ***Kishan Gopal***. The multiplier of 15 is adopted as per the Table in ***Sarla Verma***, as also considering the decision in ***Amrit Bhanu Shali***, wherein it was ruled that the age of the victim should be taken into consideration for choice of multiplier and not that of the claimants. Rs.50,000/- (Rupees fifty thousand) only, is granted under conventional heads towards loss of love and affection, funeral expenses and last rites.

(10) The decisions in ***Lata Wadhwa*** (supra) and ***Kishan Gopal*** (supra), reveal the deduction of one third for the upkeep of the child had she been alive, was not made."

24. Thus, in consideration of the aforesaid decision and in view of the fact that the victim herein was about 8 years and 10 months, I am of the considered opinion that the notional income of the victim ought to be assessed at Rs.30,000/- (Rupees thirty thousand) only. The Multiplier of '15' is also to be adopted in terms of the Table in ***Sarla Verma***[4] and the decision in ***Amrit Bhanu Shali and Others vs National Insurance Company Limited and Others***[14]. The compensation, thus, stands calculated as follow;

Yearly Income of the deceased	30,000.00 x 15	=	Rs. 4,50,000.00
Funeral Expenses	25,000.00	=	Rs. 25,000.00
Other non pecuniary damages	25,000.00 (**+**)	=	Rs. 25,000.00
	Total	=	**Rs. 5,00,000.00**

(Rupees Five Lakhs) only

25. The Respondents No. 1 to 3 shall be entitled to simple interest @ 9% per annum on the above amount w.e.f. the date of filing of the claim Petition, till its full realization. The compensation shall be divided as follows;

(i) 25% of the total award to the Claimant/Respondent No.1.

(ii) 25% of the total award to the Claimant/Respondent No.2.

(iii) 50% of the total award to the claimant-Respondent No.3. The entire amount of the Respondent No.3 shall be kept in a Fixed Deposit in a Nationalised Bank, until he attains the age of majority.

---

14. (2012) 11 SCC 738

26. The Respondent No. 4, the Insurance Company, is directed to pay the awarded amount to the Respondents within one month from today, failing which, they shall pay simple interest of 15% per annum from the date of filing of the Claim Petition till full realization. The amounts already made good by the Respondent No. 4 to the Claimants/Respondents No.1, 2 and 3 under Section 140 of the M.V. Act, shall be duly deducted by them at the time of payment of compensation.

27. Appeal allowed.

28. No order as to costs.

29. Copy of this Judgment be sent to the learned Claims Tribunal and its records be remitted forthwith.

Sd/-

(Meenakshi Madan Rai)
Judge
08-06-2017

Approved for reporting :**Yes**
Internet :**Yes**

bp