

ORIENTAL INSURANCE COMPANY LTD., THROUGH ITS REGIONAL 715
MANAGER, SCO NO. 109-11, SECTOR 17-D, CHANDIGARH v.
RAJINDER KAUR AND OTHERS (*K. Kannan, J.*)

(4) He has stated that he travelled along with him and that there were also occasions when the licence was checked by police at many nakas and the inference, therefore, was that no one ever suspected the genuineness of the licence. When we are allowing for an insurer to take a defence of violation of terms of policy, we normally test it on the light of whether there had been any breach of violation of terms of policy by the insured himself. It is the bona fides of the owner that is material and he ought to have some reason to suspect the genuineness of the same. The case has still to be held against the insurer for the fact that there was evidence of the owner about the bona fides of belief that the driving licence was genuine.

(5) The award is confirmed and the appeal is dismissed. The amount of Rs.25,000/- which has been deposited before this Court at the time of preferring the appeal, is ordered to be transmitted to the Tribunal for part satisfaction of the award.

V. Suri

Before K. Kannan, J.

**ORIENTAL INSURANCE COMPANY LTD., THROUGH ITS
REGIONAL MANAGER, SCO NO.109-11, SECTOR 17-D,
CHANDIGARH,—Appellant**

versus

RAJINDER KAUR AND OTHERS,—Respondents

F.A.O. No. 3091 of 2011

20th April, 2011

Motor Vehicles Act, 1988 - S. 166 & 163-A - Death case - Multiplier in case of a young bachelor - Judicial pronouncements and what is statutorily provided under Schedule II reconciled - Multiplier of 17 applied - Multiplier could relate to the age of the deceased and need not necessarily be confined only to the age of the parents - Appeal dismissed.

Held, That wherever the claim is in excess of Rs.40,000/- and there is no scope for application of the scales of compensation provided under Schedule II, the Tribunal shall take a 50% cut in the manner laid down by the Hon'ble Supreme Court in Sarla Verma's case (supra) and apply also the multiplier suitable to the age of the younger of the parent. That is the only way to reconcile between what has emerged through the judicial pronouncements

and what is statutorily provided under Schedule II. Schedule II is applicable in cases where claim is made under Section 163-A of the Motor Vehicles Act and the annual income of the deceased was not in excess of Rs.40,000/-. In this case, the Tribunal has taken the income of the deceased at Rs.3,000/-, which is less than Rs.40,000/- annually and taken a 50% cut and adopted a multiplier of 17. Application of principle under Section 163-A of the Motor Vehicles Act is possible even in case where the claim is made under Section 166 of the Motor Vehicles Act, as recently held by the Hon'ble Supreme Court in *Oriental Insurance Company Ltd. Vs. Dhanbai Kanji Gadhvi* 2011 (2) SCC 240. The Hon'ble Supreme Court has held in that case the Court is empowered to adopt the scales provided under Section 163-A of the Motor Vehicles Act even in case where the application is made under Section 166 of the Motor Vehicles Act. There has been a subsequent decision recently in *P.S. Somanathan and others Vs. District Insurance Officer and another* (2011) 3 SCC 566 where in a claim made by the parents and siblings for a bachelor, the Hon'ble Supreme Court held that the multiplier could relate to the age of the deceased and need not necessarily be confined only to the age of the parents.

(Para 3)

Ashwani Talwar, Advocate, *for the appellant.*

K. KANNAN J. (ORAL)

(1) The appeal is by the insurance company challenging the award passed by the Tribunal on the ground that in a claim by the parents on death of their son, who was a bachelor aged 22 years, the Tribunal was wrong in adopting a multiplier of 17 instead of taking a multiplier suitable to the age of the parents. Learned counsel would state that the judgment of the Hon'ble Supreme Court in **Shakti Devi versus New India Assurance Company Ltd. (1)** is an authority for the proposition that in a case where the claimants are parents, the multiplier must be only taken on the basis of age of the parents and not on the age of deceased.

(2) There have been some divergent opinions on the issue of appropriate multiplier in relation to a claim by the parents when the deceased is a bachelor. In **Sarla Verma versus DTC (2)**, the Hon'ble Supreme Court had given guidelines for application of multipliers suitable to the age of the deceased but it did not actually make any specific deviation for the claim by the parents and

(1) JT 2010(13) SCC 103

(2) 2009(6) SCC 121

all that it did was to provide for a 50% cut instead of conventional 1/3rd. This judgment in *Sarla Verma's case* (supra) was subsequently considered in *Shakti Devi's case* (supra) where the Court explained that the appropriate multiplier would be dependent on the age of the parents.

(3) I would understand the proposition emerging in this case as follows: Wherever the claim is in excess of Rs.40,000/- and there is no scope for application of the scales of compensation provided under Schedule II, the Tribunal shall take a 50% cut in the manner laid down by the Hon'ble Supreme Court in *Sarla Verma's case* (supra) and apply also the multiplier suitable to the age of the younger of the parent. That is the only way to reconcile between what has emerged through the judicial pronouncements and what is statutorily provided under Schedule II. Schedule II is applicable in cases where claim is made under Section 163-A of the Motor Vehicles Act and the annual income of the deceased was not in excess of Rs. 40,000/-. In this case, the Tribunal has taken the income of the deceased at Rs.3,000/-, which is less than Rs.40,000/- annually and taken a 50% cut and adopted a multiplier of 17. Application of principle under Section 163-A of the Motor Vehicles Act is possible even in case where the claim is made under Section 166 of the Motor Vehicles Act, as recently held by the Hon'ble Supreme Court in **Oriental Insurance Company Ltd. versus Dhanbai Kanji Gadhvi (3)**. The Hon'ble Supreme Court has held in that case the Court is empowered to adopt the scales provided under Section 163-A of the Motor Vehicles Act even in case where the application is made under Section 166 of the Motor Vehicles Act. There has been a subsequent decision recently in **P.S. Somanathan and others versus District Insurance Officer and another in CA No.1891 of 2011 dated 17.02.2011 (4)** where in a claim made by the parents and siblings for a bachelor, the Hon'ble Supreme Court held that the multiplier could relate to the age of the deceased and need not necessarily be confined only to the age of the parents. Under such circumstances, the compensation awarded by the Tribunal confirms to what is acceptable in law and I will not find that to be a reason for interference in appeal.

(4) The award is confirmed and the appeal is dismissed.

V. Suri

(3) 2011 (2) SCC 240

(4) JT 2011 (2) SC 242