Supreme Court of India Smt Sarla Dixit & Anr vs Balwant Yadav & Ors on 29 February, 1996 Equivalent citations: 1996 AIR 1274, 1996 SCC (3) 179 Author: M S.B. Bench: Majmudar S.B. (J) PETITIONER: SMT SARLA DIXIT & ANR.

Vs.

RESPONDENT: BALWANT YADAV & ORS.

DATE OF JUDGMENT: 29/02/1996

BENCH: MAJMUDAR S.B. (J) BENCH: MAJMUDAR S.B. (J) BHARUCHA S.P. (J)

CITATION: 1996 AIR 1274 1996 SCC (3) 179 JT 1996 (3) 252 1996 SCALE (2)802

ACT:

HEADNOTE:

JUDGMENT: J U D G M E N T S.B. Majmudar, J. The appellants, who were the original claimants in Claim Petition No.9 of 1976 before the Motor Accidents Claims Tribunal, Gwalior, have felt aggrieved by the order passed by the High Court of Madhya Pradesh Jabalpur, Bench Gwalior in Civil Misc. Appeal No.174 of 1977 by which, according to the appellants, the High Court only marginally enhanced the compensation payable by respondents nos.1 and 2 to the appellants. They have obtained special leave to appeal under Article 136 of the Constitution of India from this Court and that is how this appeal was placed for final hearing before us. Introductory Facts ———————— A few relevant facts leading to these proceedings may be noted at the outset. Appellant No. 1 is the widow of late Captain Rama Kant Dixit who died on 16th March 1975 in a road accident. Appellant No.2 was the minor daughter of appellant no.1 who by now has become major as she was aged 14 years in 1985 when Petition for Special Leave to Appeal was moved in this Court. It is the case of the appellants that late Capt. Rama Kant Dixit was hit by the offending truck owned by respondent No. 1 which was driven at the relevant time by respondent no.2. The truck was insured against third party risk by respondent no.3. That on the relevant date of the accident the deceased was aged 27 years and was serving as Captain in Indian Army. He was going on 16th March 1975 at about 11.00 a.m. from Chandra Prasth Colony side towards Mall Road, Morar, within the city of Gwalior. That at that time respondent no.2 was driving the aforesaid truck and was coming from the side of Gola-Ka- Mandir and was proceeding towards a locality known as J&K. The said road was a public road admeasuring 25 ft. in width and was running from west to east. The truck was proceeding from west to east going towards eastern side where locality J&K was situated. On the said roads intersection no.7, another public road, was proceeding from north to south and it was known as Indraprastha Road. The deceased at the relevant time was driving a scooter carrying a pillion rider, appellants' witness no.7 one Ramji Sharma. It is the case of the appellants that while the scooter

had entered the intersection and was proceeding southwards on the said road respondent no.2 driving the truck from the western side came in high speed and dashed against the scooter resulting in instantaneous death of appellant no. 1's husband Capt.Rama Kant Dixit. On account of the said accident the appellants having lost the sole bread winner filed the aforesaid Claim Petition before the Gwalior Tribunal under Section 110A of the Motor Vehicles Act, 1939- In the said Claim Petition originally appellant no.1's mother-in-law, that is, mother of deceased Rama Kant Dixit was also joined as one of the claimants but pending the proceedings, she expired and the appellants continued the Claim Petition also as her heirs with the result that thereafter remained as claimants only the present two appellants. The claimants put forward total claim of Rs.6,12,524/- on various heads against the respondents However, the Tribunal after computing the compensation payable to the appellants sliced it down by 75% on the ground that deceased Rama Kant was guilty of contributory negligence to the extent of 75% and the truck driver was negligent only to the extent of 25% and awarded in all Rs.42,569/- to the appellants. Respondents nos.1 and 2 were made liable to make good the said amount. Respondent no.3, the insurance company was exonerated by the Tribunal as it was found that at the relevant time the offending truck was being driven by respondent no.2 who was not having any driving licence. The appellants being aggrieved by the said award of the Tribunal preferred the aforesaid appeal before the High Court of Madhya Pradesh, Jabalpur, Bench Gwalior. It may be noted that so far as respondents nos.1 and 2 were concerned they preferred Cross First Appeal No.178 of 1977 challenging the award of the Tribunal against them and also to the extent respondent no.3 was exonerated of its liability to meet the awarded claim. Appellants did not press their challenge to the finding of the Tribunal exonerating respondent no.3, the insurance company, of its liability to meet the claim of the appellants. So far as respondents nos. 1 and 2 are concerned, their challenge to the award of the Tribunal exonerating respondent no.3, the insurance company, was rejected by the High Court. Consequently, the only contest in appeal before the High Court centered round the question about the computation of proper compensation to be awarded to the appellants which in its turn also included the question whether any amount could be sliced down from the computed compensation on the ground of contributory negligence of deceased Rama Kant. The High Court, therefore, addressed itself on these two main issues and came to the conclusion that the appellants were entitled to get total compensation of Rs.54,000/- and that nothing was required to be sliced down from the said amount as deceased Rama Kant was not guilty of any contributory negligence and the entire negligence rested on the shoulder of respondents no.2, driver of the truck and consequently respondent no.2 and the owner of the truck, respondent no. 1 were liable to meet the claim of compensation awarded to the appellants. The High Court ordered that Rs.54,000/ shall carry simple interest @ 6% from the date of the Claim Petition, that is 10th July 1975 till 13th October 1975 and then from 19th January 1976 until full realization. The claimants' rest of the claim against respondents nos. 1 and 2 was dismissed. Appellants' appeal was also dismissed with costs against respondent nos.3, the insurance

company. It was also ordered that the appellants shall receive one-half costs of the proceeding before the Claims Tribunal and one-half costs of the appeal from respondents nos. 1 and 2 while they had to pay the cost of insurance company, respondent no.3, in proceeding before the Claims Tribunal. Respondents nos. 1 and 2 had to bear their own costs throughout. Rival Contentions ———————— Tn the present appeal learned counsel for the appellant-claimants vehemently contended that the award of compensation as granted by the High Court in appeal was too much on the lower side. That the High Court had not applied the correct principles in computing compensation in such fatal accidents' cases and that once it was held that the accident was caused on account of sole negligence of respondent no.2, driver of the truck, looking to the young age of the deceased and his future prospects in life the High Court should have granted appropriate compensation to the appellants. That award of Rs. 54,000/- was to say the least extremely conservative and was too low. On the other hand, learned counsel for respondents nos. 1 and 2 tried to support the award of compensation as granted by the High Court and while supporting the same learned counsel for the respondents also sought to challenge the finding of the High Court that deceased Rama Kant was not guilty of any contributory negligence. It was tried to be submitted that the Tribunal was right in taking the view that deceased Rama Kant was guilty of contributory negligence to the extent of 75% and consequently in any case the amount awarded by the High Court was not required to be enhanced even though it may not be reduced as there is no cross appeal by respondents nos. 1 and 2. So far as the exoneration of respondent no.3, the insurance company, is concerned, the said finding reached by the Tribunal as well as the High Court could not be assailed by respondents nos. 1 and 2 as they have not filed any cross appeal before this Court challenging that part of the appellate decision rendered by the High Court against them. In view of the aforesaid rival contentions the following points arise for our determination : 1. What is the proper amount of compensation payable to the appellants on account of the accidental death of deceased Rama Kent Dixit caused by the offending truck. 2. Whether deceased Rama Kant had contributed towards the said accident by his own negligence to any extent. 3. What final order. We shall consider these aforesaid points seriatim ; Point No.1 ———- On the question of computation of proper compensation to be awarded to the appellants certain well established facts on the record of this case are required to be noted. The deceased was the only bread winner in the family of the appellants. He was cut short in the prime period of life at the age of 27 by the accident caused by the truck driver respondent no.2. He had put in seven years of military service by that time. He was earlier a Lieutenant in the Army. then he was promoted to the rank of Captain and was fully qualified for promotion to the rank of a major at the time of his death. The certificate issued by Dy. Comdt. & OC Tps. Rampal Singh showed that the deceased had obtained the following models during active service in various operation areas : (a) Senya Seva Service Hedal. (b) Sangram Medal. (c) Poorvi Star. (d) 25th Indept.. Anniversary Medal. His gross salary at the time of his death was Rs.1543/p.m. He had passed his M.A. examination at the time of his death. He was in the time scale of Rs.1000-

50-1550. He had large number of years of military service ahead of him which would have certainly taken him to higher echelons in the military career. The evidence showed that he was a teetotaller. He did not smoke or drink. This is established by the testimony of appellant no. 1. The Claims Tribunal on the basis of the aforesaid evidence on record came to the conclusion that on account of the untimely death of Rama Kant the appellants suffered approximately a total monetary loss of Rs.1,70.2BS/-. But as the Tribunal found that the deceased was 75% responsible for the accident the appellants were awarded only 25% of Rs.1,70,238/- which came to Rs.42,569/-. The High Court in appeal took the view that out of the gross salary of Rs.1543/- p.m. deceased Rama Kant would have spent on himself Rs.900/and from this an amount of Rs.375/- would have been spent on the clothing of the deceased leaving Rs.375/for the upkeep of the claimants per month. Considering the earning of the deceased from his salary and allowances from 1976 to 1996 the deceased would have spent a sum of Rs.1,28,131/- being 25; of the gross emoluments on Appellants nos. 1 and 2. The average figure for 20 years came to Rs.6406/- per annum. This was taken as the annual dependency multiplicand and adopting the multiplier of ]5, figure of Rs.96060/- was arrived at. It was noticed that family pension of Rs,200/- p.m. was available to appellant no. 1, widow of the deceased. On that basis a figure of Rs.36,000/- was worked out by adopting multiplier of 15 (that is to say) Rs.200/- multiplied by 12 which lead to a figure of Rs.2,400/- multiplied by 15. These Rs.364000/- were deducted from Rs.96,090/- and accordingly a figure of Rs.60,000/- was reached. 10% deduction was thereafter effected from the said figure and accordingly an amount of compensation of Rs.54,000/- was worked out. Learned counsel for the appellants vehemently submitted that the aforesaid methods adopted by the Tribunal as well as by the High Court for competition of compensation are not scientific at all. That both for arriving at proper figure of multiplicand as well as multiplier the High Court had adopted a very conservative approach. In this connection reliance was placed on two decisions of this Court. In the case of Hardeo kaur and Ors. v. Rajasthan State Transport Corporation & Anr. (1992) 2 SCC 567, for computing compensation available to the claimant-dependents of deceased Major in the military, who died at the age of 39 because of vehicular accident the Court adopted multiplier of 24. Strong reliance was placed on the said decision for adopting that multiplier. In our view on the peculiar facts of that case the Court had adopted multiplier of 24. In paragraph 10 of the Report no special reasons were assigned for adopting that multiplier. However, a scientific basis for arriving at proper multiplicand and multiplier is supplied by a latter decision of this Court in the case of General Manager, Kerala State Road Transport Corporation, Trivandrum v. Susamma Thomas (Mrs.) & Ors. (1994) 2 SCC 176. A Division Bench of this Court consisting of M.N. Venkatachaliah, J. (as His Lordship then was) and G.N. Ray, J. considered in details appropriate method for arriving at proper multiplicand and multiplier in fatal accident cases in the light of decided cases in this country as well as in England and laid down principles for computing compensation in motor vehicle accident cases. In paragraphs 12 and 13 of the Report the following pertinent observations were made : "There were two methods adopted

for determination and for calculation of compensation in fatal accident actions, the first the multiplier mentioned in Davies case and the second in Nance v. British Columbia Electric Railway Co. Ltd. The multiplier method involves the ascertainment of the loss of dependency or the multiplicand having regard to the circumstances of the case and capitalizing the multiplicand by an appropriate multiplier. The choice of the multiplier is determined by the age of the deceased (or that of the claimants whichever is higher) and by the calculation as to what capital sum, if invested at a rate of interest appropriate to a stable economy, would yield the multiplicand by way of annual interest. In ascertaining this, regard should also be had to the fact that ultimately the capital sum should also be consumed-up over the period for which the dependency is expected to last." Thereafter on consideration of cases decided by English Courts and also observations found in Halsbury's Laws of England in vol.34, para 98, the Court laid down the test for adopting the multiplier in such cases in paragraphs 16 and 17 of the Report as under : "It is necessary to reiterate that the multiplier method is logically sound and legally well-established. There are some cases which have proceeded to determine the compensation on the basis of aggregating the entire future earnings for over the period the life expectancy was lost, deducted a percentage therefrom towards uncertainties of future life and award the resulting sum as compensation. This is clearly unscientific. For instance, if the deceased was, say 25 years of age at the time of death and the life expectancy is 70 years, this method would multiply the loss of dependency for 45 years - virtually adopting a multiplier of 45 - and even if one-third or one-fourth is deducted therefrom towards the uncertainties of future life and for immediate lump sum payment, the effective multiplier would be between 30 and 34. This is wholly impermissible. We are, aware that some decisions of the High Courts and of this Court as well have arrived at compensation on some such basis. These decisions cannot be said to have laid down a settled principle. They are merely instances of particular awards in individual cases. The proper method of computation is the multiplier- method. A departure, except in exceptional and extraordinary cases, would introduce inconsistency of principle, lack of uniformity and an element of unpredictability for the assessment of compensation. Some judgments of the High Courts have justified a departure from the multiplier method on the ground that Section 110-B of the Motor Vehicles Act, 1935 insofar as it envisages the compensation to be 'just', the statutory determination of a 'just' compensation would unshackle the exercise from any rigid formula. It must be borne in mind that the multiplier method is the accepted method of ensuring a 'just' compensation which will make for uniformity and certainty of the awards. We disapprove these decisions of the High Courts which have taken a contrary view. We indicate that the multiplier method is the appropriate method, a departure from which can only be justified in rare and extraordinary circumstances and very exceptional cases . The multiplier represents the number of years' purchase on which the loss of dependency is capitalized. Take for instance a case where annual loss of dependency is Rs. 10,000. If a sum of Rs. 1,00,000 is invested at 10% annual interest, the interest will take care of the dependency, perpetually. The multiplier in this case

works out to 10. If the rate of interest is 5% per annum and not 10% then the multiplier needed to capitalize the loss of the annula dependency at Rs. 10,000 would be 20. Then the multiplier, i.e., the number of years' purchase of 20 will yield the annual dependency perpetually. Then allowance to scale down he multiplier would have to be made taking into account the uncertainties of the future, the allowances for immediate lump sum payment, the period over which the dependency is to last being shorter and the capital feed also to be spent away over the period of dependency is to last etc. Usually in English Courts the operative multiplier rarely exceeds 16 as maximum. This will come down accordingly as the age of deceased person (or that of the dependents, whichever is higher) goes up." So far as the adoption of the proper multiplier is concerned, it was observed that the future prospects of advancement in life and career should also be sounded in terms of money to augment the multiplicand. While the chance of the multiplier is determined by two factors, namely, the rate of interest appropriate to a stable economy and the age of the deceased or of the claimant whichever is higher, the ascertainment of the multiplicand is a more difficult exercise. Indeed, many factors have to be put into the scales to evaluate the contingencies of the future. All contingencies of the future need not necessarily be baneful. Applying these principles to the facts of the case before this Court in the aforesaid case it was observed that the deceased in that case was of 39 years of age. His income was Rs.1,032/- per month. He was more or less on a stable job and considering the prospects of advancement in future career the proper higher estimate of monthly income of Rs.2,000/- as gross income to be taken as average gross future income of the deceased and deducting at least 1/3rd therefrom by way of personal living expenses, had he survived the loss of dependency, could be capitalized by adopting the multiplicand of Rs.1,400/- per month or Rs.17,000/- per year and that figure could be capitalized by adopting multiplier of 12 which was appropriate to the age of deceased being 39 and to that amount was added the conventional figure of Rs.15,000/- by way of loss of consortium and loss of estate. Adopting the same scientific yardstick as laid down in the aforesaid judgment, the computation of compensation in the present case can almost be subjected to a well settled mathematical formula. Deceased in the present case, as seen above, was earning gross salary of Rs.1,543/- per month. Rounding it upto figure of Rs.1,500/- and keeping in view all the future prospects which the deceased had in stable military service in the light of his brilliant academic record and performance in the military service spread over 7 years, and also keeping in view the other imponderables like accidental death while discharging military duties and the hazards of military service, it will not be unreasonable to predicate that his gross monthly income would have shot up to at least double than what he was earning at the time of his death, i.e., upto Rs.3,000/- per month had he survived in life and had successfully completed his future military career till the time of superannuation. The average gross future monthly income could be arrived at by adding the actual gross income at the time of death, namely, Rs.1,500/- per month to the maximum which he would have otherwise got had he not died a premature death, i.e., Rs 3,000/- per month and dividing that figure by two. Thus the average gross monthly income

spread over his entire future career, had it been available, would work out to Rs.4,500/- divided by 2, i.e., Rs.2,200/-. Rs.2,200/- per month would have been the gross monthly average income available to the family of the deceased had he survived as a bread winner. From that gross monthly income at least 1/3rd will have to be deducted by way of his personal expenses and other liabilities like payment of income tax etc. That would roughly work out to Rs.730/- per month but even taking a higher figure of Rs.750/- per month and deducting the same by way of average personal expenses of the deceased from the average gross earning of Rs.2,200/- per month balance of Rs.1,450/- which can be rounded up to Rs.1,500/- per month would have been the average amount available to the family of the deceased, i.e., his dependents, namely, appellants herein. It is this figure which would be the datum figure per month which on annual basis would work out to Rs.18,000/-. Rs.18,000/-, therefore, would be the proper multiplicand which would be available for capitalization for computing the future economic loss suffered by the appellants on account of untimely death of the bread winner. As the age of the deceased was 27 years and a few months, at the time of his death the proper multiplier in the light of the aforesaid decision of this Court in General Manager, Kerala State Road Transport Corporation, Trivandrum (supra) would be 15. Rs.18,000/- multiplied by 15 will work out to Rs.2,70,000/-. To this figure will have to be added the conventional figure of Rs.15,000/- by way of loss of estate and consortium etc. That will lead to a total figure of Rs.2,85,000/-. This is the amount which the appellants would be entitled to get by way of compensation from respondents nos.1 and 2 subject to our decision on point no.2. Point No.2 ———- So far as the question of contributory negligence of deceased Rama Kant is concerned, the photography of the place of accident is to be kept in view. The accident occurred in the city of Gwalior, on the cross section of two roads. One road was proceeding from Gola-Ka-Mandir situated on the western side and was running eastwards towards another locality known as J&K. It was thus running from west to east. It was 25 ft. broad. It was known as Road No.7. A narrow gauge railway line was running parallel to the said road on its southern side. At one place on the northern border of road no.7 converged another public road from north to south. The said road was approaching Chandra Prasth Colony on the southern side. It is an admitted position on record that the offending truck driven by respondent no.2 was plying on road no.7 and was coming from Gola-Ka-Mandir side and was proceeding towards J&K locality situated towards eastern side. Thus the truck was coming on road no.7 from west to east. So far as the deceased was concerned he was coming on a scooter along with the pillion rider on the north-south road leading towards Chandra Prasth Colony. It is also on record that at the intersection of the north- south road on which the scooter was travelling the deceased was plying his scooter from north towards south. It has also been found from the record that at the intersection of northsouth road with road no,7 the scooterist Rama Kant had already entered the intersection and had come almost half way so far as the breadth of road no,7 was concerned, In other words the scooterist had already entered the intersection and was on the middle of the said intersection when the truck coming from the west dashed

with the scooter, Evidence of appellants-witness no.7 Ramji Sherma shows that after Rama Kant had crossed the center of road no.7 the offending truck coming from the western side came with speed and dashed with the scooter. The result was that the right side of the scooter dashed with the left side front wheel of the truck. Witness Ramji Sharma, appellants-witness no.7 was the pillion rider on the scooter, Therefore, he was in the best position to depose as to what had actually happened on the spot, Witness Ramji Sharma stated that while proceeding from north to south on the Chandra Prasth Colony road deceased Rama Kant had already sounded the horn when he entered the intersection and he had also given a hand signal to indicate that he intended to go across road no.7 for approaching the southern side of road no.7, having entered from the northern side of the intersection. That at the relevant time there was no other truck on road no.7 running from west to east. The exact spot of the accident on the intersection of road no.7 with the north-south Chandra Prasth Colony road 3150 appears to have been well established on the record of the case. It has been brought out in evidence that Rama Kant's scooter had a coat of green paint and it was the left side of the truck's bumper and the truck's left front wheel surface that showed green paint marks. The left head-light of the truck was also found damaged after the accident. There was no evidence that right side of the bumper of the truck bore any green paint marks or any damage as a result of the collision between the truck and the scooter Witness Ramji Sharma did not appear to have received any serious injuries. This was apparent from his statement that he had been in his senses right from the time he was lifted off the road upto the time he was removed in a car to the hospital. Dr Jain, Appellants-witness no.3 who had performed post-mortem on the deceased had deposed that he had found five ante-mortem external injuries on the dead body of the deceased and they were all on his right side. There was abrasion on the right temple and the right side of the face. There was another abrasion on the right side of the chest and the right shoulder with fracture on the upper half of the right humerus. There was an abrasion on the right side of the waist. There was another abrasion over right thigh and right knee. The last abrasion was on the right leg and the right ankle with fracture of the femur near the knee joint, This clearly indicated that the impact of the front left wheel of the truck was on the right side of the scooter driver, Rama Kant. That clearly showed that Rama Kant was travelling inside the intersection on the north-south road from north to south when the truck which came from the western side dashed with the scooter and threw off the scooter driver and the pillion rider. It is, therefore, clearly established that while Rame Kant's scooter had crossed the center of road no.7 the offending truck coming from the western side dashed with the right side of the scooter- which was proceeding across that road and was going towards the southern side of the intersection having entered the same on the northern side of road no.7. So far as the exact place of impact on the intersection is concerned we may note that the photographs Ex.P/11, P/8 and P/7 indicated that the scooter lay at the distance of 11 ft. from the northern border of road no. 7. As seen earlier the width of the road was 25 ft. The scooter was lying almost lengthwise on the road with its rear wheel towards the

west, that it, towards the direction from which the truck had come and had approached the intersection. The scooter's front portion was towards the west and its underside was towards the south. The photographs also showed that the dead body of Rama Kant was lying slightly diagonally across the width of the road. The head was pointing slightly to the south-west of the center of the road. The distance between the scooter and the dead body was 6 ft. In other words any one walking from west to east on road no. 7 would have first passed by the dead body of Rama Kant and then would have approached the fallen scooter. It was, therefore, clearly established that the collision between he truck and the scooter had occurred somewhere near the center of road no. 7. It showed that the scooter had already entered the intersection from the northern border of road no. 7, had travelled upto 11 ft. across the width of the road at the said intersection and but for the accident it would have travelled further south and would have passed through the southern outlet of the intersection. It, therefore, becomes apparent that when the scooterist had entered the intersection from the northern side and had covered almost half the distance of the width of that intersection the offending truck came from the western side and dashed against the scooter and threw it off along with the driver and the pillion rider. That indicated how fast the truck would have been driven from west to east on the main road and because of that speed the scooterist who had already crossed half the width of the road, was thrown off. That also indicated that the driver of the truck, respondent no.2 had not cared to ses the scooterist who had almost reached half way across his path while he was proceeding from west to east on road no.7 and without caring for the safety of the scooterist who would have been clearly visible to him in the broad day light while he was coming from the western side of the road and without least bothering for the safety of the scooterist crossing the intersection. He almost ran over the scooter and threw it off. It is true that the injuries noted by the doctor in the postmortem report did not indicate that the deceased was run over by the wheel of the truck but the severe impact caused by the accident all on the right side of the body of the deceased indicated the fierce collision between the scooter and the front left wheel of the truck. There would thus be two types of negligence on the part of the truck driver, (i) he was proceeding with very high speed even though he was approaching an intersection on that road; and (ii) the driver did not care to look out for the safety of the scooterist who had already crossed half of the intersection and almost come to the middle of the intersection and who would naturally be very much visible to the truck driver coming from the western side and proceeding towards the east. The driver, respondent no.2, did not care even to slow down his speed. If he had done so, the unfortunate accident would not have taken place. This showed that either he did not notice the scooterist who had come almost half way diagonally across the breadth of the road at the intersection or that he might not have cared for the safety of the scooterist shoo had come across his path. This was the most reckless and unsafe driving resorted to by respondent no.2. The fact that even after the accident he bad not slowed down his vehicle and went on driving with great speed, is fully established by the further fact that even after the accident, his vehicle could not stop there and

then but had travelled further and had gone upto 70 ft. further and had then stopped near the south-eastern side of the road after the collision. The conclusion is, therefore, inevitable that respondent no.2 while driving the offending truck was in a position to see in them broad day light the scooterist Rama Kant who had already entered the intersection and was almost half way in it, still had continued to drive recklessly in a totally careless manner. Because respondent no.2 was not having a driving licence, he was a novice trying to learn driving such heavy vehicle at the cost of such innocent victims like Rama Kant. Being a novice he went on driving fast before approaching intersection of road no.7 and could not control his vehicle by stopping it or by slowing it down so as to avoid collision with the scooterist who had come across his way. Resultantly he dashed with the scooter in the center of road no.7 with the left side front wheel of his truck which hit the right hand side of the scooterist Rama Kant and his scooter. As seen above having thrown off the scooterist and the pillion rider respondent no.2 could not control his vehicle which was in such speed that he could bring it to a halt after travelling further to the extent of 70 ft. and then it proceeded towards the wrong side of the road and halted near the southern side of road no.7 after the collision All these tell-tale facts unequivocally point to one and only conclusion that it was the rash and negligent driving by respondent no.2, a young boy aged 20, who was a novice driver without a licence to drive such heavy vehicle, that had caused this unfortunate accident. Deceased Rama Kant was not at all negligent and had not contributed to the accident save and except to the extent of bringing his body for being subjected to the impact of the on-coming truck. If at all, his only contribution was that he became a victim of this accident by being on spot on that fateful morning. It is, therefore, not possible for us to agree with the contention of the learned counsel for respondents nos. 1 and 2 that deceased Rama Kant had contributed to the accident by his own negligence to the extent of 75% or even to the extent of any lesser percentage. On this evidence the High Court was justified in reversing the finding of the Trial Court that deceased Rama Kant was guilty of contributory negligence to the extent of 75%. It must be held that deceased Rama Kant was not at all negligent and the entire cent percent negligence rested on the shoulder of respondent no.2, driver of the truck. It is also not possible to agree with the contention of learned counsel for respondents nos.1 and 2 that deceased Rama Kant was guilty of breach of Regulation (7) of Tenth Schedule of the Motor Vehicles Act. 1939. That regulation read as under : "7. The driver of a motor vehicle shall, on entering a road intersection, if the road enacted is a main road designated as such, give way to the vehicles proceeding along that road, and in any other case give way to all traffic approaching the intersection on his right hand." On the facts of the present case it is well established from the evidence of pillion rider Ramji Sharma, appellants- witness no 7 that while entering the intersection from the northern side of road no.7 deceased had already sounded the horn and had also given a hand signal to indicate that he intended to go across road no.7. There was no occasion for him to halt and give way to the truck coming from the western side and proceeding towards the eastern side of road no.7 for the simple reason that Rama Kant had already entered the

intersection and had travelled almost half way across the breadth of road no.7. In the meantime the offending truck came with great speed from the western side and dashed against the scooter Regulation (7) could have been pressed in service against deceased Rama Kant if it was shown that while entering the intersection, having seen the on-coming truck from his right hand side he had not taken due precaution. Such a situation, on the facts of the present case, is found to be absent. On the other hand respondent no.2 driving the offending truck on the main road no.7 from west to east is shown to have committed breach of Regulation (6) of the very same Schedule which read as under: "6. The driver of a motor vehicle shall slow down when approaching a road intersection, a road junction or a road corner, and shall not enter any such intersection or junction until he has become aware that he may do so without endangering the safety of persons thereon." Respondent no.2 was required to slow down while approaching the road intersection or junction and as he had not done so but went on driving with full speed the offending truck which threw off the scooterist who was already in the middle of the intersection, he was guilty of breach of Regulation (6) of Tenth Schedule and had endangered the safety of the persons crowing the said road at the relevant time. Consequently the recklessness and negligence in driving the offending truck at the relevant time wholly rest on the shoulder of respondent no.2. Point No.2 is, therefore, answered in the negative. Hence there is no question of slicing down any amount from the compensation held payable to the claimants as per our findings on point no.1 above. Point No.3 ———- Now is the time for us to bring down the curtain. In view of our findings on point nos. 1 and 2 above the appeal is allowed. The judgment and order passed by the High Court as well as the Claims Tribunal are set aside. The Claim Petition filed by the appellants is allowed against respondent nos. 1 and 2 who are ordered to pay the total compensation of Rs.2,85,000/-. The Claim Petition will stand allowed to that extent. On the said awarded amount of Rs.2,85,000/- the respondent nos. 1 and 2 shall also pay 12% interest from the date of the Claim Petition till payment of the aforesaid amount to the appellants or its realization by them. The Claim Petition will stand dismissed against respondent no.3, the insurance company. In view of the fact that the success is divided between the parties there will be no order as to costs all throughout.