

## Urmilla Pandey vs Khalil Ahmad on 10 May, 1994

**Equivalent citations:** 1994 AIR 2405, 1994 SCC (4) 207, AIR 1994 SUPREME COURT 2405, 1994 (4) SCC 207, 1994 AIR SCW 2448, (1994) 4 JT 55 (SC), (1995) 1 IJR 121 (SC), 1994 (2) BLJR 821, (1994) 3 SCR 1001 (SC), 1995 (109) PUN LR 145, (1995) 1 PUN LR 145, (1994) 24 ALL LR 266, (1994) 2 ANDHWR 36, 1994 (4) JT 55, 1994 (3) SCR 1001, 1995 (1) IJR 121, 1994 (2) UJ (SC) 333, (1994) 2 BLJ 420, (1994) 2 ACC 431, (1994) 2 ACJ 805, (1994) 3 CIVLJ 1, (1995) 1 MAD LW 70, (1994) 3 SCJ 128, (1994) 81 COMCAS 555, (1994) 2 TAC 218

**Author:** Kuldip Singh

**Bench:** Kuldip Singh, B.L Hansaria

PETITIONER:

URMILLA PANDEY

Vs.

RESPONDENT:

KHALIL AHMAD

DATE OF JUDGMENT 10/05/1994

BENCH:

KULDIP SINGH (J)

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HANSARIA B.L. (J)

CITATION:

1994 AIR 2405

1994 SCC (4) 207

JT 1994 (4) 55

1994 SCALE (2) 989

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by KULDIP SINGH, J.- Special leave granted.

2. Ram Kishore Pandey while coming home on a cycle from work was run over by car No. UPC 8527 on 3-3-1970 and died almost instantaneously. He was 29 years of age. He left behind his widow Urmilla Devi and two minor children who were infants. Almost a quarter century has passed by but the unfortunate widow and the orphan children have not as yet been paid a single penny by way of compensation.

3. Urmilla Pandey widow of Ram Kishore Pandey filed a claim petition before the Motor Accident Claims Tribunal, Allahabad claiming Rs 1, 17,747.70 as compensation on account of the death of her husband in the car accident. Khalil Ahmad, the driver of the car; Ram Kishan (dead) through his son Purshottam alias Balwa, the owner of the car; M/s Chandra Financiers; and the New India Assurance Company were impleaded as respondents before the Tribunal. The Tribunal came to the conclusion that the accident took place on account of the car being driven rashly and negligently by Khalil Ahmad, the driver of the car. While assessing the compensation the Tribunal held that the age of 58 years at which the deceased would have retired be taken as the life expectancy of the deceased. The Tribunal further found that the deceased was drawing Rs 259.10 as his salary deducting 1/3rd for maintaining himself he was spending the remaining amount of Rs 175 per month on his family. Taking the annual amount to be Rs 2100 and multiplying the same by 29, the Tribunal reached the figure of Rs 60,000. Making a deduction for the lump sum payment at the rate of 33 per cent, the Tribunal awarded Rs 40,600 as compensation to the family. The Tribunal, however, found that there was no material on the record to prove that the car was insured with the respondent-company. The Tribunal by order dated 9-5-1979 dismissed the claim against the financier and the insurance company and passed a decree for Rs 40,600 against Purshottam son of late Ram Kishan.

4. Urmilla Pandey and the two children filed appeal against the award of the Tribunal before the Allahabad High Court. Appeal against Respondents 1 and 2 (the financier and insurance company) was dismissed on 4-11-1981 for want of steps to serve notice on them. A Division Bench of the High Court heard the appeal against Respondents 3 and 4 (owner and driver) on 4-1-1989. The learned Judges declined to set aside the earlier order dismissing the appeal against Respondents 1 and 2 and on further hearing upheld the findings of the Tribunal against the financier and the insurance company. The High Court dealt with the appeal in a cursory manner.

5. This Court on 9-8-1989, passed the following order:

"In spite of service of notice the Respondent 2, owner of the vehicle, has not appeared. The owner is directed to deposit the compensation amount of Rs 40,600 in the claims Tribunal within six weeks from today, failing which the entire amount shall be recovered as affairs of land revenue and when the money is in deposit, 50% thereof shall be permitted to be withdrawn by the petitioner without furnishing any security. The CMP is disposed of."

Despite the above-quoted order of this Court, the owner of the vehicle did not deposit any amount before the Tribunal. The appellant in IA No. 2 of 1990 has stated that the owner has pleaded bankruptcy. The matter was also taken up by the Lok Adalat on 19-11-1989 when it was held in the premises of this Court. Unfortunately, no relief was granted to the appellant even by the Lok Adalat.

6. This Court on 12-11-1990 issued notice to the New India Assurance Company Ltd. calling upon the company to show cause why the Company should not be made to pay the award- money. On 6-9-1993, this Court passed the following order:

"The respondents to take notice as to why the compensation awarded by the courts below be not enhanced. The learned counsel for the Insurance Company seeks a short adjournment. To be listed on 24-9-1993, indicating that the matter may be finally disposed of on that date."

7. Meanwhile, learned counsel for the appellants placed before this Court an insurance cover note No. A-8351 dated 30-12-1969 which shows that the vehicle involved in the accident was insured with the Premier Insurance Company Limited/and the Canara Motor and General Insurance Company. This Court on 1- 10- 1993 passed the following order:

"Learned counsel for the petitioners has brought before us an insurance cover dated 30- 12-1969 from which it is obvious that the vehicle involved in the accident was insured with the Premier Insurance Co. Ltd. It is not disputed that the said company finally merged with the New India Assurance Company. A copy of this cover note has been handed over to the learned counsel for the New India Assurance Company. He seeks short adjournment to seek instructions and also to produce further documents in this respect, if available, in the records of the Company. The matter is adjourned to 15-10-1993."

The learned counsel for the New India Assurance Company has stated before us that the Company is not in a position to trace the insurance cover or any connected documents from its record.

8. The insurance cover note No. A-8351 dated 30-12-1969 shows the names of the owners of car UPC 8527 as M/s Chandra Financiers and Ram Kishan. In the cover the authorised insurer are shown to be the Premier Insurance Company limited and the Canara Motor and General Insurance Company Limited. It is no doubt correct that the cover note placed before us almost 25 years after the accident may not by itself be sufficient to make the insurance company liable to pay the award-money but there is contemporaneous evidence on the record to show that the cover note is genuine. Purshottam filed an application (96-C) before the Tribunal on 20-4-1979 wherein he stated that the car- purchased by his father under the hire-purchase agreement was insured with "Canara Motor and General Insurance Company Limited". The said application was, however, rejected by the Tribunal on the ground that no affidavit in support of the said application was filed. The Tribunal should have called upon the insurance company to produce the necessary documents. We are of the view that the Tribunal failed in its duty to judiciously investigate and adjudicate the claim filed by the appellants.

9. It is no doubt correct that initially the owner had produced certificate of insurance (KN-541) issued by the Northern India Insurance Company. In the said certificate, the names of two persons to whom the financier had earlier given the vehicle were mentioned. The Tribunal rejected the certificate on the short ground that unless the certificate of insurance is transferred in favour of Ram

Kishan, before the accident took place, no contract between Ram Kishan and the insurance company could have come into existence. It is not disputed that the car purchased by Ram Kishan was a second-hand car. The insurance cover produced before us clearly mentions that it was a second-hand car. Originally as a new car it was given to some other persons who had got it insured with the Northern India Insurance Company. When the financier transferred the vehicle in the name of Ram Kishan he must have given the original insurance certificate along with the vehicle to Ram Kishan. That is how initially in the proceedings before the Tribunal the insurance certificate (KN-541) was produced. Later on, Purshottam moved an application before the Tribunal bringing it to the notice of the Tribunal that his father Ram Kishan had got the vehicle insured with the "Canara Motor and General Insurance Company Limited". It seems that instead of having the original insurance cover transferred in his name, Ram Kishan got the car insured afresh with the Premier Insurance Company Limited and the Canara Motor and General Insurance Company Limited. It was a comprehensive cover. It is not disputed that the Premier Insurance Company Limited finally merged with the New India Assurance Company.

10. We are satisfied that the car with Registration No. UPC 8527 was insured with the Premier Insurance Company Limited and Canara Motor and General Insurance Company Limited. The New India Assurance Company, respondent in the appeal herein, being the successor of the said companies is liable to pay the award-money as an insurer.

11. The Tribunal has grossly erred in computing the compensation amount. The Tribunal was not justified in assuming the life expectancy to be 58. It could not be less than 65 even at that point of time. The Tribunal also fell into error in making 33% deduction for the lump sum payment. As a matter of fact, no payment till date has been received by the unfortunate family. The amount of Rs 40,600 awarded by the Tribunal is quite low. Without going into various heads under which the appellants could be compensated, we are of the view, that in order to do complete justice between the parties, the appellants be awarded Rs 1,20,000 (rounding off the figure of Rs 1,17,747.70 paise as claimed by the appellants). We order accordingly. On the amount of Rs 1,20,000 the appellants shall be entitled to 12 per cent per annum interest from the date of the application before the Tribunal. The total amount shall be paid by the insurance company to Urmilla Pandey, the widow, on her behalf and on behalf of her two children within three months from today. In case the amount is not paid within the period of three months, the insurance company shall be liable to pay interest at the rate of 18 per cent per annum thereafter. The amount shall be paid by way of a demand draft in the name of Urmilla Pandey.

12. We allow the appeal, set aside the High Court judgment and modify the award of the Tribunal in the above terms. The appellants shall be entitled to costs which we quantify as Rs 5000 to be paid by the insurance company.