

**(2009) 05 AHC CK 0174**

**Allahabad High Court**

**Case No:** None

New India Assurance Co Ltd

APPELLANT

Vs

Usha Devi & Others

RESPONDENT

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**Date of Decision:** May 11, 2009

**Hon'ble Judges:** Amitava Lala, J and Devendra Kumar Arora, J

**Final Decision:** Allowed

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### **Judgement**

Amitava Lala and D.K. Arora, JJ.

Heard learned Counsel appearing for the parties.

This is an appeal of the insurance company against the judgment and order dated 12.02.2009 passed by Motor Accident Claims Tribunal, Muzaffarnagar in M.A.C.P. No. 268 of 2007 awarding compensation of Rs. 3,93,500/ alongwith 4% interest.

This is a case of death of the deceased. He was 36 years old and married at the time of death. The tribunal has fixed the notional income of the deceased at Rs. 100/ per day and awarded the compensation taking into account the notional income, which according to us is justifiable.

The point which has been agitated by the learned Counsel appearing on behalf of the insurance company is contributory negligence. Upon going through the site map where accident took place, prepared by the police, we find that the tempo, which was carrying the deceased was not at fault. The deposition of eye witness with regard to running of the tempo at the speed of 50 to 60 km. seems to be unbelievable even in the common parlance. Moreover, in the site map, place of accident is shown as "A" and after accident the tempo was pushed to the place "B". Therefore, from the site map it is clear that the tempo was running straightway and unless the offending truck hit sidewise, the tempo can not be pushed to place "B". Under such circumstances, we find that there is no case of contributory negligence on the part of the tempo. In such circumstances, the appeal can not be admitted and is dismissed without imposing any cost.

Incidentally, the appellant insurance company prayed that the statutory deposit of Rs. 25,000/ made before this Court for preferring this appeal be remitted back to the concerned Motor Accidents Claims Tribunal as expeditiously as possible in order to adjust the same with the amount of compensation to be paid to the claimants, however, such prayer is allowed.