IN THE HIGH COURT OF JUDICATURE AT BOMBAY, BENCH AT AURANGABAD

FIRST APPEAL NO.: 263 OF 2003

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1. Sangita John Ohol,
   Age: 27 years, Occ: Household,

2. Suman John Ohol,
   Age: 9 years, Occu: Nil.

3. Pravin John Ohol,
   Age: 6 years, Occu: Nil.

   Appellant Nos.2 and 3 minors,
   Through their natural guardian
   i.e. Appellant No.1 (Mother).

4. Gorakhnath Ramji Ohol,
   Age: 54 years, Occu: Agri.

5. Anjanabai Gorakhnath Ohol,
   Age: 51 years, Occu: Household,

   All A/o Guha, Tq. Rahuri,
   Dist. Ahmednagar. ... **APPELLANTS**
   [ORIG. CLAIMANTS]

VERSUS

1. Gurushershing Balvirshingh Jat,
   Age: 38 yrs., Occ: Driver,
   R/o Beharam, Tq. Naamshar (Punjab),
   Dist. Kapurthala (Punjab).

2. Ravindrakumar Harbans Lal,
   Age: 50 yrs., Occu: Truck Owner,
   R/o 64/C-Model Town, Fagaware,
   Dist. Kapurthala (Punjab).

3. The New India Assurance Co. Ltd.
   (Notice to be served on Branch
   Manager, at Behind Hotel Ashoka,
   Zendigate, Ahmednagar). ... **RESPONDENTS**
   [ORIG. OPPONENTS]

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Mr. N. C. Garud, Advocate for the Appellants.
Mr. V. N. Upadhye, Advocate for Respondent No.3.

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CORAM:- T. V. NALAWADE, J.
DATED:- 20th NOVEMBER, 2015.

JUDGMENT:

1. The appeal is filed against judgment and Award of Claim Petition No. 935 of 1996 which was pending before Chairman, Motor Accident Claim Tribunal, Ahmednagar. As sufficient compensation is not awarded and as Insurance Company is not held liable to pay the compensation, original claimants have filed this appeal. Both sides are heard.

2. The claim was filed in respect of death of one John Ovol who died in motor accident. Claimant No.1 is the widow of the deceased, claimant Nos.2 and 3 are issues of Claimant No.1 born from the deceased and claimant Nos.4 and 5 are the parents of the deceased. The claim was made against owner, driver and Insurance Company of the offending vehicle.

3. The accident took place on 7th September, 1996 at

about 01.30 p.m. on Ahmednagar-Manmad road, near S. T. Stand. The vehicle involved was truck No. PB 09-A-0277. It is contended that dash was given by this truck to John and due to injury sustained in the accident John died.

4. It is the case of the claimants that the deceased was earning at-least Rs.4,500/- per month by working as a mason. It is contended that he was aged about 25 years and his income was the only source for the livelihood of the claimants. They had claimed compensation of Rs.2 Lakh.

5. The Insurance Company filed written statement and contested the matter. The insurance company contended that there was a breach of condition of policy and at the relevant time Respondent No.1, the driver was not holding valid and effective driving licence to drive the truck. It was also contended that the licences produced on the record were fake.

6. Issues were framed on the basis of aforesaid pleadings. The Tribunal presumed that the deceased was working as a mason and his monthly income was at least

Rs.3,000/-. On that basis the Tribunal calculated total loss of dependency as Rs.3.84 Lakh. In view of the age of the deceased, 16 was adopted as multiplier. The Tribunal however held that the claimants are entitled to get Rs.2 Lakh as the claim of Rs.2 Lakh is made. On this point learned counsel for the claimants submitted that just amount of compensation needs to be awarded irrespective of the claim made in the petition. On this point, the case reported as ***AIR 2008 SC 1221 (APSRTC and another Vs. M. Ramadevi and others)*** can be referred. Law is settled on this point and so Tribunal ought to have granted the amount which is just and which needs to be calculated as per the settled law. The amount of Rs.3.84 lakh is the amount of total loss of dependency. As claimant No.1 is widow, the amount of Rs.15,000/- could have been granted on the count of loss of consortium and some amount could have been granted on the ground of total funeral expenses. Thus, the total amount of at-least Rs.4 Lakh ought to have been awarded as compensation by the Tribunal on the principle of fault. Thus, the Award needs to be corrected, on the point of quantum of compensation.

7. The Tribunal has exonerated the insurance company and the claim against the insurance company is dismissed by observing that the claimants could not prove that the driver was holding valid and effective driving licence at the relevant time. The Tribunal considered circumstance that licences issued by three R.T.O. offices were produced and this circumstance was sufficient to create probability that they were fake licences.

8. Though the defence of aforesaid nature was taken by the insurance company, when there were three licences on the record, like Exhibit-52 issued by R.T.O. Office at Cuttak, State Orissa, Exhibit-71 issued by R.T.O. Jalandar, State of Punjab and Exhibit-73 issued by R.T.O. Amrutsar, State Punjab, it was necessary for the insurance company to lead positive evidence to prove that these licences were fake. The record shows that some attempt was made by the insurance company to call a witness from Cuttak office with the original record. The witness did not turn up and it appears that the insurance company collected correspondence made by Cuttak office and it was produced on record. Such correspondence could not have been

considered and the said letter is not accepted by the Tribunal. Inspite of these circumstances, the insurance company did not give evidence by calling the original record from three R.T.O. offices and by examining the concerned witnesses to prove that these licences were fake. On this point, there is one more important circumstance. Copies of police papers are on record and they show that the crime was not registered under section 3 of Motor Vehicles Act, for driving the vehicle without licence. This circumstance is sufficient to create probability that after the accident the driver had produced licence before the investigating officer and so the investigating officer did not register the crime under section 3 of Motor Vehicles Act. Suresh Bhambre, the investigating officer is examined by the claimants and he had given the report. His evidence shows that Exhibit-52 was considered by him though he had not verified as to whether the document was genuine or fake. In view of these circumstances, the burden was more on insurance company to prove the breach alleged. Even when no evidence was given by insurance company to prove the aforesaid breach, the learned Chairman of the Claims

Tribunal has inferred that the licence was probably fake. The fact that there were three licences was not sufficient to draw such inference and the burden was on the insurance company to prove that it was a fake licence and there was the breach of condition of policy.

9. The learned counsel for insurance company submitted that it can be inferred that it was a fake licence and insurance company can be protected by giving right to recover the compensation from the owner. This submission is also not acceptable. Learned counsel for the insurance company placed reliance on two cases reported as ***AIR 2014 SC 305 [Pepsu Road Transport Corporation V/s National Insurance Company]*** and ***AIR 2003 SC 1292 [United India Insurance Co. Ltd. V/s Lehru and others]***. In those cases the Apex Court had asked the insurance company to pay the compensation first and the insurance company was allowed to recover the amount from the owner when it was proved that licence was fake. In the present matter, the insurance company has not proved that the licence was fake and so such order is not possible. The fact of

insurance is not disputed. Due to these circumstances, this Court holds that the Tribunal has committed error in not fastening the liability on insurance company.

10 In the result, appeal is allowed. The judgment and Award of the tribunal is modified in following terms:

(I) The claim petition filed under section 166 of M.V.Act by the Applicant is allowed with costs. Opponent Nos.1 to 3 do jointly and severally pay the compensation of Rs.4 Lakh, which includes the compensation which was already paid on principal of “no fault”. The Respondents are also liable to pay interest at the rate of 9% p.a. and the interest will be payable on the amount which remains after deducting the amount of compensation paid under “no fault” liability and the interest will be payable till realisation of the amount from the date of the claim petition. The order of the Tribunal of dismissal of claim petition as against Respondent No.3 Insurance Company stands set aside.

(II) The disbursement of the amount of compensation is to be made as follows:

(i) Out of the total amount, 50% amount is awarded to claimant No.1 Sangita, widow of deceased.

(ii) The remaining amount is to be equally distributed amongst cllimant Nos.2 to 5.

(iii) The amount awarded to claimant No.1 is to be kept in fixed deposit in any nationalised bank for a period of 5 years and she is entitled to get quarterly interest on this amount.

(iv) Award to be prepared accordingly.

(v) Before making disbursement of compensation the deficit court fee is to be recovered from claimants.

[T. V. NALAWADE, J.]

Dated:20/11/2015.
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