IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

FIRST APPEAL NO. 347 OF 2015

Sunil s/o Vanilal Bhavsar ... **APPELLANT**
R/o Amrut, Indraprasta Nagar
Near Milk Federation Road,
Jalgaon, Taluka & Dist. Jalgaon.

VERSUS

1. United Insurance Co. Ltd.
   Through Divisional Manager,
   United India Insurance Co. Ltd.
   Near Railway Station, Jalgaon.

2. Shri Vasimkhan Nabikhan
   R/o Shivaji nagar, Hudco, Jalgaon,

3. Rekhabai Nandkumar Khairnar
   Age: Major Occupation: Household

4. Prerna Nandkumar Khairnar
   Age: Major, Occupation: Household

5. Nitikesh Nandkumar Khairnar
   Age 17 years, Occupation: Education
   Respondents 3 t 5:
   R/o Plot No.53, Gat No.22,
   Muktai Nagar, Jalgaon

6. Shakuntala Bhaskarrao Khairnar
   Age Major Occu: Household.

7. Bhaskarrao Shyamrao Khairnar ... **RESPONDENTS**
   Age Major, Occu: Agri.

   Respondents 1 and 2: R/o Dusane,
   Tq. Sakri, District: Dhule

Mr. Vinod Prakash Patil, Advocate for the Appellant
Mr. S. B. Yawalkar, Advocate for respondents 3 to 5
Mr. S. G. Chapalgaonkar, Advocate for respondent No.1

WITH
CROSS OBJECTION (ST) NO. 23043 OF 2015

1. Rekhabai Nandkumar Khairnar
   Age 38 years, Occupation: Household

2. Prerna Nandkumar Khairnar
   Age: 20 years, Occupation: Education

3. Nitikesh Nandkumar Khairnar
   Age 17 years, Occupation: Education
   All R/o Plot No.53, Gat No.22,
   Muktai Nagar, Jalgaon ... **CROSS OBJECTIONIST** (Ori. claimants)

VERSUS

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   R/o Amrut, Indraprasta nagar
   Near Milk Federation Road,
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   Through Divisional Manager,
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3. Shri Vasimkhan Nabikhan
   R/o Shivaji nagar, Hudco, Jalgaon, ... **RESPONDENTS.**

JMr. S. B. Yawalkar, Advocate for the cross objectionist.
Mr. Vinod Prakash Patil, Advocate for respondent No.1
Mr. S. G. Chapalgaonkar, Advocate for respondent No.2

CORAM : S. V. GANGAPURWALA, J.

DATE : 19th August, 2015

PER COURT :

1. Mr. Patil,learned counsel for the appellant submits that the present respondents 3, 4, and 5 had filed Motor Accident Claim Petition under Section166 of the Motor Vehicles Act calming compensation on

account death of Nandkumar Khairnar. The present respondents 6 and 7 are the parents of the deceased and were added as respondents in the said claim petition. Learned counsel submits that the appellant is owner of a Qualis vehicle which is involved in the accident, in which the deceased was traveling along-with the present appellant. According to the learned counsel, the Motor Accident Claim Tribunal partly allowed the claim petition and awarded compensation of Rs.19,72,000/- alongwith interest @7.5 % per annum. However, it made insurance company liable to the extent of Rs. 1 lac only. Learned counsel submits that the vehicle was validly insured. It is a case of package policy and as such, the insurance company cannot limit its liability.

2. Mr. Yawalkar, learned counsel for the claimants submits that respondents 6 and 7 are dead and in their place, the present respondents 3, 4 and 5 only are entitled for the compensation amount which was payable to respondents 6 and 7. Learned counsel submits that claimants have filed cross objection and have averred that the insurance company is jointly and severally liable to pay the amount and so also has challenged the apportionment of the amount as awarded by the claims tribunal.

3. Mr. Chapalgaonkar, learned counsel for the Insurance Company submits that the Tribunal has rightly considered the policy. The liability of the insurance company with regard to passengers was Rs. 1 lac only. The deceased was fare paying passenger, however the tribunal has

erroneously held that the deceased was a gratuitous passenger. Considering the terms and conditions of policy, the insurance company, by no stretch, can be made liable above Rs.1 lac.

4. With the assistance of the learned counsel for the respective parties, I have gone through the judgment and the record and proceedings.

5. The factum of accident is not disputed.

6. Mr. Yavalkar, the learned counsel submits that the fact that the deceased was in permanent employment is accepted by the Tribunal, however has not considered the future prospects. According to learned counsel, even consortium amount awarded is only Rs.10,000/- and funeral expenses Rs.5,000/- which is highly inappropriate. Learned counsel relies on the judgment of the Apex Court in the case of **Kansingh & another Vs.Tkaram & others, reported in 2015 ALL SCR 733** and also the judgment in the case of **Sarla Verma and others Vs. Delhi Transport Corporation and another, reported in 2009 (5) Mh.L.J. 775**.

7. The insurance company has not challenged the judgment of the tribunal. The points for determination in the present appeal would be as to the extent of the liability of the insurance company so also the quantum of compensation. Upon going through the insurance policy, the learned

counsel for the insurance company does not dispute that the same is a package policy.

8. When the policy is a package policy, the liability of the insurance company is not a limited liability but it would be unlimited liability. The insurance company themselves have come out with the circular dated 16.11.2009 which says that in case of package policy they would accept unlimited liability. The same was also placed before the Delhi High Court.

9. As far as the the quantum of compensation is concerned, the Court has held that the deceased was serving with the employer company, he was senior supervisor of human resource. It is a fact that the deceased was permanent employee aged 41 years. In such a case, the future prospects to the extent of 30% can be considered. The Court has considered the multiplier as 14 which is reasonable and proper. The gross salary was considered as 16,443/-. Professional Tax was deducted and for the purpose of computing income, the salary was considered Rs.16,243/-. The dependency has been rightly considered by the Tribunal. 30% amount of future prospect would be required to be added which would come to Rs. 1,90,035/-. (Salary 16243 + 30% increase = i.e. total Rs.21,115/-)

10. As per the judgment of the Apex Court in the case of **Kansingh & another** (supra), for the deceased 27 years age, the Apex Court has given Rs. 1 lac towards love and affection and Rs.25,000/- towards funeral

expenses. Considering the above, I follow the same course.

11. The applicant as such would be entitled for compensation of Rs.1,00,000/- towards consortium and Rs.25,000/- funeral expenses.

12. The respondents 6 and 7, during the pendency of the present appeal, have died. They were the dependents. As such, the amount which was payable to them would go to the present claimants only as they would be the dependents.

13. Considering the above, the claimant would be entitled to for the total compensation amount of Rs.27,85,490/- with interest @ 7.5% per annum from the date of claim petition till realization. The amount already paid shall be adjusted. The appellant owner, respondent No.1 Insurance Company and Respondent No.2 Driver shall all jointly and severally pay the said amount to claimants 1, 2 and 3.

14. Appeal, so also the cross objections accordingly disposed of. No costs.

15. The amount deposited by the owner to the extent it is retained in this Court, is allowed to be withdrawn by the owner.

(S. V. GANGAPURWALA, J.)

JPC