IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 228 OF 2014

1. Smt. Kalpana W/o Rajendrakumar Shendre,
Age 45 years, Occu. Household,

2. Mayur S/o Rajendrakumar Shendre,
Age 22 years, Occu. Education,

3. Pranav S/o Rajendrakumar Shendre,
Age 18 years, Occu. Education,

4. Smt. Shaila Deepal Shendre,
Age 77 years, Occu. Nil,
All R/o behind Hotel Pancharatna,
Yawal Road, Faizpur,
Taluka Yawal, District Jalgaon. … Applicants
(Orig. Claimants)

Versus

1. Ramesh S/o Jagannath Patil,
Age Major, Occu. Agriculture,
R/o Village Chinawal,
Taluka Raver, District Jalgaon.

2. United India Insurance Company Ltd.,
Mansing Market, Near Railway Station,
Jalgaon Office, Jalgaon,
District Jalgaon.

3. Parish @ Paresh S/o Nilkanch Choudhary,
Age 31 years, Occu. Labour,
R/o Village Chinawal, Taluka Raver,
District Jalgaon. … Respondents
(Orig. Respondents)

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Advocate for the appellants : Mr. P. R. Katneshwarkar
Advocate for respondent No.1 : Mr. S. S. Shete
Advocate for respondent No.2 : Mr. S. S. Rathi

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CORAM : V. K. JADHAV, J.
RESERVED FOR JUDGMENT ON : 13th JUNE, 2016
JUDGMENT PRONOUNCED ON : 12th JULY, 2016

JUDGMENT :-

1. By consent of learned counsel for respective parties, heard finally.

2. Being aggrieved by the judgment and award dated 23.09.2013 passed by learned Member, Motor Accident Claims Tribunal, Jalgaon in MACP No. 3 of 2007, the original claimants have preferred this appeal to the extent of dismissal of the claim petition against original respondent No.2/insurer (United India Insurance Co. Ltd.)

3. Brief facts giving rise to the present appeal are as follows:

a) On 11.05.2006, deceased Rajendrakumar was proceeding on his motorcycle bearing registration No. MH-19-AB-7767 to attend a marriage ceremony of his relative. At around 9 a.m., on Savda-Faizpur Road, near Munjoba Temple, one motorcycle bearing registration No. MH-19-A-8115 (offending motorcycle) came from the opposite direction in high speed and dashed to the motorcycle of the deceased. The offending motorcycle bearing registration No. MH-19-A-8115 is owned by respondent No. 1, insured with respondent No.2 and was being driven in rash and negligent manner in speed by respondent No.3 when the accident occurred. In consequence of which, deceased Rajendrakumar was thrown away from his motorcycle and sustained fracture of his skull. He died on the spot. Thus, the claimants, who are the legal representatives of deceased Rajendrakumar, preferred claim petition before the Motor Accident Claims Tribunal, Jalgaon for grant of compensation under various heads.

b) It is contended in the claim petition that deceased Rajendrakumar was 40 years old at the time of his accidental death and he was Professor at J.T. Mahajan Polytechnic Collage run by Technical and Medical Education Society and he was getting monthly salary of Rs.16,095/-. The claimants were entirely depending on his income and as such, they claimed total amount of compensation of Rs.35,00,000/- from the respondents under various heads.

c) Respondent No.1/owner of the offending motorcycle strongly resisted the claim petition by filing written statement Exh.19 and additional written statement Exh.31. It is contended that the accident occurred on account of fault of deceased Rajendrakumar. He has denied the involvement of his motorcycle in the accident. According to him, on 11.05.2006, there was marriage of his daughter and for some work, he handed over his motorcycle to one Nilesh Nemade. It is further contended that he is not aware as to whom and how Nilesh handed over the motorcycle. He never handed over his motorcycle to respondent No.3-Paresh.

d) Respondent No.2/insurer has also strongly resisted the claim petition by filing its written statement Exh.17. It is contended that rider of the offending motorcycle was not holding a valid and effective driving licence, and as such, there is breach of terms and conditions of the insurance policy. It is also contended that the accident occurred on account of rash and negligent driving of deceased Rajendrakumar.

e) Respondent No.3/rider of the offending motorcycle has also resisted the claim petition by filing his written statement Exh.30-A. According to him, he has no concern with the accident and on the basis of hearsay complaint, he is made accused in the Summary Criminal Case No.1069 of 2006 arising out of the said accident. In the criminal trial, witness No.3-Nilesh has not supported the prosecution story, however, in cross-examination at the hands of the learned APP in the said case, he has given certain admissions which cannot be taken into consideration. It is further contended that he has been falsely implicated in the case and he has no concern with the offending motorcycle or its owner.

f) On the basis of these rival contentions of the parties to the claim petition, the Tribunal has framed issues at Exh.35. The claimant, as well as the respondents filed their oral and documentary evidence in support of their rival contentions. Learned Member of the Motor Accident Claims Tribunal, Jalgaon has partly allowed the claim petition with costs and thereby held respondent Nos. 1 and 3 jointly and severally liable to pay the amount of compensation of Rs.60,50,000/- to the petitioners, including amount of N.F.L., along with interest. Learned Member of the Tribunal, however, dismissed the claim petition as against respondent No.2/insurer. Being aggrieved by the same, the original claimants have preferred the present appeal to the extent of dismissal of the claim petition against respondent No.2/insurer.

4. Learned counsel for the appellants submits that respondent No.1/owner of the offending motorcycle has made a categorical statement that he has given his motorcycle to one Nilesh Nemade, who is having a valid and effective driving licence to drive motorcycle. Driving licence of said Nilesh is also produced on record. Respondent No.1/owner never handed over his motorcycle to respondent No.3. Consequently, there is no breach of promise as contemplated under the insurance policy. Learned counsel submits that the defence of respondent/insurer built on the exclusion clause

cannot succeed for more than one reasons. There was marriage of daughter of respondent No.1/owner on the date of the alleged accident. Respondent No.1/owner has handed over the keys of the offending motorcycle to said Nilesh. Said Nilesh is having valid and effective driving licence to drive motorcycle. Thus, respondent No.1/owner has done everything in his power to keep the promise and he is not guilty of a deliberate breach. It is for the respondent/insurer to establish that the insured/owner is guilty of infringement or violation of promise and the said violation or infringement of promise on the part of respondent No.1 must be wilful. Respondent insurer has failed to establish that owner of the offending motorcycle had himself placed the offending motorcycle in charge of respondent No.3, who was not holding a driving licence. In absence of the same, it cannot be said that respondent No.1/owner is guilty of breach of promise and that the insurer is not liable to pay compensation on account of the said breach or infringement of the terms of policy.

5. Learned counsel, in order to substantiate his contention, places reliance on the decision of Supreme Court in the case of ***Skandia Insurance Co. Ltd. vs. Kokilaben Chandravadan and others,*** reported in ***AIR 1987 SC 1184(1)***.

6. Learned counsel for respondent No.1/owner submits that on the date of accident, there was marriage of daughter of respondent No.1 and for some reason, he handed over his vehicle motorcycle to one Nilesh Nemade. Said Nilesh Nemade is having valid and effective driving licence to drive motorcycle and the same is evident from the copy of his driving licence which is verified with the original licence and marked Exh.79. Respondent No.1/owner has handed over the keys of said motorcycle to Nilesh for some work and he himself remained busy in the marriage ceremony of his daughter. If said Nilesh Nemade subsequently, on his own, handed over the keys of said motorcycle to respondent No.3-Paresh without any express or implied consent of respondent No.1/owner, then there is no wilful infringement or violation of promise or obligation on his part so far as the exclusion clause in the contract of insurance policy is concerned. It is clear from the judgment passed by the Judicial Magistrate First Class, Raver dated 03.03.2009 in the Summary Criminal Case against respondent No.3 Paresh. Certified copy of the said judgment in Summary Criminal Case No. 1069 of 2006 is placed on record and marked Exh.50. In the said criminal case, Niesh Nemade has admitted that he was the pillion rider on the said motorcycle at the time of accident and he also sustained injury in the said accident. He has further, in unequivocal words, admitted that the accused (present respondent No.3 Paresh) was riding the said motorcycle. Though

witness Nilesh Nemade has not supported the prosecution case before the Magistrate in the said criminal case, the said admissions on his part in his cross-examination at the hands of learned APP can be considered. Respondent/insurer has failed to establish that there was wilful infringement or violation on the part of respondent No.1/owner and thus, failed to discharge the burden of proving breach of the terms of contract of insurance by respondent No.1. Though there is valid contract of insurance between respondent No.1/owner and respondent No.2/insurer, the tribunal has erroneously exonerated respondent/insurer from paying compensation to the claimants.

7. Learned counsel for respondent No.2/insurer submits that though respondent No. 3 has denied his involvement in the accident, the documents placed on record coupled with the oral evidence sufficiently indicates that respondent No.3-Paresh was riding the motorcycle at the time of accident. Respondent No.2/insurer has succeeded in proving that respondent No.3-Paresh was not having valid and effective licence at the time of accident. Respondent/insurer has examined RW-1 Prakash Patil serving in Regional Transport Office, Jalgaon. As per the record of R.T.O., Jalgaon, the driving licence was issued to respondent No.3-Paresh on 09.10.2006 authorizing him to drive motorcycle with gear.

Respondent No.2/insurer has proved documents Exh.71 and 73 respectively, through this witness. It is, thus, clear that respondent No.3-Paresh was not having valid, effective driving licence at the time of accident. Learned counsel for respondent No.1 has not examined said Nilesh Nemade as his witness. There is no evidence to show that respondent No.1/owner handed over the keys of the offending motorcycle to Nilesh Nemade on the date of accident. After the accident, crime came to be registered against respondent No.3-Paresh and after due investigation, the Police submitted charge sheet against him. Even though respondent No.3-Paresh came to be acquitted in the said criminal case, it is established that respondent No.3-Paresh was riding the motorcycle at the time of accident. Even though respondent No.1/owner has shown his ignorance about riding of motorcycle by respondent No.3-Paresh at the time of accident and also denied acquaintance with said Paresh in the pleadings, he admitted in his cross-examination that respondent No.3-Paresh and said Nilesh are the residents of his village. He has further admitted the damage caused to his vehicle motorcycle, however, he has further stated in his cross-examination that he did not ask Nilesh as to whom he handed over the vehicle and how damage caused to his vehicle. The conduct of respondent No.1/owner is sufficient to establish that he is guilty of infringement or violation of the terms and conditions of the policy wilfully. The Tribunal has, thus, rightly exonerated respondent No.2/insurer from the liability to pay compensation to the claimants. Learned counsel, in the alternate, submits that if this Court comes to the conclusion that respondent/insurer is liable to pay compensation jointly and severally with respondent/owner, then respondent No.2/insurer may be heard on the point of negligence as well as the quantum of compensation.

8. I have carefully considered the submissions advanced by learned counsel appearing for the parties. With their able assistance, I have carefully gone through the grounds taken in the appeal and the annexures thereto.

9. Respondent No.1/owner Ramesh Patil, in his affidavit of evidence Exh.77, has contended that on the date of accident, he was busy in the marriage ceremony of his daughter. On that day, for some work, he handed over the said motorcycle to Nilesh Nemade. He has denied that respondent No.3 had driven the motorcycle and caused the accident. According to him, the complaint in the Police Station came to be lodged on the basis of hearsay evidence. He has further stated that the accident had taken place due to fault on the part of deceased himself. In order to substantiate his contentions, he also produced copy of driving licence issued in the name of Nilesh Nemade and after verifying the original, the same is marked Exh.79.

He is subjected to cross-examination at length by respondent/insurer. It is true that respondent/owner has not raised a plea in his first written statement Exh.19 that on the date of accident, he handed over the keys of the motorcycle to Nilesh Nemade and in his subsequent written statement Exh.32, he has raised the said plea. He has denied the suggestion that in order to avoid liability to pay compensation, he is deposing falsely. However, it is part of record that after respondent No.3-Paresh, who came to be impleaded as a party respondent to the claim petition as per order passed by the tribunal, by his written statement, denied his involvement in the alleged accident, respondent No.1/owner, with the permission of the Court, has filed his additional written statement Exh.32. Respondent No.3-Paresh, even though the crime came to be registered against him on the basis of the complaint lodged in the concerned Police Station, and even though after due investigation, charge sheet came to be submitted against him, denied his involvement in the said accident. It thus, appears that respondent No.1/owner has rightly explained in his subsequent written statement Exh.32 about handing over of the vehicle to one Nilesh Nemade.

10. On careful perusal of certified copy of the judgment delivered by the Judicial Magistrate First Class in Summons Criminal Case No. 1069 of 2006, it appears that said Nilesh Nemade was the

prosecution witness No.3 in the said case and since he has not supported the prosecution case, he was subjected to cross-examination by the Assistant Public Prosecutor. Learned Magistrate has observed in the judgment that PW-3 Nilesh Nemade has given certain admissions in his cross-examination. He has admitted in his cross-examination that the accident has taken place and he also sustained injuries to his leg. He has also admitted that at the time of accident, present respondent No.3-Paresh was riding the motorcycle and he himself was the pillion rider. It is well settled that the Court is not precluded from taking into account the statement of a hostile witness altogether and it is not necessary to discard the same in to-to and can be relied upon partly. Evidence of the hostile witness is admissible in evidence and part of it can be accepted by the Court if the Court is satisfied with its truthfulness. It further appears from the observations made by learned Magistrate in the said judgment that learned Magistrate believed the evidence of witness Nilesh Nemade to that extent. However, Learned Magistrate further observed that the said admissions on the part of witness Nilesh Nemade are not sufficient to establish that accused Paresh had driven the vehicle in rash and negligent manner and that he is responsible for the accident.

11. I find much substance in the contention of respondent/owner

that on the day of accident, he handed over the keys of his motorcycle to Nilesh Nemade, who is having valid and effective driving licence to drive the motorcycle. It was revealed during the course of investigation that said Nilesh Nemade was the pillion rider of the offending motorcycle and respondent No.3-Paresh was riding the motorcycle at the time of accident. Once respondent No.1/owner handed over keys of his motorcycle to the person having valid and effective driving licence to drive motorcycle, irrespective of the question whether he remained busy in the marriage ceremony of his daughter or not, he looses his control in the form of supervision over the vehicle. It is thus, for the respondent/insurer to establish that respondent/owner is guilty of an infringement or violation of the conditions of insurance policy and the said infringement or violation is wilful. Respondent/insurer has nowhere even suggested to respondent No.1/owner in his cross-examination that he himself placed the vehicle motorcycle in charge of respondent-Paresh who was not holding driving licence. Unless the said burden is discharged, respondent/insurer cannot escape from the liability to indemnify respondent/owner.

12. I am fortified by the view expressed by the Apex Court in the case of ***Skandia Insurance Co. Ltd.*** (supra) relied upon by the learned counsel for the appellant, wherein, in paragraph No. 14 of

the judgment, the Apex Court has made the following observations :

"14. Section 96(2)(b)(ii) extends immunity to the Insurance Company if a breach is committed of the condition excluding driving by any named person or persons or by any person who is not fully licenced, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification. The expression 'breach' is of great significance. The dictionary meaning of 'breach' is 'infringement or violation of a promise or obligation' (see Collins English Dictionary). It is therefore abundantly clear that the insurer will have to establish that the insured is guilty of an infringement or violation of a promise that a person who is not (sic) duly licenced will have to be in charge of the vehicle. The very concept of infringement or violation of the promise that the expression 'breach' carries within itself induces an inference that the violation or infringement on the part of the promisor must be a wilful infringement or violation. If the insured is not at all at fault and has not done anything he should not have done or is not amiss in any respect how can it be conscientiously posited that he has committed a breach? It is only when the insured himself places the vehicle in charge of a person who does not hold a driving licence, that it can be said that he is 'guilty' of the breach of the promise that the vehicle will be driven by a licenced driver. It must be established by the Insurance Company that the breach was on the part of the insured and that it was the insured who was guilty of violating the promise or infringement of the contract. Unless the insured is at fault

and is guilty of a breach the insurer cannot escape from the obligation to indemnify the insured and successfully contend that he is exonerated having regard to the fact that the promisor (the insured) committed a breach of his promise. Not when some mishap occurs by some mischance. When the insured has done everything within his power inasmuch as he has engaged a licenced driver and has placed the vehicle in charge of a licenced driver, with the express or implied mandate to drive himself it cannot be said that the insurer is guilty of any breach. And it is only in case of a breach or a violation of the promise on the part of the insured that the insured can hide under the umbrella of the exclusion clause. In a way the question is as to whether the promise made by the insured is an absolute promise or whether he is exculpated on the basis of some legal doctrine. The discussion made in paragraph 239 of Breach of Contract by Carter (1984 Edition) under the head Proof of Breach, gives an inkling of this dimension of the matter. In the present case even if the promise were to be treated as an absolute promise the grounds for exculpation can be found from Section 84 of the Act which reads thus :-

> ***"84**. Stationary vehicles - No person driving or in charge of a motor vehicle shall cause or allow the vehicle to remain stationary in any public place, unless there is in the driver's seat a person duly licenced to drive the vehicle or unless the mechanism has been stopped and a brake or brakes applied or such other measures taken as to ensure that the vehicle cannot accidentally be put in motion in the absence of the driver."*

In view of this provision apart from the implied mandate to the licenced driver not to place a non-licenced person in charge of the vehicle. There is also a statutory obligation on the said person not to leave the vehicle unattended and not to place it in charge of an unlicenced driver. What is prohibited by law must be treated as a mandate to the employee and should be considered sufficient in the eye of law for excusing non-compliance with the conditions. It cannot therefore in any case be considered as a breach on the part of the insured. To construe the provision differently would be to re-write the provision by engrafting a rider to the effect that in the event of the motor vehicle happening to be driven by an unlicenced person regardless of the circumstances in which such a contingency occurs, the insured will not be liable under the contract of insurance. It needs to be emphasised that it is not the contract of insurance which is being interpreted. It is the statutory provision defining the conditions of exemption which is being interpreted. These must therefore be interpreted in the spirit in which the same have been enacted accompanied by an anxiety to ensure that the protection is not nullified by the backward looking interpretation which serves to defeat the provision rather than to fulfil its life-aim. To do otherwise would amount to nullifying the benevolent provision by reading it with a non-benevolent eye and with a mind not tuned to the purpose and philosophy of the legislation without being informed of the true goals sought to be achieved. What the legislature has given, the Court cannot deprive of by way of an exercise in *interpretation when the view which renders the provision potent is equally plausible as the one which renders the provision impotent. In fact it appears that the former view is more plausible apart from the fact that it is more desirable. When the option is between opting for a view which will relieve the distress and misery of the victims of Accidents or their dependents on the one hand and the equally plausible view which will reduce the profitability of the insurer in regard to the occupational hazard undertaken by him by way of business activity, there is hardly any choice. The Court cannot but opt for the former view. Even if one were to make a strictly doctrinaire approach, the very same conclusion would emerge in obeisance to, the doctrine of 'reading down' the exclusion clause in the light of the 'main purpose' of the provision so that the 'exclusion clause' does not cross swords with the 'main purpose' high-lighted earlier. The effort must be to harmonize the two instead of allowing the exclusion clause to snipe successfully at the main purpose. This theory which needs no support is supported by Carter's "Breach of Contract" Vide paragraph 25 To quote:-*

> *"Notwithstanding the general ability of contracting parties to agree to exclusion clause which operate to define obligations there exists a rule, usually referred to as the "main purpose rule", which may limit the application of wide exclusion clauses defining a promisor's contractual obligations. For example, in Glynn v. Margetson & Co., [1893] A.C. 351 at 357 Lord Halsbury L.C. stated:*

"It seems to me that in construing this document, which is a contract of carriage between the parties, one must be in the first instance look at the whole instrument and not at one part of it only. Looking at the whole instrument, and seeing what one must regard .... as its main purpose, one must reject words, indeed whole provisions, if they are inconsistent with what one assumes to be the main purpose of the contract."

Although this rule played a role in the development of the doctrine of fundamental breach, the continued validity of the rule was acknowledged when the doctrine was rejected by the House. of Lords in Suissee Atlantique Societe d' 766 Armement Maritime S.A.v.N.V. Rotterdamsche Kolen Centrale, [1967] 1 A.C. 361 at 393,412- 413,427, 428, 430. Accordingly, wide exclusion clauses will be read down to the extent to which they are inconsistent with the main purpose, or object of the contract." (Exphasis added).”

13. In view of the above discussion and in the light of observations made by the Hon'ble Apex Court, I am of the considered opinion that respondent/insurer has failed to discharge its burden and thus, is liable to pay compensation to the claimants. Learned Member of the tribunal has committed error of fact and law to exonerate respondent/insurer from the liability to pay compensation and from the obligation to indemnify the insured under the terms of contract of insurance. I, thus, hold that respondent No.2/insurer is jointly and severally liable to pay compensation with respondent Nos.1 and 3.

14. Learned counsel for respondent No.2/insurer submits the the appellants/claimants have failed to prove that the accident has occurred because of rash and negligent driving of the motorcycle bearing registration No. MH-19-A-8115 by its driver. PW-1 is not an eye witness to the accident and the F.I.R. is lodged on the basis of hearsay information. The evidence before the tribunal, at the most indicates the involvement of said motorcycle in the alleged accident. However, there is no evidence at all to show that the accident had occurred on account of rash and negligent driving of said motorcycle by its driver. It is true that PW-1 *Kalpana* has no personal knowledge about the accident and she has not actually witnessed the accident. However, she has produced on record the Police documents such as F.I.R., spot panchnama, inquest panchnama etc. On careful perusal of spot panchnama Exh.40, it appears that the road Savda-Faizpur is east-west in direction at the spot of the accident. It further appears from the contents of the spot panchnama that the tar road is 30 ft. in width at the spot of accident. Both the counsel admit that village Savda is towards eastern side whereas, Faizpur is situated towards western side. As per contents of the spot panchnama, the road at the spot of accident is straight and plain. It is not disputed that deceased Rajendrakumar was proceeding on his motorcycle from Faizpur to Savda. In view of the same, northern side of the road is the correct side for the vehicle proceeding towards Savda from

Faizpur. It is specifically mentioned in the spot panchnama that the blood spots are towards the northern side of the road and the motorcycle being driven by deceased Rajendrakumar was also lying towards the northern side of the road. It further appears from the contents of the panchnama that excessive damage has been caused to the right portion of the motorcycle of deceased, partly on the right side indicator, foot-ware, side glass and the dickey which is placed to the right side of the vehicle. Thus, the only inference can be drawn that even though the tar road is 30 ft. in width, the another vehicle motorcycle gave dash to the motorcycle of deceased by going to the wrong side of the road and dash was given on the right side portion of the vehicle motorcycle being driven by the deceased. Thus, the maxim *res ipsa loquitur* squarely applies to the facts and circumstances of the present case. Neither respondent Nos. 1 and 3, nor respondent No.2/insurer examined said Nilesh Nemade to substantiate their contention that deceased Rajendrakumar was responsible for the accident. Even though said Nilesh Nemade has admitted in his cross-examination before the criminal court that he was the pillion rider and he actually witnessed the incident and further stated that deceased Rajendrakumar was responsible for the accident, none of the respondents have bothered to examine said witness. In view of the above, I do not find any fault in the affirmative finding recorded by the tribunal that the accident has occurred because of the rash and negligent riding of motorcycle bearing registration No. MH-19-A-8115 by its rider.

15. Learned counsel for the respondent/insurer submits that the tribunal has not considered salaried income of deceased Rajendrakumar and awarded exorbitant compensation on the surmise that deceased Rajendrakumar might have fetched salary in accordance with 6th Pay Commission. Deceased Rajendrakumar was getting total salary of Rs.16,095/- p.m. Even assuming that 6th Pay Commission was made applicable by the Government w.e.f. 01.01.2006, as deposed by witness No.2 for the claimants viz. Shri Ramanlal Mahajan, the basic pay of deceased Rajendrakumar would have increased from Rs.10,975/- to Rs.20,420/- and after adding academic grade pay and other allowances, his total salary would have been Rs.29,591/-. Said witness has further stated that deceased Rajendrakumar would have earned the salary of Rs.62,241/- had he been alive in the year 2013. The tribunal has thus, erroneously assessed his salaried income as Rs.62,241/- p.m.

16. I find much substance in the submissions made by learned counsel for respondent/insurer. Witness Ramanlal Mahajan has admitted in his cross-examination that the last drawn pay of deceased Rajendrakumar for the month of April 2006 was

Rs.12,876/-. As per his affidavit of evidence, deceased Rajendrakumar was getting total salaried income of Rs.16,095/- p.m. and after necessary deductions, he was getting Rs.12,876/- p.m. as salary. He has further admitted in his cross-examination that the Government Resolution of 6th Pay Commission was published on 20.08.2010 with retrospective effect from 01.01.2006 and the said pay was not applied to deceased Rajendrakumar Shendre for the reason that only the serving persons are entitled to the benefit of 6th Pay Commission. In view of the above admissions and after considering the future prospects of deceased Rajendrakumar, it would be just and proper to consider the salaried income of deceased Rajendrakumar as stated by said witness Ramanlal Mahajan. Deceased Rajendra, even assuming that the benefit of 6th Pay Commission was given to him, would have earned Rs.29,591/- and after deducting amount towards Professional Tax and Income Tax, and after making addition of 30% in the income by considering the future prospects, the claimants sustained loss of future income of Rs.38,208/- p.m. Learned Member of the tribunal has deducted 1/3rd amount towards personal expenses erroneously instead of 1/4th amount. Learned Member of the tribunal should have considered deduction of 1/4th amount from the income of deceased towards his personal expenses considering the number of claimants entirely depending on the income of deceased Rajendrakumar. Thus, after deducting 1/4th of the amount towards personal expenses, there is loss of future income of Rs.28,656/- p.m., corresponding to Rs.3,43,872/-per annum. Considering the age of deceased Rajendrakumar, the tribunal has rightly applied multiplier 14. It further appears that the tribunal has not awarded compensation under the non-pecuniary heads such as loss of consortium, loss of estate, loss of love and affection for the minor claimants etc. Claimant No.1 is entitled for an amount of Rs.25,000/- for loss of consortium, whereas, the minor claimant Nos. 2 and 3 are entitled for an amount of Rs.10,000/- each, towards loss of love and affection. The claimants are also entitled for an amount of Rs.10,000/- towards loss of estate. In view of the above, recalculation of compensation is required to be done. Thus the break up of compensation, which can be broadly categorized, is as under :

I.	Loss of future income (28,656X12X14)	-	Rs.48,14,208=00
II.	Loss of consortium	-	Rs.00,25,000=00
III.	Loss of love and affection for minor claimant Nos.2 & 3 (Rs.10,000/- each)	-	Rs.00,20,000=00
IV.	Loss of estate	-	Rs.00,10,000=00
V.	Funeral expenses (as awarded by the Tribunal)	-	Rs.00,10,000=00
		Total	Rs.48,79,208=00

17. Thus, the appellants-claimants are entitled for compensation of Rs.48,79,208/- (Rupees Forty Eight Lac Seventy Nine Thousand Two Hundred Eight only) and respondent No.2/insurer is jointly and severally liable to pay the same with respondent No.1/owner and respondent No.3/driver. In view of the above, the judgment and award passed by the Member, M.A.C.T., Jalgaon in MACP No. 3 of 2007, needs to be modified. Hence, I proceed to pass the following order :

ORDER

I. First Appeal No.228 of 2014 is hereby allowed with proportionate costs.

II. The judgment and award dated 23.09.2013 passed by the Member, M.A.C.T., Jalgaon, in MACP No. 3 of 2007 is hereby quashed and set aside to the extent of dismissal of claim petition against respondent No.2/United India Insurance Company Ltd.

III. The impugned judgment and award is hereby modified in the following manner :

“Respondent No. 1/owner, respondent No. 2/insurer and respondent No.3/driver do pay, jointly and severally, amount of compensation of Rs.48,79,208/- (Rupees Forty Eight Lac Seventy Nine Thousand Two Hundred Eight only) to the claimants, including the amount of N.F.L., along with interest at the rate of 7.5% p.a. from the date of petition till realization of the entire amount.”

IV. Rest of the judgment and award stands confirmed.

V. Award be drawn up in tune with the modification as aforesaid.

VI. First Appeal is accordingly disposed of.

(V. K. JADHAV, J.)

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