

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 297 OF 2014

1. Sarjubai w/o Vishnudas Manme,
Age – 45 years, Occu. Household,
2. Laxmikant @ Sham s/o Vishnudas
Manme,
Age 13 years, Occu. Education,

Claimant No. 2 is minor child of
deceased, u/g of claimant No.1.
Both R/o. Basweshwar Chowk,
Ring Road, Latur,
Taluka and District Latur.

... Appellants

Versus

1. Deepak Balbhimrao Suryawanshi,
Age – 36 years, Occ. Pvt. Service,
R/o. Old AUSA Road,
Near Lal Bhadur School,
Choudhary Nivas, at Latur,
Taluka and District Latur.
2. Nawaz s/o Mainoddin Pathan,
Age – major, Occu. Driver,
R/o. Yerol, Taluka Shirur Anantpal,
District Latur (Driver of car)
3. The New India Assurance Co. Ltd.,
Through its Branch Manager,
Jeevan Suman LIC building,
Flat no.3, N-5, CIDCO,
Jalgaon Road, Aurangabad.
4. Satyabhamabai w/o Laxminarayan
Manme,
Age – 65 years, Occu. Nil,
R/o. Veer Hanuman Wadi,
Manjeet Road, Latur.

... Respondents.

WITH
FIRST APPEAL NO. 298 OF 2014

1. Manisha w/o Raghvendra Shastri,
Age – 39 years, Occu. Household,
2. Mansi D/o Raghvendra Shastri,
Age – 13 years, Occu. Education,
3. Mayur S/o Raghvendra Shastri,
Age – 9 years, Occu. Education,

Appellant Nos. 2 and 3 are minors,
u/g of their natural mother i.e.
appellant No. 1.

All R/o. C/o. M. G. Pandey
House No. 1/272, Old Adarsh Colony,
Ausa Road, Latur.

... Appellants.

Versus

1. Deepak S/o Balbhimrao Suryawanshi,
Age-major, Occu. Business,
R/o Yeshwantrao Chavan Shoping
Complex, Main Road, Latur.
2. The New India Assurance Co. Ltd.,
Through its Branch Manager,
Opp. Shahu College, Latur.
3. Sudhakar S/o. Purshottam Shastri,
Age – 70 years, Occu. Nil,
4. Sau. Sudha w/o Sudhakar Shastri,
Age – 65 years, Occu. Household,
Both R/o Vijay Housing Society,
Near Shivaji School, Latur.
5. Maharashtra State Electricity
Distribution Co. Ltd.,
Through its Cheif Engineer,
First Floor, Old Power House,
Salle Galli, Latur.

6. Nawaz s/o Mohaddinkhan Pathan,
Age – 25 years, Occu. Driver of Car,
R/o Yerol, Tq. Shirur (Anantpal)
District Latur. ... Respondents.

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Mr. R. P. Adgaonkar, Advocate for the appellants
Mr. A. S. Usmanpurkar, Advocate for respondent No.3-insurer in FA
No.297/14

Mr. V. R. Mundada, Advocate for respondent No.2-insurer in FA No.
298/14

Mr. A. M. Gaikwad, Advocate for respondent No.5-MSEDCL in FA
No.298/2014

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CORAM : V. K. JADHAV, J.
DATED : 10th JUNE, 2016

ORAL JUDGMENT:-

1. Heard finally by consent of learned counsel for the respective parties.

2. Being aggrieved by the common judgment and award dated 21.10.2013 passed by learned Member, Motor Accident Claims Tribunal, Latur in M.A.C.P. No. 106 of 2009 (Manisha w/o Raghvendra Shastri and others v/s Deepak S/o Balbhimrao Suryawanshi and others) and M.A.C.P. No. 225 of 2009 (Sarjubai w/o Vishnudas Manme and another v/s Deepak Balbhimrao Suryawanshi and others), the original claimants have preferred two separate appeals, bearing First Appeal No. 298 of 2014 and 297 of 2014 respectively.

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

a) Deceased Raghvendra Shastri was serving as Junior Engineer and deceased Vishnudas Manme was serving as Helper in M.S.E.D.Co.Ltd. at Latur. On 25.03.2008, at about 8:30 a.m. on Pune-Mumbai express Highway, near village Theku, District Thane, both of them while travelling in Indica car bearing registration No. MH-24-C-7486, met with vehicular accident as the said car dashed against an unidentified moving container from its back side while the said container was ahead of the Indica car. In consequence of which, both of them sustained severe injuries and were admitted in MGM Hospital at Kalambuli, District Thane. Deceased Vishnudas Manme succumbed to the injuries on the day of the vehicular accident while under treatment, whereas on the next day, deceased Raghvendra Shastri, while undergoing treatment, died in the said hospital. The legal representatives of both of them preferred two separate claim petitions before the M.A.C.T., Latur for grant of compensation under various heads. It is contended that the vehicular accident has occurred on account of rash and negligent driving of driver of said Indica car in which deceased Raghvendra and deceased Vishnudas were travelling. It is further contended that respondent No.1, who is the owner of said car involved in the accident, was the friend of both the deceased, and out of said friendly relationship, he had provided said car to them for travelling

from Latur to Bombay. It is alternatively contended that the said Indica car involved in the vehicular accident was hired by respondent No.5-MSEDCL, Latur for official use and deceased Raghvendra Shastri was heading to Bombay for official work in the said car. It is therefore contended that respondents, i.e. the owner, the insurer and the driver respectively, are jointly and severally liable to pay compensation or, in the alternate, respondent No.5-MSEDCL is liable to pay compensation. Respondent-owner and respondent-driver of the car, though duly served with the notice of claim petitions, remained absent and therefore, hearing of claim petition was ordered to proceed ex-parte. Respondent-insurer strongly resisted the claim petitions by filing separate written statement in both the claim petitions, however, the defence taken by respondent-insurer is identical in both the claim petitions. It is contended that respondent No.1 was the friend of deceased Raghvendra Shastri. It is further contended that either deceased persons or respondent No.5-MSEDCL, Latur hired the Indica car for official work as both the deceased, at the material time, being on duty, were heading to Bombay for official work. It is also contended that the Indica car involved in the vehicular accident is a private car and the same cannot be provided on hire or reward basis and since the owner of the said car had provided the car on hire to deceased or to MSEDCL, Latur, though for official work, there has been breach of terms and

conditions of the insurance contract, and as such, respondent-insurer of the car is not liable to pay the compensation. It is also contended that driver of the car, at the material time, was not holding valid and effective driving licence.

b) Respondent No.5-MSEDCL has contested only the Motor Accident Claim Petition No. 106 of 2009 by filing written statement. It is contended that respondent No.5-MSEDCL never hired the car involved in the accident for official work. It is also contended that if deceased Raghvendra had hired said car for his journey, then his individual act of hiring of the car does not fasten the liability on respondent No.5-MSEDCL to pay compensation. It is also contended that deceased Raghvendra was not authorized to hire any vehicle for official use. As such, respondent No.5 is not liable to pay compensation.

c) Parties have adduced oral and documentary evidence in support of their rival contentions. Learned Member, M.A.C.T., Latur has recorded findings that the accident took place due to rash and negligent driving of the said indica car by its driver and deceased Raghvendra and deceased Vishnudas died in the said vehicular accident. Even learned Member of the tribunal has recorded the finding that the insurance company has succeeded in proving that owner of the car involved in accident committed breach of terms and

conditions of the policy. Learned Member of the tribunal, by its impugned judgment and award, allowed the MACP No. 106 of 2009 and held that the claimant Nos. 1 to 3 and respondent Nos. 3 and 4 in MACP No. 106 of 2009 are entitled for compensation of Rs.39,97,740/- inclusive of amount of NFL, with interest from respondent No.1-owner and respondent No.6-driver of the car, jointly and severally. Similarly, in MACP No.225 of 2009, the claimant Nos. 1 and 2 and respondent No.4 are held to be entitled for compensation of Rs.15,10,200/-, inclusive of amount of NFL, with interest from respondent No.1-owner and Respondent No.2-driver of the said car involved in the accident, jointly and severally. In both the claim petitions, the claim against respondent-insurer came to be dismissed. In MACP No.106 of 2009, MSEDCL is impleaded as a party respondent No.5 and in the said claim petition, learned Member of the tribunal dismissed the claim petition against respondent No.5-MSEDCL. Being aggrieved by the same, the claimants in both the claim petitions preferred two separate appeals to the extent of exonerating respondent-insurer and also to some extent, the quantum under the non-pecuniary heads.

4. Learned counsel for the appellants submits that learned Member of the tribunal has erroneously exonerated respondent-insurer in both the claim petitions. Learned Member of the tribunal

exonerated respondent-insurer only on the basis of surmises and conjectures. The tribunal has exonerated respondent-insurer on the basis of conjectures drawn in the light of contents of the letter Exh.59. Furthermore, the tribunal has also committed grave error while relying on the police statement of respondent No.1. Respondent No.1 has not contested the claim petitions by filing written statement. On the other hand, he has failed to appear before the tribunal in both the claim petitions though duly served. The police statement is not a substantive part of evidence and the same is not at all admissible in evidence. A police statement can be used to contradict the witness and the same cannot be directly read in evidence. Respondent-insurer has examined one witness Achyut Purushottam Kulkarni, Administrative Officer of the insurer company. He has admitted in his cross-examination that an investigator was appointed by the insurance company to collect the details of the vehicles involved in the accident and also the necessary information. He has further admitted in his cross examination that during investigation of crime and during the investigation by investigator appointed by the insurance company, it was not revealed that the car was hired or the passengers travelling therein had paid fare. Further, he has not denied whether the claim of respondent No.1 in respect of damage to the car has been satisfied by the insurance company. He has further admitted that if there is a breach of

insurance contract, then the insurance company invariably rejects the own damage claim. The tribunal has not at all considered the admissions given by this witness in his cross-examination. Respondent No.5-MSEDCL, by examining the witnesses and by calling before the tribunal the official record, proved that the vehicle car involved in the accident was not hired by respondent No.5-MSEDCL. Deceased Raghvendra was working as Junior Engineer and deceased Vishnudas was working as Helper with respondent No.5. Considering their official status, as also stated by respondent No.5, none of them was entitled to hire a car for official work. If they were not at all entitled to hire a car for official purpose, then there is no question of reimbursement from the department. In that event, deceased Raghvendra Shastri or deceased Vishnudas could not have hired the car for going to Bombay from Latur for official work, the probability, which is also not disputed by respondent No.1, is that respondent No.1 being a friend of deceased Raghvendra, gave the car to deceased Raghvendra for the said tour in friendly terms. The approach of the tribunal is not proper, correct and legal, and therefore, the impugned judgment and award to the extent of exonerating respondent-insurer is liable to be quashed and set aside.

5. Learned counsel for the appellants further submits that though the tribunal has rightly assessed the quantum of compensation, has

awarded meager amount under the non-pecuniary heads such as, loss of consortium, loss of love and affection and funeral expenses in both the claim petitions. The tribunal has also committed error in awarding interest at the rate of 6% p.a. Instead of 7.5% p.a.

6. Learned counsel for the appellants further submits that there is no specific pleading by respondent-insurer about filing of the claim petitions by the respective claimants in collusion with respondent No.1. The burden is on respondent-insurer to prove the breach of terms and conditions of the policy and in the given set of events, respondent-insurer has failed to discharge the said burden. Learned counsel, in order to substantiate his contentions, placed reliance of the decision in following cases:

1. ***National Insurance Co. Ltd. vs. Swaran Singh and Ors***, reported in **(2004) 3 SCC 297**,
2. ***The New India Assurance Company Limited vs. Wahida Bano and others***, reported in **2013 (6) All MR 145**,
3. ***Bajaj Allianz General Insurance Co. Ltd. vs. Ashwita Arvind Poll***, reported in **2015 (2) Bom.C.R. 359** and
4. ***Asha Verman and Ors. vs. Maharaj Singh and ors.***, reported in **2015 (4) SCALE 329**.

7. Learned counsel for respondent-insurer in both the appeals submits that the letter Exh.59 is a material piece of evidence. Even though the official record of respondent No.5-MSEDCL shows that the vehicle involved in the accident was not hired by it, the contents of the letter unmistakably point out that the said vehicle was hired by deceased Raghvendra Shastri for his visit to Bombay. Though the burden is on respondent-insurer to prove breach of conditions of policy, said burden can be discharged by leading oral/documentary evidence or by way of cross-examination or by relying on the documents tendered either by the claimants or any other respondent before the tribunal. The respondent-owner has failed to appear before the tribunal though duly served and that itself indicates that he is supporting the case of the claimants. Even though there is no direct pleading of collusion between the claimants on the one hand and respondent-owner on the other, still then, conduct of respondent No.1-owner in not contesting the claim petitions and the fact that the same would be in his advantage, itself is sufficient to draw an inference that there is a collusion between the claimants and the respondent-owner. The tribunal has considered the police statement of respondent No.1 to the extent that respondent No.1 is serving in "Deepak Travels" in Latur, and therefore, there is every possibility that he provided the vehicle to the customers on hire. The tribunal has rightly considered the contents of the letter Exh. 59 and come to

the conclusion that there has been breach of terms and conditions of policy. Learned Member of the tribunal has correctly held that providing of private vehicle on hire amounts to breach of terms and conditions of the insurance policy. Respondent-owner has willfully committed breach of terms of insurance contract and as such, the tribunal has rightly exonerated respondent-insurer from paying compensation to the claimants. Learned counsel submits that the tribunal has correctly assessed the compensation even under the non-pecuniary heads. There is no substance in the appeals and thus, both the appeals are liable to be dismissed.

8. I have also heard learned counsel for respondent No.5-MSEDCL.

9. It appears that the tribunal has given weightage to the contents of letter Exh.59. It appears from the contents of the letter Exh.59 that the same is addressed to the claimants in claim petition No. 106 of 2009 and issued by Deputy Chief Industrial Relation Officer, Bombay. It is stated in the said letter that certain amount is payable to the legal representatives of deceased Raghvendra under the Workmen's Compensation Act in respect of his accidental death. By the said letter, the claimants were called upon to state on bond whether they intend to file claim petition before the Motor Accident

Claims Tribunal or they are ready to accept the amount under the Workmen's Compensation Act. What is material in the said letter, as observed by learned Member of the tribunal, is the reference about the vehicle stated to have been "hired for official work". There is no reference in the said letter Exh.59 as to who has hired the said vehicle car involved in the accident. There is a passing reference in the said letter about hiring of the vehicle for official work. Respondent No.5-MSEDCL has come with a specific pleading and evidence that deceased Raghvendra, being a Junior Engineer and deceased Vishnudas, being the helper, are not entitled by their official status to reimbursement of the conveyance by using car. Thus, the only possibility would remain that the vehicle must have been hired by respondent No.5-MSEDCL for providing it to its employees. Even the official record placed before the tribunal, on perusal of the same, and considering the oral evidence of respondent No.5 in this regard, the tribunal has come to the conclusion that respondent No.5 has not hired the said car involved in the vehicular accident. Learned counsel for the appellants-claimants has rightly pointed out that in absence of entitlement for reimbursement of expenses incurred in travelling by a car, the deceased persons were not likely to hire the car for travelling such a long distance i.e. from Latur to Mumbai.

10. Learned Member of the Tribunal has observed that respondent-owner is the best person to state that he had provided the said vehicle out of friendship to the deceased for travelling from Latur to Bombay, however, he has chosen not to contest the claim petition. Learned Member of the tribunal, in para No. 46 of the impugned judgment, has observed that the possibility cannot be ruled out that both the deceased or one of them hired the car, involved in the accident, for their journey from Latur to Bombay. Learned Member of the Tribunal has further considered the police statement of respondent No.1. It is well settled that police statement can be used only for the purpose of contradiction and the same cannot be used as a substantive piece of evidence. On the basis of the said statement, learned Member of the tribunal has drawn a far fetched conclusion that since respondent No.1-owner is serving in "Deepak Travels" at Latur and since first name of respondent No.1-owner is "Deepak", there is every possibility that respondent-owner had provided the said Indica car to the deceased on hire. Learned counsel for the appellants/original claimants has rightly pointed out that learned Member of the tribunal has drawn the said conclusion only on the basis of presumption, assumption and conjectures.

11. Learned Member of the tribunal has given no reference at all to the admissions given by the administrative officer of respondent-

insurer. The said witness Achyut Kulkarni has admitted in his cross-examination that even during the police investigation and the investigation of private investigator appointed by respondent-insurer, it was not revealed that the car involved in the accident was hired or the passengers travelling therein had paid fare. Furthermore, if the claim of own damage for the said car is submitted by respondent-owner and if the same is accepted by respondent-insurer, then there is no question of breach of insurance contract. Thus, considering the case from any angle, I do not find that respondent-insurer has discharged the burden of proving breach of conditions of insurance contract. Learned Member of the tribunal has committed a grave error to exonerate respondent-insurer from paying compensation jointly and severally along with respondent-owner of the vehicle involved in the vehicular accident.

12. Since this Court finds the respondent-insurer liable to pay compensation jointly and severally with respondent-owner, I have also heard learned counsel for respondent-insurer on the point of quantum of compensation. Learned counsel submits that the tribunal has awarded exorbitant amount of compensation, however, having gone through the impugned judgment and award carefully, I do not find that the tribunal has awarded compensation exorbitantly. It appears that the tribunal has considered salaried income of both the

deceased persons and by applying correct multiplier, assessed the compensation.

13. So far as the compensation awarded under non-pecuniary heads is concerned, it appears that the tribunal has awarded very meager amount for loss of consortium, loss of love and affection and funeral expenses. Claimant No.1 in MACP No.106 of 2009 was 35 years old at the time of accidental death of her husband, whereas, claimant No.1 in MACP No.225 of 2009 was 45 years old at the time of accidental death of her husband. In both the claim petitions, the minor children are also the claimants. Considering the age of claimant No.1 in respective claim petitions, it would be just and proper if the amount of compensation for loss of consortium is enhanced to Rs.50,000/- in MACP No. 106 of 2009 and to Rs.25,000/- in MACP No.225 of 2009. The tribunal has awarded Rs.5,000/- each for the minor claimants towards loss of love and affection. It would be proper if the amount of Rs.10,000/- each is awarded under the head of loss of love and affection. It would be proper to award Rs.25,000/- towards funeral expenses in both the claim petitions. In view of this, recalculation of compensation awarded by the tribunal is necessary. Thus, the breakup of compensation which can be broadly categorized as under:

IN MACP No.106 of 2009

1. Loss of future income/ dependency	-	Rs.39,64,740=00 (as awarded by the tribunal)
2. Loss of consortium	-	Rs.00,50,000=00
3. Loss of love and affection for minor Claimant Nos. 2 and 3 (Rs.10,000/- each)	-	Rs.00,20,000=00
4. Loss of Estate	-	Rs.00,05,000=00 (as awarded by the tribunal)
5. Funeral expenses	-	Rs.00,25,000=00
Total		Rs.40,64,740=00

IN MACP No. 225 of 2009

1. Loss of future income/ dependency	-	Rs.14,87,200=00 (as awarded by the tribunal)
2. Loss of consortium	-	Rs.00,25,000=00
3. Loss of love and affection for minor Claimant No. 2	-	Rs.00,10,000=00
4. Loss of Estate	-	Rs.00,05,000=00 (as awarded by the tribunal)
5. Funeral expenses	-	Rs.00,25,000=00
Total		Rs.15,52,200=00

14. So far as the rate of interest is concerned, the appellants-claimants are entitled for the interest at the rate of 7.5% p.a. from the date of application till realization of the entire amount.

15. With these modifications, I proceed to pass the following order :

ORDER

- I. First Appeal No. 297 of 2014 (Sarjubai w/o Vishnudas Manme and another v/s Deepak Balbhimrao Suryawanshi and others) and First Appeal No. 298 of 2014 (Manisha w/o Raghvendra Shastri and others v/s Deepak S/o Balbhimrao Suryawanshi and others) are hereby partly allowed with proportionate costs.
- II. The common judgment and award impugned in both the claim petitions is hereby quashed and set aside to the extent of dismissal of claim petitions against respondent-New India Assurance Co. Ltd.
- III. The impugned common judgment and award passed by the Member, MACT, Latur dated 21.10.2013 in MACP No. 106 of 2009 (Manisha W/o Raghvendra Shastri and others vs. Deepak S/o Balbhimrao Suryawanshi and others) and MACP No. 225 of 2009 (Sarjubai W/o Vishnudas Manme and another vs. Deepak S/o Balbhimrao Suryawanshi and others) is hereby modified in the following manner.

“In MACP No. 106 of 2009, the claimants are entitled for the compensation of Rs.40,64,740/- and respondent No.1/owner, respondent No.2/insurer and respondent No.6/driver are jointly and severally liable to pay compensation to the claimants with interest at the rate of 7.5% p.a. from the date of application till realization of the entire amount.

In MACP No. 225 of 2009 the claimants are entitled for the compensation of Rs.15,52,200/- and respondent No.1/owner, respondent No.2/driver and respondent No.3/insurer are jointly and severally liable to pay compensation to the claimants with interest at the rate of 7.5% p.a. from the date of application till realization of the entire amount.”

- IV. Rest of the common judgment and award passed by the tribunal stands confirmed.
- V. Award be drawn up in tune with the modifications as aforesaid.
- VI Both the appeals are accordingly disposed of.

(V. K. JADHAV, J.)

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