IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1208 OF 2003
WITH
CIVIL APPLICATION NO. 10077 OF 2003
WITH
CIVIL APPLICATION NO. 2011 OF 2011

New India Assurance Co. Ltd.
Through its Divisional Manager
Adalat Road, Aurangabad
For Branch Manager, Parbhani ...Appellant

versus

1. Smt. Sabiha w/o Abdul Hamid
Age 35 years, Occ. Household,
R/o. Gulsanabag, Parbhani
Taluka and District Parbhani .

2. Dilshad Begum d/o Abdul Hamid
Age 16 years, Minor Occ. Nil,

3. Ibrahim s/o Abdul Hamid
Age 15 years, Minor, Occ. Nil

4. Moin s/o Abdul Hamid
Age 9 years, Minor, Occ. Nil

5. Afrin Begum d/o Abdul Hamid
Age 9 years, minor, Occ. Nil

6. Amina Begum d/o Abdul Hamid
Age 6 years, Minor, Occ. Nil

Appellant Nos. 2 to 6 are minors
under guardianship of real mother
Sabina w/o Abdul Hamid i.e.
appellant No. 1 R/o. As above

7. Sheshrao s/o Bapurao Bhalerao
Age major, Occ. Business & Agri.
Owner of Jeep No. MH-22/4134.
Taluka and District Parbhani ...Respondents

…..

Mr. S.G. Chapalgaonkar, advocate for the appellant
Mrs. A.N. Ansari, advocate for respondent Nos. 1 to 6
Mr. M.P. Kale, advocate for respondent No.7.

…..

WITH
FIRST APPEAL NO. 599 OF 2004

1. Smt. Sabiha w/o Abdul Hamid
Age 35 years, Occ. Household
R/o. Gulsanabag, Parbhani
Tq. and District Parbhani.

2. Dilshad Begum d/o Abdul Hamid
Age 16 years, Minor Occ. Nil

3. Ibrahim s/o Abdul Hamid
Age 15 years, Minor, Occ. Nil

4. Moin s/o Abdul Hamid
Age 10 years, Minor, Occ. Nil

5. Afrin Begum d/o Abdul Hamid
Age 10 years, Minor, Occ. Nil

6. Amina Begum d/o Abdul Hamid
Age 6 years, Minor, Occ. Nil

Appellant Nos. 2 to 6 are minors
under guardianship of real mother
Sabina w/o Abdul Hamid i.e.
appellant No. 1 R/o. As above ...Appellants

versus

1. Sheshrao s/o Bapurao Bhalerao
age major, Occ. Business and
Agriculture, Owner of
Jeep No. MH-22/4134.
R/o Dhar Road, Parbhani,
Tq. and District Parbhani

2 New India Assurance Co. Ltd.
"Yeshodip Building", Shivaji Road,
Parbhani ...Respondents

.....

Mrs. A.N. Ansari, advocate for the appellants
Mr. M.P. Kale, advocate for respondent No.1
Mr. S.G. Chapalgaonkar, advocate for respondent No.2

…..

CORAM : V. K. JADHAV, J.
DATED : 18th APRIL, 2016

ORAL JUDGMENT:-

1. Being aggrieved by the judgment and award passed by learned Member M.A.C.T. Parbhani dated 29.4.2003 in MACP No.114 of 2001, original respondent No.2 insurer has preferred first appeal No. 1208 of 2003, whereas the original claimants have preferred first appeal No. 599 of 2004 to the extent of quantum.

2. Brief facts, giving rise to the present appeals, are as under:-

I) On 16.2.2001, deceased Abdul Hamid was going on his cycle rickshaw on Jintur road. At that time, one jeep bearing registration No. MH-22-4134 came in fast speed and gave dash to the cycle rickshaw of deceased Abdul Hamid. In consequence of which, deceased Abdul Hamid, who was pulling said cycle rickshaw, was thrown on the road. He had sustained various injuries. He was immediately shifted to Civil Hospital at Parbhani and thereafter, to Government Hospital at Aurangabad. However, he succumbed to the injuries on 22.2.2001.

II) The legal representatives of deceased Abdul Hamid preferred claim petition for grant of compensation under various heads. Respondent No.1 is the owner of said vehicle-jeep, had not appeared in the claim petition though duly served in the matter and therefore, hearing of the claim petition ordered to be proceeded *ex parte* against him. Respondent No.2-insurer has strongly resisted the claim by filing written statement at Exh.12. It is contended that the driver of vehicle-jeep did not have valid licence at the time of accident and therefore, respondent No.2-insurer is not liable to pay compensation. Learned member of the Tribunal, by its impugned judgment and award dated 29.4.2003, partly allowed the claim petition with proportionate costs and thereby directed the respondents jointly and severally to pay amount of Rs.1,67,000/- to the claimants along with interest.

III) Being aggrieved by the said judgment and award, the original claimants have preferred first appeal No. 599 of 2004 and the respondent-insurer has preferred first appeal No. 1208 of 2003, as the tribunal has not considered the defence raised by the insurer.

3. Learned counsel for the appellants original claimants submits that deceased Abdul Hamid was driver by occupation and he was earning Rs.3000/- per month. The driving licence possessed by deceased was placed before the tribunal. Though the Tribunal has accepted that deceased was driver by occupation, in absence of any proof of income, considered his annual income as Rs.15,000/- as non earning member of the family. Learned counsel submits that the Tribunal has not awarded just compensation under non pecuniary heads. The Tribunal has deducted 1/3rd amount from his income towards personal expenses. Learned counsel submits that considering the fact that deceased Abdul Hamid was the only bread earning member of the family and that there are six dependents on his earning, the Tribunal should have deducted 1/5 amount from his total income towards personal expenses.

4. Learned counsel for the respondent-insurer submits that in absence of any income proof, the Tribunal has rightly considered income of deceased Abdul Hamid at Rs.15,000/- per year. During pendency of the appeal, claimant No.4 died and therefore, deduction to the extent of ¼th towards his personal expenses would be appropriate at this stage. Learned counsel submits that driver of the jeep was holding learner's driving licence in the year 1998 and at the time of accident, he was not having valid and effective driving

licence. The insurer has accordingly examined two witnesses on this point to substantiate the said contention. Witness No.1 is investigator appointed by the insurer and witness No.2 is an employee of Regional Transport office. The evidence is consistent and it is clear that the driver of jeep was not having valid and effective driving licence at the time of accident.

5. Learned counsel for the respondent owner submits that the Tribunal has rightly passed award against the respondent-insurer and directed to pay the compensation jointly and severally to the claimants. Learned counsel submits that in the crime registered by the police, no charges are levelled against the driver of jeep under relevant provisions of Motor Vehicles Act. Learned counsel submits that the Tribunal has rightly awarded compensation and respondent insurer is required to pay the compensation jointly and severally along with respondent-owner.

6. So far as grant of compensation in this case is concerned, though deceased Abdul Hamid was having driving licence to drive the motor vehicle, the Tribunal has considered his income as non earning member of the family. Deceased Abdul Hamid was the bread earner of the family and besides a widow, there are five minor claimants depending upon his income only. In absence of any proof

of income, the Tribunal ought to have considered his notional income. According to the claimants, deceased was earning Rs.3000/- p.m., however, learned counsel for the insurer has rightly pointed out that in the year 2001, at the most, the income of deceased would be considered at Rs.2000/- p.m. and not more than that. Claimant No.4 died during pendency of the appeal and therefore, at present, there are 5 dependents. In view of the judgment of the Hon'ble Supreme Court in the case of ***Sarla Verma and others vs. Delhi Transport Corporation and another- 2009 (5) Mh.L.J. 775***, and more particularly in view of observations made in para 30, 1/4th deduction towards personal expenses of deceased Abdul Hamid would be appropriate in this case. It is not disputed that deceased Abdul Hamid was 40 years old at the time of his accidental death. Hence, the appropriate multiplier would be 15. In view of this, if income of deceased Abdul Hamid is considered at Rs.2000/- per month, which corresponds to Rs.24,000/- per year. After deducting ¼th amount towards his personal expenses, his annual income comes to Rs.18,000/- and after applying the multiplier 15, total loss of future income/dependency comes to Rs.2,70,000/-.

7. It appears that the Tribunal has not awarded any compensation for loss of love and affection so far as the minor claimants are concerned. Considering the date of accident, it would

be appropriate if the amount of Rs.20,000/- (Rs. 5000/- each for claimant Nos. 2, 3, 5 and 6) is awarded. The Tribunal has also awarded very meager amount towards loss of consortium, the same is increased at Rs.10,000/- more i.e. Rs.15,000/-. The accident had taken place on 16.2.2001. However, after the accident, deceased Abdul Hamid was taken to Civil Hospital, Parbhani and from there to Government Hospital, Aurangabad, where he succumbed to the injuries on 22.2.2001. Considering these facts, it would be appropriate if Rs.10,000/- more is added to the amount of funeral expenses.

8. Thus, the breakup of compensation under different heads which can be broadly summarized as under:-

i)	Loss of future income/dependency	Rs.2,70,000.00
ii)	Loss of consortium	Rs. 15,000.00
iii)	Loss of love and affection for claimant Nos. 2, 3, 5 and 6 (Rs.5,000/- each)	Rs. 20,000.00
iv)	Funeral expenses	Rs. 12,000.00
	Total	Rs.3,17,000.00

Thus, the claimants are entitled to Rs.3,17,000.00 as total compensation.

9. After perusal of record and proceedings and the oral as well as documentary evidence adduced by the insurer, it is clear that the driver of the jeep, involved in the accident, was not having valid and effective driving licence at the time of accident. It is not the case that the driver was not having driving licence at all. In the year 1988, he was having driving licence to drive motor vehicle, however, the same was learning driving licence and it appears that even though he was driving the motor vehicle, he failed to obtain permanent licence. The Apex Court in the case of ***S. Iyyapan vs. M/s. United India Insurance company Ltd. and Anr. reported in AIR 2013 SC 2262,*** in para 17 of the said judgment, has made the following observations:-

> "17. The heading "Insurance of Motor Vehicles against Third Party Risks" given in Chapter XI of the Motor Vehicles Act, 1988 itself shows the intention of the legislature to make third party insurance compulsory and to ensure that the victims of accident arising out of use of motor vehicles would be able to get compensation for the death or injuries suffered. The provision has been inserted in order to protect the persons travelling in vehicles or using the road from the risk attendant upon the user of the motor vehicles on the road. To overcome this ugly situation, the legislature has made it obligatory that no motor vehicle shall be used unless a third party insurance is in force.

10. In view of the above observations, respondent No.2 insurer shall pay entire amount alongwith interest to the claimants and then recover the same from the respondent-owner.

11. In view of this, I proceed to pass the following order:-

O R D E R

I. Both the first appeals i.e. first appeal No. 1208 of 2003 and first appeal No. 599 of 2004 are hereby partly allowed.

II. The judgment and award dated 29.4.2003 passed by the Ex Officio Member, M.A.C.T. Parbhani in M.A.C.P. No. 114 of 2001 is hereby modified in the following manner:-

The original respondent No.1-owner shall pay an amount of Rs.3,17,000/- (Rupees Three lacs seventeen thousand only) to the claimants, including the amount of no fault liability, alongwith interest @ 9% p.a. from the date of application till realization of entire amount. Original respondent No.2-insurer shall pay the entire amount as per the award alongwith interest to the claimants and then recover it from respondent No.1-owner Shri Sheshrao Bapurao Bhalerao.

III. It is not necessary for respondent No.2 insurer to initiate independent proceeding for recovery of said amount from respondent No.1 owner.

IV. Rest of the judgment and award stands confirmed.

V. The award be drawn up in tune with the modified award.

12. In response to the order passed by this Court the appellant-insurer in first appeal No. 1208 of 2003 has deposited compensation amount before this Court. The claimants are permitted to withdraw the same in proportionate, as determined by the Tribunal, alongwith accrued interest, if any.

13. In view of disposal of first appeals, pending civil applications are also disposed of.

(V. K. JADHAV, J.)

rlj/