IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1699 OF 2008

1. Lila w/o Satish Chousalkar (Shete)
Age 30 years, Occ. Household
R/o. Chousala, Tq. and dist. Beed

2. Subodh s/o Satish Chousalkar (Shete)
Age minor (9 years) under guardianship of
Mother, claimant No.1

3. Shivani d/o Satish Chousalkar (Shete)
Age 1 years (minor) under guardianship of
Mother, claimant No.1

4. Sau. Sunanda w/o Ambadas Chousalkar (Shete),
Age 63 years, Occ. Nil,
R/o. Chousala, Tq. and Dist. Beed

5. Ambadas s/o Dagambar Chousalkar (Shete)
Age 66 years, Occ. Nil
R/o. As above. ...Appellants

versus

1. J.K. Sharma
Age major, Occ. Transport
R/o. Chetak Transport of India,
17/6, Mathura Road,
Faridabad (Hariyana),

2. National Insurance Company Limited
Through its Divisional manager
Hazari Chamber, Station Road,
Aurangabad ...Respondents

WITH

FIRST APPEAL NO. 2861 OF 2008
WITH
CIVIL APPLICATION NO. 9316 OF 2003
WITH
CIVIL APPLICATION NO. 5346 OF 2006

National Insurance Co. Ltd.,
having its Head Office and
Registered Office at No.3,
Middleton Street, Kolkatta
and a Divisional Office at Hazari
Chambers, Station Road, Aurangabad
through its Divisional manager
at Aurangabad ...Appellant

versus

1. Lila w/o Satish Chousalkar (Shete)
Age 34 years, Occ. Household
R/o. Chousala, Tq. and dist. Beed

2. Subodh s/o Satish Chousalkar (Shete)
Age 13 years,Occ. Student
R/o. Chousala, a minor, under
guardianship of mother,
claimant No.1

3. Shivani d/o Satish Chousalkar (Shete)
Age 4 years,
R/o. Chousala, a minor, under
guardianship of mother,
claimant No.1

4. Sau. Sunanda w/o Ambadas Chousalkar (Shete),
Age 67 years, Occ. Nil,
R/o. Chousala, Tq. and Dist. Beed

5. Ambadas s/o Dagambar Chousalkar (Shete)
Age 70 years, Occ. Nil
R/o. As above. (Ori. Claimants)

6. J.K. Sharma
Age major, Occ. Transport
R/o. Chetak Transport of India,
17/6, Mathura Road,
Faridabad (Hariyana), ...Respondents

....

Mr. Mohit Deshmukh h/f Mr. S.G. Chapalgaonkar, advocate for appellants in first appeal No. 1699 of 2008.
Mr. D.S. Kulkarni h/f Mr. S.V. Kulkarni Advocate for respondent No.2 in F.A. No. 1699 of 2008.
Mr. P.P. Bafna, advocate for appellant in F.A. No. 2861 of 2008.
Mr. Mohit Deshmukh h/f Mr. S.G. Chapalgaonkar, advocate for

respondents Nos. 1 to 5 in F.A. No. 2861 of 2008.

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CORAM : V. K. JADHAV, J.
DATED : 3rd MAY, 2016

ORAL JUDGMENT:-

1. Being aggrieved by the judgment and award dated 3.4.2003 passed by the Chairman, M.A.C.T. Beed in M.A.C.P No. 107 of 1999, original claimants preferred first appeal No. 1699 of 2008 to the extent of quantum whereas the respondent insurer has preferred first appeal No. 2168 of 2008. Hence, both these appeals are being decided by this common judgment.

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

a) Deceased Satish was the owner of truck bearing registration No. MH-23-1379. He was travelling in the said truck in the capacity of owner. On 13.1.1999 at about 5.00 a.m. he was returning from State of Karnataka to Maharashtra by his truck and on way, within the limits of village Itkal, the said truck had gone out of order. Thus, deceased Satish, driver and cleaner of the truck stood behind the said truck. At that time, one truck bearing registration No. HR-38-C-3481 came from back side of these three persons and gave dash to them. In consequence of which, deceased Satish sustained severe injuries and became unconscious. He was immediately shifted to General Hospital, Itkal where he was declared dead. Thus, the legal representatives of deceased Satish preferred M.A.C.P No. 107 of 1999 for grant of compensation under various heads.

b) Respondent No.1 though duly served remained absent and therefore, proceeding of M.A.C.P. ordered to be proceeded exparte against him. Respondent No.2 has strongly resisted the claim by filing written statement. Respondent No.2 insurer has taken a plea that the driver of the truck, involved in the accident, was not having valid and effective driving licence at the time of accident and therefore, there has been breach of the condition of policy. The learned Member of the Tribunal by its impugned judgment and award dated 3.4.2003 partly allowed the claim petition and thereby directed respondent Nos. 1 and 2 to pay amount of compensation of Rs.5,00,000/- inclusive amount of no fault liability alongwith interest to the claimants.

c) Being aggrieved by the same, the claimants preferred first appeal No. 1699 of 2008 to the extent of quantum and the respondent insurer has preferred first appeal No. 2861 of 2008 to the extent of liability fastened on it alongwith respondent-owner.

3. Learned counsel for the appellants-original claimants submits that the Tribunal has not considered the income of deceased Satish. Deceased Satish was doing the business of transport and used to provide his truck on hire basis. The claimants have examined witness No.3 Vinay Motilal Sancheti to substantiate their contentions. Even though there is evidence of income proof, the Tribunal has considered the income of deceased Satish at Rs.5000/- p.m. only. Learned counsel submits that considering the age of Satish at the time of his accidental death, the Tribunal should have applied multiplier 15 instead of 12. Furthermore, considering the number of claimants, the Tribunal should have deducted 1/4th of income of deceased towards his personal expenses instead of 1/3rd. Furthermore, the Tribunal has not awarded any amount towards funeral expenses. The Tribunal has also awarded meager amount for loss of consortium and for loss of love and affection for minor claimants.

4. Learned counsel of the appellant insurer in first appeal No. 2861 of 2008 submits that the driver of the truck was not having valid and effective licence at the time of accident. The Tribunal has not considered oral evidence adduced by the appellant insurer in this regard. The appellant insurer has examined witness Rakeshkumar,

an employee of R.T.O. office Karnal, State of Haryana and as per his evidence; licence produced on record is a fake licence. Accordingly, the said witness has submitted his report before the Tribunal and the same is marked Exh.96. In view of this, the Tribunal should have exonerated the appellant insurer from the liability to pay compensation jointly and severally with respondent owner. In the alternate, learned counsel submits that the appellant insurer may be directed to pay the compensation to the claimants and then recover it from the respondent owner.

5. I have also heard learned counsel for the respondent insurer in first appeal No. 1699 of 2008. He submits that the Tribunal has awarded just and reasonable compensation and no interference is required and there is no substance in the appeal and appeal preferred by the claimants for enhancement of compensation is liable to be dismissed.

6. So far as the income of deceased Satish as considered by the Tribunal, I do not find any fault in the same. It appears from the oral evidence of witness Vinay Sancheti that deceased Satish was not having any fixed income and as such, it appears that income was fluctuating and depending upon the availability of business.

7. It appears from the impugned judgment and award that the Tribunal has committed error in applying the multiplier as well as deducting 1/3rd amount from the income of deceased towards his personal expenses. Considering the age of deceased Satish, appropriate multiplier would be 15 instead of 12. Further, considering the number of claimants, the Tribunal should have considered deduction of 1/4th amount of income of deceased Satish towards his personal expenses instead of 1/3rd. The Tribunal has also not awarded compensation for loss of estate and for funeral expenses. Furthermore, the Tribunal has also awarded meager amount for loss of consortium. The claimant No.1 is entitled for amount of Rs.25,000/- for loss of consortium and claimants are entitled for amount of Rs.10,000/- for loss of estate and Rs.15,000/- for funeral expenses, since, deceased Satish was taken to the Hospital after the accident and thereafter his dead body was brought to the residence for funeral.

8. In view of the above discussion, the deduction towards personal expenses is considered as 1/4th. Thus, the yearly loss of income comes to Rs.45,000/- and if the multiplier 15 is applied, then the loss of income/dependency comes to Rs.6,75,000/- and the claimants are entitled for the same. Furthermore, the claimants are also entitled for amount under non pecuniary heads as above. So far

as the liability of the appellant insurer is concerned, in view of the observations of Supreme Court in para 17 of judgment in the case of ***S. Iyyapan vs. M/s. United India Insurance company Ltd. and Anr.*** reported in ***AIR 2013 SC 2262,*** the appellant insurer is liable to pay the compensation and recover the same from the owner. Paragraph Nos. 18 and 19 of the said judgment are reproduced herein below:-

> *"18. Reading the provisions of Sections 146 and 147 of the Motor Vehicles Act, it is evidently clear that in certain circumstances the insurer's right is safeguarded but in any event the insurer has to pay compensation when a valid certificate of insurance is issued notwithstanding the fact that the insurer may proceed against the insured for recovery of the amount. Under Section 149 of the Motor Vehicles Act, the insurer can defend the action inter alia on the grounds, namely, (i) the vehicle was not driven by a named person, (ii) it was being driven by a person who was not having a duly granted licence, and (iii) person driving the vehicle was disqualified to hold and obtain a driving licence. Hence, in our considered opinion, the insurer cannot disown its liability on the ground that although the driver was holding a licence to drive a light motor vehicle but before driving light motor vehicle used as commercial vehicle, no endorsement to drive commercial vehicle was obtained in the driving licence. In any case, it is the statutory right of a third party to recover the amount of compensation so awarded from the insurer. It is for the insurer to proceed against the insured for recovery of the amount in the event there has been violation of any condition of the insurance policy.*
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> *19. In the instant case, admittedly the driver was holding a valid*

driving licence to drive light motor vehicle. There is no dispute that the motor vehicle in question, by which accident took place, was Mahindra Maxi Cab. Merely because the driver did not get any endorsement in the driving licence to drive Mahindra Maxi Cab, which is a light motor vehicle, the High Court has committed grave error of law in holding that the insurer is not liable to pay compensation because the driver was not holding the licence to drive the commercial vehicle. The impugned judgment is, therefore, liable to be set aside."

9. In the case of ***United India Insurance Co. Ltd. vs. Lehru and others, reported in 2003 AIR SCW 1695,*** wherein the Supreme court held that even though the driver's licence found to be fake, the liability of the Insurance Company towards third party does not get avoided.

10. In view of the above, the breakup of compensation, which can be broadly categorized as under:-

I)	Loss of income/dependency	Rs.6,75,000.00
II)	Loss of consortium	Rs. 25,000.00
III)	Loss of estate	Rs 10,000.00
IV)	Funeral expenses	Rs. 15,000.00
	Total	Rs. 7,25,000.00

Thus, the claimants entitled for compensation of Rs.7,25,000/- (Rupees Seven lacs twenty five thousand only).

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

O R D E R

I. First appeal No. 1699 of 2008 (Lila Satish Chousalkar (Shete) and others. vs. J.K. Sharma and another) is hereby allowed with costs.

II. The First appeal No. 2861 of 2008 (National Insurance Co. Ltd. vs. Lila Satish Chausalkar and others) is hereby partly allowed.

III. The judgment and award passed by the learned Chairman, M.A.C.T. Beed in M.A.C.P. No. 107 of 1999 is hereby modified in the following manner:-

"The respondent no.1 is liable to pay the amount of Rs.7,25,000/- (Rupees Seven lacs twenty five thousand only) alongwith interest as worked out by the Tribunal and the respondent No.2 shall pay entire amount of compensation alongwith interest to the claimants and then recover the same from respondent No.1.

IV. Rest of the judgment and award stands confirmed.

V. The award be drawn up accordingly as per the modification as above.

VI. The claimants shall pay deficit court fees within six weeks from today.

VII. Both the appeals are accordingly disposed of.

VIII. The amount deposited by the Insurance Company be permitted to be withdrawn by the claimants alongwith the interest.

IX. Pending civil applications are also disposed of.

(V. K. JADHAV, J.)

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