IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1753 OF 2013

ALONGWITH

CIVIL APPLICATION NO.3906 OF 2014

ALONGWITH

CIVIL APPLICATION NO.4610 OF 2013

United India Insurance Company Ltd.]
Through its branch office at Sarda Sankul,]
M. G. Road, Nashik, Dist. Nashik].. Appellant

Versus

1. Smt. Chaya Ramesh Gojare]
Aged 39 years, Occ: nil,]

2. Ravindra Ramesh Gojare]
Age: 17, Occ: education,]

3. Savita Ramesh Gojare]
Age: 15 yrs. Occ: Education,]

4. Poonam Ramesh Gojare]
Age: 13 years, Occ: Education]
S. No.3 M/G. OF S. No.4 to 6]
All r/o. Gojare Mala,]
Gangavesh, Sinnar,]
Tal. Sinnar, Dist. Nashik]

5. Shri. Lakhvindarsingh Mahindar Singh,]

Age Adult, Occ. Transport,	**]**
r/o. House No.46, Bhoha colony,	**]**
Galli No.3, Ballabhgarh,	**]**
Faridabad, Haryana	**]**
6. Shri. Tanaji Nana Tajanpure	**]**
Age adult, occ-business	**]**
r/o. Chehadi,	**]**
Tal. And Dist. Nashik	**].. Respondents**

Mr. Ketan Joshi for the Appellant/Applicant.
Mr. R. N. Gite for the Respondent Nos.1 to 4.

CORAM : R.M. SAVANT, J.
DATE : 8th JULY 2016

ORAL JUDGMENT

1 Admit. Considering the challenge raised heard forth.

2 The above First Appeal challenges the judgment and order dated 22.02.2013 passed by the Learned Member of the Motor Accident Claims Tribunal, Nashik, ("MACT" for short) by which order, the Claim Petition filed by the Respondent Nos.1 to 4 herein came to be partly allowed and resultantly, the said Respondents were held to be entitled for compensation in the sum of Rs.5,33,000/- with future interest at 6% per annum from the date of the filing of the Petition till realization. There are

further directions issued by the MACT, Nashik in respect of investment of the part of the amount in favour of the Respondent Nos.2 and 3 herein.

3 The facts giving rise to the filing of the above First Appeal can in brief be stated thus :-

The Respondent Nos.1 to 4 herein are the original claimants in the said MACP No.710 of 1997. The Respondent No.1 is the wife of one Ramesh Gojare whereas the Respondent Nos.2 to 4 are the children of the said Ramesh Gojare. The said Ramesh Gojare was involved in an accident which took place on 27.10.1996 at about 6.30 p.m. between the Jeep in which he was travelling bearing No. MH-15-K-609 and a Trailer bearing registration No. HR-29-C-2705 on the Nashik-Pune road whilst the said Jeep was travelling from Nashik road towards Sinnar. On account of the said accident, the said Ramesh Gojare as also one Sunil @ Anil Shivram Sonawane who was the driver of the Jeep and one Balu Padwal who was also travelling in the Jeep suffered grievous injuries on account of which all three died. The Respondent Nos.1 to 4 herein as indicated above filed the MACP No.710 of 1997 and claimed compensation in the sum of Rs.6,00,000/-. The said claim petition was preceeded by the police registering an FIR in respect of the accident which took place on 27.10.1996. The police also carried out a spot panchanama at the scene of the accident. In the claim petition, the Opponent No.1 driver of the Trailer was deleted. In so far as the Opponent Nos.2 and 3 i.e. owners of the Jeep and the Trailer are concerned, though they were served they did not file their written statement though they appeared in the claim petition. In so far as the Insurance Company is concerned, which was the Opponent No.4 and who is the Appellant herein it filed its written statement and interi-alia took contentions which were to the effect that the vehicles were driven in breach of the insurance policies as both the vehicles were insured with it as also that the respective drivers were not driving the vehicles with valid driving licenses and that the accident has occurred on account of the rash and negligent driving of the driver of the Trailer. The claim petition proceeded to trial. In so far as the policy regarding the Trailer is concerned, the Insurance Company also took a stand that since the cheque was dishonoured, there was no insurance policy in respect of the Trailer. On behalf of the claimants, the Respondent No.1 who was the Petitioner No.3 i.e. Chaya Ramesh Gojare examined herself as also produced copies of the permit of the Trailer, certified copy of the registration of the Trailer and the Jeep, driving licence of the Jeep driver, policy of the Jeep, spot panchanama, FIR, inquest panchanama and death certificate which were marked as Exhs. 82 to 92. She also produced the school leaving certificate of the said Ramesh Gojare and salary slip of

Ramesh Gojare which were marked as Exhs.54/1 and 54/2. She also produced Award passed in MACP No.248 of 1997 dated 30.11.1997 and MACP No.116 of 1997 dated 07.04.2002 which were marked as Exhs. 72 to 75. She has also produced FIR and spot panchanama at Exh.80 and 81 exhibited in the said cases. In so far as the Insurance Company is concerned i.e. Opponent No.4 it produced the deposition of witness Suchasingh Sardar Bahadursingh Randhawa recorded in MACP No.116 of 1997, certified copy of the cheque issued by the owner of the Trailer in favour of the Insurance Company. However, in so far as the Opponent Nos.2 and 3 are concerned, they have not produced any oral as well as documentary evidence and that they remained absent when the witness for the claimants was being examined. The Insurance Company also did not adduce any oral evidence. The MACT framed the following issues :-

> "1) Whether the applicants prove that deceased Ramesh Sampat Gojare son of applicant nos.1 and 2 father of applicant nos.4 to 6 and husband of applicant no.3 died in the accident took place on 27.10.1996 at 6.30 p.m. on Nashik Poona Road near Hotel Carvan out of the use of vehicles Jeep no. MH-15-K-609 and truck bearing no. HR-29-C-2705 ?
>
> 2) Whether the applicants prove that the accident occurred due to the rash and negligent driving of the drivers of aforesaid both vehicles ?
>
> 3) Whether the Opponent no.4 proves that Jeep driver was not holding valid permit to carry passengers and

therefore there is breach of terms and conditions of the insurance policy of the Jeep ?

4) Whether the Opponent no.4 proves that the driver of the Trailer had no effective and valid driving licence at the time of occurrence of accident and thereby there is breach of terms and conditions of the policy ?

5) Whether the Opponent no.4 proves that the owner of the Trailer had no valid transport permit at the time of occurrence of accident and thereby there is breach of permit rules and terms and conditions of the policy ?

6) Whether the applicants are entitled to claim compensation along with interest as prayed from the opponents ? If yes, at what quantum and from whom ?”

4 In so far as the first issue is concerned, the MACT after adverting to the case which has come on record as also the stand taken by the Insurance Company as also having regard to the police papers i.e. FIR Exhs.90 and 81 and thereafter referring to the findings recorded in MACP No.248 of 1997 and MACP No.116 of 1997 which were filed on behalf of the other two persons who had expired in the same accident held that it is proved that the accident in question has occurred because of the rash and negligent driving of the driver of the Trailer bearing No. HR-29-C-2705 and in the said accident the deceased Ramesh Gojare died due to accidental injuries which he suffered. Prior to this, the MACT has adverted to the finding recorded in the MACP No.248 of 1997 and MACP No.116 of 1997 wherein the MACT had held that the accident in question had

occurred because of the rash and negligent driving by the driver of the Trailer.

5 In so far as the issue of whether the drivers of both the vehicles were holding valid and effective driving licences, the MACT held that in view of the finding recorded in MACP No.248 of 1997 and MACP No.116 of 1997 wherein the MACT has held that the Insurance Company has failed to prove that the drivers of both the vehicles were not holding valid and effective driving licences and that the owners of both the vehicles had committed breach of terms and conditions of the policy, recorded a finding against the Opponent No.4 i.e. the Insurance Company.

6 The MACT thereafter ventured to adjudicate upon the compensation that the claimants would be entitled to. In that respect, the MACT relied upon the salary slip of the deceased Ramesh Gojare who was at the relevant time working with the India Security Press at Nashik Road, where his gross salary was shown as Rs.10,555/- per month and net salary was Rs.5000/- per month. The MACT came to a conclusion that the yearly income of the deceased was Rs.60,000/-. The MACT thereafter deducting 1/3 of the amount for his personal expenses held that the yearly contribution of the said deceased Ramesh Gojare was Rs.40,000/- per annum and since the age of the deceased Ramesh Goare was 45 at the

time of his death, the multiplier 13 would have to be applied and applying the said multiplier the MACT held that the claimants would be entitled to the total dependency in the sum of Rs.5,20,000/-. The MACT thereafter has awarded interest at 6% per annum on the said amount. The MACT has also awarded a sum of Rs.5000/- towards consortium, Rs.2000/- towards funeral expenses and Rs.2000/- each to the Respondent Nos.2 to 4 for loss of love and affection totally amounting to Rs.6000/- and thereby arrived at the total figure of Rs.5,33,000/- which the MACT held was a just and reasonable compensation. In so far as to whose liability it would be to pay the said compensation, the MACT adverted to the judgments in MACP No.248 of 1997 and MACP No.116 of 1997, wherein it was held that since both the vehicles were insured with the Opponent No.4 i.e. the Appellant herein at the time of accident, the liability would be of the Insurance Company, the MACT did not find any force in the submission that the said vehicles were not insured with the Insurance Company. The MACT as indicated above has by the impugned order dated 22.02.2013 partly allowed the claim petition to the extent mentioned hereinabove.

7 The Learned Counsel appearing on behalf of the Appellant Mr. Ketan Joshi would seek to once again reiterate the contentions urged on behalf of the Appellant/Insurance Company before the MACT. The Learned Counsel would contend that in view of the fact that the cheque

issued by the owner of the Trailer had been dishonoured, there was no effective insurance policy in respect of the Trailer and therefore the Insurance Company could not be made liable for the payment of compensation. Reliance is sought to be placed by the Learned Counsel on the judgment of the Apex Court reported in ***(2012) 5 SCC 234*** in the matter of ***United India Insurance Company Limited Vs. Laxmamma and others***. It has been held by the Apex Court in the said judgment that in a case where the cheque issued for payment of premium was dishonoured. In such circumstances, statutory liability of insurer to indemnify third parties which policy cover subsists and insurer has to satisfy award of compensation unless policy of insurance was cancelled by insurer and intimation of such cancellation had reached insured before the accident. This was the main plank of the challenge to the impugned Award of the MACT, Nashik. However, the Learned Counsel fairly brought to the attention of this Court the orders dated 25.07.2006 passed in First Appeal No.1570 of 2006 and the order dated 09.03.2007 in First Appeal No.1084 of 2004, First Appeal Stamp No.27170 of 2004 and First Appeal Stamp No.18128 of 2004 which were First Appeals arising out of MACP No.248 of 1997 and MACP No.116 of 1997. By the said orders, the First Appeals filed by the Appellant Insurance Company in respect of the Awards passed in the said MACP No.248 of 1997 and MACP No.116 of 1997 have been dismissed. As indicated above, the said two MACPs were filed by the claimants who were the heirs of the other persons who were travelling in the said Jeep and expired on account of the accident.

8 Per contra, the Learned Counsel appearing for the Respondent Nos.1 to 4 Mr. R. N. Gite would support the Award passed by the MACT and would contend that in the light of the earlier adjudication, no interference is called for with the impugned Award.

9 Having heard the Learned Counsel for the parties, I have considered the rival contentions. As indicated above, in so far as on account of whose fault the accident has occurred, the said issue has been concluded by the orders passed in MACP No.248 of 1997 and MACP No.116 of 1997 and thereafter confirmed by this Court in First Appeal No.1570 of 2006 by order dated 25.07.2006 and First Appeal No.1084 of 2004, First Appeal Stamp No.27170 of 2004 and First Appeal Stamp No.18127 of 2004 by order dated 09.03.2007. The issue of the liability of the Insurance Company to pay the compensation has also been concluded by the said adjudication. In so far as the quantum is concerned, the Learned Counsel for the Appellant fairly stated that the Appellant/ Insurance Company is not questioning the quantum and it is questioning the Award only on the ground of liability. In so far as the liability is

concerned, as indicated above, the liability of the Insurance Company is no more res-integra and is concluded by the judgment of this Court rendered in the First Appeals mentioned hereinabove. However, the Learned Counsel appearing on behalf of the Appellant sought to draw this Court's attention to the judgment in *United India Insurance Company Limited*'s case (*supra*). In my view, the said judgment does not further the case of the Appellant in so far as its liability is concerned. In the instant case, it is required to be noted that no oral evidence has been led by the Appellant so as to satisfy the test enunciated by the Apex Court in the said judgment. Apart from that as indicated above, the liability of the Insurance Company has already been concluded on account of the dismissal of the aforesaid four First Appeals i.e. First Appeal No.1570 of 2006, First Appeal No.1084 of 2004, First Appeal Stamp No.27170 of 2004 and First Appeal Stamp No.18127 of 2004. In that view of the matter, there is no merit in the above First Appeal, the same to accordingly stand dismissed.

10 The Civil Applications do not survive and to accordingly stand disposed of as such.

[R.M. SAVANT, J]