**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**BENCH AT AURANGABAD**

**916 FIRST APPEAL NO. 127 OF 2017**
**WITH**
**CA/596/2017 IN FA/127/2017**

1) Shaikh Akhil Shaikh Ajmer
Age: 28 years, Occu.: Driver,
R/o.Pachod, Tq.Paithan,
Dist.Aurangabad.

2) Shaikh Kammu Shaikh Bhikan
Age: Major, Occu.: Owner,

Both R/o.Ekod Pachod, Tq. &
Dist.Aurangabad. ..Appellants

VERSUS

1) Shobhabai wd/o Sahebrao Waghchaure
Age: 55 years, Occu.: Household,

2) Manoj Sahebrao Waghchaure
Age: 55 years, Occu.: Labour

3) Sandip Sahebrao Waghchaure
Age: 27 years, Occu.: Labour

All R/o. Lane No.A-2/48, Gajanan
Nagar, Garkheda, Aurangabad.

4) New India Assurance Company Ltd.,
Through Divisional Manager,
Adalat Road, above Mahesh Auto,
Aurangabad. ..Respondents

...

Advocate for Appellants : Mr.Satej S.Jadhav
(in FA No.127 of 2017)
and Mr.M.M.Ambhore
(in FAST No.18170 of 2014)
Advocate for Respondent Nos.1 to 3/Claimants :
Mr.Rahul R. Karpe and Mr.Yogesh D. Kale
Advocate for Respondent No.4/Insurance Company :
Mr.Mohit Deshmukh

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**WITH**
**FIRST APPEAL STAMP NO.18170 OF 2014**
**WITH CA NO.11854 OF 2014 WITH CA NO.11855 OF 2014**

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**CORAM : M.S.SONAK, J.**
**DATE : 18th January, 2018**

**ORAL JUDGMENT:-**

1) Heard Mr.Satej Jadhav learned counsel for the appellants, Mr.Yogesh Kale learned counsel for the respondent Nos.1 to 3 (claimants) and Mr.Mohit Deshmukh learned counsel for respondent No.4 (Insurance Company) in First Appeal No.127 of 2017.

2) Heard Mr.M.M.Ambhore learned counsel for the appellant Insurance Company, Mr.Yogesh Kale learned counsel for respondent Nos.1, 2 and 3 (claimants) and Mr.Satej Jadhav learned counsel for respondent No.4

(owner) in First Appeal Stamp No.18170 of 2014.

3) Although, First Appeal Stamp No.18170 of 2014 is not on board, with the consent of the parties, the same is taken on board, since, the learned counsel for the parties are agreed that this appeal will not survive in the light of the order, which is supposed to be made in First Appeal No.127 of 2017.

4) First Appeal No.127 of 2017 has been instituted by the owner of the offending vehicle primarily on two grounds:-

(a) The exoneration of the Insurance Company.

(b) The quantum of compensation.

5) On 4.1.2018, this Court has made the following order:-

*"1) The learned counsel for the appellants relied upon the decision of the Hon'ble Supreme Court in*

*the case of Nagashetty Vs. United India Insurance Co. Ltd. and others [**AIR 2001 SC 3356**] to submit that the person having licence to drive a Tractor is not disqualified from driving a Tractor with Trailer attached to it. He submits that the Insurance Company i.e. respondent No.4 cannot be absolved of the liability in the present case only on the ground that driver of the Tractor had no licence to specifically drive a Tractor with Trailer attached to it, though, there is no dispute that driver had a valid licence to drive a Tractor.*

*2) Taking into consideration aforesaid circumstances, issue fresh notice to respondent No.4, returnable on 18.1.2018 for final disposal of this appeal at the stage of admission. Place the matter in supplementary board.*

*3) Mr.Yogesh Shinde who holds for Mr.R.R.Karpe waives notice on behalf of respondent Nos.1, 2 and 3.*

*4) Since, the condition subject to which, interim relief was granted, has not been complied* *with by the appellants, it is clarified that the interim relief stands vacated and/or is no longer in operation.*

*sd/-*
***[M.S.SONAK, J.]"***

6) The learned counsel for the appellants points out that there are two further decisions in *Sant Lal Vs. Rajesh & Ors. [**2017 (8) SCC 590**]* and *Mukund Devangan Vs. Oriental Insurance Co.Ltd. [**2017 SCC Online SC 788**]*, which had taken the view that a person, who has licence to drive a Tractor is not disqualified in driving a Tractor with Trailer attached to it even though there may have not beena formal endorsement on his licence to do the same. In these two Judgments, the Hon'ble Apex Court has held that it cannot be said that there is any fundamental breach of the policy so as to exonerate the Insurance Company.

7) Therefore, on the basis of the aforesaid decisions of the Hon'ble Supreme Court, the impugned Award to the

extend it exonerates the respondent No.4 from liability is required to be interfered with. Accordingly, the portion of the impugned award to the extent it exonerate the Insurance Company is set aside. It is accordingly declared that the respondent Nos.1, 2 and 3 in the Claim Petition i.e. the owner, driver and the Insurance Company are jointly and severally liable to pay the compensation amount to the claimants.

8) So far as the quantum of compensation is concerned, Mr.Satej Jadhav and Mr.Mohit Deshmukh learned counsel submit that award under the heads of the consortium, funeral expenses and loss of love and affection is excessive and infact contrary to the law laid down by the Constitution Bench of the Supreme Court in the case of *National Insurance Company Vs. Pranay Sethi and ors. [**2017 SCC Online SC 1270**].* They submitted that as against the head of loss of consortium maximum of Rs.40,000/- may be granted, funeral expenses maximum

amount of Rs.15,000/- could have been awarded. They submit that no award has been made for love and affection. Besides, they pointed out that the impugned award has granted compensation of Rs.50,000/- each to the claimants, which includes the wife of the deceased. They pointed out that the wife of the deceased has been granted compensation of Rs.1,00,000/- for loss of consortium in addition to loss of love and affection. Hence, they submit that it is a clear case of duplication and therefore, constitutes error apparent on the face of record.

9) Mr.Kale learned counsel for the claimants submits that there is absolutely no bar to make an award towards loss of love and affection. He submits that loss of love and affection is distinct from loss of consortium and therefore, there was no error in awarding compensation towards love and affection. He points out the decision of the Apex Court in case of *Smt.Sarla Varma Vs. Delhi*

*Transport Corporation [**AIR 2009 SC 3104**]* for considering the issue of compensation relating to loss of consortium and funeral expenses. In view of the decision in the aforesaid case, he submits that there is no case made out to interfere in such compensation. Besides, no award has been made towards loss of estate, even though ***Pranay Sethi*** (supra) requires an award on this head. For all these reasons, he submits that the appeal in so far as quantum of compensation is concerned is liable to dismissed.

10) Rival contentions now call for determination.

11) In the Judgment and award dated 11.1.2018 in First Appeal No.1633 of 2017, this Court has already held that compensation is due and payable towards loss of love and affection. The reasoning in the said Judgment is therefore, reiterated in the present Judgment and award. However, the quantum of compensation towards loss of

love and affection will have to be restricted to Rs.25,000/- each in favour of Manoj and Sandip, the two sons of the deceased, since, the wife, Shobhabai has already been awarded compensation towards loss of consortium, which will include loss of love and affection. There is no question in making further award towards loss of love and affection in case of Shobhabai. To that extent, the submissions made by Mr.Satej Jadhav and Mr.Mohit Deshmukh are required to be upheld. Therefore, under the head of loss of love and affection, the compensation will have to be restricted to Rs.50,000/-.

12) Similarly, applying the law laid down by the Constitution Bench in **Pranay Sethi** (supra), the compensation towards loss of consortium will have to be reduced from Rs.1,00,000/- to Rs.40,000/- and towards funeral expenses from Rs.25,000/- to Rs.15,000/-. However, as contended by Mr.Kale learned counsel, to this

amount, further amount of Rs.15,000/- will have to be added towards loss of estate.

13) On this basis, the compensation comes to Rs.3,44,028/-, which can be rounded up to Rs.3,50,000/-.

14) The First Appeal No.127 of 2017 will therefore, have to be partly allowed. In the first place, it is held that the Insurance Company i.e. respondent No.4 here is also jointly and severally liable to pay compensation to respondents/claimants. The compensation amount is however, determined as Rs.3,50,000/- in place of the determination of Rs.4,99,028/- made by the Tribunal. The rest part of the impugned award to remain undisturbed.

15) The First Appeal Stamp No.18170 of 2014 had only questioned the award in so far as no fault liability is concerned. In view of the aforesaid circumstances, the said Appeal will not survive and the same is also disposed of.

16) The First Appeal No.127 of 2017, First Appeal Stamp No.18170 of 2014 and the Civil Applications therein, are disposed of in the aforesaid terms.

17) There shall be no order as to costs.

18) The respondents/claimants are permitted to withdraw the amount deposited by the Insurance Company in First Appeal Stamp No.18170 of 2014 together with interest accrued thereon.

19) The Registry to accordingly do the needful in the matter.

20) The appellants in First Appeal No.127 of 2017 are permitted to withdraw the statutory deposit of Rs.25,000/- made by them in this appeal.

21) The Insurance Company is directed to deposit the

compensation amount in terms of the impugned award as modified in this Judgment and award, in this Court, within a period of four weeks from today with due intimation to the learned counsel appearing for the respondents/claimants. The respondents/claimants shall then be entitled to withdraw the said amount from the Registry.

**[M.S.SONAK, J.]**