IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1337 OF 2017

The Oriental Insurance
Company Ltd.,
through it's Divisional
Manager, Branch Office
at Dhule ...Appellant
[Orig. Resp. NO.2]

VERSUS

1] Smt. Sunanda Popat Patil,
age 45 years, occ.hosuewife,

2] Pravin Popat Patil,
age 26 years, occ. Education,

3] Vaishali Popat Patil,
age 24 years, occ. Education,

4] Bhimrao Rajaram Patil,
(Abated),

5] Sau. Kamal Bhimrao Patil,
age 64 year, occ. Nil,

All R/o Arthe, Tal. Shirpur,
Dist. Dhule,

6] Shri Deepak Pralhad Patil
(Sonawane), age Major,
Occ. Driver & Owner,
R/o Nimbhora, Tal. Amalner,
Dist. Jalgaon ...Respondents
[Nos. 1 to 5 Orig. Claimant
No. 6 Orig. Resp. No.1]

...

Mr. Uday S. Malte, advocate for Appellant
Mr. S.S.Patil, advocate for Resp. nos.1 to 3 and 5
Respondent no.4 abated
Respondent no.6 served.

...

CORAM : SUNIL K.KOTWAL, J.

DATE OF RESERVING THE JUDGMENT : 27.11.2018
DATE OF PRONOUNCEMENT OF JUDGMENT : 03.12.2018

J U D G M E N T :

This appeal is directed by original respondent no.2-insurance company of the motor cycle involved in the accident, against the judgment and award, passed by the Motor Accident Claims Tribunal, Dhule, in Motor Accident Claim Petition No. 444 of 2010.

2. Respondent nos. 1 to 5 are original claimants. Respondent no.6 is the owner and driver of offending motor cycle.

3. Facts leading to institution of this appeal are : -

On 11.11.2007, deceased Popat was proceeding on motor cycle as pillion rider in Amalner city and that time respondent no.1 (hereinafter referred as, 'the original respondent no.1') was driving that motor cycle. Due to rash and negligent driving by respondent no.1, he lost control of the motor cycle and it slipped resulting into head injury to the deceased Popat. The deceased succumbed to these injuries when referred to Civil Hospital, Dhule. Therefore, the claimants filed this claim petition for compensation.

4. Respondent no.2, by filing written statement, raised defence that respondent no.1 driver of the offending motor cycle did not hold effective and valid driving license at the time of accident.

5. After considering the evidence placed on record, the Tribunal awarded compensation of Rs.6,05,000/- to the claimants with interest thereon at the rate of 7.5 per cent per annum from the date of filing of petition. That award is challenged in the present appeal.

6. Heard Shri U.S.Malte, learned counsel for

the appellant-insurance company and Shri S.S.Patil, learned counsel for respondent nos. 1 to 3 and 5. Respondent no.4 died during pendency of the claim petition.

7. Learned counsel for the appellant submits that the driving license filed by respondent no.1 owner and driver of the offending motor cycle shows that it was not valid and effective on the date of accident, but it was issued subsequently. He submits that the Tribunal under assumption held that the driver of the offending motor cycle was holding effective driving license on the date of accident. He has drawn my attention to Rule 15 of the Motor Vehicle Rules.

Next contention of learned counsel for appellant is that though as per pleadings, the claimants claim monthly salary of deceased at the rate of Rs.2,000/-, the Tribunal erroneously held that notional income of the deceased was Rs.4,000/- per month. He has also pointed out that under conventional head, more compensation is awarded by the Tribunal than permitted by Apex Court in

“National Insurance Company Ltd. Vs Pranay Sethi and others[2018 (3) Mh.L.J. 70].

8. Learned counsel for respondent nos. 1 to 3 and 5 submits that burden lies on insurance company to prove the breach of condition of policy of the insurance that driver of offending vehicle did not hold valid and effective driving license. He has pointed out that no witness is examined by the insurance company to substantiate its contention.

His next contention is that notional income of the deceased assessed by the Tribunal is proper. He has pointed out that as per the verdict of Apex Court in **National Insurance Company Ltd. Vs Pranay Sethi and others** (supra), when the deceased was 40 years old at the time of his death, 25 per cent amount shall be added in the income of the deceased under the head of loss of future prospects.

9. In the case at hand, the occurrence of the accident due to rash and negligent driving of driver of the offending motor cycle No. MH-18/AX-

1974 is an admitted fact at the stage of appeal. Even, it is not disputed that the offending motor cycle was insured with original respondent no.2 on the date of accident. According to respondent no.2-insurance company, as the driver of offending motor cycle did not hold effective and valid driving license, respondent no.1 owner of the motor cycle has committed breach of condition of policy of insurance.

10. No doubt, the policy of the insurance (Exh.53) shows that to get the cover of insurance, the person driving the motor cycle should hold effective and valid driving license at the time of accident. However, burden lies on the insurance company to prove the breach of condition of policy of the insurance. In other words, burden lies on the insurance company to prove that on the date and time of the accident, respondent no.1, who was driver of offending motor cycle, did not hold effective and valid driving license. However, the insurance company has not taken pains to examine any witness to substantiate the said contention.

11. The particulars given by the Regional Transport Officer (Exh.52) shows that license of the deceased was renewed on 11.1.2008 and it was valid till 10.1.2028. This indicates that prior to 11.1.2008 the deceased did held effective and valid diving license, otherwise he would have no reason to get renewal of his driving license. It must be noted that the particulars given by Regional Transport Officer (Exh.52) do not show that it was issuance of fresh driving license to the deceased. Therefore, question of holding learning license prior to 11.1.2008, as held by the Tribunal does not arise.

12. No doubt, fresh particulars dated 20.10.2016 (Exh.54) are also filed by claimants to show that license was issued on 11.1.2008. However, in the column no.5 of these particulars, the word, “renewal” is scratched and instead the word, “issued” is written in the hand writing. No initial is made by the person who made those corrections. Thus, obviously the second particulars (Exh.54) is tampered document and

deserves to be ignored.

13. However, because on 11.1.2008 the driving license of the deceased was renewed, inference cannot be drawn that on the date of accident i.e. 11.11.2007 the deceased did not hold valid and effective driving license. Burden lies on the insurance company to examine witness from the Regional Transport Office and to prove that driving license of the deceased was not valid on 11.11.2007, which was renewed on 11.1.2008. Unless these particulars are proved by the insurance company, it cannot prove the breach of condition of policy of the insurance. Though, learned counsel for the insurance company submits that it is the burden of claimant to prove that on the date of accident the deceased held effective and valid driving license, the said argument is not acceptable.

14. Therefore, I have no hesitation to hold that the insurance company failed to prove that on the date and time of the occurrence of the

accident, the deceased did not hold valid and effective driving license. The authority cited in the case of “**New India Assurance Co. Ltd. vs Manjit Singh and others**”, delivered by Delhi High Court on 18.5.2018 in M.A.C.A. No. 1052 of 2006 is distinguishable on above said facts.

15. Now, question arises about quantum of compensation. The postmortem notes of the deceased (Exh.42) show that on the date of death, the deceased was 40 years old. Therefore, in view of guidelines issued by the Apex Court in “**Smt. Sarla Verma and Ors. vs Delhi Transport Corporation and Anr.” [2009 (5) Mh.L.J. 775]**, multiplier of 15 is applicable.

16. Though, the Tribunal held that notional income of the deceased was Rs.4000/- per month, that finding is against the pleading and evidence on record. As per pleading of claimants, the deceased used to draw salary of Rs.2,000/- per month by serving at Priyadarshani Cooperative

Cotton Spinning Mill, Shirpur and in addition to this, he had income of Rs.3,000/- from agricultural land. However, from the cross-examination of claimant Sunanda Patil (PW 1), it emerges that the deceased did not hold any agriculture land for cultivation. As the deceased was landless, there cannot be any income to the deceased from agricultural land. Therefore, only one source of income is available to the deceased i.e. service in Spinning Mill, Shirpur. In the circumstances, though, no pay slip issued by the Spinning Mill, Shirpur is filed on record by claimants, the notional income of the deceased is to be assessed at the rate of Rs.2,000/- per month and not more than claimed by the claimants in the pleadings.

17. In the circumstances, after adding 25 per cent amount in the monthly income of the deceased, as ruled by Apex Court in **National Insurance Company Ltd. Vs Pranay Sethi and others** (supra), the monthly income of the deceased comes to Rs.2000+500=2500/-. It follows that annual income of the deceased can be assessed as

Rs.2500x12=30000/-.

As claimants are more than three in number, but less than seven, in view of guidelines issued by the Apex Court in **Smt. Sarla Verma and Ors. vs Delhi Transport Corporation and Anr.**(supra), 1/4th amount is to be deducted from annual income towards personal expenses of the deceased. Thus, annual contribution of the deceased to his family is assessed as Rs.30000-7500=22500/-.

After applying multiplier of 15, the loss of dependency comes to Rs.22500x15=337500/-. The claimants are entitled to compensation of Rs.337500/- under the head of loss of dependency.

In addition to this, in accordance with verdict of Apex Court in **National Insurance Company Ltd. Vs Pranay Sethi and others** (supra), the claimants are also entitled for following conventional heads.

Loss of consortium	Rs.40,000/-
Loss of estate	Rs.15,000/-
Funeral Expeses	Rs.15,000/-

Thus, claimants are entitled to total

following compensation under different heads :

Loss of dependency	Rs. 337500/-
Loss of consortium	Rs. 40000/-
Loss of estate	Rs. 15000/-
Funeral Expeses	Rs. 15000/-
Total	Rs. 407500/-

18. The claimants are also entitled to interest on compensation amount at the rate of nine per cent per annum from the date of filing of petition till realization of the compensation amount. This amount shall be inclusive of compensation received under no fault liability.

19. In view of these findings, the appeal preferred by the insurance company deserves to be partly allowed to reduce the compensation to the tune of Rs.407500/-.

20. In view of law settled by the Apex Court in the case of **Jitendra Khimshankar Trivedi**

and others vs Kasam Daud Kumbhar and others [2015 (4) SCC 237], even in absence of cross-objection the rate of interest can be modified by this Court.

21. Accordingly, First Appeal No. 1337 of 2017 is partly allowed. The award, passed by the Motor Accident Claims Tribunal, Dhule, in Motor Accident Claim Petition No. 444 of 2010 is modified to reduce the compensation to the tune of Rs.407500/- with interest at the rate of nine per cent per annum from the date of filing of petition till realization of the compensation amount. This amount shall be inclusive of compensation received under no fault liability. The apportionment of the compensation, investment and other directions to pay deficit court fee shall be as per the award passed by the Tribunal.

22. The claimants are permitted to withdraw the compensation amount in accordance with the modified award, if deposited in this Court. For

disbursement and investment, the deposited compensation amount be transmitted to the Motor Accident Claim Tribunal, Dhule.

23. Parties to bear their respective costs.

24. Appeal is disposed of in above terms.

[**SUNIL K.KOTWAL, J.**]

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