IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1802 OF 2007

New India Assurance Co.Ltd.,
Divisional Office No.1,
Adalat Road, Aurangabad,
through its Senior D.M./
Dy. Manager, Shri Hiralal
Namdeo Vishpute,
age 52 years, occ. Service,
r/o Aurangabad ...Appellant
(Orig. Claimant)

VERSUS

1] Smt. Sumati w/o Sudhakar Ghogare,
age 50 years, occ. Household,
R/o Ambad, Tq. Ambad,
Dist. Jalna,

2] Rajesh s/o Sudhakar Ghogare,
age 30 years, occ. Student,
r/o Ambad, Dist. Jalna,

3] Rohini d/o Sudhakar Ghogare,
age 25 years, occ. Student,
R/o Ambad, Dist. Jalna,

4] Shri Bhausaheb s/o Vithalrao,
Kakade, age 55 years, occ. Service,
R/o Ambad, Dist. Jalna

5] Shri Babasaheb s/o Vithalrao
Kakade, age 52 years, occ. Agril.,
r/o Ambad, Dist. Jalna ...Respondents
(Nos. 1 to 3 orig.claimants and Nos. 4 and 5
Orig. Resp. Nos. 1 and 2)

...

Mr. M.M.Ambhore, advocate for Appellant
Mr. M.V.Ghatge, advocate for Resp. nos. 1 to 3
Mr. S.B.Bhapkar, advocate for Resp. nos. 4 and 5 absent

...

CORAM : SUNIL K.KOTWAL, J.

DATE OF RESERVING THE JUDGMENT : 26.09.2018
DATE OF PRONOUNCEMENT OF JUDGMENT : 04.10.2018

J U D G M E N T :

This appeal is directed by original respondent no.3 against the insurance company of the offending vehicle i.e. motor cycle No. MH-21/E-2343, against the judgment and award, passed by the Motor Accident Claims Tribunal, Jalna, in Motor Accident Claim Petition No. 92 of 2001, where compensation of Rs. Five Lac was awarded to the claimants.

2. Respondent nos. 4 and 5 are the owner and driver of the offending vehicle.

3. Succinctly, the facts of the present case are that, on 18.12.2000, original respondent no.1 was driving the offending vehicle i.e. motor cycle

on Jalna-Beed road and the deceased Sudhakar was the pillion rider. Near village Math Tanda, due to rash and negligent driving by original respondent no.1, the motor cycle gave dash to bridge and the deceased Sudhakar was thrown from the motor cycle and succumbed to the injuries on the spot. Therefore, the claimants filed Motor Accident Claim Petition before the Tribunal for compensation.

4. Heard Shri M.M.Ambhore, learned counsel for the appellant and Shri M.V.Ghadge, learned counsel for respondent nos. 1 to 3.

5. Learned counsel for appellant assailed the judgment and award, passed by the Tribunal and submits that the insurance policy was third party policy, and therefore, risk of the pillion rider was not covered. He submits that no additional premium was paid for pillion rider, and therefore, the appellant insurance company is not liable to indemnify the owner of the motor cycle.

6. His next submission is that the driver of the motor cycle did not hold effective and valid driving license.

7. Learned counsel for respondent nos. 1 to 3 submits that the insurance policy (Exh.58) is package policy and being comprehensive policy of insurance, it covers even the liability of pillion rider of the motor cycle. He also submits that in this appeal, the claimants have filed Cross-objection along with Civil Application No. 5645 of 2017 to enhance the compensation. He submits that the Tribunal erroneously reduced the compensation amount on the ground that the claimant nos. 2 and 3 became major during pendency of the claim petition. He submits that even claim of future prospects is not considered by the Tribunal and under conventional head meager compensation is awarded by the Tribunal.

8. He prays for enhancement of compensation by allowing the Cross-objection.

9. Initially, I prefer to consider the first objection raised by learned counsel for the appellant that risk of pillion rider is not covered under the policy of insurance. Learned counsel for the appellant has placed reliance on the "**Oriental Insurance Co. Ltd. Vs S and others" [2008 (7) SCC 428].**

10. At the out set, I must make it clear that in the case of "**National Insurance Co. Ltd. Vs Balakrishnan and another" [AIR 2013 SC 473]**, the Apex Court held that if the policy is comprehensive/package policy, the liability of pillion rider of motor cycle and occupant in car would be covered. In this case, the Apex Court also has considered the judgment in the case of **Oriental Insurance Co. Ltd. Vs Sudhakaran K.V. And others [(2008) 7 SCC 428].**

11. After going through the original policy of the insurance (Exh.58) placed on record before the Tribunal, it becomes clear that it is

comprehensive/package "B" policy. Section II (1) (a) of the policy clearly indicates that it covers the risk of pillion rider, if he is not carriage for hire or reward.

12. In the case at hand, it is not the case of any party that original respondent no.1 was carrying the deceased Sudhakar on his motor cycle for hire or reward. Therefore, the policy of the insurance (Exh.58) clearly covers the risk of the accidental death of deceased Sudhakar. In the circumstances, the first objection raised by the learned counsel for the appellant is rejected.

13. Regarding quantum of compensation, after going through the judgment, passed by the Tribunal, it emerges that the Tribunal did not consider future prospects at the time of assessing even the monthly income of the deceased. Under the conventional head, the Tribunal has awarded meager compensation of Rs.9,500/-, which is improper, in view of legal position settled by the Apex Court in the case of "**National Insurance Company Ltd. Vs**

Pranay Sethi and others" [2018 (3) Mh.L.J. 70].

14. Even the Tribunal has reduced the compensation amount only on the ground that the income of the deceased would be reduced after retirement and during pendency of the petition, son and daughter of original claimant have attained majority.

15. In view of legal position settled by the Apex Court in the case of **National Insurance Company Ltd. Vs Pranay Sethi** (supra) and **"Smt. Sarla Verma and Ors. Vs Delhi Transport Corporation and Anr." [AIR 2009 SC 3104]**, while assessing the loss of dependency, the age of dependent is not relevant, but age of deceased is relevant. Even the monthly income of the deceased is to be considered only after deducting the amount recovered towards taxes.

16. To assess the just and fair compensation, I have to first consider what was the age of

deceased on the date of his death. The Secondary School Certificate (Exh.45) of the deceased indicates that the date of birth as 17.2.1947. The deceased died on 18.12.2000. Thus, at the time of death, the age of the deceased was 53 years. In view of legal position settled by Apex Court in the case of **Smt. Sarla Verma** (supra), considering the age of deceased as 53 years, the multiplier of 11 is applicable in the case at hand.

17. At the time of death, deceased used to work as Assistant Secretary in Agriculture Produce Market Committee, Ambad. By examining Narayan Dangre (PW 2), the claimants have proved the pay slip (Exh.44) of the deceased. The pay slip shows that total monthly salary of deceased in the month of November, 2000 is 8,512/- and towards taxes only Rs.150/- are deducted. Thus, monthly salary of the deceased is assessed as Rs8512-150= 8362/-.

18. As laid down in **National Insurance Company Ltd. Vs Pranay Sethi** (supra) by Apex Court,

as the deceased was 53 years old, having permanent job, 15 per cent amount of the salary is to be added towards future prospects. Thus, monthly income of the deceased is assessed as 8362+1254=9616/-. Thus, annual income of deceased is assessed as 9616x12=115392/-.

19. There are three dependents in the family of deceased. As such, 1/3rd income is to be deducted towards personal expenses of the deceased. Thus contribution by deceased with family is assessed as Rs.115392-38464=76928. After multiplying this multiplicand by multiplier of 11, loss of dependency is assessed at Rs.76928x11=846208/-.

20. In addition to this, as per law settled by the Apex Court in the case of **National Insurance Co. Ltd. Vs Pranay Sethi** under conventional head, the claimants are also entitled to Rs.40,000/- for loss of consortium, 15,000/- for loss of estate and Rs.15,000/- towards funeral expenses.

21. Thus, the claimants are entitled to total compensation under different heads as follows :

Loss of dependency	: Rs.846208.00
Loss of consortium	: Rs. 40000.00
Loss of estate	: Rs. 15000.00
Funeral expenses	: Rs. 15000.00
Total :	: Rs.9,16,208.00 (Rs.Nine Lac Sixteen Thousand Two Hundred Eight Only)

22. The claimants are entitled to total compensation of Rs.9,16,208/- (Rs.Nine Lac Sixteen Thousand Two Hundred Eight Only) with interest thereon at the rate of nine per cent per annum from the date of filing of petition till its realization. This compensation amount shall be inclusive of interim compensation granted under Section 140 of the Motor Vehicles Act.

23. In view of above discussion, the appeal preferred by original respondent no.3 insurance company deserves to be dismissed and the Cross-objection along with Civil Application in this

appeal filed by original claimants deserves to be allowed.

24. Accordingly, First Appeal No. 1802 of 2007 is dismissed. Cross-objection filed with Civil Application No. 5645 of 2017 filed by original claimants/respondent nos. 1 to 3 is allowed to enhance the compensation awarded to the original claimants to the extent of Rs.9,16,208/- (inclusive of compensation under no fault liability) with interest thereon at the rate of nine per cent per annum from the date of filing of petition till its realization. The award passed by the Motor Accident Claims Tribunal, Jalna, , dated 28.2.2007, in Motor Accident Claim Petition No. 92 of 2001 be modified in the above said terms. Civil Application No. 5645 of 2017 is allowed and disposed of in above said terms.

25. Original claimants/respondent nos. 1 to 3 are permitted to withdraw the compensation amount along with accrued interest deposited by the appellant in this appeal. Deficit court fee, if

any, be recovered from the claimants, in accordance with rules. Parties to bear their respective costs.

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

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