IN THE HIGH COURT OF JUDICATURE AT BOMBAY,

BENCH AT AURANGABAD

FIRST APPEAL NO. 3181 OF 2016

New India Assurance Company Ltd.,
A Company registered under the
Companies Act and a subsidiary of
General Insurance Company of India
Having one of its divisional office
at Aurangabad, through its
authorised signatory. **APPELLANT**
(Original Respondent No. 3)

VERSUS

1) Mahananda Narayan Wagh,
Age; 24 years, Occupation; Household,
Residence; Ranmala, Taluka; Georai,
District; Beed.

2) Samarth Narayan Wagh,
Age; 02 years, Occupation;
Under Guardian of R. No. 1.

3) Sakhubai Nivrutti Wagh,
Age; 60 years, Occupation
and R/o as above

4) Nivrutti Genu Wagh,
Age; 65 years, Occupation; Agriculture,
R/o as above.

5) Nitin Raosaheb Langade,
Age; Major, Occupation; Advocate,
R/o Shahunagar, Majalgaon,
Taluka Majalgaon, District; Beed.

6) Gangadhar Dhondiba Kale,
Age; Major, Occupation; Driver,

Resident of Manurwadi,
Taluka; Majalgaon,
District Beed. **RESPONDENTS**
(Respondent Nos. 2 to 4
original claimants
Respondent Nos. 5 and 6
original Respondent
Nos. 1 & 2)

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Shri A.B. Kadethankar, Advocate for Appellant
Shri P.C. Mayure, Advocate for Respondent Nos. 1 to 4
Shri V.S. Undre, Advocate for Respondent Nos. 5 & 6

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WITH

FIRST APPEAL NO. 1834 OF 2015

1) Nitin Raosaheb Langade,
Age; 33 years, Occupation; Advocate,
R/o Shahu Nagar, Majalgaon,
Taluka; Majalgaon, District; Beed.

2) Gangadhar Dhondiba Kale,
Age; Major, Occupation: Driver,
R/o Manurwadi,
Taluka Majalgaon, District; Beed. **APPELLANTS**
(Original Respondent Nos.
1 and 2)

VERSUS

1) Mahananda Narayan Wagh,
Age; 26 years, Occupation; Household,

2) Samarth Narayan Wagh,
Age; 04 years, Occupation;
Under Guardian of mother
respondents No. 1.

3) Sakhubai Nivrutti Wagh,
Age; 62 years, Occupation; Household,

4) Nivrutti Genu Wagh,
Age; 67 years, Occupation; Agriculture,

All R/o Ranmala, Tq. Georai,
Dist. Beed (Original Claimants)

5) The Manager,
The New India Insurance Company Limited,
Jalna Road, Beed, District; Beed. **RESPONDENTS**

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Shri V.S. Undre, Advocate for Appellants
Shri P.C. Mayure, Advocate for Respondent Nos 1 to 4
Shri A.B. Kadethankar,Advocate for Respondent Nos. 5

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CORAM : SUNIL K. KOTWAL, J.

Date of Reserving Judgment : 24.8.2018.

Date of Pronouncing Judgment : 29.8.2018.

JUDGMENT :

First Appeal bearing No. 3181 of 2016 is preferred by the New India Assurance Company Limited and First Appeal No. 1834 of 2015 is preferred by the owner and driver of the offending vehicle, against the judgment and award passed by the Motor Accident Claims Tribunal, Beed in MACP No. 153 of 2013. The Civil Application bearing No. 17031 of 2015 is filed by the owner and driver of the offending vehicle for permission to file documents. Respondent Nos. 1 to 4 are the original claimants. These both appeals and Civil Application are disposed of by this common judgment.

2. Mr. Kadethankar, learned counsel on behalf of appellant/Insurance Company and Mr. P.C. Mayure learned counsel for respondent nos. 1 to 4 fairly concede that they have no objection to allow the prayer of owner and driver of the offending vehicle to produce driving license and other documents on record. Mr. Kadethankar, learned counsel on behalf of Insurance Company fairly concedes that as the driver of the offending vehicle was holding valid driving license on the date of accident, appellant Insurance Company cannot avoid its liability to indemnify the insured. In view of these fair submissions of learned counsel, the First Appeal No. 3181 of 2016 filed by the owner and driver along with Civil Application No. 17031 of 2015 deserve to be allowed, as admittedly on the date of occurrence of accident the driver of the offending vehicle was holding valid driving license and on the date of occurrence of the accident the offending vehicle was insured with Insurance Company. The award passed by the learned Tribunal deserves to be modified to fasten joint and several liability against original respondent nos. 1 to 3, including the Insurance Company to pay awarded compensation to the original claimants. The direction given to the Insurance Company/original respondent no. 3, to recover the compensation with interest and costs paid to the claimants from original respondent no. 2, deserves to be set aside.

3. In the circumstances, now the question remains to be decided in the appeal preferred by the Insurance Company is, “whether compensation awarded by the learned Tribunal is exorbitant or not ?”.

4. Mr. Kadethankar, learned counsel for appellant Insurance Company submits that in view of law settled by the Larger Bench of the Apex Court in “**National Insurance Company Limited Vs. Pranay Sethi and others” (AIR 2017 Supreme Court 5157)**, the compensation of Rs. 1,00,000/- awarded under the head of consortium and under the head of funeral expenses is exorbitant and needs to be reduced. He submits that in view of law laid down in **National Insurance Company Limited Vs. Pranay Sethi** (supra), under the head of loss of consortium only Rs. 40,000/-, under the head of funeral expenses Rs. 15,000/- and under the head of loss of estate Rs. 15,000/- can be granted to the claimants. He prays for modification of the award to that effect.

5. In reply, learned counsel for original claimants submits that the Insurance Company is not permitted to take defences beyond the scope of Section 149 (2) of the Motor Vehicles Act, 1988. Therefore, in the present appeal, the Insurance Company cannot challenge the quantum of compensation awarded by the Tribunal.

He placed reliance on the judgment of the Apex Court in the case "**Rekha Jain Vs. National Insurance Company Limited" (2013 AIR SCW 4597)**.

6. In the case at hand, undisputedly appellant Insurance Company did not obtain permission under Section 170 (b) of the Motor Vehicles Act from the Tribunal for availing defences available to the owner of the vehicle. Section 149 (2) of the Motor Vehicles Act reads as under :

> " **149. Duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks. -**
>
> (1) ….. ….. ….. …..
>
> (2) No sum shall be payable by an insurer under sub-section (1) in respect of any judgment or award unless, before the commencement of the proceedings in which the judgment of award is given the insurer had notice through the Court or, as the case may be, the Claims Tribunal of the bringing of the proceedings, or in respect of such judgment or award so long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely:-
>
> (a) That there has been a breach, of a specified condition of the policy, being one of the following conditions, namely: -
>
> (i) A condition excluding the use of the vehicle-
>
> (a) For hire or reward, where the vehicle is on the date of the contract of
>
> insurance a vehicle not covered by a permit to ply for hire or reward or
>
> (b) For organised racing and speed testing, or
>
> (c) For a purpose not allowed by the permit under which the

vehicle is used, where the vehicle is a transport vehicle, or

(d) Without side-car being attached where the vehicle is a motor cycle; or

(ii) A condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification; or

(iii) condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion; or

(b) That the policy is void on the ground that it was obtained by the nondisclosure of a material fact or by a representation of fact, which was false in some material particular.

……. ……………… ……… "

7. Thus, it is clear that for the Insurance Company, in motor accident claim, limited defences are available pertaining to breach of conditions of policy of insurance. However, if the owner of the vehicle fails to contest the claim only then under Section 170 (b) of the Motor Vehicles Act, the Insurance Company can take defences available to the owner including the defences regarding breach of conditions of policy. In "**Jospine James v. United India Insurance Company Limited and Anr." (AIR 2014 SC (Supp) 1511)** and **Rerkha Jain v. National Insurance Company Limited** (supra), the Apex Court has made it clear that, in absence of permission under Section 170 (b) of the Motor Vehicles Act, the insurance company has got limited defence as provided under section 149 (2) of the Motor Vehicles Act, 1988.

8. The Three Judges Bench of Apex Court in the case of "**National Insurance Company Limited v. Nicolletta Rohtagi and Ors." (AIR 2002 SC 3550)** observed that :

> "15. It is relevant to note that Parliament, while enacting sub-section (2) of Section 149 only specified some of the defences which are based on conditions of the policy and, therefore, any other breach of conditions of the policy by the insured which does not find place in sub-section (2) of Section 149 cannot be taken as a defence by the insurer. If Parliament had intended to include the breach of other conditions of the policy as a defence, it could have easily provided any breach of conditions of insurance policy in sub-section (2) of Section 149. If we permit the insurer to take any other defence other than those specified in sub-section (2) of Section 149, it would mean we are adding more defences to the insurer in the statute which is neither found in the Act nor was intended to be included.
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> 16. For the aforesaid reasons, we are of the view that the statutory defences which are available to the insurer to contest a claim are confined to what are provided in sub-section (2) of Section 149 of the 1988 Act and not more and for that reason if an insurer is to file an appeal, the challenge in the appeal would confine to only those grounds."

9. Thus, it is clear that in absence of permission under section 170 (b) of the Motor Vehicles Act 1988, in the present appeal the insurance company cannot take objection regarding exorbitant quantum of compensation. Thus, the ratio of **National Insurance Company v. Pranay Sethi** (supra) is of no help to the appellant/Insurance Company to challenge the quantum of compensation awarded by the Tribunal.

10. In the result, I hold that First Appeal No. 1834 of 2015 along with Civil Application No. 17031 of 2015 deserve to be allowed and First Appeal No. 3181 of 2016 instituted by the New India Assurance Company Limited deserves to be dismissed with costs. Hence the following order :

ORDER

1) The Civil Application No. 17031 of 2015 is allowed with costs.

2) First Appeal No. 1834 of 2015 is allowed.

3) The award passed by the Motor Accident Claims Tribunal, Beed in M.A.C.P. No. 153 of 2013 is modified as under :

" a) Application is allowed with costs.

b) Respondent nos. 1 to 3 shall jointly and severally pay compensation of Rs. 10,98,000/- (Rs. Ten Lakhs Ninety Eight Thousand Only) to the applicants which shall be inclusive of No Fault Liability amount of Rs. 50,000/- (Rs. Fifty Thousand Only).

c) Respondent nos. 1 to 3 shall pay aforesaid amount with simple interest @ 7.5 % per annum from the date of application till its realisation.

d) It is directed to deposit the amount of compensation with the Tribunal along with interest accrued thereon by account payee cheque to facilitate the ensuing apportionment order.

e) Out of total amount of compensation the respondent no. 1 shall get 30% share, the minor respondent no. 2 shall get 40% share and respondent No.3 and 4 shall get 15 % share each.

f) The share of minor respondent No. 2 be invested in fixed deposit in his name in any Nationalized Bank till attaining the age of majority.

g) The share of respondent nos. 1, 3 and 4 be paid to them by account payee cheque after due verification and identification.

h) Award be drawn accordingly after recovery of deficit court fee on the excess compensation. "

4) Parties to bear their respective costs.

5) First Appeal No. 3181/2016 is dismissed with costs.

(SUNIL K. KOTWAL)
JUDGE

mahajansb/