IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.3309 OF 2016

1. Hariba s/o Sopan Kamble
   Age: 55 Yrs., occu. Nil.

2. Rajabai w/o Hariba Kamble
   Age: 50 Yrs., occu. Household,

   Both R/o Chapoli, Tq. Chakur,
   District Latur. .. **APPELLANTS**
   (Orig.Claimants)

Versus

1. Prakash s/o Pandurang Jadhav
   Age: 33 Yrs., occ. Driver,
   r/o Gawali Nagar, Malwati Road,
   Latur (Driver of TATA ACE)

2. Pandurang s/o Harishchandra Jadhav
   Age:Major, occ. Business
   r/o Gawali Nagar, Malwati Road,
   Latur (Owner of TATA ACE).

3. ICICI Lomb349-04FAsard General Insurance
   Company Ltd. Through its
   Branch Manager, Near Parizat
   Mangal Karyalaya
   .. **RESPONDENTS**

...

Mr. Fayaz K.Patel, Advocate for Appellants.

Mr. SV Gundre, Advocate for Respondent Nos. 1 & 2;

Mr.Abhijit Choudhari, Adv. For Resp.No.3

CORAM : P.R. BORA, J.
DATED : 29th October, 2018.

ORAL JUDGMENT:-

1. Original claimants in MACP No.5/2013 have

preferred the present appeal being dissatisfied with the amount of compensation awarded to them by Motor Accident Claims Tribunal at Latur in the aforesaid claim petition decided on 10th June, 2016. The appellants are herein after referred to as the claimants.

2. It was the case of the claimants before the Tribunal that their son viz. Dattatraya, aged about 22 years, suffered death in a road accident happened on 5.7.2012 having involvement of TATA ACE bearing registration No.MH-24-F-9593 owned by present Respondent No.2 and insured with Respondent No.3 insurance company. It was the contention of the claimants that the accident happened because of the negligence on part of the driver of said TATA Ace, i.e. respondent No.1 in the present mater. It was also the contention of the claimants that deceased Dattatraya was working as driver and used to earn around Rs.7,000/- per month by way of salary. The claimants had, therefore, claimed compensation of Rs.5,00,000/- from the driver, owner and insurer of said TATA ACE.

3. The claim petition was resisted by the opponents on various grounds. The insurance company had raised a defense of breach of policy condition by owner of TATA ACE by permitting Respondent No.1 to drive the said vehicle though he was not holding a valid driving license to drive the said vehicle. Age, income etc. of the deceased were also disputed. The Tribunal, after having considered the evidence on record, held the claimants entitled for total compensation of Rs. 4,67,000/- inclusive of NFL compensation, jointly and severally from driver and owner of TATA ACE. The Tribunal, however, has dismissed the claim petition against Respondent No.3 insurance company. Aggrieved by, the claimants have preferred the present appeal.

4. Shri Patel, learned counsel appearing for the claimants, assailed the impugned judgment on various grounds. The learned counsel submitted that though the claimants had brought on record sufficient evidence to prove salary income of the deceased to the tune of Rs.7000/-, disbelieving the said evidence, the Tribunal has erroneously worked

out the compensation by holding the income of the deceased by applying criterion of notional income. The learned counsel further submitted that the Tribunal also has not considered future prospects of the deceased. The learned counsel submitted that the Tribunal has also not awarded appropriate compensation towards non-pecuniary damages.

5. The learned counsel was more persuasive in submitting that the Tribunal has manifestly erred in dismissing the claim petition against Respondent No.3 insurance company. The learned counsel submitted that the evidence on record clearly demonstrates that Respondent No.1 was, at the relevant time, holding a valid driving license to drive light motor vehicle and the said fact was duly proved during the course of hearing. The learned counsel further submitted that merely because the driving license of original Respondent No.1 for MLV (T) was renewed after lapse of five months, that may not be a valid reason for holding that Respondent No.1 was not capable of driving the offending vehicle at the relevant time. The learned counsel, relying upon the judgment of the Hon'ble

Apex court in the case of *Mukund Dewangan Vs. Oriental Insurance Company Ltd. - AIR 2017 SC 3668*, submitted that, even that objection now cannot be raised by the insurance company.

6. The learned counsel tendered across the Bar a copy of the judgment and order passed by Motor Accident Claims Tribunal at Latur in MACP No. 6/2013 decided on 10.11.2016. The learned counsel submitted that the aforesaid claim petition is arising out of the same accident from which the present claim petition is arising. The learned counsel submitted that in the said matter, the pillion rider of deceased Dattatraya, had filed the aforesaid claim petition, claiming compensation on account of the injuries suffered to him in the said accident. The learned counsel submitted that in the said claim petition, the Tribunal has held Respondent Nos.1 and 3 jointly and severally responsible to pay the amount of compensation. Respondent No.3 in the said claim petition is ICICI Lombard General Insurance Company Ltd., which is Respondent No.3 in the present appeal. The learned counsel further submitted that the insurance

company has satisfied the Award passed in the said claim petition and has not preferred any appeal against the said judgment. The learned counsel further submitted that in view of the fact that the insurance company has satisfied one Award, arising out of the same accident, it is estopped from taking such objection in the present matter.

7. The learned counsel, for all the above reasons, prayed for setting aside the order passed by the Tribunal so far as it relates to exoneration of the insurance company from its liability to pay the amount of compensation to the claimants and further prayed for adequate enhancement in the amount of compensation awarded by the Tribunal.

8. Learned Counsel Shri Choudhari advanced the arguments on behalf of Respondent No.3 insurance company. The learned counsel supported the impugned Judgment and Award. The learned counsel submitted that well-reasoned order has been passed by the Tribunal and no interference is required in the judgment and order so passed. The learned counsel further submitted that the issue as

about driving license, as was discussed in the case of *Mukund Dewangan (cited supra)*, has been referred to a larger Bench and as such, at present, no reliance can be placed on the said decision. The learned counsel however did not deny or dispute the fact stated on behalf of the appellants that in MACP No.6/2013 arising out of the same accident, the insurance company has satisfied the Award passed by the Tribunal.

9. I have given due consideration to the submissions made by the learned counsel appearing for the respective parties. First, I will deal with the aspect of liability of the insurance company. It is not in dispute that Respondent No.1 was holding a valid driving license to drive light motor vehicle on the date of the accident. Further, it is also a fact that his license to drive light motor vehicle (T) was expired prior to the date of accident and was not renewed till the date of accident.

10. In the case of *Mukund Dewangan (cited supra)*, the Hon'ble Apex court has discussed

elaborated this issue and has in para 46 of the judgment held thus, -

> "46. Section 10 of the Act requires a driver to hold a licence with respect to the class of vehicles and not with respect to the type of vehicles. In one class of vehicles, there may be different kinds of vehicles. If they fall in the same class of vehicles, no separate endorsement is required to drive such vehicles. As light motor vehicle includes transport vehicle also, a holder of light motor vehicle licence can drive all the vehicles of the class including transport vehicles. It was pre-amended position as well the post-amended position of Form 4 as amended on 28.3.2001. Any other interpretation would be repugnant to the definition of "light motor vehicle" in section 2(21) and the provisions of section 10(2)(d), Rule 8 of the Rules of 1989, other provisions and also the forms which are in tune with the provisions. Even otherwise the forms never intended to exclude transport vehicles from the category of 'light motor vehicles' and for light motor vehicle, the validity period of such licence hold good and apply for the transport vehicle of such class also and the expression in

Section 10(2)(e) of the Act 'Transport Vehicle' would include medium goods vehicle, medium passenger motor vehicle, heavy goods vehicle, heavy passenger motor vehicle which earlier found place in section 10(2)(e) to (h) and our conclusion is fortified by the syllabus and rules which we have discussed. Thus we answer the questions which are referred to us thus:

(i) 'Light motor vehicle' as defined in section 2(21) of the Act would include a transport vehicle as per the weight prescribed in section 2(21) read with section 2(15) and 2(48). Such transport vehicles are not excluded from the definition of the light motor vehicle by virtue of Amendment Act No.54/1994.

(ii) A transport vehicle and omnibus, the gross vehicle weight of either of which does not exceed 7500 kg. would be a light motor vehicle and also motor car or tractor or a road roller, 'unladen weight' of which does not exceed 7500 kg. and holder of a driving licence to drive class of "light motor vehicle" as provided in section 10(2)(d) is competent to drive a transport vehicle or omnibus, the gross vehicle weight of which does not exceed 7500 kg. or a motor car or tractor or road-roller, the "unladen weight" of which does not exceed 7500 kg. That is to say, no separate endorsement on the licence is required to drive a transport vehicle of light motor vehicle class as enumerated above. A licence issued under section 10(2)(d) continues to be valid after Amendment Act 54/1994 and 28.3.2001 in the form.

(iii) The effect of the amendment made by virtue of Act No.54/1994 w.e.f. 14.11.1994 while substituting clauses (e) to (h) of section 10(2) which contained "medium goods vehicle" in section 10(2)(e), medium passenger motor vehicle in section 10(2)(f), heavy goods vehicle in section 10(2)(g) and "heavy passenger motor vehicle" in section 10(2)(h) with expression 'transport vehicle' as substituted in section 10(2)(e) related only to the aforesaid substituted classes only. It does not exclude transport vehicle, from the purview of section 10(2)(d) and section 2(41) of the Act i.e. light motor vehicle.

(iv) The effect of amendment of Form 4 by insertion of "transport vehicle" is related only to the categories which

> were substituted in the year 1994 and the procedure to obtain driving licence for transport vehicle of class of "light motor vehicle" continues to be the same as it was and has not been changed and there is no requirement to obtain separate endorsement to drive transport vehicle, and if a driver is holding licence to drive light motor vehicle, he can drive transport vehicle of such class without any endorsement to that effect."

In view of the law laid down by the Hon'ble Apex court as above, the finding recorded by the Tribunal cannot be sustained.

11. Moreover, in view of the fact stated by the learned counsel for the appellants that in the companion claim petition arising out of the same accident, the insurance company has satisfied the Award, in fact, the insurance company was estopped from taking any such objection in the present case. For both the aforesaid reasons, the impugned order passed by the Tribunal thereby exonerating the insurance company from its liability to indemnify the injured, deserves to be quashed and set aside.

12. Now, as about the quantum of compensation determined by the Tribunal. In order to prove the income of the deceased, the claimants had examined employer of the deceased at Exhibit-42. AW-2 Shamsoddin Shaikh in his testimony before the court has specifically deposed that deceased Dattatraya was working with him as driver of his vehicle and he used to pay him Rs.7,000/- per month by way of salary. It was the contention of the learned counsel for the appellants that in absence of any contrary evidence, the Tribunal should not have rejected or disbelieved the evidence of AW 2. In cross-examination the said witness has squarely admitted that he does not have any record to show that he was paying Rs.7,000/- per month by way of salary to deceased Dattatraya. The Tribunal in the circumstances has preferred to determine the income of the deceased by applying the criterion of notional income. The Tribunal has accordingly held the income of the deceased to the tune of Rs. 4,000/- per month, which is the notional income of a person working as a labourer. In the instant matter, it cannot be ignored that the claimants have placed on record driving license of the

deceased. A person who was holding a driving license can certainly be presumed to be working as a driver. In the circumstances, the salary of the deceased, in no case, can be determined on the basis of the notional income of a labourer. In absence of any concrete evidence on record and in absence of any document produced by employer of the deceased on record, I deem it appropriate to hold the salary of the deceased approximately to the tune of Rs.4,500/- per month.

13. Future prospects of the deceased must also be considered. As has been laid down in the judgments of *National Insurance Company Ltd. Vs. Pranay Sethi and Ors. - (2017) 16 SCC 680*, and *Sarla Verma Vs. DTC – (2009) 6 SCC 121* , 40% of existing income has to be added into the said income to determined the prospective income of the deceased which approximately comes to Rs.6,000/- per month and Rs. 72,000/- per annum. Since the claimants are parents and the deceased was bachelor son, half of the said amount would be liable to be deducted towards personal expenses of the deceased and on the remaining amount of Rs.36,000, dependency of

the claimants can be worked out by multiplying the said multiplicand by multiplier of 18, which is appropriate multiplier in the present case. By applying the said multiplier, the amount of dependency compensation comes to Rs.6,48,000/-. In addition to the aforesaid amount, the claimants also are held entitled for a sum of Rs.70,000/- towards non-pecuniary damages. By adding the said amount, the total compensation amount comes to Rs.7,18,000/- (Rupees seven lakhs and eighteen thousand). In the facts and circumstances of the case, it appears to me that this would be the just and fair compensation payable to the claimants in the present case.

14. For the reasons stated above, I deem it appropriate to pass following order, -

ORDER

i. The impugned Judgment and Award so far it relates to dismissal of the petition against Respondent No.3 – insurance company is quashed and set aside;

ii. The appellants claimants are held entitled for the total compensation of Rs.7,18,000/- (Rupees seven lakhs and eighteen thousand) inclusive of NFL amount jointly and severally from Respondent Nos.1 to 3;

iii. The appellants claimants are also entitled for interest on the enhanced amount of compensation @ 9% per annum from the date of filing of the appeal till its realization, jointly and severally from Respondent Nos. 1 to 3;

iv. The Award be drawn accordingly.

v. Deficit court fees, if any, be recovered from the appellants claimants.

vi. The appeal is allowed in the aforesaid terms.

(P.R. BORA)
JUDGE

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