IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 2427 OF 2009

Reliance General Insurance
Co. Ltd., Through its Manager,
Regd. Office Reliance Center,
10, W-Hirachand Marg,
Ballard Estate, Mumbai-38. **Appellant**.

Versus

1. Mahanand w/o Gopal Chame
Age : 43 yrs, occu.: household
R/o Umbadga, Taluka Ausa,
District Latur.

2. Pooja d/o Gopal Chame
Age : 16 yrs, occu.: Education

3. Dnyaneshwar Gopal Chame
Age : 14 yrs, occu.: education

(Respondent Nos.2 and 3 being
minors under guardianship of
respondent No.1).

4. Baburao Yelba Chame
Age : 62 years, occu.: agri.,
R/o as above.

5. Pravin Bhansibhai Barad
Age : major, occu: business
R/o D-2, MAPMC Market-I,
Phase-II, Turbhe, Washi,
Navi Mumbai. **Respondents.**

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Mr. S.G. Chapalgaonkar, Advocate for the appellant.
Mr. N.D. Kendre, Advocate for respondents Nos.1 to 4.

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WITH

FIRST APPEAL NO. 1403 OF 2012

1. Mahanand w/o Gopal Chame
Age : 45 yrs, occu.: household

2. Pooja d/o Gopal Chame
Age : 15 yrs, occu.: Education

3. Dnyaneshwar Gopal Chame
Age : 13 yrs, occu.: education

(Appellant Nos.2 and 3 being
minors under guardianship of
appellant No.1).

4. Baburao Yelba Chame
Age : 62 years, occu.: agri.,
R/o Umbadga,Tal. Ausa,
District Latur. **<u>Appellants.</u>**

Versus

1. Pravin Bhansibhai Barad
Age : major, occu.: business
R/o D-2, MAPMC Market-I,
Phase-II, Turbhe, Washi
Navi – Mumbai.

2. Reliance General Insurance
Co. Ltd., Through its Manager,
Regd. Office Reliance Center,
10, W - Hirachand Marg,
Ballard Estate, Mumbai-38. **<u>Respondents</u>**.

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Mr. N.D. Kendre, Advocate for the appellants.
Mr. S.G. Chapalgaonkar, Advocate for respondents No.2.

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CORAM : SUNIL K.KOTWAL,J.

Judgment reserved on : 1 April 2019.

Judgment pronounced on : 4 April 2019.

JUDGMENT.

1. These both appeals are filed against the judgment and award passed by the Motor Accident Claims Tribunal (hereinafter referred to as the "Tribunal"), Latur in Motor Accident Claim Petition (M.A.C.P.) No.233/2008, whereas the compensation of Rs. 4,80,000/- was awarded by the Tribunal.

2. First Appeal No. 2427 of 2009 is filed by the Reliance General Insurance Company Limited who was respondent No.2 in the original claim petition. First Appeal No.1403 of 2012 is filed by the original claimants. Respondent No.1 in original proceeding was the owner of offending jeep No. MH-43-D-4030. Hereinafter the parties are referred to in accordance with their status in the original proceeding as "claimants", "owner of offending vehicle" and "insurer of the offending vehicle".

3. The facts leading to institution of these appeals are that on 01.05.2008 the deceased was travelling by the offending jeep and when it reached near village Kopri, on Mumbai to Pune

Express Highway, due to rash and negligent driving by the driver of the jeep, he lost control and jeep dashed against side wall of the road resulting into the death of driver and deceased Gopal Chame. Therefore, the dependents of deceased Gopal filed claim petition before the Tribunal claiming compensation of Rs.37,30,000/-.

4. By filing written statement (Exh.22) owner of offending jeep denied the claim in toto and in the alternate contended that as the offending jeep was insured with respondent No.2, he is not liable to pay compensation to the claimants.

5. Respondent No.2 filed written statement (Exh.18) and denied the claim petition on the ground that the offending jeep was registered as a taxi and on the date of the accident the driver of offending jeep did not hold effective and valid driving licence, and thereby committed breach of terms and conditions of the policy of insurance.

6. After considering the oral and documentary evidence placed on record the Tribunal passed the above-said award and held that respondent Nos.1 and 2 are jointly and severally liable

to pay the compensation to the claimants.

7. Heard Mr. N.D. Kendre, learned Counsel for the claimants and Mr. S.G. Chapalgaonkar, learned Counsel for the insurer of the offending vehicle.

8. Learned Counsel for the claimants submits that on the date of the death of deceased Gopal was only 48 years old and he used to earn about Rs. 4,00,000/- per year by running a business. However, the Tribunal considered meager annual income of the deceased and awarded less compensation.

9. The next contention of learned Counsel for the claimants is that though in the family of deceased there were four dependents, the Tribunal erroneously deducted one-third income towards personal expenses of the deceased from his annual income. It should have been one-fourth deduction.

10. The next objection raised by the learned Counsel for the claimants is that while determining loss of dependency the Tribunal wrongly applied multiplier of "11", when considering the age of deceased as 48 years, the appropriate multiplier is "14". He has also pointed out that no income is added in the annual income of the deceased towards loss of future prospects

and under conventional heads, meager compensation is awarded by the Tribunal. He prays for enhanced compensation.

11. Relying on the judgment in the case of **"Mukund Dewangan Vs. Oriental Insurance Co. Ltd." [(2017) 14 SCC 663]**, learned Counsel for the claimants submits that when on the date of occurrence of the accident the driver of offending vehicle held valid driving licence to drive Light Motor Vehicle, he has right to drive any Light Motor Vehicle including non-transport as well as transport vehicle. Because the offending jeep is registered as "Taxi" i.e. a transport vehicle, the Insurer cannot prove that there was breach of condition of policy of insurance.

12. In reply, learned Counsel for the insurer submits that the judgment of the Apex Court in the case of **"Mukund Dewangan Vs. Oriental Insurance Co. Ltd."** (supra) is referred to Larger Bench by the Supreme Court in the case of "*M/s. Bajaj Allianz General Insurance Co. Vs. Rambha Devi"* and others" in Civil Appeal No.841 of 2018 decided on 03.05.2018. Therefore, the law laid down by the Apex Court in the case of **"Mukund Dewangan Vs. Oriental Insurance Co. Ltd."**

(supra) is not applicable in the case at hand.

13. The next contention of the learned Counsel for the insurer is that the postmortem notes of the dead body of deceased show that on the date of death the deceased was 55 years old, and therefore, multiplier of "11" is applicable, as applied by the Tribunal. However, he fairly submits that considering the number of dependents in the family of the deceased, there can be deductions of one-fourth income towards personal expenses of the deceased from his annual income. He submits that there can be addition of 10% income on account of loss of future prospects.

14. However, learned Counsel for the insurer fairly concedes that under conventional heads, compensation can be awarded to the tune of Rs. 70,000/-.

15. After hearing learned Counsel for both the sides, following points arise for my determination:

	POINTS	**FINDINGS**
1.	Does the insurer prove that owner of the offending vehicle committed breach of terms and conditions of the policy of insurance?	No.

2.	What would be the just and reasonable compensation payable to the claimants?	As per final order.

16. In the wake of the arguments of both the sides, it becomes clear that the claimants are claiming enhanced compensation and on the other hand the insurer is denying its liability on the ground of breach of terms and conditions of the policy of insurance.

17. For determining just and reasonable compensation payable to the claimants, the age of deceased and his income play an important role.

18. No doubt, in the postmortem notes (Exh.27), age of the deceased is mentioned as 55 years. However, as rightly pointed out by the learned Counsel for the claimants, in the income-tax returns for the year 2005-2006 (Exhs. 29 and 30) submitted by the deceased prior to his death, his date of birth is mentioned as 09.12.1960. The accident occurred on 01.05.2008. Thus, considering the date of birth mentioned in the income-tax returns of the deceased on the date of death, the deceased was above 47 years and less than 48 years old. Therefore, in view of the law settled by the Apex Court in the case of **"Sarla Varma &**

Ors Vs. Delhi Transport Corp. & Anr.", (AIR 2009 SC 3104), the multiplier of "13" is applicable in the case at hand.

19. Regarding annual income of the deceased, it is suffice to say that in view of the Shop Registration Certificate (Exh.42) the deceased was dealing with grocery business in the name and style as "Sai Provision Stores" at Rahul Nagar, Kopar Road, Dombiwali (West). The income-tax returns (Exhs.29 to 32) submitted by the deceased show that gross annual income of the deceased from his business was in between Rs. 62,000/- to 63,000/-. Therefore, the Tribunal rightly rounded up his income as Rs. 63,000/- per annum. The income-tax returns also make it clear that the deceased did not pay income-tax as the income was not taxable. Thus, the annual income of the deceased can be considered as Rs. 63,000/-.

20. As the deceased was self-employed person between the age of 40 and 50 years, in view of the law laid down in the case of **"National Insurance Co. Ltd. Vs. Pranay Sethi and others" [2018 (3) Mh.L.J. SC 70]**, there should be addition of 25% income i.e. Rs. 15,750/- in the actual annual income of the deceased. Thus, the total annual income of the deceased comes

to Rs. 78,750/-.

21. As per the guidelines issued by the Apex Court in the case of **"Sarla Varma Vs. Delhi Transport Corp."** (supra), as there are four dependents in the family of deceased, one-fourth income is to be deducted from the annual income of the deceased towards his personal expenses. Thus, the income of deceased available to the family comes to Rs. 59,063/- per annum. On applying multiplier of "13" the loss of dependency comes to Rs. 7,67,819/- (59,063 x 13).

22. In addition to this, as ruled by the Apex Court in the case of **"National Insurance Co. Ltd. Vs. Pranay Sethi"** (supra), the claimants are entitled to the following compensation under conventional heads :

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

23. Thus, the claimants are entitled to the following compensation under different heads :

Loss of dependency	:-	Rs. 7,67,819/-
Loss of consortium	:-	Rs. 40,000/-
Loss of estate	:-	Rs. 15,000/-
Funeral expenses	:-	Rs. 15,000/-
Total	:-	Rs. 8,37,819/-

24. Since 2009 the insurer has challenged the death claim of the claimants. Therefore, in view of the law settled by the Apex Court in the case of **"Municipal Council of Delhi Vs. Association of Victims of Upahaar Tragedy" [(2011) 14 SCC 481]**, the claimants are entitled to interest on compensation at the rate of 9% per annum from the date of petition.

25. No doubt, respondent No.1 being owner of the offending vehicle, is liable to pay the above-mentioned compensation to the claimants. However, policy of insurance (Exh.28) of the offending vehicle shows that the offending vehicle was insured with respondent No. 2 Insurance Company for the period from 31.08.2007 to 30.08.2008. Thus, on the date of the accident i.e. on 01.05.2008 the offending vehicle was duly insured with respondent No.2 - insurer. In the circumstances, the insurer is bound to indemnify respondent No.1 for accidental death of deceased, provided that no breach of condition of policy is proved by the insurer.

26. By examining a cleark working in the Licence Section of Regional Transport Officer, Latur namely Ramchandra Kulkarni (DW-1), respondent No.2 has brought on record that

though the driver of offending vehicle held driving licence to drive Light Motor Vehicle, the particulars of licence (Exh.49) show that the driver was authorised to drive Light Motor Vehicle (non-transport) Category. Registration Certificate (Exh.52) of the offending vehicle shows that it was registered as "Light Motor Vehicle Taxi" i.e. a transport vehicle. However, in the case of "**Mukund Vs. Oriental Insurance Co. Ltd.”** (supra), the Apex Court has made it clear that the person holding licence to drive Light Motor Vehicle, can drive any type of Light Motor Vehicle, whether transport or non-transport, and the driver holding licence to drive Light Motor Vehicle can also drive transport vehicle of such class without any endorsement to that effect. Therefore, because the driver of offending jeep held driving licence to drive the Light Motor Vehicle with an endorsement "non-transport", on that count driving licnece of the driver of offending jeep does not become ineffective and invalid driving licence.

27. No doubt, in view of the judgment of Apex Court in the case of *“M/s Bajaj Allianz General Insurance Co. Vs. Rambha Devi”* (supra), the case of "**Mukund Vs. Oriental**

Insurance Co. Ltd.” (supra) is referred to the Larger Bench. However, till today the ratio of the case of *Mukund Dewangan* holds the field, as it is not in any way disturbed by the Larger Bench.

28. In the circumstances, I have no hesitation to hold that the insurer of the offending vehicle miserably failed to prove that owner of the offending vehicle committed breach of condition of policy of insurance in any manner. I answer point No.1 in the negative and point No.2 accordingly.

29. In view of my findings against point Nos.1 and 2, First Appeal No.2427 of 2009 filed by the Insurance Company deserves to be dismissed and First Appeal No.1403 of 2012 filed by the claimants deserves to be partly allowed and judgment and award passed by the Tribunal in M.A.C.P. No.233/2008 deserves to be modified.

30. Claimant No.4 is the father of deceased and on the date of filing of the claim petition, he was about 62 years old in the year 2008. Now he must be of age above 72 years. Thus, considering his advance age, it is desirable to award him lessor share in the compensation amount. Thus, I hold that claimant

No.4 is entitled to only Rs. 75,000/- with proportionate interest thereon out of total compensation amount. The remaining compensation amount shall be equally apportioned amongst claimant Nos.1 to 3 as they are young and long life span is before them.

31. In the result, First Appeal No. 2427 of 2009 is dismissed. First Appeal No.1403 of 2012 is partly allowed and judgment and award passed by the Tribunal in M.A.C.P. No.233/2008 is modified as under :

"(I) M.A.C.P. No.233/2008 is partly allowed with proportionate costs.

(II) Respondent Nos.1 and 2 do jointly and severally pay compensation of Rs. 8,37,819/- (Rupees Eight Lakh Thirty Seven Thousand Eight Hundred and Nineteen only) to claimant Nos.1 to 4 with interest there on at the rate of Rs. 9% per annum from the date of petition till realization of entire compensation amount.

(III) On deposit of the compensation amount in the Tribunal, an amount of Rs. 75,000/- with proportionate interest thereon shall be paid to claimant No.4 Baburao Yelba Chame through the Tribunal by issuing separate account payee cheque in his name.

(IV) The remaining compensation amount be equally paid to claimant Nos.1 to 3 through the Tribunal, by issuing separate account payee cheques in their respective names.

(V) Award be drawn up accordingly."

31. Parties to bear their respective costs of the appeals.

32. Compensation amount deposited in this Court be remitted to the Motor Accident Claims Tribunal, Latur for its disbursement amongst the claimants in accordance with the modified award.

33. Appeals are disposed of in above terms.

(SUNIL K. KOTWAL)
JUDGE

vdd/