

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

FIRST APPEAL NO.938 OF 2018

The New India Assurance Company Ltd.,
Through its Authorized Official and
Divisional Manager, Legal Hub,
Adalat Road, Aurangabad.

... **Appellant.**

... **Versus** ...

1 Jyoti Ganesh Gavhane,
Age 24 yrs., Occ. Household,

2 Anushka Ganesh Gavhane,
Age 5 yrs., Occ. Nil,

3 Vedika Ganesh Gavhane,
Age 2 yrs., Occ. Nil,

Respondent Nos.2 & 3 are minors and
U/G of their natural mother respondent No.1.

4 Vinayak Bhimraj Gavhane,
Age 55 yrs., Occ. Service,

5 Shobha Vinayak Gavhane,
Age 50 yrs., Occ. Household,
Respondent Nos.1 to 5 are
r/o S.R.P Ground No.7,
S.R.P Quarters, Room No.51/6,
Daund, Tq. Daund, Dist. Pune.

6 Dadasaheb Machchhindra Nimse,
Age : major, Occ. Agri.,
R/o Madhi, Tq. Pathardi,
Dist. Ahmednagar.

... **Respondents.**

...

Mr. A.S. Usmanpurkar, Advocate for the appellant

Mr. D.R. Jaybhar, Advocate for the respondent Nos.1, 4 and 5

...

CORAM : SMT. VIBHA KANKANWADI, J.

RESERVED ON : 03rd OCTOBER, 2019

PRONOUNCED ON : 07th NOVEMBER, 2019

JUDGMENT :

1 Present appeal has been filed by the insurance company-original respondent No.2 challenging the Judgment and Award passed by learned Member, Motor Accident Claims Tribunal, Ahmednagar in M.A.C.P. No.559/2012 dated 03.01.2017, whereby the petition filed under Section 166 of the Motor Vehicles Act, 1988 by present respondent Nos.1 to 5 came to be allowed against it.

2 The facts giving rise to the present appeal are, that the claimants are the heirs of one Ganesh Vinayak Gavhane. He was proceeding from S.R.P. Group No.7 towards Daund city on 15.06.2012 with one Yuvraj Gurav on motorcycle bearing No.MH 10/AM-2788. When they reached in front of gate

No.2, at that time another motorcycle bearing No.MH 40/L-5241 and one Tata Sumo jeep bearing registration No.MH 16/R-1909 came from opposite direction. The said Tata Sumo gave forcible dash to motorcycle bearing No.MH 42/L-5241 and thereafter that motorcycle gave dash to the motorcycle on which deceased was the pillion rider. As a result of which, all the occupants of both the motorcycles fell down and due to the multiple injuries to his head, deceased Ganesh expired on the spot. It is contended that the said accident took place due to the sole negligence on the part of the Tata Sumo driver only. On the basis of report lodged with the Police Station inquiry as well as investigation has been carried out and the jeep driver has been prosecuted. It was the further contention of the claimants, that Ganesh was 27 years old person having permanent job with Cipla Limited at Kurkum M.I.D.C., Daund, Dist. Pune. He was getting Rs.24,000/- per month as salary. Therefore, the claimants had claimed compensation of Rs.35,00,000/- together with interest from original respondent No.1, who was the owner of the said jeep and present appellant-original respondent No.2 with whom the said jeep was insured on the date of the accident.

3 Respondent No.1 as well as No.2 filed separate written statement. They both have denied the contents of the petition. The averments about allegations in driving on the part of the jeep driver have

been denied specifically. The insurance company had come with a case that the driver of the offending vehicle was not holding valid and effective driving licence of the class of vehicle he was driving, at the relevant time. There is breach of terms of policy by the respondent No.1 and therefore, the insurance company will have to be exonerated.

4 After taking into consideration the rival contentions, issues were framed. Parties have led oral as well as documentary evidence. The learned Member, Motor Accident Claims Tribunal has awarded compensation of Rs.32,85,000/- to the petitioners inclusive of amount under No Fault Liability. It was held that the insurance company has failed to prove that there is breach of terms of policy. The insurance company has challenged the quantum as well as its liability to pay compensation, in view of the fact that there is breach of terms of policy.

5 Heard learned Advocate Mr. A.S. Usmanpurkar for the appellant and learned Mr. D.R. Jaybhar for the original claimants.

6 It has been vehemently submitted on behalf of the appellant that the accident had taken place between two motorcycles and one jeep. The jeep had dashed the other motorcycle and then the said motorcycle had dashed the motorcycle driven by the friend of deceased, on which the

deceased was travelling as pillion rider. The jeep was insured with respondent No.2, admittedly. Exoneration has been claimed on the points that the driver of the jeep was not holding valid and effective driving licence. Evidence was specifically led by the insurance company by examining the witness from Regional Transport Office, Ahmednagar. RW Santosh Aute has specifically stated that original respondent No.2 was given licence on 21.09.1999 in respect of LMV transport goods. The validity of the same was till 16.02.2012. Further, said Dadasaheb Nimse had taken licence for driving motorcycle without gear. The validity of the same was 03.04.2023. It has been misread by the learned Tribunal, that since jeep can be categorized in non transport vehicle, as it has been so admitted by RW Aute and in the certificate Exh.39 would clearly show the said bifurcation, which was orally stated by RW 1 Santosh and the validity of the same is till 03.04.2023, was not considered properly. Only on the basis of that alleged admission, it is stated that there was valid licence with the driver of the Tata Sumo and thus, the liability has been wrongly saddled on the shoulders of the insurance company. When there was breach of terms of policy, on the point of not holding the driving licence on the date of the accident i.e. in this case it had expired about four months earlier to the accident. It ought to have been held, that there was no licence to the driver of the Tata Sumo, on the date of the accident, in this case. The insurance company ought not to have been

saddled with the compensation amount.

7 Further, it has been submitted on behalf of the appellant that the non pecuniary damages have not been properly considered by the learned Tribunal and by relying upon Rajesh vs. Rajbir Singh, 2013 (9) SCC 54, compensation has been awarded, which deserves to be corrected.

8 Learned Advocate appearing for the original claimants supported the reasons given by the learned Tribunal. It was submitted that perusal of the extract produced by RW 1 Aute at Exh.39 would make it clear that driver was holding two types of licences, one was for motorcycle with gear and another was LMV transport goods. However, the said document also states that the validity of non sport category is till 03.04.2023. Therefore, it has been rightly held by the Tribunal that driver of the jeep was holding valid and effective driving licence to drive the jeep, on the date of the accident. Reliance has been placed on the decision in Ram Babu Tiwari vs. United India Insurance Company Limited and others, (2008) 8 SCC 165, wherein it is stated that the defence available to insurer to avoid liability in case driver was not “duly licenced” etc. under Section 149(2)(a)(ii). Question, as to whether the owner of the vehicle had taken care to inform himself, as to whether the driver entrusted to drive the vehicle was having a licence or not, would be essentially a question of fact.

Further reliance has been placed on the decision in **Magma General Insurance Co. Ltd. vs. Nanu Ram Alias Chuhru Ram and others, Civil Appeal No.9581 of 2018 (arising out of SLP (Civil) No.3192 of 2018,** wherein it has been held that though Hon'ble Supreme Court by its Constitution Bench in **National Insurance Co. Ltd. vs. Pranay Sethi, (2017) 16 SCC 680,** yet, the compensation can be awarded under consortium, spousal consortium, parental consortium and filial consortium. Therefore, to each one of the claimant such type of compensation could have been given, proof has been laid in support of the quantum and therefore, the amount awarded as compensation by the learned Tribunal is correct.

9 Taking into consideration the above submissions, following points arise for determination; findings and reasons for the same are as follows.

- 1 Whether the respondent No.2 had proved breach of terms of policy ?
- 2 Whether insurance company was required to be exonerated ?
- 3 Whether the amount of compensation granted by the learned Tribunal is on higher side ?

REASONS

10 The insurance company though admitting the fact, that the jeep owned by respondent No.1 was insured with it, on the date of the accident claimed exoneration, on the point that the driver of the jeep was not holding valid and effective driving licence to drive jeep on the date of the accident. In order to prove the same, insurance company examined RW Santosh. He has produced the extract of the driving licence of the driver of the jeep at Exh.39. He has deposed that Dadasaheb Nimse was having LMV transport goods valid up to 16.02.2012 and then Dadasaheb was also having licence to drive motorcycle without gear and the validity of the same was till 03.04.2023. However, in the cross-examination he has stated that the validity of non transport vehicle is till 03.04.2023 and jeep is a non transport vehicle. He denied the suggestion that the non transport vehicle if renewed, would automatically renewed the driving licence in transport category. Learned Tribunal has taken the said admission into consideration and also stated, that the validity of the driving licence to drive non transport vehicle, which is inclusive of jeep, was till 03.04.2023 and therefore, the said driver was holding valid and effective driving licence, to drive the jeep, on the date of the accident. Important point to be noted is that after the said admission is given by RW Santosh, there was no re-examination by the insurance

company, getting more clarification regarding the driving licence of two types mentioned in Exh.39. Perusal of Exh.39 would show that Validity (Non Transport) is stated as 03.04.2023 and Validity (Transport), it is stated 16.02.2012 and then there is Class of Vehicle Held and Endorsement Details remark is “Motor Cycle With Gear w.e.f. 04.04.2003 LMV Transport Goods w.e.f. 21.09.1999. In fact, there is no bifurcation in the driving licence, as to which is for two wheeler and which is for four wheeler. Naturally, there is no question of transport of goods on two wheeler, but that does not mean that “Validity (Non Transport)” was not for jeep. In fact, the RW Santosh ought to have clarified in detail as to which is for the two wheeler and which is for four wheeler, in the register itself. RW Santosh had not brought along with him other documents and whatever was submitted at Exh.39 was the only extract. The application for driving licence would have made it very clear as to for which vehicle which category of licence have been given. Further, when the said admission was given by the witness, even the concerned Tribunal ought to have got the things clarified from the witness, which would have avoided any confusion. Another fact to be noted from the decision in **Ram Babu Tiwari** (supra), the defence which insurance company can take under Section 149(2)(a)(ii) to avoid liability, on the ground that the driver was not “duly licenced” would be available, only if it is proved that the owner had the knowledge that the driver is not holding valid and effective driving

licence and gave the vehicle to such driver. Here, in this case, the confusion which appears to be in the mind, as to which the licence is till which period would have justified the respondent No.1 in appointing the driver Dadasaheb. Further, when the burden was on the insurance company to prove the breach of terms of policy. There is no evidence on record to show that the said fact was within the knowledge of the owner. The breach should be willful, then only benefit would be given to the insurance company. It has not come on the record, that at the relevant time jeep was used for transport purpose. The insurance also does not appear to be for a vehicle which could transport goods. Therefore, when jeep can be used for non transport as well as transport, then further clarification as aforesaid was necessary from the witness. Under such circumstance, when one of the entry on the driving licence says that the driving licence is valid for vehicles of non transport category, then, by giving benefit of the same to the owner, it can be said that there is no breach of terms of policy, in this case. When there is no breach of terms of policy, question of exonerating the insurance company does not arise. The liability of such insurance company would be joint and several with the owner. Therefore, no fault can be found in the findings given by the learned Tribunal.

11 Now, as regards the quantum, especially, the non pecuniary

damages are concerned, it is to be noted that those non pecuniary damages i.e. loss of consortium, loss of love and affection have been granted, funeral expenses have been granted as per the ratio laid down in the case of *Rajesh vs. Rajbir Singh*. While computing the compensation the deductions have been properly made and from monthly income which has been derived after standard deduction has been considered, so also, on the basis of number of family members, multiplier is also properly applied, taking into consideration the age of the deceased. Now, only as regards consortium of Rs.1,00,000/-, loss of love and affection Rs.1,00,000/- and funeral expenditure Rs.25,000/-, the point has been agitated now. Important point to be noted is that though there were in all five claimants, out of that loss of consortium is granted to claimant No.1 and for others i.e. claimant Nos.2 to 5, amount of Rs.1,00,000/- has been granted. No doubt, in **Pranay Sethi's** case, which is a Constitutional Bench's Judgment, **Rajesh vs. Rajbir Singh** has been held to be not a binding precedent. But taking into consideration the decision in **Magma General Insurance Company Limited** (supra), where further bifurcation has been made in respect of spousal consortium, parental consortium, filial consortium and taking into consideration the decision in **Pranay Sethi**, it is observed that the amount of compensation to be awarded as consortium will be governed as a principles of awarding compensation under “loss of consortium” as laid down in **Pranay Sethi**. However, further

amount was granted under filial consortium, which has been explained as the right of the parents to compensation in the case of an accidental death of a child and it has been held, that in case, where a parent has lost their minor child or unmarried son or daughter, the parents are entitled to be awarded loss of consortium under the head of Filial Consortium. Parental consortium is awarded to children, who lose their parents in motor vehicle accidents under the Act. Under the said circumstance, when for claimant Nos.2 to 5 total compensation of Rs.1,00,000/- is awarded, it need not be interfered. Hence, points are answered accordingly.

12 Taking into consideration the above said discussion, there is no necessity to interfere with the Judgment and Award passed by the learned Tribunal. There is no merit in the present appeal. It deserves dismissal and accordingly, it is dismissed. No order as to costs.

(Smt. Vibha Kankanwadi, J.)

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