

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,**BENCH AT AURANGABAD****FIRST APPEAL NO. 3080 OF 2016**

United India Insurance Co. Ltd.,
 Through it's Divisional Manager and
 authorised representative & signatory,
 Sangamner Divisional Office,
 Hotel Karam Building, Opposite S.T. Stand,
 At & Post & Taluka Sangamner – 422 605,
 District; Ahmednagar. **...APPELLANT**

(Original Respondent No. 2)

VERSUS

1. Anil Kisan Shinde,
 Age; 28 years, Occ; Coolie,
 Resident of Kasara Dumala,
 Taluka; Sangamner,
 District; Ahmednagar.
2. Vishvanath Dhondiba Naikwadi,
 Age; 45 years, Occ; Agril & Business,
 Resident of Gardhani, Tq. Sangamner,
 Dist; Ahmednagar ..(**Dead, through
 his Lrs.**)
- 2-A) Kisan Vishawnath Naikwadi,
 Age; 50 years, Occ; Agril,
- 2-B) Vasant Vishwanath Naikwadi,
 Age; 47 years, Occ; Agril,
- 2-C) Pandu Vishwanath Naikwadi,
 Age; 45 years, Occ; Agril,

All Resident of Gardhani,
 Tq. Akole, Dist; Ahmednagar. **..RESPONDENTS**

(Respdt. No. 1 Orig.
 Claimant, Respdt. No. 2
 Orig. Respdt. 1)

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Shri. A.B. Gatne, Advocate for Appellant
Shri. R.K. Temkar, Advocate for Respondent
No.1.

Shri K.N. Shermale, Advocate for Respondent Nos.
2-A to 2-C.

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CORAM : SUNIL K. KOTWAL, J.

Date of Reserving Judgment : 20/03/2019

Date of Pronouncing Judgment : 02/04/2019

JUDGMENT :

The United India Insurance Co. Ltd., the original respondent No. 2 has filed this appeal against the judgment and award passed by the Motor Accident Claims Tribunal, Sangemner, (hereinafter referred to as the 'Tribunal') in Motor Accident Claim Petition No. 14 of 2009, (hereinafter referred to as the 'MACP'), whereby, as in injury claim, compensation of Rs. 6,93,000/- was awarded with interest @ 8% p.a. and the liability was fastened against respondent No. 2. Respondent No. 1 in appeal, is original claimant and respondent No. 2-A to 2-C, are legal heirs of respondent No. 1, who died during the pendency of the Claim Petition. (hereinafter, the parties are referred in accordance with their status in the original

proceeding as claimants, owner of offending vehicle and insurer of the offending vehicle).

2. Facts leading to the institution of this appeal in brief are that on 10.11.2008, at about 10.45 p.m., when the claimant was riding the motorcycle bearing No. MH-17-Y-9118, by Akole to Sangamner Road, near the brick kiln of Jorvekar, the offending tractor No. MH-41-D-1513 came from opposite direction and gave dash to the motorcycle of the claimant, after coming towards wrong side of the road. The accident occurred due to rash and negligent driving of the driver of the offending tractor. The claimant sustained injuries to his head, right shoulder and right ulna, resulting into amputation of his right hand. Therefore, the claimant filed the claim petition for compensation against the owner of the offending vehicle.

3. The owner of the offending vehicle filed written statement (Exb. 21) and denied the allegations of rash and negligent driving by the driver of the offending tractor. He blamed the claimant for driving his motorcycle in rash and

negligent manner. In the alternate, his contention is that, the tractor being insured with respondent No. 2, he is not liable to pay compensation.

4. Even the Insurance Company filed written statement (Exh. 25) and admitted that the offending tractor was insured with respondent No. 2, Insurance Company on the date of the accident, but raised the defence of breach of condition of policy of the insurance, on the ground that the tractor was used for transportation purpose, though, permit was issued only for the agricultural purpose and on the ground of non holding valid and effective driving license by the driver of the tractor to drive it. It is also alleged that the accident occurred due to contributory negligence on the part of the claimant.

5. After considering the evidence placed on record by the claimant and insurer, the learned Tribunal pleased to award the above said compensation and fastened liability only against the Insurance Company, as the owner of the tractor

died during pendency of the proceeding.

6. Heard Shri A.B. Gatne, learned counsel for Appellant/insurer, Shri. R.K. Temkar, learned counsel for Respondent No.1/Original Claimant and Shri K.N. Shermale, learned counsel for legal representatives of the owner of the offending tractor i.e. original respondent Nos. 2-A to 2-C.

7. After hearing learned counsel of both parties, following points arise for my consideration, I have recorded my findings against each point for the reasons stated below :

SR. No.	POINTS FOR DETERMINATION	FINDINGS
1)	Does claimant prove that on 11.10.2008, motor vehicular accident occurred due to rash and negligent driving by the driver of the offending tractor resulting into permanent disability to the Original Claimant ?	In the affirmative.
2)	Does the insurer of the offending vehicle prove that the owner of the offending vehicle committed breach of condition of policy of the insurance ?	In the negative.
3)	What is the just and reasonable compensation payable to the Claimant ?	As awarded by the Tribunal.

4)	Who is liable to pay compensation to the claimant ?	The owner and the insurer are jointly and severally liable to pay compensation to the claimant, with interest @ 9 % p.a. from the date of filing of the petition till realization.
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R E A S O N S

AS TO POINT NO. 1 :-

8. The claimant has blamed the driver of the offending tractor for rash and negligent driving. On the other hand, the owner and Insurer of the offending tractor blamed the claimant for driving his motorcycle in rash and negligent manner and thereby contributed the occurrence of the accident.

9. The claimant Anil Shinde (PW 1), stepped into witness box and deposed regarding the occurrence of the accident. As per his version, the accident occurred due to rash and negligent driving of the driver of the offending tractor,

which came towards wrong side of the road and dashed against the motorcycle of the claimant. His oral version is also corroborated by FIR (Exh. 34) and spot panchanama (Exh. 35), which shows that the offending tractor came to the wrong side of the road and dashed against the motorcycle of the claimant. Despite searching cross-examination by the learned counsel for the insurer, nothing could be elicited from his cross-examination, to show that accident occurred due to rash and negligent driving by the claimant. Only because the claimant did not hold driving license to drive the motorcycle, an inference cannot be drawn that he was driving the motorcycle in rash and negligent manner.

10. In addition to this, the claimant has placed on record the permanent disability certificate (Exh. 58), which shows that the right hand of the claimant was amputated, resulting into 80% of the permanent disability. Even the discharge card (Exh. 37) issued by the Lifeline Hospital, Nashik, supports the permanent disability certificate regarding amputation of

right hand of the claimant, above elbow. Thus, the claimant has discharged the initial burden to prove that accident occurred due to rash and negligent driving by the driver of the offending tractor resulting into 80% permanent disability.

11. In rebuttal, on behalf of insurance company, except examination of the Junior Clerk (DW 1) Mr. Arun Garud (Exh. 53) from R.T.O. Office, Shrirampur, no other witness is examined by the Insurer to prove the contention of contributory negligence of the claimant. In the result, I have no hesitation to hold that Tribunal is absolutely justified while holding that accident occurred only due to rash and negligent driving of the driver of the offending tractor, resulting into permanent disability to the claimant. I answer point No. 1 in affirmative.

AS TO POINT NO. 2 :-

12. This appeal is mainly argued on the ground of breach of condition of policy of the insurance, by using the tractor for commercial purpose, when it was insured for agricultural

purpose. The second objection of the Insurer is that the driver of the tractor did not hold valid and effective driving license to drive the tractor.

13. No doubt, the cover note (Exh. 38), shows that the offending tractor was insured with respondent No. 2, the insurance company and the policy of the insurance was in force from 9.1.2008 to 8.1.2009. Therefore, on the date of occurrence of the accident i.e. on 10.11.2008, the policy of the insurance was in force.

14. No doubt, the cover note shows that it was 'farmer package policy'. Therefore, the insured tractor is to be used only for agricultural purpose. It is to be noted that though the insurer contended that the tractor was used for commercial purpose, i.e. for transportation purpose, on behalf of insurer, no evidence is placed on record to prove this contention. Only because the driver of the tractor was plying it by road, the conclusion cannot be drawn that the offending tractor was used for

transportation purpose or for commercial purpose. Therefore, the insurer cannot prove that by using the tractor for commercial purpose, the owner of the offending tractor committed breach of condition of policy of the insurance.

15. Though the learned counsel for insurer contended that in Maharashtra for driving a tractor, the driving license must specify that it was issued for driving the 'tractor'. However, till passing of this judgment, those separate rules applicable in Maharashtra are not placed on record by the learned counsel for the insurer. On the other hand, a copy of the driving license (Exh. 40) of the driver of the tractor, shows that even on the date of accident, the driver of the offending tractor was holding valid and effective driving license to drive light motor vehicle (LMV). Even the employee of the R.T.O. office, Shrirampur (DW-1) Mr.Arun Garud (Exh. 53), deposed before Court that the driver of the tractor holds valid and effective driving license to drive the light motor vehicle. In his cross-examination, he has admitted that the tractor is a light motor

vehicle. Otherwise also, the copy of registration certificate of the tractor shows that it was registered as light motor vehicular. In "**Mukund Dewangan v. Oriental Insurance Company Limited**" [2017 SCC On Line SC 788], the Larger Bench of the Apex Court ruled that,

"the person holding driving license to drive light motor vehicular, can drive any category of light motor vehicle and the license need no endorsement about the type of the vehicle"

16. No doubt, learned counsel for the Insurer has pointed out that in "**M/S. Bajaj Alliance General Insurance Co. Ltd. v. Rambha Devi & Ors.**" [Civil Appeal No. 841 of 2018 decided on 3.5.2018], the Apex Court has considered the prayer for referring the case of "**Mukund Dewangan v. Oriental Insurance Company Limited**" [supra] for reconsideration by the Larger Bench of Three Judges. However, till today, the law laid down in "**Mukund Dewangan v. Oriental Insurance Company Limited**" [supra] holds field. Therefore, I have no hesitation to hold that no separate driving license is required to drive the tractor and the driving license held by the driver of the

offending tractor to drive light motor vehicular is sufficient compliance of of the conditions of policy of insurance of the tractor. In other words, the Insurer of the offending tractor failed to prove that the owner of the offending tractor committed breach of conditions of policy of the insurance. Accordingly, I answer point No. 2 in the negative.

AS TO POINT NO. 3 :-

17. In fact, the quantum of compensation awarded by the Tribunal is not disputed by the learned counsel for Insurer or the owner of the offending vehicle at the stage of the arguments. Otherwise also, after going through the judgment passed by the tribunal, it emerges that considering the occupation of the claimant as Coolie and his amputated right hand, due to accidental injuries, the Tribunal has rightly held that the claimant sustained 100% loss of income due to permanent disability. Considering the minimum notional income of the claimant @ Rs. 3,000/- p.m. and his age as 24 years as specified in the discharge card (Exh. 37), the Tribunal has

rightly applied multiplier '18', while calculating the total loss of income due to permanent disability as Rs. 6,48,000/-. Even the attendant charges of Rs. 5,000/- and compensation of Rs. 20,000/- towards pains and sufferings and Rs. 10,000/- towards loss of amenities of life and Rs. 5,000/- towards traveling expenses are just and reasonable and cannot be considered as exorbitant compensation. I hold that the Tribunal is justified by holding that the claimant is entitled for total compensation of Rs. 6,93,000/-. I answer point No. 3 accordingly.

AS TO POINT NO. 4 :-

18. It is to be noted that though the legal representatives of the owner of the offending vehicle were not brought on record, that irregularity is rectified in the appeal by joining respondent No. 2-A to 2-C, as legal representatives of owner of the offending vehicle.

19. In view of my findings against point No. 1 to 3, as the accident occurred due to rash and negligent driving by the driver of the offending

tractor and as the tractor was duly insured with respondent no. 2 insurer on the date of accident, the owner of the offending tractor and the insurer are jointly and severally liable to pay the compensation of Rs. 6,93,000/- to the claimant. Even the rate of interest on compensation, deserves to be enhanced by invoking the powers of this Court under Order 41 Rule 33 of the Code of Civil Procedure, 1988, to the extent of 9% p.a. from the date of filing of the petition till realization. The appeal preferred by the insurance company deserves to be partly allowed to fasten joint and several liability to pay compensation to the claimant, against the owner of the offending vehicle and the insurer of the offending vehicle. I answer point No. 4 accordingly and proceed to pass following order :

ORDER

- 1) First Appeal No. 3080 of 2016 is partly allowed.
- 2) The Judgment and award passed by the MACT, Sangemner, in MACP No. 14 of 2009 is modified as

under :

"a) Petition is partly allowed with proportionate costs.

b) Respondent No. 1-A to 1-C and respondent No. 2, do jointly and severally pay total compensation of Rs. 6,93,000/-, (Rs. Six Lac and Ninety Three Thousand Only), inclusive of No Fault Liability of Rs. 25,000/- (Rs. Twenty Five Thousand Only), to the claimant with interest thereon @ 9% p.a., from the date of filing of the claim petition till realization of that amount.

c) Part of compensation amount Rs. 3,00,000/- (Rs. Three Lacs Only), be invested in fixed deposit in any Nationalised Bank of the choice of the claimant for the period of five years, in the name of the claimant and the balance amount shall be paid to the claimant by account payee cheque only through the Tribunal.

d) Respondent No. 1-A to 1-C and respondent No. 2 shall jointly and severally pay proportionate cost of the petition to the claimant.

e) Award be drawn up accordingly."

3) Parties to bear their respective costs of the appeal.

4) Appeal is disposed of in above said terms.

5) If compensation amount is deposited in

the Court, it be remitted to Motor Accident Claims Tribunal, Sangamner, for disbursement and the claimant is allowed to withdraw the same from the Tribunal in accordance with the modified award.

(**SUNIL K. KOTWAL**)
JUDGE

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