

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

FIRST APPEAL NO. 1464 OF 2016

WITH

CROSS-OBJECTION NO.19739 OF 2016

Sangita w/o Balasaheb Thorat
Age : 41 yrs, occu.: household
R/o Wadgaon Pan, Tal. Sangamner,
District Ahmednagar.

Appellant.

Versus

1. Aslam Altaf Shaikh
Age : major, occu.: business
R/o Jorwe, Tal. Sangamner,
District Ahmednagar.
2. Oriental Insurance Co. Ltd.,
Through Branch Manager,
Sangamner,
District Ahmednagar.
3. Tushar Balasaheb Thorat
Age : 22 yrs, occu.: education
R/o Wadgaon Pan, Tal.Sangamner,
District Ahmednagar.
4. Punam Balasaheb Thorat
Age : 18 yrs, occu.: education
R/o Wadgaon Pan, Tal.Sangamner,
District Ahmednagar.
5. Sunil Balasaheb Thorat
Age : 20 yrs, occu.: education
R/o Wadgaon Pan, Tal.Sangamner,
District Ahmednagar.

6. Haushabai w/o Rajaram Thorat
Age : 65 yrs, occu.: household
R/o Wadgaon Pan, Tal.Sangamner,
District Ahmednagar.

7. Balasaheb Sopan Gaikwad
(Deleted).

Respondents.

Mr. S.S. Dixit, Advocate for the appellant.

Mr. V.V. Bhide, Advocate for respondent No.1.

Mr. A.G. Kanade, Advocate for respondent No.2.

Mr. A.S. Kulkarni, Advocate for respondent Nos.3 to 6.

CORAM : SUNIL K.KOTWAL, J.

Judgment reserved on : 10th December 2018.

Judgment pronounced on : 7th January 2019.

JUDGMENT.

1. This appeal is directed by original claimant No.1 alongwith respondent Nos.3 to 6, for enhancement of compensation against judgment and award passed by Motor Accident Claims Tribunal, Sangamner (hereinafter referred to as "Tribunal") in Motor Accident Claim Petition No.179/2004. Similarly, original respondent No.1 (owner of the offending vehicle) filed Cross-objection against the finding of exoneration of Insurer of the offending vehicle.

2. Respondent No.1 is the owner of offending vehicle and respondent No.2 is its insurer.

3. The facts, in brief, leading to institution of this appeal are that, deceased Babasaheb died due to dash given by jeep bearing registration No. MH-17-C-8696, when he was passing by Sangamner to Loni road by his bicycle on 15.05.2004. It is alleged that the accident occurred due to rash and negligent driving of the driver of offending jeep. Therefore, motor accident claim petition arose wherein at last compensation of Rs.3,46,000/- was awarded with interest thereon at the rate of Rs.7.5% per annum from the date of filing of application.

4. In this appeal, only two points are disputed in between the parties. The first point is whether the driver of offending jeep holding driving licence to drive Light Motor Vehicle (N.T.), can drive commercial Light Motor Vehicle and the second point is, whether the compensation awarded by Tribunal is just and reasonable.

5. Heard Mr. S.S. Dixit, learned Counsel for the appellant, Mr. A.G. Kanade, learned Counsel for respondent No.2, Mr. V.D. Bide, learned Counsel for respondent No.1 and Mr.

A.S. Kulkarni, learned Counsel for respondent Nos.3 to 6.

6. Learned Counsel for the appellant submits that in view of the judgment of Larger Bench of the Apex Court in the case of **“Mukund Dewangan Vs. Oriental Insurance Company Limited”** [(2017) 14 SCC 663], it is no more *res integra* that the driver having licence to drive Light Motor Vehicle can drive even light weight Transport Vehicle or commercial vehicle, without having such endorsement on the driving licence. He has also drawn my attention to the case of **“S. Iyyapan Vs. M/s. United India Insurance Company Ltd. and another”** (AIR 2013 SC 2262).

7. Next submission of the learned Counsel for appellant is that though monthly salary of the deceased was proved as Rs.4,500/-, the learned Tribunal considered the notional income of the deceased as Rs. 3,000/- per month and awarded meager compensation. Relying on the case of **“National Insurance Company Ltd. Vs Pranay Sethi and others”** [2018 (3) **Mh.L.J. SC 70**], he prays for enhancement of compensation.

8. Learned Counsel for respondent No.2 also placed reliance on the case of **“S. Iyyapan Vs. M/s. United India Insurance Company Ltd. and another”** (supra) and submits that when the driver of offending jeep was holding effective and valid driving licence (Exh.29) to drive Light Motor Vehicle, no breach of condition of policy of insurance is proved by Insurance Company, and therefore, Insurance Company cannot be exonerated.

9. Learned Counsel for Insurance Company supported the judgment and award passed by the Tribunal. He submits that by examining the employee from the Regional Transport Office, the Insurance Company has proved that the driver of offending vehicle was holding driving licence to drive Light Motor Vehicle of Non-Transport Category. He submits that At the time of accident he was driving commercial vehicle and thereby committed breach of condition of policy of insurance. He submits that in the claim petition no claim of loss of future prospects is made by the claimants.

10. In the case at hand, undisputedly, the driver of offending jeep was driving Maxi Cab, which is a commercial

transport vehicle. Even it is not disputed that the driver of offending vehicle was holding driving licence (Exh.29) to drive Light Motor Vehicle (N.T.) which was renewed on 15.11.1999 and it was valid up to 14.11.2024. Thus, on the date of accident i.e. on 15.05.2004 the driver of offending vehicle was holding effective and valid driving licence to drive Light Motor Vehicle. In the case of **“Mukund Dewangan”** (supra) the Larger Bench of the Apex Court has made it clear that once a licence is issued to drive Light Motor Vehicle, it would also mean specific authorisation to drive a transport vehicle or omnibus, the gross vehicle weight or motor car, road roller or tractor, the unladen weight of which, as the case may be, does not exceed 7500 kg. No special endorsement is required to drive such transport vehicle. In the case of **“S. Iyyapan”** (supra) it is also held that merely because the driver did not get any endorsement in the driving licence to drive Mahindra Maxi Cab, which is a light motor vehicle, the High Court has committed grave error of law in holding that the insurer is not liable to pay compensation because the driver was not holding licence to drive commercial vehicle. This view was also followed by Division Bench of the Apex Court in the case of

“Kulwant Singh and others Vs. Oriental Insurance Co. Ltd.” [(2015) 2 SCC 186].

11. Thus, in the case at hand, when it is duly proved by the claimants that driver of offending jeep was holding effective and valid driving licence to drive the Light Motor Vehicle, the Insurance Company cannot prove the breach of condition of policy of insurance. Otherwise also, the policy of insurance (Exh.42) shows that it was a 'package policy' for passenger carrying commercial vehicle for four-wheeler (car). Thus, in any case the Insurance Company cannot prove breach of condition of policy of insurance by owner of the offending vehicle. In the circumstances, the Insurance Company cannot be exonerated from its liability to indemnify the owner of offending vehicle, when the policy of insurance was in force from 25.09.2003 till midnight of 24.09.2004. I hold that the finding of Tribunal regarding breach of condition of policy of insurance by owner of offending vehicle and regarding exoneration of insurer of offending vehicle is incorrect and deserves to be set aside.

12. Now the question arises regarding reasonable and fair compensation payable to the claimants. The claimants claim

that at the time of the accident the deceased Babasaheb was 40 years old. School Leaving Certificate (Exh.31) of the deceased shows that his date of birth was 03.11.1963. Thus, on the date of accident he was 41 years old. Thus, in view of the guidelines issued in the case of **“Sarla Varma & Ors Vs. Delhi Transport Corp. & Anr.”**, (AIR 2009 SC 3104), multiplier of '14' is applicable in the case at hand.

13. To prove income of deceased the claimants have examined Shivaji Dada Zanan (PW-2), who is employer of the deceased. This witness has duly proved that deceased used to work as a Clerk on his petrol pump at Wadgaonpan and monthly salary of the deceased was Rs. 4,500/-. He has proved salary certificate (Exh.36). No doubt, in his cross-examination it has come before the Court that no record was produced regarding appointment of deceased on the petrol pump or regarding payment of salary to the deceased. However, for such small business, maintenance of such record of employee is not expected. Therefore, merely on the ground of non-production of papers regarding payment of salary to the deceased cannot be a ground to disbelieve the evidence of employer Shivaji (PW-2). This Court

has taken consistent view that no such evidence is necessary. Therefore, I have no hesitation to hold that the claimants have duly proved monthly income of deceased as Clerk as Rs. 4,500/-. It follows that his annual income is Rs. 54,000/-.

14. As the deceased was employed on fixed salary, in view of the judgment in the case of **“National Insurance Company Ltd. Vs Pranay Sethi** (supra), 25% income i.e. Rs. 13,500/- is to be added in the annual income of deceased towards loss of future prospects as he was between the age of 40 to 50 years. Thus, his actual annual income comes to Rs. 67,500/- (54,000 + 13,500). As the dependents in the family of deceased are five in numbers, one-fourth income is to be deducted towards personal expenses of the deceased. Thus, after deducting one-fourth income i.e. Rs.16,875/-, the annual contribution of deceased towards his family would be Rs.50,625/- (67,500 – 16,875). After applying multiplier of “14”, the loss of dependency comes to Rs.7,08,750/-.

15. Under the conventional heads, the claimants are entitled to following compensation :-

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

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

Loss of dependency	:-	Rs.7,08,750/-
Loss of consortium	:-	Rs. 40,000/-
Loss of estate	:-	Rs. 15,000/-
Funeral expenses	:-	<u>Rs. 15,000/-</u>
Total	:-	Rs. 7,78,750/-

17. As the claimants are compelled to knock the doors of this Court for getting appropriate amount of compensation due to adamant behaviour of Insurance Company, towards non settlement of claim of claimants, the claimants are also entitled to interest of compensation amount at the rate of Rs. 9% per annum in view of the law settled in the case of **“Municipal Council of Delhi Vs. Association of victims of Upahaar Tragedy” [(2011) 14 SCC 481]**. This compensation shall be inclusive of compensation received under the head of “no fault liability”.

18. In view of the above discussion, this appeal as well as cross-objection filed by owner of offending vehicle deserves to be allowed.

19. Accordingly First Appeal No.1464 of 2016 and Cross-objection No. 19739 of 2016 filed by respondent No.1 are allowed.

20. Judgment and award passed by Motor Accident Claims Tribunal, Sangamner in Motor Accident Claim Petition No.179/2004 regarding exoneration of original respondent No.3 Oriental Insurance Company Limited is set aside.

21. The award passed by Tribunal is modified as under:-

- “(i) Motor Accident Claim Petition No.179/2004 is partly allowed with proportionate costs.
- (ii) Respondent Nos.2 and 3 do jointly and severally pay compensation of Rs.7,78,750/- (Rupees Seven Lakh Seventy Eight Thousand Seven Hundred and Fifty only), inclusive of the interim compensation of Rs. 50,000/- under no fault liability, with interest thereon at the rate of Rs. 9% per annum from the date of filing of claim petition till realization.
- (iii) On deposit of compensation amount in the Tribunal, claimant No.1 is entitled to 30%, claimant Nos.2 to 4 are entitled to 20% each and claimant No.5 is entitled to 10% in the said compensation amount.
- (iv) The compensation amount of the shares of claimant No.1 and claimant No.5 be paid to

them by separate account payee cheques in their respective names, through the Tribunal.

(v) The compensation amount of the share of claimant Nos.2 to 4 shall be invested separately in their respective names in fixed deposit in any Nationalized Bank of the choice of claimant No.1 for the period of three years.

(v) Award be drawn up accordingly.

22. Deficit Court fees, if any, be recovered from the claimants.

23. The claimants are permitted to withdraw the compensation amount, if deposited in this Court or in the Tribunal, in accordance with the modified award.

24. Parties to bear their respective costs of the appeal.

The appeal is disposed of in the above-said terms.

(SUNIL K. KOTWAL)
JUDGE

vdd/