IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.851 OF 2020

Bajaj Allianz General Insurance
Company Limited
through its Branch Manager,
Divisional office at Adalat Road,
Near L.I.C. Office, Aurangabad,
Tq. & Dist. Aurangabad
through its Authorised Signatory/
Branch Manager, A.B.C. Complex,
M.I.D.C., Chikalthana,
Near Prozone Mall, Aurangabad,
Tq. & Dist. Aurangabad-431001 … APPELLANT

VERSUS

1) Dattu s/o Mayanji Lad,
Age 63 years, Occu. Labour,
R/o Rakshi Limgaon, Tq. Shevgaon,
District Ahmednagar

2) Kalyan s/o Kundlik Takwale,
Age 44 years, Occu. Driver/ Business,
R/o H.No.432, Pimpalwadi (Mudalwadi),
Dr. Ambedkar Nagar, Pimpalwadi,
Tq. Paithan, Dist. Aurangabad … RESPONDENTS

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Mr. S.G. Chapalgaonkar, Advocate for appellant
Mr. Subhash S. Chillarge, Advocate for respondent No.1.

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WITH

CIVIL APPLICATION NO.3890 OF 2021 IN
FIRST APPEAL NO.831 OF 2020

Dattu s/o Mayanji Lad,
Age 63 years, Occu. Labour,
R/o Rakshi Limgaon, Tq. Shevgaon,
District Ahmednagar … **APPLICANT**

<u>VERSUS</u>

1) Bajaj Allianz General Insurance
Company Limited
through its Branch Manager,
Divisional office at Adalat Road,
Near L.I.C. Office, Aurangabad,
Tq. & Dist. Aurangabad
through its Authorised Signatory/
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M.I.D.C., Chikalthana,
Near Prozone Mall, Aurangabad,
Tq. & Dist. Aurangabad-431001

2) Kalyan s/o Kundlik Takwale,
Age 44 years, Occu. Driver/ Business,
R/o H.No.432, Pimpalwadi (Mudhalwadi),
Dr. Ambedkar Nagar, Pimpalwadi,
Tq. Paithan, Dist. Aurangabad … **RESPONDENTS**

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Mr. Subhash S. Chillarge, Advocate for applicant
Mr. S.G. Chapalgaonkar, Advocate for respondent No.1.

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CORAM : R. G. AVACHAT, J.

Date of reserving judgment : 9th July, 2021

Date of pronouncing judgment : 14th July, 2021

<u>J U D G M E N T</u> :

This First Appeal is admitted and taken up for final hearing with the consent of learned counsel for the parties.

2. The challenge in this appeal is to the award dated 30/11/2019, passed by the Member, Motor Accident Claims Tribunal (MACT), Aurangabad in Motor Accident Claim Petition (MACP) No.53/2016. By the impugned award, the MACP preferred by the respondent No.1 (claimant) for compensation on account of death of his brother came to be allowed, directing the appellant – Insurance Company to pay a sum of Rs.2,20,000/- with interest thereon @ 7% p.a. from the date of filing of the MACP till realisation of the entire amount to the respondent No.1 claimant and then recover the same from the owner of the vehicle – respondent No.2 herein.

3. Heard learned counsel for the parties. Perused the impugned award. Mr. S.G. Chapalgaonkar, learned counsel for the appellant – Insurance Company would submit that, the deceased was the real brother of the claimant – respondent No.1. He was 62 years of age when he breathed his last. The respondent claimant is a Blacksmith by profession. The claim petition is conspicuously silent to aver that the respondent/ petitioner was dependent on the deceased. There is, therefore, no question of loss of dependency. The Tribunal, therefore, ought not to have awarded compensation on this count. The learned counsel,

therefore, ultimately urged for setting aside the impugned award.

4. Mr. Chillarge, learned counsel for the respondent – claimant would, on the other hand, submit that, Section 166(1) clause (c) of the Motor Vehicles Act (MV Act) authorises all or any of the legal representatives of the deceased, to prefer an application for compensation. The learned counsel placed reliance on the judgment of the Apex Court in case of National Insurance Company Limited Vs. Birender and ors. reported in (2020) 11 SCC 356. The learned counsel, therefore, urged for dismissal of the appeal.

5. The Apex Court in National Insurance Company's case (supra) has observed :-

> "14. The legal representatives of the deceased could move application for compensation by virtue of clause (c) of Section 166(1). The major married son who is also earning and not fully dependent on the deceased, would be still covered by the expression "legal representative" of the deceased. This Court in **Manjuri Bera** (supra) had expounded that liability to pay compensation under the Act does not cease because of absence of dependency of the concerned legal representative. Notably, the expression "legal representative" has not been defined in the Act."

6. The learned counsel for the appellant does not dispute, as he cannot, the legal proposition. According to him, the claim petition is silent to make out a case of dependency. It is, therefore, necessary first to advert to the impugned award. In para No.3 of the award, the relevant averments of the claim petition have been reiterated. The same read thus :-

> "It is contended by the claimant that the deceased Trimbak was possessing good sound health and used to do labour work and used to earn net income of more than Rs.250/- to 300/- per day. The deceased to maintain himself from that income and used to help the present claimant. The deceased was unmarried. The deceased was residing with the claimant. He used to do work of iron smith with claimant. They used to earn Rs.500/- to Rs.600/- per day jointly from said work. Due to death of deceased, the claimant alone is unable to do said work and hence total income source of claimant has been stopped."

7. The factual observations in the judgment are presumed to be correct. The pleadings indicate that the respondent – claimant came with a case that, both the deceased and himself were working together as Blacksmiths. Due to untimely death of his brother, he was unable to pursue

his work and hence, his source of income has been discontinued. The respondent – claimant reiterated the same in his oral evidence. He has not been disproved. As such, it cannot be said that the respondent – claimant did not come with a case of dependency nor has he proved his such claim. Thus, the appeal is devoid of merits. The same fails. The appeal is, therefore, dismissed.

8. In view of dismissal of the First Appeal, Civil Application filed by the original claimant for withdrawal of the amount is allowed. The original claimant is permitted to withdraw the amount along with accrued interest thereon.

(R. G. AVACHAT)
JUDGE

fmp/-