IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 682 OF 2007

WITH
CIVIL APPLICATION NO. 5389 OF 2007
CIVIL APPLICATION NO.5390 OF 2007
CIVIL APPLICATION NO. 11177 OF 2008
CIVIL APPLICATION NO. 9939 OF 2021

Sitaram Pandaji Misal
Age: 66 yrs., Occupation: Business,
R/o Khokarmoha, Taluka Shirur (Kasar),
District: Beed **... Appellant**
(Original Respondent)

Versus

1. Smt. Lankabai w/o Vishnu Kekan
Age 31 years, Occupation: Service
R/o Khokarmoha, Tq. Shirur (Kasar)
Dist. Beed. At present Central Primary
School, Manur, Tq. Shirur (Kasar),
Dist. Beed

2. Bhagwan Wamanrao Kekan
Age 62 years, Occupation: Agriculturist,

3. Bhamabai w/o Bhagwanrao Kekan
Age 49 years, Occupation: Household,

Both R/o Khokarmoha, Tq. Shirur (Kasar),
Dist. Beed (Original Claimants)

4. Anis Yunus Shaikh
Age 34 years, Occupation: Driver
R/o Nagar Road, Beed,
Taluka and District: Beed

5. The United India Insurance Co. Ltd.,
Through Branch Manager, Beed Branch,
Chhatrapati Sankul, Subhash Road,
Beed, Taluka and District Beed (Respondent Nos. 4 & 5 are original respondents 2 & 3)
... **Respondents**

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Mr. Milind Patil, Advocate for appellant
Mr. M. P. Kale, Advocate h/f Mr. S. K. Naikwade, Advocate for respondent Nos. 1 and 2
Mr. Dhananjay Mane, Advocate for respondent No.4
Mr. V. R. Mundada, Advocate for respondent No.5

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WITH
CROSS OBJECTION STAMP NO. 25930 OF 2008
WITH CIVIL APPLICATION NO. 3447 OF 2009
IN
FIRST APPEAL NO. 682 OF 2007

1] Smt. Lankabai w/o Vishnu Kekan
Age: 31 years, Occu. Service,
R/o Khokarmoha, Tq. Shirur (Kasar),
Dist. Beed.

2] Bhagwan Wamanrao Kekan
Age: 62 years, Occu. Agri;
R/o: As above

3] Bhamabai w/o Bhagwanrao Kekan
Age: 49 years, Occu. Household,
R/o: As above ... **Objection Petitioners**

Versus

1] Sitaram s/o Pandaji Misal
Age: 66 years, Occu. Business,
R/o: Khokarmoha, Tq. Shirur (Kasar),
Dist: Beed,
At present Central Primary School,
Manur, Tq, Shirur (Kasar), Dist. Beed.

2] Anis Yunus Shaikh,
Age: 38 years, Occu. Driver,
R/o: Nagar Road, Beed,
Tq. & Dist. Beed

3] The United India Insurance Co. Ltd.,
Through Branch Manager,
Chhatrapati Sankul, Subhash Road,
Beed, Tq. & Dist. Beed … Respondents

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Mr. S. K. Naikwade, Advocate for petitioners
Mr. Milind Patil, Advocate for respondent No.1
Mr. Dhananjay Mane, Advocate for respondent No.2
Mr. V. R. Mundada, Advocate for respondent No.3

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CORAM : R. G. AVACHAT, J.

DATED : 05th OCTOBER, 2021

JUDGMENT :-

. The Civil application for condonation of delay in filing cross objection is allowed.

2. The appellant herein is the owner of the vehicle involved in the accident. He takes exception to the judgment and award dated 30.03.2007 passed by the Motor Accident Claims Tribunal, Beed (Tribunal), in Motor Accident Claim Petition No.8 of 2003. Vide impugned judgment and award, compensation of Rs.4,33,000/- has been awarded with 9% interest thereon. The liability of respondent – Insurance Company has however been restricted to Rs.1,00,000/- in view of the terms and conditions of the policy of insurance. The

owner of the vehicle involved in the accident has, therefore, preferred the present appeal. The original claimants have also filed cross objections for enhancement of amount of compensation.

3. Heard.

Learned Advocate for the appellant would submit that the policy of insurance was comprehensive in nature. The respondent – Insurance Company was therefore under liability to pay entire compensation. The Tribunal, however, misread the terms of contract of insurance and the statutory provisions. He, therefore, urged for allowing the appeal.

4. Learned Advocate for the claimants would submit for grant of compensation in terms of Hon'ble Supreme Court judgments in the case of ***National Insurance Company Limited Vs Pranay Sethi and others – (2017) 16 SCC 680*** and ***Magma General Insurance Company Limited vs. Nanu Ram alias Chuhru Ram and others – (2018) 18 SCC 130.***

5. The learned Advocate for the respondent – Insurance Company would, on the other hand, submit that the Tribunal has awarded just and reasonable compensation. The widow of the

deceased was serving as a primary teacher. She was not dependent on the deceased. After having considered take home salary of the deceased, reasonable compensation has been awarded by the Tribunal. The learned Advocate would further submit that under the insurance cover, its liability was restricted to Rs.1,00,000/- only. He, therefore, urged for non interference with the impugned judgment and award.

6. Considered the rival submissions. Gone through the evidence relied on. Perused the impugned award.

7. Deceased Vishnu was a Primary School Teacher. He died in an accident involving motor vehicle. He was 33 years of age when breathed his last. The owner of the vehicle involved in the accident and its Insurance Company have therefore rightly been held to be liable to pay compensation to the claimants, widow and parents of the deceased.

8. The Tribunal considering the net salary of the deceased at Rs.2684/- p.m., deducted 1/3rd therefrom towards personal and living expenses. Thus the Tribunal considered the loss of dependency to be at Rs.2,000/- p.m. (Rs.24,000/- p.a.) and awarded

compensation applying multiplier of 17. A sum of Rs.25,000/- was awarded towards loss of love and affection.

9. The salary certificate of the deceased is on record. His gross salary was Rs.8111/-. The break up thereof is - basic pay Rs.5375/-, Dearness Allowance Rs.2392/-, House Rent Allowance Rs.269/-, Travelling Allowance Rs.75/-.

Deduction from the salary were - Provident Fund Rs.545/-, Professional Tax Rs.175/-, Group Insurance Rs.30/-, Recurring Deposit Rs.500/-, L.I.C. premium Rs.326/-, Loan installment of Shikshak Society Rs.3842/-.

10. Except deductions towards professional tax and conveyance allowance, no other deduction should have been considered by the Tribunal for calculating just compensation. After deducting the amount under these two heads, gross salary of the deceased would come Rs.7861 (8111 - 250 = Rs.7861). His annual salary would come to Rs.94,332/-. The deceased was in permanent service. Considering his age 33, 50% of his established income is added towards future prospects. This way, his total income would come to Rs.1,41,498/-. Considering the number of dependents, 1/3rd thereof is deducted towards personal and living expenses, although,

his widow (claimant No.1) passed away, pending appeal. Rs.1,41,498/- minus 1/3rd amount, it comes to Rs.94,332/-. Applying the multiplier of 17 thereto, it comes to Rs.16,03,644/-. The parents of deceased are granted a sum of Rs.80,000/- towards loss of love and affection, besides a sum of Rs.30,000/- towards funeral expenses and loss of estate. Therefore, total compensation comes to Rs.17,13,644/-. Since widow has passed away pending the appeal, she is not granted compensation on account of loss of consortium. The rate of interest is on higher side. The same is scaled down to 6% p.a.

11. Admittedly, the jeep had insurance cover when it met with the accident. The policy of insurance was comprehensive in nature. Although the terms and conditions of the policy of the insurance cover, indicate insurer to have charged Rs.450/- to cover risk of nine unknown passengers to the extent of Rs.1,00,000/- each, in view of the Hon'ble Apex Court judgment in the case of ***National Insurance Company Ltd., vs. Balakrishna and another - AIR 2013 SC 473,*** decided on 20.11.2012. The respondent – Insurance Company will have to indemnify the entire amount of compensation. In the aforesaid case, it has been observed thus:-

"*Motor Vehicles Act, 1988 – Section 140, 147 and 166 – Comprehensive or Package policy – Scope – Held – Where the vehicle is covered under Package or comprehensive policy then there is no need for Tribunal to go into the question as it covers injury of pillion rider on a two wheeler or occupants in a private car.*"

12. In view of the above, both the First Appeal and the Cross Objection succeed in terms of the following order:-

O R D E R

(i) The First Appeal and the Cross Objection, are partly allowed.

(ii) The amount of compensation awarded by the Tribunal is enhanced to Rs.17,13,644/-. The rate of interest is scaled down from 9% p.a. to 6% p.a.

(iii) Clause No.3 under the impugned award holding the respondent – Insurance Company's liability limited to Rs.1,00,000/-, is set aside.

(iv) The amount of compensation deposited by the appellant herein and paid to the claimants be paid to him by the respondent – Insurance Company by depositing the same with this Court within a period of one month.

(v) The remaining amount of compensation in terms of this award be paid to the claimants, immediately.

(vi) All pending civil applications are disposed of.

[R. G. AVACHAT, J.]

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