IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.1758 OF 2018

Bajaj Allianz General Insurance
Company Limited, Jalgaon,
through its Authorised Signatory,
ABC Complex, IIIrd Floor,
Near Prozone Mall,
MIDC Chikalthana, Aurangabad ..Appellant
Vs.
Rahul @ Chetan Balkrishna Dusane,
Age : 29 years, Occ. Private Service
(Now Nil), r/o. Near Pitambar Temple,
Sutar Lane, Jamner, Dist. Jalgaon
and ors. ..Respondents

Mr.S.G.Chapalgaonkar, Advocate for appellant
Mr.M.M.Bhokarikar, Advocate for respondent no.1

AND
CIVIL APPLICATION NO.11777 OF 2018
IN
FIRST APPEAL NO.1758 OF 2018

Rahul @ Chetan Balkrishna Dusane ..Applicant
Vs.
Bajaj Allianz General Insurance
Company Limited, Jalgaon,
through its Authorised Signatory,
and ors. ..Respondents

Mr.M.M.Bhokarikar, Advocate for applicant
Mr.S.G.Chapalgaonkar, Advocate for respondent no.1

AND

CROSS APPEAL NO.3 OF 2021
IN
FIRST APPEAL NO.1758 OF 2018

Rahul @ Chetan Balkrishna Dusane,
Age : 29 years, Occ. Nil,
r/o. Near Pitambar Temple,
Sutar Lane, Jamner, Dist. Jalgaon ..Appellant

Vs.

Bajaj Allianz General Insurance
Company Limited, Jalgaon,
through Divisional Manager,
r/o. 1st Floor, Alaknanda Complex,
Adalat Road, Near Baba Petrol Pump,
Opposite LIC Building,
Bhagyanagar, Aurangabad
and ors. ..Respondents

Mr.M.M.Bhokarikar, Advocate for appellant
Mr.S.G.Chapalgaonkar, Advocate for respondent no.1

AND
FIRST APPEAL NO.401 OF 2019

Bajaj Allianz General Insurance
Company Limited, Jalgaon,
through its Authorised Signatory,
ABC Complex, IIIrd Floor,
Near Prozone Mall,
MIDC Chikalthana, Aurangabad ..Appellant

Vs.

Savitrabai w/o. Shivaji Mali (Bande)
Age : 48 years, Occ. Household
r/o. Shrikrishna Nagar, Pachora Road,
Jamner, Distl.Jalgaon
and others ..Respondents

Mr.S.G.Chapalgaonkar, Advocate for appellant
Mr.M.M.Bhokarikar, Advocate for respondent nos.1 to 3

AND
CIVIL APPLICATION NO.12954 OF 2018
IN FIRST APPEAL ST. NO.26500 OF 2018

Savitrabai w/o. Shivaji Mali (Bande)
Age : 48 years, Occ. Household
r/o. Shrikrishna Nagar, Pachora Road,
Jamner, Distl.Jalgaon
and others ..Applicants

Vs.

Bajaj Allianz General Insurance
Company Limited, Jalgaon,
and ors. ..Respondents

Mr.M.M.Bhokarikar, Advocate for applicants
Mr.S.G.Chapalgaonkar, Advocate for respondent no.1

FIRST APPEAL NO.2176 OF 2018

Savitrabai w/o. Shivaji Mali (Bande)
Age : 41 years, Occ. Household
r/o. Shrikrishna Nagar, Pachora Road,
Jamner, Distl.Jalgaon
and others ..Appellants

Vs.

1. Shaikh Salim Shaikh Sikandar,
   Age – 46 years, Occ. Driver
   (Deleted as per order dated 21.11.2019)

2. Abdul Adam Randhera

3. Bajaj Allianz General Insurance
   Company Limited ..Respondents

Mr.M.M.Bhokarikar, Advocate for appellants
Mr.S.G.Chapalgaonkar, Advocate for respondent no.3

CORAM : R.G. AVACHAT, J.
DATE : AUGUST 11, 2021

JUDGMENT :-

These four appeals have been filed under Section 173 of the Motor Vehicles Act, 1988 ("the Act", for short). They are being decided by common judgment since common questions of facts and law arise therein. In short, these appeals arise out of the Motor Accident Claim Petitions (M.A.C.P.) preferred for compensation on account of death and permanent disability having been resulted in the accident involving the motor vehicles that took place on 08.01.2011.

2. First Appeal No.2176 of 2018 and Cross-Appeal No.3 of 2021 are for enhancement of compensation, whereas, other two appeals have been preferred by the insurance company, Bajaj Allianz General Insurance Company Ltd. ("the insurance company", for short) for setting aside the awards granting compensation.

3. Heard learned counsel appearing for the parties.

4. Mr.S.G.Chapalgaonkar, learned counsel for the insurance company, would submit that the policy of insurance of the vehicle

involved in the accident has been obtained by misrepresentation of facts. The same is, therefore, void in view of Section 149(2)(b) of the Act. The insurance company is, therefore, not liable to pay any compensation under the impugned awards. To make out a case of misrepresentation in obtaining insurance cover for the offending vehicle, learned counsel took me through the evidence in the case.

In the appeals for enhancement of compensation, learned counsel for the insurance company would, in the alternative, submit that there is no reason to interfere with the impugned awards.

5. Mr.Bhokarikar, learned counsel for the claimants (appellants in Cross Appeal No.3 of 2021 and First Appeal No.2176 of 2018), would, on the other hand, submit that in case of the death claim, the deceased was serving as a Manager of Hotel on monthly pay of Rs.10,000/-. The employer of the deceased was examined in proof of quantum of salary. He would further submit that no addition has been made towards future prospects. As such, the Tribunal has awarded grossly inadequate compensation.

In case of the injured claimant, learned counsel would submit that no compensation has been awarded on account of loss of earning capacity. Though there was a certificate indicating the injured to be required to undergo an operation for removal of implant, no compensation has been awarded towards future medical expenses. The injured was removed from service. The compensation has been awarded considering his notional income at Rs.3,000/- per month. A very meagre amount has been granted for pain and suffering. Learned counsel, therefore, urged for enhancing the amount of compensation.

LIABILITY OF INSURANCE COMPANY:

6. Admittedly, the accident involving a Maruti Omni van bearing registration No.MH-19-Y-1031 and a TATA Safari car bearing registration No.GJ-05-CJ-5531, took place at 12.00 noon on 08.01.2011. On investigation of the crime, the driver of TATA Safari car has been prosecuted. As such, TATA Safari car is the offending vehicle. It is the case of the insurance company that the owner (Abdul Adam Randhera, respondent no.2 in First Appeal No.2176 of 2018) of the offending vehicle obtained insurance cover by misrepresentation.

7. Exhibit-48 is a copy of the insurance policy given by the owner of offending vehicle to the police. Reading of the said policy

would indicate that it was valid from 15.01.2010 to 14.01.2011. This period of validity of insurance policy is said to have been fabricated one. Another copy of the very insurance policy (Exhibit-53) was relied upon to show its validity period to be from 05.01.2011 to 04.01.2012. Although it was valid from 05.01.2011, it was issued on 11.01.2011. Premium was paid under a cheque dated 04.01.2011. Learned counsel for the insurance company would meant to say that the insurance cover of the offending vehicle expired on 05.01.2011. With a view to show the offending vehicle to have insurance cover, the figures of date appearing in insurance policy (Exhibit-48) were interpolated to show the offending vehicle to have insurance cover on the date it met with accident. Since the owner of offending vehicle realised that said fraud is likely to be disclosed/discovered, he, without informing the insurance company that the offending vehicle met with the accident, sought renewal of the insurance policy by giving back-dated cheque. The insurance policy (Exhibit-53) was issued on 11.01.2011.

8. The submissions made by learned counsel for the insurance company appear to be genuine in the first blush. An official of the insurance company was examined in proof of its

defence. During his cross-examination, he deposed that the policy of insurance could be renewed on payment of premium either by a cheque or cash on the date prior to expiry of the policy period. He admitted that on receipt of the premium, the company issues policy as per its convenience. In the present case, the premium was paid by cheque dated 04.01.2011. No acknowledgment receipt issued against receipt of the premium paid by cheque has, however, been placed on record. The submission of learned counsel for the insurance-company may be right but the case has not been proved.

9. The insurance policy (Exhibit-53) was issued on 11.01.2011 for the period from 05.01.2011 to 04.01.2012, which covers the date of the accident. Admittedly, the premium was paid by cheque dated 04.01.2011. The acknowledgment receipt issued against receipt of said cheque has not been placed on record. It, therefore, cannot be said that the owner of the offending vehicle has issued a back-dated cheque on 11.01.2011 when the policy (Exhibit-53) was issued. The witness testified that in case of fraud in obtaining the insurance policy, the company lodges F.I.R. So has not happened in this case. True, in terms of Section 149(2)(b) of the Act, a policy of insurance is void if it is obtained by non-disclosure of

material fact or by misrepresentation of fact, which was false in some material particular and the insurance company shall not be liable to pay compensation. Issuance of policy of insurance is a contract between the insurer and the insured. So as to have such contract vitiated by fraud or misrepresentation, such claim is necessarily required to be pleaded with particulars and then proved. The written statement filed by the insurance company is silent to raise said defence. Whatever evidence laid in proof of it's case (oral submission) of fraud and misrepresentation in obtaining insurance cover, these needs to be ignored. Even if the evidence in this regard is accepted as it is, the case as is orally propounded, does not get proved for want of placing on record a receipt issued against the premium received by cheque dated 04.01.2011.

QUANTUM:

First Appeal No.2176 of 2018 :

10. It is a death claim. The claimants are parents and brother of the deceased – Anil. The deceased was said to have been serving as a Hotel Manager on monthly pay of Rs.10,000/-. The Tribunal has rightly found that no cogent evidence was laid in proof of the salary of the deceased. It, therefore, assumed salary of the

deceased at Rs.4,000/- per month. However, no addition was made in the established income of the deceased towards future prospects. During the relevant days, the rate of minimum wages was Rs.160/- per day. I am, therefore, inclined to assume income of the deceased at Rs.4,800/- per month. In view of this, the amount of compensation granted by the Tribunal needs to be reworked out as under:-

Particulars		Figures in Rupees
Income of deceased per annum (Rs.4,800/- per month x 12 months)		57,600
Addition of 40% towards future prospects (deceased being below 22 years of age) in view of the decision in National Insurance Company Limited Vs. Pranay Sethi and ors., (2017)16 SCC 680.	+ (plus)	23,040
		80,640
Deduction of 50% amount, as deceased died bachelor, towards personal expenses which deceased would have incurred for self had he been alive	- (minus)	40,320
		40,320
Considering age of deceased to be 22 years, the Tribunal rightly awarded multiplier of 18. Amount of compensation on account of loss of dependency (Rs.40,320 x 18)	+ (plus)	7,25,760
Addition on account of funeral	+ (plus)	40,000

expenses, loss of estate and love and affection, already granted by the Tribunal		
Amount of compensation		**7,65,760/-**

Cross Appeal No.3 of 2021:

11. For want of cogent and reliable evidence, the Tribunal has rightly considered the notional income of the injured at Rs.3,000/-. Considering the suffering i.e. comminuted fracture of left femur, proximal third region with fracture of left tibia with implant situ, the percentage of disability assessed is 20%. There is, in fact, no evidence of loss of earning capacity, although it was submitted that the injured lost his job. The Tribunal, therefore, rightly not granted compensation on account of loss of earning capacity.

12. I have carefully perused the award to find the injured to have been granted compensation under all possible heads. No compensation has, however, been awarded towards future medical expenditure. The evidence indicates that there was implant in situ of the injured. The Doctor has certified that the injured will be required to undergo an operation for removal of the implant. The expenditure required for the same is stated to be Rs.70,000/-. The

same appears to be grossly on higher side. The injured was operated upon in 2011. By that time, he must have undergone operation for removal of the implant. He did not place on record medical bill indicating how much he spent therefor. On account of future medical expenditure, the injured, therefore, needs to be awarded a sum of Rs.35,000/-.

13. In view the above, the impugned awards need to be modified. Hence, the following order:-

(i) The insurance company's appeals i.e. First Appeal No.1758 of 2018 and First Appeal No.401 of 2019 are dismissed.

(ii) First Appeal No.2176 of 2018 is partly allowed. The amount of compensation payable to the claimants shall be Rs.7,65,760/- with 7.5% interest thereon from the date of the claim petition, until the amount is deposited.

(iii) Cross Appeal No.3 of 2021 is partly allowed. The amount of compensation payable to the claimants shall be Rs.2,88,400/- with 7.5% interest thereon from the date of the claim petition, until the amount is deposited.

(iv) The amount in deposit be paid to the respective claimants with interest accrued thereon, immediately. Civil Applications stand disposed of accordingly.

[**R.G. AVACHAT, J.**]

KBP