IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1371 OF 2009

The Oriental Insurance Company Ltd.
70, Panchawati, Ramgarh, Alwar,
Rajastan Through its Divisional Manager,
Divisional Office, Inderprakash,
Adalat Road, Aurangabad ... **Appellant**
(Orig. Respondent No.2)

Versus

1. Laxmibai Wd/o Narayan Khillare
Age: 30 years, Occu. Household,

2. Kum Pooja D/o Narayan Khillare,
Age: 12 years, Occu. Education,
U/G of Claimant no.1

3. Kum. Kirti D/o Narayan Khillare - (no more)

4. Rohan s/o Narayan Khillare
Age: 6 years, Occu. Education
U/G of claimant no.1

5. Sau. Anusayabai w/o Kachru Khillare - (no more)

6. Kachru s/o Vithalrao Khilare - (no more)
(Respondent No. 1 to 6 are
orig. claimant Nos. 1 to 6)

7. Mehboob Khan s/o Sh. Ibrahim Khan
Age: Major, Occu. Owner of Truck
Ramarh District: Alwar
Rajasthan

8. Mrs. Kalpana w/o Ravindra Chavan
Age: Major, Occu. Owner of the Tata Indica
Car No. MH/20-Y-2766
R/o: N-4, 27, CIDCO, Aurangabad

9. The New India Assurance Co. Ltd.,
Through its Divisional Manager,
Divisional Office No.1, Adalat Road,
Aurangabad (Respondent No. 7 to 9 are original respondent No. 1, 3 and 4 respectively)

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Mr. U. S. Malte, Advocate for appellant
Mr. V. P. Kadam, Advocate for respondent Nos. 1 to 4
Mr. S. G. Chapalgaonkar, Advocate h/f Mr. Shrikant Patil, Advocate for respondent No.8
Mr. V. R. Mundada, Advocate for respondent No.9

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CORAM : R. G. AVACHAT, J.

DATED : 10th DECEMBER, 2021

ORAL JUDGMENT :-

. This is an appeal by insurer of the truck involved in the accident. The challenge is mainly on the ground of negligence on the part of the driver of the other vehicle involved in the accident. The quantum of compensation under the impugned award has also been taken exception to.

2. Heard.

Learned Advocate for the appellant – Insurance Company would submit that the Tribunal, in fact, held the car driver to be equally responsible to the accident. However, under the policy of insurance, liability for occupant of the car being limited to rupees one lakh, it directed the insurer of the car to pay that much amount only. Learned Advocate took this Court through the panchanama and the sketch of the site of the accident to push through his point. On the question of quantum, learned Advocate would submit that false documents as to income were placed on record and it was nothing but the fraud played on the Court. He meant to say that the firm with which the deceased was said to have been employed was not in existence. He relied on Bailiff's report, wherein it is stated that while the Bailiff had been to the site to serve the summons, the firm by name "Transolutions Private Limited" was not in existence there. According to the learned Advocate, the salary certificate placed on record is itself false and fabricated one. He, therefore, urged to consider notional income of the deceased at Rs.3,000/-.

3. Learned Advocate for the respondent – Insurance Company would, on the other hand, submit that the car driver has stepped into the witness box. He gave details as to how the accident took place. He was not subjected to in detail cross examination, whereby his evidence almost went unchallenged so far as regards question of negligence at least. Learned Advocate took this Court

through the reasons given by the Tribunal in support of the impugned award. Learned Advocate for the owner of the car would submit that the policy of insurance was of comprehensive in nature. If any liability is saddled on the car owner, the respondent - Insurance Company is liable to pay the same. On the question of negligence, he would submit that the break was applied by the car driver. The same indicates his efforts to avoid the accident. According to him, the driver of the car was not at all responsible for the accident. He ultimately urged for dismissal of the appeal.

4. Considered the submissions advanced. Perused the impugned award and the evidence relied on.

5. It is an accident between a Swift car and truck, that took place on a bridge. Necessarily, the width of the bridge is narrow compared to the width of the road outside the bridge. Perusal of the panchanama and the sketch of the site of the accident does indicate that the accident took place not at the middle of the road. It does indicate that the truck was keeping its left. It further appears that the car left its track, went to the wrong side and dashed against the truck. The car driver’s evidence appears to be self-saving. As was submitted by the learned Advocate for the appellant, the Court finds

it to be a case of contributory negligence of the drivers of both the vehicles in equal proportion.

6. On the question of quantum or compensation, it is to be stated that the deceased was employed with "Om Carrying Corporation" M.I.D.C. Chikalthana, Aurangabad. According to the learned Advocate, the name of the said company was changed to "Transolutions Pvt. Ltd." Some documents have also been placed on record before this Court to suggest the same. In view of this Court, the claimants will not go to such an extent to claim the deceased to have been in employment with a non existing company, said to have been located in M.I.D.C. Chikalthana, Aurangabad. The Bailiff report appears to be so in view of the change in the name of the company and nothing more. This Court has therefore no reason to doubt the claim of the respondents - claimants that the deceased was serving with Om Carrying Corporation / Transolutions Pvt. Ltd. His pay slip is placed on record to indicate the deceased to have been drawing a monthly pay of not less than Rs.11,200/-.

7. The Apex 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 were not in the field when the impugned award was passed. The Court is not inclined to interfere with the quantum, since the respondents - claimants are justified in defending the same pointing out to this Court that they have not been compensated adequately under conventional heads and future prospects etc. No interference with quantum of the compensation under the impugned award is therefore warranted.

8. So far as regards extent of liability of the insurer of the car involved in the accident is concerned, under the policy the same is said to be limited to Rs.1,00,000/- (Rupees One Lakh). The insurance cover is comprehensive in nature. In view of the Apex Court judgment in the case of ***National Insurance Co. Ltd. Vs Balakrishnan and another – 2013 ACJ 199*** and as per the circular dated 16.11.2009 issued by Insurance Regulatory and Development Authority (IRDA), the liability of the insurer of the Swift car is necessarily unlimited since it being a packaged policy.

9. For the reasons given herein above, the appeal partly succeeds in terms of the following order.

O R D E R

(i) The appeal is allowed.

(ii) The appellant – insurance company and respondent No.7 on one hand and respondent Nos. 8 and 9 on the other, shall pay jointly and severally the amount of compensation granted under the impugned award.

(iii) The amount of compensation deposited by the appellant – Insurance Company shall immediately be paid to the respondents-claimants with interest accrued thereon.

(iv) Since both the drivers were responsible, the inter-se liability of the insurers of both the vehicles shall be in equal proportion.

(v) The respondent - Insurance Company shall pay the appellant – Insurance Company 50% of the amount of compensation paid/deposited by it with this Court (minus a sum of Rs.1,00,000/- if already paid to the respondents-claimants with interest @ 9% p.a. as has been directed under clause "C" of the impugned award) with interest @ 6% p.a. from the date of this order to the date of payment.

(vi) The amount of compensation shall be paid by the respondent - Insurance Company within eight weeks from the date of this order.

(vii) It is informed that the the parents and a daughter of the deceased passed away, pending the appeal. The amount, therefore, be paid to the rest of the claimants/respondents.

(viii) Pending civil applications stand disposed of.

[R. G. AVACHAT, J.]

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