IN THE HIGH COURT OF JUDICATURE OF BOMBAY

BENCH AT AURANGABAD

FIRST APPEAL NO.1308 OF 2014 WITH
CIVIL APPLICATION NO.6845 OF 2014

Suhas s/o Suresh Suryawanshi,
Age 35 years, Occ. Business,
R/o Tisgaon, Tq. Pathardi,
District Ahmednagar ...APPELLANT

VERSUS

1. Smt. Rupali w/o Santosh Vaidya,
Age 35 years, Occ. Service,
R/o Kranti Nagar, Patoda,
District Beed.

2. Renuka d/o Santosh Vaidya,
Age 19 years, Occ. Education

3. Dhanashree d/o Santosh Vaidya,
Age 13 months, Occ. Nil

4. Bhagya s/o Santosh Vaidya,
Age 7 years, Occ. Nil.

Appellant Nos.3 and 4 are minors and
they are under guardianship of their
mother appellant No.1 Rupali

5. Kesharbai w/o Popatrao Vaidya,
Age 67 years, Occ. Pensioner,
R/o as above.

6. Popatrao Yashwantrao Vaidya
(Deleted as Dead)

7. The National Insurance Company Ltd.,
through its Branch Manager,
Branch office at Hazari Chambers,
Station Road, Aurangabad
District Aurangabad ...RESPONDENTS

....

Shri Umakant U. Wagh, Advocate for appellants
Shri A.N. Nagargoje, Advocate for respondents No.1 to 5
Shri A.B. Gatne, Advocate for respondent No.7

....

WITH

FIRST APPEAL NO.1557 OF 2014 WITH
CIVIL APPLICATION NO.8829 OF 2014

National Insurance Company Ltd.,
through its Divisional Manager
Aurangabad Divisional Office
Hazari Chambers, Station Road,
Aurangabad ...APPELLANT

VERSUS

1. Smt. Rupali w/o Santosh Vaidya,
Age 35 years, Occ. Service,

2. Renuka d/o Santosh Vaidya,
Age 17 years, Occ. Education

3. Dhanashree d/o Santosh Vaidya,
Age 13 years, Occ. Education

4. Bhagya s/o Santosh Vaidya,
Age 8 years, Occ. Nil.

Appellant Nos.2 to 4 minor at the
time of filing of claim petition, hence
through natural guardian
mother appellant No.1

5. Kesharbai w/o Popatrao Vaidya,
Age 67 years, Occ. Pensioner,

Respondents No.1 to 5 R/o Kranti Nagar,
Patoda, District Beed

6. Popatrao Yashwantrao Vaidya
Age 60 years, Occ. Nil,

R/o Kranti Nagar, Patoda, Dist. Beed
(Deleted as Dead)

7. Suhas s/o Suresh Suryawanshi,
Age Major, Occ. Vehicle owner
R/o Tisgaon, Tq. Pathardi,
District Ahmednagar ...RESPONDENTS

....

Shri A.B. Gatne, Advocate for appellant
Shri A.N. Nagargoje, Advocate for respondents No.1 to 5
Shri Umakant U. Wagh, Advocate for respondent No.7

....

WITH

CIVIL APPLICATION NO.2139 OF 2021 IN
FIRST APPEAL NO.1557 OF 2014

1. Smt. Rupali w/o Santosh Vaidya,
Age 44 years, Occ. Service,

2. Renuka d/o Santosh Vaidya,
Age 24 years, Occ. Education

3. Dhanashree d/o Santosh Vaidya,
Age 19 years, Occ. Education

4. Pranav s/o Santosh Vaidya,
Age 15 years, Occ. Nil.

5. Kesharbai w/o Popatrao Vaidya,
Age 67 years, Occ. Household,

6. Popatrao Yashwantrao Vaidya
Age 60 years, Occ. Nil,
R/o Kranti Nagar, Patoda, Dist. Beed
(Deceased Deleted in Trial Court)

All R/o Kranti Nagar, Patoda,
District Beed …APPLICANTS

VERSUS

1. National Insurance Company Ltd.,

through its Divisional Manager
Aurangabad Divisional Office
Hazari Chambers, Station Road,
Aurangabad

2. Suhas s/o Suresh Suryawanshi,
Age Major, Occ. Vehicle owner
R/o Tisgaon, Tq. Pathardi,
District Ahmednagar ...RESPONDENTS

....

Shri A.N. Nagargoje, Advocate for applicants
Shri A.B. Gatne, Advocate for respondent No.1.
Shri Umakant U. Wagh, Advocate for respondent No.2

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CORAM : R. G. AVACHAT, J.

DATED : 1st SEPTEMBER, 2021

J U D G M E N T :

Admit. With the consent of learned counsel for the parties, taken up for final hearing at admission stage.

2. Both these appeals, since interconnected, are being decided by this common judgment.

3. The challenge in both these appeals is to the judgment and award dated 7/5/2014, passed by Member, Motor Accident Claims Tribunal (MACT), Beed in Motor Accident Claim Petition (MACP) No.168/2007. The appellant, in First Appeal No.1557/2014, National Insurance Company Ltd. (original opponent No.2 in the claim petition before the

Tribunal) challenges the impugned judgment and award on quantum. While the appellant in First Appeal No.1308/2014 (original opponent No.1 in the claim petition before the Tribunal), the vehicle owner, takes an exception to the impugned award directing him to pay simple interest @ 7.5% p.a. for the period 21/1/2010 to 7/5/2014.

4. Almost all the facts are not in dispute. Deceased Santosh Vaidya died in an accident involving motor vehicle. His legal representatives (respondent No.1 to 6), therefore, preferred the MACP No.168/2007 for compensation. It was allowed on 21/1/2010, absolving the appellant Insurance Company of its liability to pay compensation, since the Tribunal found the owner of the vehicle to have failed to prove the driver of the offending vehicle to have had valid and effective driving licence to drive the same at the relevant time. The owner of the vehicle (appellant in First Appeal No.1308/2014), therefore, challenged the judgment and award dated 2/1/2010 in First Appeal No.679/2011. This Court allowed the said appeal vide order dated 16/11/2013, setting aside the judgment and award dated 21/1/2010, remanding the matter back to the Tribunal with a liberty to the parties to adduce additional evidence and then the

Tribunal to decide the claim petition expeditiously.

5. The Tribunal, after remand of the matter back to it, passed the judgment and award impugned in both these appeals.

6. Heard. Shri A.B. Gatne, learned counsel for the appellant Insurance Company would submit that, the matter was remanded on the limited point of allowing the parties to adduce evidence on the point of driving licence only. All other issues were already settled under the impugned judgment and award dated 21/1/2010. There was no scope for the Tribunal to reopen other issues. On the same evidence, the Tribunal enhanced the amount of compensation which was granted by it under the judgment and award dated 21/1/2010. The claimants had not preferred appeal against the judgment and award dated 21/1/2010. The same, therefore, attained finality so far as regards the quantum of compensation awarded thereunder. According to learned counsel, notional income of the deceased was considered at Rs.3000/- per month. There, therefore, was no question to make addition thereto on account of future prospects. He would further submit that, for loss of consortium and other conventional heads, a hefty amount has been awarded as

compensation. On the question of appeal preferred by the vehicle owner, the learned counsel would submit that, had he (vehicle owner) placed before the Tribunal the driving licence in the first round of hearing, there would not have been a reason for preferring the appeal against the award dated 21/1/2010, which remained pending for little over four years, imposing a liability to pay interest for the period spent in appeal only at the instance of the vehicle owner. According to learned counsel, the Tribunal was, therefore, justified in directing the vehicle owner (appellant in First Appeal No.1308/2014) to exclusively bear/ pay interest for the period 21/1/2010 to 7/5/2014.

7. Shri Wagh, learned counsel for the vehicle owner (appellant in First Appeal No.1308/2014) would submit that, the details of the driving licence had already been placed before the Tribunal in the first round of hearing of the petition. There were, however, no details regarding duration of validity of the driving licence. According to him, from the details of the driving licence, which were before the Tribunal, the duration of its validity could have been ascertained in view of Section 14(2)(b)(i) of the Motor Vehicles Act.

8. Vide order dated 16/11/2013, the judgment and

order dated 21/1/2010 was set aside, remanding the matter back to the Tribunal with liberty to the parties to adduce evidence. As such, the award dated 21/1/2010 stood set aside in its entirety. The learned counsel for the appellant Insurance Company, therefore, could not be heard to say that since the claimants did not prefer any appeal from the judgment and award dated 21/1/2010, the same attained finality so far as regards quantum of compensation awarded thereunder.

9. The learned counsel then came around to agree to work out the amount of compensation in terms of the law laid down by the Constitution Bench of the Hon'ble Supreme Court in case of **National Insurance Company Ltd. Vs. Pranay Sethi and others [(2017) 16 SCC 680]**.

10. The Tribunal, considering the notional income of the deceased at Rs.3000/- per month, made addition of 50% thereof towards future prospects. It also granted a sum of Rs.1,00,000/- to the widow on account of loss of consortium. Equal amount has been awarded towards loss of care and guidance of minor children. While a sum of Rs.25,000/- has been granted towards funeral expenses. The sum of Rs.25,000/- was awarded to the mother of the deceased

towards loss of love and affection. For loss of estate, a sum of Rs.5000/- came to be awarded. Thus, the total amount of compensation was worked out at Rs.9,43,500/-.

11. The deceased was serving with a hotel. For want of there being a concrete evidence of his salary, the Tribunal rightly considered a sum of Rs.3000/- per month as his notional income. Post passing of the impugned award, the judgment in Pranay Sethi's case (supra) came to be delivered. In terms of paragraph No.59.4 of Pranay Sethi's judgment (supra), in case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should the warrant where the deceased was below 40 years of age. In view of the same, 40% of the notional income of the deceased needs to be added thereto towards future prospects. Thus, the monthly income of the deceased comes to Rs.4200/-. Necessarily, his annual income would be Rs.50,400/- (4200 x 12). Considering the number of dependents, the Tribunal rightly made deduction of one fourth of the annual income of the deceased, towards his personal and living expenses had he been alive. After such deduction, the amount comes to Rs.37,800/-. Considering the age of the deceased, the Tribunal has rightly applied the multiplier of

17. As such, the loss of dependency comes to Rs.6,42,600/- (Rs.37,800/- x 17).

12. Compensation under other heads needs to be granted in terms of paragraph No.59.8 of the judgment in Pranay Sethi's case (supra), which reads as under :

> "59.8. Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs.15,000/-, Rs.40,000/- and Rs.15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years."

13. In view of the same, I am inclined to award a sum of Rs.40,000/- to the widow of the deceased towards loss of consortium. Towards loss of estate and funeral expenses, a sum of Rs.15,000/- each is awarded. On account of loss of love and affection, the children and mother of the deceased are granted a sum of Rs.30,000/-.

This way, the total amount of compensation comes to Rs.7,42,600/-.

14. Admittedly, the particulars of the driving licence produced before the Tribunal in the first round of hearing did not disclose the period of its validity. The Tribunal, therefore,

absolved the appellant Insurance Company of its liability to pay compensation. After remand of the matter, in view of order dated 16/11/2013, in First Appeal No.679/2011, the Tribunal saddled the vehicle owner (appellant in First Appeal No.1308/2014) with an exclusive liability to pay interest on the amount of compensation for the period from 21/1/2010 to 7/5/2014 for the reason that the said delay occasioned because of negligence on the part of the vehicle owner.

15. Although the particulars of the driving licence before the Tribunal did not disclose the exact date upto which the same was valid, the learned counsel was right in relying on Section 14(2)(b)(i) of the Motor Vehicles Act. For better appreciation, the same is reproduced below :-

> **"14. Currency of licences to drive motor vehicles :-**
> (1) . . . . .
>
> (2) A driving licence issued or renewed under this Act shall,
>
> (a) . . . .
>
> (b) in the case of any other licence,
>
> (i) if the person obtaining the licence, either originally or on renewal thereof, has not attained the age of fifty years on the date of issue or, as the case may be, renewal thereof, –

> (A) be effective for a period of twenty years from the date of such issue or renewal.
>
> . . . .”

16. The learned counsel was right in submitting that, ignorance of law is no excuse. From the clause (A) aforesaid, it is crystal clear that the validity of the driving licence is for a period of twenty years from the date of its issue (clause 7 of Exh. 30 – report about the Motor Vehicle’s accident) discloses that date of issue of the driving licence is 19/8/2003. In terms of the aforesaid provision, the said driving licence was valid for a period of twenty years next after 19/8/2003. The same period would expire on 17/8/2023. The accident took place on 13/8/2006 i.e. during the currency of driving licence. As such, the Tribunal in the first round of hearing itself ought not to have absolved the appellant Insurance Company of its liability. Be that as it may. Had the Tribunal referred to the aforesaid provision at the first instance itself, the vehicle owner would not have been required to prefer First Appeal No.679/2011, wherein time of four years was spent. In my view, therefore, the Tribunal ought not to have saddled the vehicle owner with liability to exclusively pay simple interest on the aforesaid amount for a period of four

years from 21/1/2010 to 7/5/2014. The said term in the impugned award, therefore, deserves to be set aside.

17. In the result, the Appeal No.1308/2014 preferred by the vehicle owner succeeds.

18. For the foregoing reasons, both the appeals are allowed in terms of the following order :-

O R D E R

(i) First Appeal No.1557/2014 is allowed, substituting the amount of compensation of Rs.9,43,500/- by Rs.7,42,600/-.

(ii) First Appeal No.1308/2014 is allowed, setting aside the clause in the impugned award directing the respondent No.1 to pay simple interest @ 7.5% p.a. on the amount of compensation from 21/1/2010 till 7/5/2014.

(iii) Rest of the terms of the award to stand unaltered.

(iv) The sum of Rs.25,000/- deposited by the appellant in First Appeal No.1308/2014 (vehicle owner) towards compulsory statutory deposit be paid to Sai Gramin Punarrachana Sanstha, Aurangabad along with interest accrued thereon.

(v) The amount in deposit with this Court or the Tribunal be paid to the claimants/ petitioners along with interest accrued thereon in terms of the modified award, and the balance amount be paid back to the Insurance Company.

(vi) In view of disposal of First Appeals, pending Civil Applications are disposed of.

(R. G. AVACHAT)
JUDGE

fmp/-