IN THE HIGH COURT OF JUDICATURE AT BOMBAY NAGPUR BENCH, NAGPUR.

FIRST APPEAL NO.655 OF 2010

APPELLANT : The Divisional Manager,
(Ori. Respondent No.3)
Oriental Insurance Co. Ltd.,
Amravati Divisional Office,
through the Divisional Manager,
Nagpur Divisional Office-II
8, Hindustan Colony, Wardha Road,
Nagpur.

..**VERSUS**.

RESPONDENTS :
(On R.A.)

(The name of Respondent No.1 deleted as per Court's order dated 23.02.2018)

1. Santoshkumar Parmanand Akhar (Kapur),
aged about 45 years, Occupation – Nil.

2. Sau. Vimala w/o. Santoshkumar Akhar (Kapur),
Aged about 40 years, Occupation - Housewife.

3. Arti d/o. Santoshkumar Akhar (Kapur),
aged about 20 years, Occupation – Student.

(Respondent Nos.4 and 5 attended the age of Major)

4. Jitu s/o. Santoshkumar Akhar (Kapur),
aged about 16 years, Occupation – Student.

5. Sanjay s/o. Santoshkumar Akhar (Kapur),
aged about 12 years, Occupation – Student.

(Respondents 4 and 5 minors, through their father and natural guardian respondent no.1

(Org. Petitioners)		All R/o. Subnis plot, Near Vishwakarma Furniture, Daskholi, Amravati, Tq – and Dist – Amravati
(Original respondent No.1)	**6.**	Akhatar Khan Babakhan, Age – Adult, Occu – Driver of Motor Cycle No. MH-30/K 9277, R/o Riyaz Medical Stores, Pathan Chowk, Bhatkuli Road, Amravati.
(Original respondent No.1)	**7.**	Aniskha s/o. Yunus-Kha, Age – Adult, Occu – Owner of Motor Cycle No. MH-30/K 9277, R/o Bharti pura, Karanja Lad, Dist - Washim

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Shri. D. N. Kukday, Advocate for Appellant
Ms. A. Sharma, Advocate for Respondent Nos.2 to 5.

CORAM: M. S. SONAK, J.

DATE: 09/12/2021.

ORAL JUDGMENT

Heard the learned Counsel Shri. D. N. Kukday for Appellant and the learned Counsel Ms. A. Sharma for the Respondent Nos.2 to 5 (Claimants).

2. The challenge in this Appeal is to the judgment and Award dated 20.08.2008 by the Motor Accident Claims Tribunal (Tribunal), Amravati, in MACP No.324 of 2006. Shri. Kukday, the learned Counsel, who appears on behalf of the Appellant/Insurance Company submits that in this case, the driver of TVS Motor Cycle

(insured vehicle) was not having a valid license to drive the same and therefore, this amounts to a fundamental breach of the terms of the insurance policy. Shri. Kukday, the learned Counsel pointed the license which was placed on record related to the driving of an Auto Rickshaw and not a Motor Cycle.

3. The learned Counsel Ms. Sharma submitted that the Insurance Company cannot avoid liability by raising such technical pleas. She submitted that in this case, there was no nexus between the accident and the driver not possessing the requisite type of license and therefore, this was not a case of breach of the terms of the insurance policy or in any case, a fundamental breach of the terms of the insurance policy. She relies on the decision of this Court in ***The New India Assurance Co. Ltd .vs. Shaila Janardhan Zendekar and Anr., 2020 (2) Mh.LJ 694*** and the decision of the Hon'ble Supreme in ***National Insurance Company .vs. Swaran Singh, 2004 (3) SCC 297***, in support of her submissions.

4. Ms. Sharma, points out that in this case, the compensation awarded by the Tribunal is not just

compensation and relies on the decision of the Hon'ble Supreme Court in ***Surekha W/o Rajendra Nakhate and Ors. .vs. Santosh S/o Namdeo Jadhav and Ors., 2020 ACJ 2156***, to submit that enhanced compensation should not be denied to the claimants, even though they may have failed to file a cross-appeal. She submits that the Tribunal erred in deducting an amount of Rs.97,000/- by simply observing that the deceased, who was a bachelor at the time of his demise would have married eventually. She submits that no Award has been made for the consortium. She submits that the compensation amount is required to be suitably enhanced in this Appeal.

5. The rival contentions now fall for determination.

6. In this case, the record indicates that the driver of the insured vehicle did possess a license to drive an Auto Rickshaw. There is no evidence whatsoever on record to suggest any nexus between the accident and the driver not possessing the license to drive a motorcycle. In *Shaila Zendekar* (supra), this Court has held that unless such nexus is established,

the insurer cannot be absolved of its liability on such technical grounds. Similarly in *Swaran Singh* (supra), the Hon'ble Supreme Court has held that in each case on evidence led before the Tribunal, a decision has to be taken whether the fact of the driver possessing a license for one type of vehicle but found driving another type of vehicle, was the main or contributory cause of the accident. If on facts, it is found that the accident was caused for reason having no nexus with a driver not possessing the requisite type of license, the insurer should not be allowed to avoid its liability merely for a technical breach of conditions concerning the driving license.

7. Following the aforesaid two rulings, the contention on behalf of the Appellant/Insurance Company, in this case, will have to be rejected and is hereby rejected.

8. In this case, the claimants have not filed any cross-appeal or cross-objections to seek enhancement of compensation. However, in *Surekha Nakhate* (supra), the Hon'ble Supreme Court has held that enhanced compensation, if found, due should not be denied to the

claimants on the ground that they have failed to file a cross-appeal. The Hon'ble Supreme Court held that it is by now well settled that in a matter of insurance claim compensation involving the motor accident, the Court should not take a hyper-technical approach and rather, the approach must be to ensure that just compensation is awarded to the affected person or the claimants. The Hon'ble Supreme Court reversed the decision of this Court that had declined to grant enhancement merely on the ground that the Appellants had failed to file cross-appeal.

9. Similarly, in ***Reliance General Insurance Company .vs. Manju Wd/o Vikram Choudhari, 2021 (6) ALL MR 171***, the learned Single Judge of this Court held that in absence of any cross-objections or cross-appeal by the claimants, the Appellate Court is not only entitled but is duty-bound to determine just compensation and thereby, even increase the compensation over and above that which may have been awarded by the Tribunal, if the evidence requires or supports such increase.

10. Having regard to the aforesaid decisions, the contention of Ms. Sharma, concerning enhanced compensation will have to now be considered.

11. In this case, the income of the deceased was taken at Rs.3050/- per month and there is no objection raised on this Court. The Tribunal in this case has deducted only 33% of the monthly income and Shri. Kukday, the learned Counsel has correctly pointed out that since the deceased was a bachelor, the deduction should have been to the extent of 50%. This means that the contribution of the deceased to the claimants should have been taken at Rs.1525/- per month. The multiplier, in this case, was correctly taken by the Tribunal at 15. Therefore, the compensation towards dependency would come to Rs.2,74,500/-.

12. The Tribunal has correctly awarded compensation of Rs.26,000/- towards medical expenses. Having regard to the fact that the accident took place in the year 2006, there is no case made out to disturb the awards towards funeral expenses, loss of estate, and the expenditure for bringing the dead body. The Tribunal has awarded an amount of Rs.4550/- under these

heads.

13. The Tribunal, in this case, has made no Award whatsoever for loss of consortium. In the case of ***Magma General Insurance Co. Ltd. .vs. Nanu Ram alias Chuhru Ram & Ors., 2018(18) SCC 130***, the Hon'ble Supreme Court following its decision in ***National Insurance Company Co. Ltd. .vs. Pranay Sethi, 2017 (16) SCC 680***, has held that a consortium compensation of Rs.40,000/- will have to be awarded to each of the claimants because the consortium would include not merely 'spousal consortium' but also 'parental and filial consortium'. In this case, there were five claimants and therefore, towards the consortium an Award of Rs.2,00,000/- was due.

14. Taking into consideration the aforesaid factors, the just compensation, in this case, would come to Rs.5,05,500/-.

15. Accordingly, though the main contention of the Insurance Company is not being accepted, the just compensation in favor of the claimants is now determined @ Rs.5,05,500/-. Shri. Kukday, the learned Counsel for Appellant is quite right in his submission,

the Award of interest @ 7.5% per annum is quite high, and applying the decisions relied upon by Ms. Sharma, this interest rate is required to be reduced to 6% per annum or even lesser. Since just compensation is being determined, Shri. Kukday’s contention deserves to be accepted and the interest rate deserves to be reduced to 6% per annum.

16. Thus, this Appeal is disposed of by making the following order :

a) The Appeal, to the extent the Insurance Company seeks to avoid its liability, is hereby **dismissed**.

b) The just compensation, in this case, is determined @ Rs.5,05,500/- and the Insurance Company, the owner, and driver of the offending vehicle are held jointly and severally liable to pay the same.

c) The Insurance Company is directed to deposit the balance compensation within eight weeks from today in this Court.

d) The claimants are permitted to withdraw the compensation amount already deposited forthwith and the compensation amount i.e. now directed to be deposited, once the same is deposited.

e) The claimants will undoubtedly be entitled to interest on the deposited amount as may accrued thereon.

f) There shall be no order for costs.

(M. S. SONAK, J.)

TAMBE