

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**FIRST APPEAL NO.1961 OF 2019
WITH
CIVIL APPLICATION NO. 7490 OF 2019**

The New India Assurance Co. Ltd. .. Appellant
Through its Branch Manager,
3rd Party Claims Hub, 3rd Floor,
Rushiraj Regency, Near Vidya Circle,
Gangapur Road, Nasik,
Through its authorised signatory
Asstt. Manager, Legal Hub,
Aurangabad D.O. Aurangabad.

Versus

1. Raghunath Sakharam Aher .. Respondents
Age.50 years, Occ. Agri., [original
claimants]
2. Bhamabai Raghunath Aher
Age.49 years, Occ. Agri. & Household,

Both resident of Mhalas Pimpalgaon,
Tq. Newasa, Dist. Ahmednagar.
3. Laxman Sahadu Godambe
Age. Major, Occ. Agri.,
R/o. Godambewadi No.1,
Post Ghotawade, Tq. Mulshi,
Dist. Pune.
4. Navnath Rangnath Gaudse
Age. Major, Occ. Driver,
R/o. Saltar Post Ambavane,
Tq. Mulshi, Dist. Pune.

WITH

**FIRST APPEAL NO.1948 OF 2019
WITH
CIVIL APPLICATION NO. 7433 OF 2019**

The New India Assurance Co. Ltd. .. Appellant
Through its Branch Manager,
3rd Party Claims Hub, 3rd Floor,
Rushiraj Regency, Near Vidya Circle,
Gangapur Road, Nasik,
Through its authorised signatory
Asstt. Manager, Legal Hub,
Aurangabad D.O. Aurangabad.

Versus

1. Sunita alias Manda Mahadeo Kardile .. Respondents
Age.35 years, Occ. Household.
2. Sopan Namdeo Kardile
Age.85 years, Occ. Nil,

Both resident of Mhalas Pimpalgaon,
Tq. Newasa, Dist. Ahmednagar.
3. Laxman Sahadu Godambe
Age. Major, Occ. Agri.,
R/0. Godambewadi No.1,
Post Ghotawade, Tq. Mulshi,
Dist. Pune.
4. Navnath Rangnath Gaudse
Age. Major, Occ. Driver,
R/o. Saltar Post Ambavane,
Tq. Mulshi, Dist. Pune.

Mr.Dhananjay Deshpande, Advocate for the appellant.
Mr.Ram B. Deshpande, Advocate for respondent Nos.1 & 2.

CORAM : VINAY JOSHI, J.
RESERVED ON : 10.01.2022
PRONOUNCED ON : 12.01.2022

J U D G M E N T :-

01. These appeals are filed by the insurance company in terms of section 173 of the Motor Vehicles Act, 1988, challenging the even dated judgments passed by the Motor Accident Claims Tribunal, Nevasa, Dist. Ahmednagar, in MACP Nos.486 of 2014 and 487 of 2014. Both the petitions arose from the same accident as well as common question of law and fact has been raised by the insurer. Hence, they are taken together for disposal.

02. It was the case of the claimants that on 01.11.2014 deceased Ganesh was riding motor cycle bearing Registration No. MH-17-BA-4248 whilst another deceased Mahadeo was pillion rider. While the motorcycle was proceeding on the road, offending vehicle Mahindra Pick-up van bearing Registration No. MH-14-DM-3454, came in high speed and gave dash to the motorcycle from behind.

In the result, both rider and pillion rider of the motorcycle sustained severe injuries to which they succumbed. The accident took place due to rash and negligent driving on the part of the pick-up van driver. The legal heirs of both the deceased have filed above named two separate claims seeking compensation on account of death of their kin. After recording evidence, the Tribunal concluded that due to rash and negligent driving of pick-up van driver the accident occurred. Since the offending vehicle was duly insured with the New India Insurance Company Limited, liability has been jointly and severally saddled on the insurance company along with driver and owner of the offending vehicle.

03. Before the claims tribunal, respondent No.3 – insurer raised defence that the insurance policy was cancelled since the cheque issued by the owner was came to be dishonoured. It is the defence that after dishonour of cheque, the policy was cancelled and duly intimated to the owner of the offending vehicle. Besides

that some other defences have also been raised.

04. The owner and driver of the offending vehicle also appeared and contested the claim by filing written statement. It is their defence that due to sole rash and negligent driving of the motorcycle rider, the accident occurred. Moreover, it is contended that at the relevant time the vehicle was duly insured with the New India Insurance Company and therefore they are not liable to pay the damages.

05. The learned Counsel for the appellant submitted that the insurance company cannot be fastened with the liability to pay the compensation. It was the submission that the owner of the pick-up van though issued a cheque towards premium for the insurance policy, however, said cheque was dishonoured and therefore the policy was cancelled. The office of the insurance company has intimated to the owner of the vehicle about the dishonour of cheque and cancellation of the policy. According to

the appellant, on 14.03.2014 itself, the policy was cancelled and intimated to the owner. In other words, before accident, the intimation was given about cancellation of the policy and therefore they cannot be saddled with the liability to pay compensation.

06. On the other-hand, learned Counsel appearing for the claimants supported the impugned judgment. It is specific submission that the claimants being third party, the insurance company is statutorily liable to pay the compensation. According to the claimants the insurer has utterly failed to establish that the policy was duly cancelled and there was valid intimation to the owner of the vehicle. In absence of proof of intimation regarding cancellation of policy, the insurance company cannot be exonerated.

07. Besides above submissions, the appellant has also disputed the quantum of compensation as regards the claim raised on behalf of the legal heirs of deceased

Ganesh in MACP No.486 of 2014. It was the only submission that the Tribunal erred in deducting 1/3rd amount towards personal and living expenses of deceased. According to the appellant, deceased Ganesh was a bachelor and therefore the Tribunal ought to have deducted 50% amount towards his personal and living expenses. As regard to the claim raised on account of death of pillion rider Mahadeo is concerned, the quantum assessed by the Tribunal has not been disputed.

08. At the inception, I will take up the issue about specific defence raised by the insurance company claiming exoneration. The learned Counsel appearing for the appellant would submit that the insurance company has raised a specific defence in its written statement about cancellation of policy and issuance of intimation letter to the owner. It is submission that the owner of the offending vehicle has appeared in the proceeding as well as contested the claim by way of cross-examination. Therefore, the owner of pick-up van was well aware about

the defence. Still he has not led evidence to disprove specific defence raised by the insurance company. Moreover, it is submitted that the insurance company has filed separate application before the Tribunal claiming deletion of its name on account of cancellation of policy. Said application was supported by the documents showing that the policy was cancelled on account of dishonour of cheque and its intimation was dispatched to the owner and the Regional Transport Office.

09. By placing reliance on the decision in the case of United India Insurance Company Limited Vs. Laxmamma and Others, (2012) 5 SCC 234, the learned Counsel for the appellant submitted that intimation of cancellation was issued to the owner much prior to the accident and therefore liability of insurance company ceases. It is his specific submission that the intimation of such cancellation dated 14.03.2014 was much earlier than the questioned accident, which took place on 01.11.2014. The Hon'ble Supreme Court in the said case has expressed that

when authorized insurer has issued policy towards cheque which was dishonoured, the liability of the authorized insurer to indemnify a third party is to satisfy the award in terms of section 147(5) and 149(1) of the Act, unless the policy of insurance is cancelled by the authorized insurer and intimation of such cancellation has reached the insured before the accident. The ratio laid down by the Supreme Court is clearly distinguishable on facts. In the case at hand, it is very much in dispute that the intimation of cancellation has reached to the insured before the accident.

10. Admittedly, though at initial stage insurer has filed application for deletion of insurance company on account of dishonour of cheque, however, said application was not decided, rather has not pursued by the company. It is pertinent to note that the insurance company took specific defence of dishonour of cheque and issuance of intimation. However, they have not led any evidence in support of said defence. Undoubtedly, the burden lies on

the insurance company to prove that the policy was cancelled before the date of accident and the cancellation was properly intimated to the insured before the accident. The insurance company has produced copies of two letters, perhaps office copies of intimation given to the insured and Regional Transport Office. However, those documents were not proved by way of leading evidence. Besides that the insurance company has not produced either postal receipt to satisfy that intimations were dispatched or the acknowledgment of the receipant.

11. The learned Counsel for the claimants/ respondents would submit that unless insurance company discharges its burden of proving its service, they cannot claim exoneration. In this regard, reliance is placed on the reported case of National Insurance Co. Ltd. Vs. Gangadhar Gendrao Patankar and Ors., 2017 ACJ 563. In the said case, this Court took a view that in absence of proof of service, the insurance company cannot be

exonerated. This Court has observed that considering the beneficial nature of the provisions of the Motor Vehicles Act as regards third party, service of such intimation under section 147(4) of the said Act is required to be duly proved. These observations would assist the respondent since the insurer has not stepped into witness box to establish the defence. On the similar line, the respondent also relied on the judgment of Kerala High Court in the case of Bajaj Allianz General Insurance Co. Ltd. Vs. Kunhami and Others, 2019 ACJ 581, wherein same view has been expressed.

12. Taking a particular defence and establishing a defence are two different factors. It was not in dispute that insurance cover note was issued by the authorized insurer by accepting a cheque of the premium. The claimants are third party. Therefore, unless the cancellation of cheque towards dishonour has been duly intimated, the insurance company cannot claim exoneration. On facts, the appellant insurance company

has not discharged its burden in proving that the cancellation of policy was properly intimated and therefore such defence is of no avail.

13. Coming to the facts, in case of deceased Ganesh it is argued that the Tribunal has erred in deducting 1/3rd amount towards personal and living expenses though deceased Ganesh was a bachelor. In view of decision of the Supreme Court in the case of Sarala Verma Vs. Delhi Transport Corporation, (2009) 6 SCC 121, when deceased was bachelor, 1/2 amount has to be deducted towards personal and living expenses of the deceased. Having regard to said legal position, one has to recalculate the quantum of compensation. The Tribunal on facts concluded that the income of the deceased was to the tune of Rs.5000/- per month from all the sources. In view of decision of the Supreme Court in the case of National Insurance Company Ltd. Vs. Pranay Sethi, (2017)16 SCC 680, as the deceased was below 30 years, 50% has to be added towards future prospects and this comes to the tune

of Rs.5000 + Rs.2500 = Rs.7500. Out of that, 50% i.e. Rs.3750 has to be deducted towards personal and living expenses of deceased which would come to the tune of Rs.3750 per month i.e. Rs.3750 x 12 = Rs.45000 per annum. Considering the age of the deceased, multiplies of 17 has to be used. Thus, loss of income would be Rs.45000 x 17 = Rs.765000. Besides, there should be addition of Rs.40000/- each towards filial consortium and Rs.15000/- each towards loss of estate. Hence, total compensation would be Rs.765000 + Rs.110000 = Rs.875000. In view of that, modification to that extent is necessary in the judgment and award passed in MACP No.486 of 2014.

14. So far as appeal No.1948 of 2019 arising out of MACP No.487 of 2014 is concerned, no submissions was made on the point of quantum of compensation. Since, I held that the insurance company is liable, therefore, no interference is called in the said appeal. In view of that following order :-

O R D E R

i) First Appeal No.1961 of 2019 stands partly allowed.

ii) The judgment and order dated 16.11.2018 passed in MACP No.486 of 2014 is set aside and modified only to the extent of determination of total compensation of Rs.8,75,000/- (Rupees Eight Lakh Seventy Five Thousand). Rest part of the operative order would remain as it is. While disbursing the amount of compensation, the reduced amount shall be proportionately adjusted while investing the amount of each claimant with the nationalized bank.

iii) First Appeal No.1948 of 2019 stands dismissed.

iv) No order as to costs.

v) In view of disposal of the First Appeals, connected Civil Applications for stay do not survive and disposed of accordingly.

[VINAY JOSHI,J.]