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

FIRST APPEAL NO. 1205 OF 2019

H.D.F.C. Ergo General Insurance Co. Ltd.
Erstwhile L & T General Insurance
Company Limited,
Through its Branch Manager,
Jaika Building, 2nd floor Civil Lines,
Commercial Road, Sadar, Nagpur

.... APPELLANT

// **VERSUS //**

1. Shri Sanjay S/o Ankush Kankam
   Aged about 51 years, Occu. : Labour,

2. Sau. Shobha W/o Sanjay Kankam
   Aged 41 yrs, Occu. : Housewife

   Both R/o Dadabhau Naoroji Ward,
   Near Durga Mandal, Behind Anand Garage,
   Ballarpur, Tq. Ballarpur, Distt. Chandrapur

3. Shri Chandrakumar Kundandas Lalwani
   Aged about Major, Occu. : Owner,
   R/o Tirupati Ward, Ballarpur,
   Tq. Ballarpur, Distt. Chandrapur

4. Shri Ramanand S/o Shriramkar Sagar
   Aged about 38 yrs., Occu. Driver,
   R/o. Behind Prasanna Petrol Pump, Lalpeth
   Colliery No.3, Chandrapur,
   Tq. & Distt. Chandrapur

.... RESPONDENTS

Shri H.N. Verma, Advocate for appellant
Shri Rohit Joshi, Advocate for respondent Nos. 1 and 2
Shri D.I. Jain, Advocate for respondent No.3

CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATE : 17/02/2022

ORAL JUDGMENT

. This is an appeal under Section 173 of the Motor Vehicles Act, challenging the judgment and award dated 03/04/2017 in M.A.C.P. No. 118/2013. By the impugned judgment, the Claims Tribunal partly allowed the claim petition under Section 166 of the Motor Vehicles Act and directed the Appellant and Respondent nos. 3 and 4 to pay compensation of Rs.9,88,000/- with interest at the rate of 9% per annum from the date of the petition till final realization.

2. The brief facts necessary to decide this appeal are as under:

The Respondent nos. 1 and 2, who shall be hereinafter referred to as the claimants, are the parents of the deceased Vishal Kankam. They had filed a Claim Petition under Section 166 of the Motor Vehicles Act alleging that their son Vishal had expired in a motor vehicular accident, involving truck no. MH 34-AB-4799, which was owned and driven by Respondent nos.3 and 4 respectively and insured by the Appellant-Insurance Company. The Claimants alleged that the accident was caused solely due to rash and negligent driving by the driver of the offending truck. They claimed that the deceased was 21 years of age and was taking education in I.T.I. and was also working as a supervisor with Om Transport Services. He was drawing salary of Rs.9,000/- per month. The Claimants claimed total compensation of Rs. 15,17,000/-. The Claimants alleged that they are entitled for compensation of Rs.15,17,000/-, but restricted their claim to Rs.1,00,000/-.

3. The Respondent no.3-owner denied that the accident was caused due to rash and negligent driving by the driver of the offending truck. He claimed that the vehicle was duly insured during the relevant period. He claimed that two vehicles were involved in the said accident and raised the plea of non-joinder of the parties. He further claimed that the offending truck was duly insured with the Appellant-Insurance Company.

4. The Appellant-Insurance Company claimed that the offending vehicle was not duly insured and further claimed that the cheque issued towards payment of premium was dishonoured and that the insured was already informed that the policy was cancelled. The Appellant-Insurance Company claimed that since the vehicle was not insured, it is not liable to pay any compensation.

5. The Tribunal after appreciating the evidence adduced by the respective parties, held that the accident was caused due to rash and negligent driving by the driver of the offending vehicle. The Tribunal considered the income of the deceased at Rs.9,000/- per month. The Tribunal did not consider future prospects. The Tribunal applied multiplier of 17, and after deducting 50% towards personal expenses, computed loss of dependency at Rs.9,18,000/-. In addition, the Tribunal awarded compensation at Rs.20,000/- towards funeral expenses, and Rs.50,000/- towards loss of love and affection. The Tribunal thus awarded total compensation of Rs.9,88,000/- with interest at the rate of 9% per annum from the date of the petition till its realization.

6. The Tribunal held that the vehicle was duly insured with the Appellant-Insurance Company w.e.f. 03/04/2013 to 02/04/2014. The Tribunal held that the Insurance Company cannot cancel the policy for dishonour of premium. The Tribunal held that there was sufficient fund and that the Appellant-Insurance Company had failed to present the cheque for encashment. Under the circumstances, the Tribunal held that the Appellant-Insurance Company is liable to indemnify the insured. Hence, directed the Appellant-Insurance Company, owner and the driver of the vehicle to pay the compensation. Being aggrieved by the said judgment and award, the Appellant-Insurance Company has filed this

appeal.

7. Shri Verma, learned Counsel for the Appellant states that the owner had issued a cheque dated 31/03/2013 at (Exh.65) for payment of premium of Rs.2,33,784/-. The said cheque was towards the payment of premium in respect of six policies. The Insurance Company had issued policy which was w.e.f. 03/04/2013 to 02/04/2014. The said cheque was dishonoured under cheque return memo dated 04/04/2013 at Exh. 66. He states that the vehicle had met with an accident on 08/04/2013. The Insurance Company *vide* notice dated 10/04/2013 had cancelled the policy. He, therefore, submits that the Insurance Company, though liable to satisfy the award towards the 3rd party, is entitled to recover the said amount from the insured. In support, he had relied upon the decision of this Court (Coram: Sunil Kotwal, J.) in S.B.I. Insurance Company, Aurangabad Vs Madhubala Sanjeev Patil and others 2019 (4) ABR (NOC) 25 (Bom.).

8. Learned Counsel for the Respondent no.3 has relied upon the decision of the Hon'ble Apex Court in United India Insurance Company Ltd. Vs Laxmamma and others 2012 (5) SCC 234 to contend that the Insurance Company is liable to indemnify third party unless the policy of insurance is cancelled by the authorized insurer and intimation of such

cancellation has reached to insurer before the accident. He submits that there was valid policy and as such the Insurance Company is liable to indemnify the insured.

9. Learned Counsel for the Claimants submits that the compensation awarded by the tribunal is not just and reasonable. He submits that the Tribunal has not considered the future prospects and has applied a wrong multiplier. He further submits that the Tribunal has not awarded compensation on other conventional heads, as per the decision of the Hon’ble Apex Court in ***National Insurance Company Limited Vs Pranay Sethi and Others*** reported in ***AIR 2017 SC 5157 and Magma Fincorp Ltd. Vs Rajesh Kumar Tiwari reported in (2020) 10 SCC 399***. He submits that the compensation can be enhanced even in the absence of cross-objection.

10. I have perused the record and considered the submissions advanced by learned Counsel of the respective parties. The only question for consideration is whether the compensation awarded by the Claims Tribunal is just and reasonable and whether the Appellant-Insurance Company is entitled to recover the same from the Respondent no.3-owner of the offending vehicle.

11. It is not in dispute that the deceased Vishal had expired as a

result of the injuries sustained in a motor vehicular accident, involving truck no. MH-34-AB-4799. The said truck was owned by the Respondent no.3, and was driven by Respondent no.4. The Tribunal has recorded the finding that the accident was caused due to rash and negligent driving by driver of the offending vehicle. There is no challenge to the said finding.

12. The evidence on record reveals that the deceased was 21 years of age and he was drawing monthly salary of Rs. 9,000/- per month. The annual income of the deceased therefore works out to Rs.1,08,000/-. In terms of the judgment of the Hon'ble Apex Court in Pranay Sethi (supra) and considering the age of the deceased, 40% of the actual income was required to be added towards future prospects. Similarly, considering the age of the deceased and in view of the decision of the Hon'ble Apex Court in ***Sarla Verma and Ors. Vs Delhi Transport Corporation and Ors. Reported in (2009) 6 SCC 121***, the appropriate multiplier was 18. The record also indicates that the Tribunal has not awarded compensation in respect of other conventional heads, as per the decision of the Hon'ble Apex Court in Pranay Sethi and Magma (supra). Hence, in my considered view, the compensation awarded by the Tribunal cannot be said to be just and reasonable.

13. The deceased was earning Rs.9,000/- per month. The annual

income of the deceased works out to Rs. 1,08,000/- and on adding 40% towards future prospects, the actual income works out to Rs.1,51,200/-. Since the deceased was a bachelor, 50% amount needs to be deducted towards his personal expenses. Upon deducting 50% and applying multiplier of 18, loss of dependency works out to Rs.13,60,800/-. In addition the Claimants are entitled for compensation of Rs.80,000/- towards loss of filial consortium and Rs.30,000/- towards funeral expenses and loss of estate.

The Claimants are thus entitled for compensation as under :

I.	Loss of dependency—	
i.	Annual income	Rs.9,000/- (9,000×12) = Rs.1,08,000/-
ii.	Addition of 40% towards future prospect	Rs.43,200/-
iii.	Total income	Rs.1,51,200/-
iv.	50% deduction towards personal expenses	Rs.75,600/-
v.	Total income after deducting personal expenses	Rs.75,600/-
vi.	Loss of dependency on applying multiplier of 18	Rs.13,60,800/- (75,600×18)
II.	Compensation payable on other conventional heads	
i.	Loss of filial consortium	Rs.80,000/-
ii.	Funeral expenses and loss of estate	Rs.30,000/-
Total compensation payable—		Rs.14,70,800 Rounded up to Rs.14,71,000/-

14. It may be mentioned that the Claimants had restricted their claim at Rs.1,00,000/-. The Claimants have also not filed any cross objection to enhance the compensation. However, considering the decisions of the Hon'ble Apex Court in ***United India Insurance Co. Ltd. V. Nagappa*** reported in ***2012 SCC Online Kar 1255,*** as well as in ***Surekha and Ors. Vs Santosh and Ors.*** reported in ***2020 ACJ 2156***, the Tribunal as well as this Court is under an obligation to award just and reasonable compensation even in the absence of cross objection. Hence, the Claimants are entitled for total compensation of Rs. 14,71,000/-. The accident was of the year 2013. The prevailing rate of interest was 6% to 7% per annum. Hence, the said amount shall carry interest at the rate of 7% per annum from the date of petition till final payment.

15. The next question is whether the Appellant-Insurance Company is liable to pay the said amount to the claimants and recover the same from the Respondent no.3 – owner. The evidence on record reveals that the policy was issued on 03/04/2013, and it was valid till 02/04/2014. It is not in dispute that the owner had issued a cheque dated 31/03/2013 at Exh.65 towards payment of premium in respect of the policy in question. The cheque return memo at Exh.66 reveals that the cheque was dishonoured for insufficient funds. The vehicle was involved in an accident on 08/04/2013 and the Insurance Company had cancelled

the polity after the accident.

16. In the case of Laxmamma and others (supra), the Apex Court has considered the question whether the insurance company is absolved of its liability to pay the compensation to the third party under the policy of insurance because of dishonour of cheque and cancellation of policy subsequent to the accident. The Apex Court after considering the previous decision has held as under:

> *"26. In our view, the legal position is this :where the policy of insurance is issued by an authorized insurer or receipt of cheque towards the payment of premium and such cheque is returned dishonoured, the liability of authorized insurer to the indemnfy third parties in respect of the liability which that policy covered subsists and it has to satisfy the award of compensation by reason of the provisions of Sections 147(5) and 149(1) of the M.V. Act unless the policy of insurance is cancelled by the authorized insurer and intimation of such cancellation has reached the insured before the accident. In other words, where the policy of insurance is issued by an authorised insurer to cover a vehicle on receipt of the cheque paid towards premium and the cheque gets dishonored and before the accident of the vehicle occurs, such insurance company cancels the policy of insurance and sends intimation thereof to the owner, the insurance companies liability to indemnify the third parties which that policy covered ceases and the insurance company is not liable to satisfy awards of compensation in respect thereof."*

17. The facts before the Hon'ble Apex Court were similar to the facts of the present case. In the said case, the Hon'ble Apex Court has held that the Appellant-Insurance Company is liable to indemnify the third party and liberty was granted to the insurer to prosecute its remedy to recover the amount paid to the claimants from the insured. The learned Single Judge of this Court (Coram :Sunil Kotwal, J.) has considered the said decision as well as the other decisions of the Hon'ble Apex Court on the said issue and held that the Insurance Company is liable to indemnify the third party and then to recover the amount from the insured. In view of the said decisions, in my considered view, the Insurance-Company cannot be totally absolved of its liability to indemnify the third party. However, the Insurance Company is always at liberty to recover the amount paid to the Claimants from the owner of the offending vehicle.

18. Under these circumstances and in view of the discussion supra, the appeal is partly allowed. It is held that the Claimants are entitled for compensation of Rs.14,71,000/- with interest at the rate of 7% per annum from the date of the petition till final realization.

19. The Appellant-Insurance Company to pay the said amount to the Claimants with liberty to recover the same from the Respondent no.3-owner of the offending vehicle. The Respondent nos. 1 and 2/Claimants

are permitted to withdraw compensation of Rs.14,71,000/- with proportionate interest accrued thereon. The Claimants to pay the deficit court fees on the enhanced compensation.

20. The appeal stands disposed of in above terms. Pending applications, if any, stand disposed of.

JUDGE

Jayashree..