

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

FIRST APPEAL NO. 1096 OF 2008

1. Babasaheb S/o Dagadu Bansode [deleted as per order dated 05/01/2023]
Age: 49 years, Occ. Labour
2. Sau. Jijabai W/o Babasaheb Bansode
Age: 44 years, Occu: Household
Both R/o Manjiri, Tq. & Dist Beed. **... Appellant**
[Original Claimant Nos.1 and 2]

Versus

1. Shahid Khan Ibrahim Khan
Age: Minor, Occu: Business,
R/o, Pithampur Chopati
Tq. Pitampur, Dist. Dar
Indore (M.P.).
2. Oriental Insurance Company Ltd.,
Branch Beed **... Respondents**
[Original Opponent Nos.1 & 2]

...

Mr. K. D. Bade Patil, Advocate for the Appellant
Respondent No.1 served through paper publication
Mr. D. P. Deshpande, Advocate for Respondent No.2

...

CORAM : S. G. CHAPALGAONKAR, J.

RESERVED ON : 01.08.2023

PRONOUNCED ON : 08.08.2023

JUDGMENT :

1. The appellants / original claimants impugn the judgment and award dated 19/11/2007, passed by the Motor Accident Claims Tribunal,

Beed, in Motor Accident Claim Petition [MACP] No.154/2003.

2. The claimants / parents of the deceased, namely, Arvind Babasaheb Bansode approached the Tribunal seeking compensation towards accidental death of their son in an accident dated 21/01/2003. The claimants contend that the accident occurred due to rash and negligent driving of offending vehicle bearing registration No.MP-09/K-8283. The claimants contend that the deceased – Arvind was engaged on tanker bearing registration No. MH-04/H-2854 as a Cleaner. When the tanker reached in the vicinity of Sangamner, a truck bearing registration No. MP-09/K-8283 came from the opposite direction and dashed against the tanker. The deceased – Arvind had suffered fatal injuries in the said accident. The claimants also contend that the accident occurred due to rash and negligent driving on the part of truck driver. It was owned by respondent no.1 and insured with respondent no.2. The deceased was aged about 18 years and getting monthly salary of Rs.3000/- per month. The claimants / parents were depended on his income. The respondent no.2 / insurer appeared before the Tribunal and contested the claim petition on the ground that the driver of the insured truck was not holding valid licence. After due investigation, a charge-sheet was filed against him. The charge of driving the

insured vehicle without valid authorization i.e. under Section 3/181 of the Motor Vehicle Act, 1988 [hereinafter referred to as 'the Act' for short] has been incorporated in the charge-sheet. Apart from statutory defence, the contentions on merit were also refuted. The Tribunal, after recording of the evidence and hearing of the parties, passed an award for Rs.1,50,000/- in favour of the claimants directing respondent no.1 / owner of the truck to pay the compensation and the claim petition came to be dismissed against respondent no.2 / insurer by accepting the defence of breach of condition of the policy.

3. Mr. Bade-Patil, learned Advocate appearing for the appellant would submit that the Tribunal recorded erroneous finding on the point of breach of condition of the policy in absence of the evidence. He would submit that the Tribunal failed to award just compensation by applying settled principles of assessment of compensation. The multiplier is also wrongly applied. Nothing is awarded towards future prospects. He would further submit that paltry sum has been awarded towards non-pecuniary heads.
4. Per contra, Mr. Dhananjay Deshpande, learned Advocate appearing for respondent no.2 submits that the Tribunal has rightly concluded

that the driver of the insured vehicle was not holding valid licence and exonerated the insurance company by accepting the defence of breach of condition of the policy. He would submit that the accident occurred in the year 2003, therefore in absence of income proof, the Tribunal considered the notional income @ Rs.3000/- per month and passed just and proper award, which need not be disturbed.

5. Having heard the submissions advanced by the learned Advocates appearing for the respective parties and upon perusal of the record and proceedings, it is evident that there is no dispute of the accidental death of son of the claimants. There is no dispute that the deceased was a victim of the accident attributable to fault of the truck driver, owned by respondent no.1 and insured with respondent no.2. The Tribunal accepted the defence of the insurer on the point of breach of policy for the reason that the driver was charged for driving the vehicle without holding the valid driving licence. The insurer relied upon the judgment of the Division Bench of the Allahabad High Court in the matter of **National Insurance Company Vs. Brij Pal Singh and Another** reported in **2003 ACJ 1274**. The Tribunal drawn adverse inference under Section 106 of Evidence Act, since no evidence has been brought on record by

insured to prima facie establish that the driver was holding valid licence. The 'Form Comp. AA' [Exhibit-42] relied by the claimants shows that the particulars of driving licence of the driver are absent. The copy of charge-sheet [Exhibit-49] shows that the charge under Section 3(1)/181 of the Act has been incorporated in the charge-sheet filed against the truck driver.

6. The Supreme Court in the matter of **Pappuu and Others Vs Vinod Kumar Lamba and Another** reported in **(2018) 3 SCC 208** has observed that it is the duty of the insured / owner of vehicle to plead and establish that he took reasonable care to engage the driver having valid authorization. If there is failure of owner / insured to discharge his primary obligation, the onus to prove the fact that the driver had no licence / authorization would not shift on the insurer.
7. Pertinently, Section 134(c) of the Act also mandates owner of the vehicle to supply such information to the insurer. In the present case, there is nothing on record to counter the contents of charge-sheet that establish the fact that the driver had no valid authorization at the time of accident. In that view of the matter, the findings recorded by the Tribunal that there was a breach of

conditions of the policy by insured, cannot be disturbed.

8. However, the law is well settled as regards to the liability of insurer towards third party. The Supreme Court of India in the case of **National Insurance Co. Ltd. v. Swaran Singh** reported in **2004 AIR SCW 663** held that although the insurer succeeds to prove its defence in terms of Section 149 (2) of the Act, its liability to satisfy the award passed in favour of “Third Party” being the insurer of the vehicle would continue to exist. The insurer in such case entitles to recover the compensation from the insured, who committed default in his obligation to appoint the authorized driver. Therefore, the Tribunal ought to have directed the insurer to satisfy the award at first instance and then recover the compensation amount from the insured / owner of the vehicle. There was no reason to outright dismiss the claim against the insurer. Therefore, the finding of the Tribunal to that extent needs to be modified.
9. So far as the quantum of compensation is concerned, the claimant has pleaded that the deceased was earning Rs.3000/- per month at the time of accident. The Tribunal accepted the contentions of claimants and worked out the compensation based on the notional income. However, while applying multiplier method, the Tribunal

committed an error of adopting the multiplier of '17' instead of '18'. Further, nothing is added towards future prospects. The claimants would also be entitled for addition of compensation towards loss of consortium, funeral expenses and loss of estate.

10. In view of the aforesaid observations, the assessment of compensation can be made in the tabular form as under :

Sr. No.	Heads	Amount
1.	Annual income of the deceased [3000x12]	36000/-
2.	Addition of 40% towards future prospects [36000 + 14400 = 50400]	50400/-
3.	½ deduction towards personal and living expenses [50400 – 25200 = 25200]	25200/-
4.	Multiplier 25200x18	4,53,600/-
5.	Add towards non-pecuniary heads	70,000/-
	Total	Rs.5,23,600/-

11. Resultantly, the appeal deserves to be partly allowed. Hence, this Court proceeds to pass the following order:

ORDER

- (I) The appeal is partly allowed.
- (ii) The judgment and award dated 19/11/2007, passed by the Motor Accident Claims Tribunal, Beed, in Motor Accident Claim Petition [MACP] No.154/2003 is modified.

- (iii) The respondent nos.1 and 2 shall jointly and severally pay the compensation of **Rs.5,23,600/- [Five Lakhs Twenty Three Thousand Six Hundred Only]** to the claimants along with interest @ 6% per annum from the date of filing of the claim petition. The amount already paid/disbursed to claimants as per award of Tribunal shall be appropriated.
- (iv) The respondent no.2 / insurer shall first satisfy the modified award or release compensation amount in favour of claimants and then proceed to recover the same from respondent no.1 / owner of the vehicle by filing execution proceeding before the Tribunal, as if the dispute between insurer and owner of the vehicle has been decided under the award.
- (v) On deposit of deficit court fees, if any, the modified award be drawn up accordingly.
- (vi) On deposit of the compensation amount, it be disbursed to the appellant no.2.

[S. G. CHAPALGAONKAR, J.]