IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1428 OF 2018

National Insurance Company Ltd.
Alanavar (KS)
Through its Authorized Official,
Hazari Chamber, Station Road,
Aurangabad. .. Appellant
(Orig. Res. No. 2)

Versus

1. Shobha wd/o Arjun More,
Age : 30 years, Occu. : Household,
R/o. Dudhalwadi Tq. Kallam,
District Osmanabad.

2. Deepali d/o Arjun More,
Age : 11 years, Occu. : Education,
R/o. As above (minor).

3. Bhagyashri d/o Arjun More,
Age : 9 years, Occu. : Education,
R/o. As above (minor).

4. Pooja d/o Arjun More,
Age : 7 years, Occu. : Education,
R/o. As above (minor).

5. Amruta d/o Arjun More,
Age : 3 years, Occu. : Education,
R/o. As above (minor).

6. Ishwat s/o Arjun More,
Age : 1 year, Occu. : Nothing,
R/o. As above (minor).

Res. Nos. 2 to 6 are minors &
U/Guardianship of their natural mother
Shobha w/o Arjun More i.e. Res. No. 1. **(Orgi. Claimants)**

7. Maruti s/o Shivling Chungadi,
Age : Major, Occu. Business,
R/o. Mangankoppa, Tq. Khanapur
District Belgaum (KS).
Owner of Truck No. KA-31/1727 .. Respondents

(Res. No. 1 to 6 are orig. claimants
& Res. No. 7 Orig. Res. No. 1)

Mr. Aniruddha S. Usmanpurkar, Advocate for the Appellant.
Mr. Dhananjay Mane, Advocate h/f Mr. P. A. Bharat, Advocate for Respondent Nos. 1 to 6.
Respondent No. 7 served.

WITH
FIRST APPEAL NO. 1541 OF 2021

1. Shobha wd/o Arjun More,
Age : 30 years, Occu. : Household,
R/o. Dudhalwadi Tq. Kallamb,
District Osmanabad.

2. Deepali d/o Arjun More,
Age : 13 years, Occu. : Education,
Minor U/g. Of their natural mother
i.e. appellant No. 1.

3. Bhagyashri d/o Arjun More,
Age : 11 years, Occu. : Education,
Minor U/g. Of their natural mother
i.e. appellant No. 1.

4. Pooja d/o Arjun More,
Age : 9 years, Occu. : Education,
Minor U/g. Of their natural mother
i.e. appellant No. 1.

5. Amruta d/o Arjun More,
Age : 5 years, Occu. : Education,
Minor U/g. Of their natural mother
i.e. appellant No. 1.

6. Ishwat s/o Arjun More,
Age : 3 years, Occu. : Education,
Minor U/g. Of their natural mother
i.e. appellant No. 1. .. Appellants
(Orig. claimants)

Versus

1. Maruti s/o Shivling Chungadi,
Age : Major, Occu. Business,
R/o. Mangankoppa, Tq. Khanapur
District Belgaum (Karnataka State).

2. National Insurance Co. Ltd.
Alanavar (Karnataka State)
Through its Divisional Manager,
Shubhrai Towers, Datta Chowk,
Solapur Dist. Solapur .. Respondents
(Orig. Respondents)

Mr. Dhananjay Mane, Advocate h/f Mr. P. A. Bharat, Advocate for the Appellants.
Mr. Aniruddha S. Usmanpurkar, Advocate for Respondent No. 2.
Respondent No. 1 served.

CORAM : KISHORE C. SANT, J.

Date on which reserved for order : 29th September, 2023.

Date on which order pronounced : 10th November, 2023.

ORDER :-

. Both the appeals are arising out of the same judgment and award passed by the learned Member, M.A.C.T., Osmanabad in Motor Accident Claim Petition No. 102/2016. Both the appeals therefore, are taken up together.

2. The First Appeal No. 1428/2018 is by the insurer and the First Appeal No. 1541/2021 is by the original claimants. The claim of the Insurance Company is that the Tribunal has erred in awarding compensation to the claimants more than their entitlement. The appeal of the claimants is on the ground that the Tribunal has not awarded sufficient and adequate compensation.

3. The facts in short are that the claimant No. 1 is the widow of deceased Arjun More who died in an unfortunate accident. Other claimants are son and daughters of the deceased. On 08.03.2016 the deceased along with his friend Rajendra were proceeding to Pandhari, Taluk Barshi on a motorcycle bearing registration No. MH-13/AE-4956. The deceased was driving the motorcycle on road. A goods truck bearing registration No. KA-31/1727 coming in opposite direction in rash and negligent manner in high speed and gave dash to the motorcycle. In this accident Arjun felled unconscious. He was shifted to the hospital. During the treatment he succumbed to the injuries. An FIR also came to be lodged with the Police against the driver of the truck for the offences punishable under Section 279, 304-A of the Indian Penal Code. The deceased was doing labour work earning Rs. 300/- per day. Considering his age and income the claimants claimed compensation of Rs. 15,00,000/- on all the counts. However, they

restricted the claim only to Rs. 10,000/-. The respondent No. 1 – owner of the truck did not file any written statement and the matter proceeded without written statement against respondent No. 1. The respondent No. 2 i.e. Insurance Company filed written statement and denied all the adverse contentions. It is denied that the driver was driving truck in rash and negligent manner. There was breach of condition of policy etc.

4. The Tribunal on going through the oral as well as documentary evidence held that, the claimants have proved that the deceased died due to injuries which he received in road accident. Further it is held that the accident took place because of rash and negligent driving on the part of driver of truck. The Insurance Company could not prove breach of condition of policy. It is thus held that, the claimants are entitled to receive compensation of Rs. 7,83,000/- including no fault liability under Section 140 of the Motor Vehicles Act.

5. On the point of quantum the Tribunal accepted the oral evidence of Shobha – claimant No. 1 that the deceased was earning Rs. 300/- per day. As there was no evidence except oral evidence of the claimants. The Tribunal held that, since except oral evidence there is no other proof it considered the notional income to be Rs. 4,000/- per

month. Since the claimants were six in numbers, the Tribunal deducted 1/5th amount towards personal expenses of deceased Arjun.

6. Thus, the calculations were made Rs. 4,000/- per month minus Rs. 800/- i.e. 1/5th personal expenses. The loss of income is thus considered Rs. 3200/- per month. Considering the age as 30 years multiplier of 17 was applied. The Tribunal thus came to the figure of Rs. 6,52,800/-. Rs. 40,000/- was granted towards consortium to the wife. Rs. 15,000/- was granted towards funeral expenses. Rs. 15,000/- each to applicant Nos. 2 to 6 was granted towards loss of estate and passed the award.

7. In the appeal filed by the Insurance Company it is argued that, the Tribunal ought to have deducted 1/4th amount from the income towards personal expenses instead of 1/5th and the loss of dependency ought to have been taken as Rs. 3,000/- per month and accordingly the compensation ought to have been granted as Rs. 6,12,000/- instead of Rs. 6,52,800/-. It is further argued that the learned Member, M.A.C.T. has erred in awarding interest at the rate of 9% per annum on the amount of compensation. The Tribunal failed to appreciate that the license of the driver was not for heavy motor vehicle whereas, the driver was possessing license only for a transport vehicle. It is further

argued that, the deceased himself was driving the motorcycle in negligent manner. He was driving the motorcycle right in the middle of the road. It is thus prayed for reducing the amount of compensation.

8. It is the case of the appellants in First Appeal No. 1541/2021 that the Tribunal has not granted 40% amount towards future prospects. Considering the future prospects the total amount ought to have been Rs. 11,42,400/- by applying multiplier of 17. If 40% future prospects are considered and when the income would be Rs. 4,000/- per month, then it is calculated as Rs. 4,000/- per month plus Rs. 1600/- (40%) towards future prospects is equal to 5600/-. Thus, annualy it is Rs. 67,200/-. Applying multiplier of 17 the amount ought to have been granted as Rs. 11,42,400/-. Considering the 1/5th deductions the reasonable amount of compensation will be Rs. 9,13,920/- plus amount of consortium, loss of interest ought to have been granted as Rs. 70,000/- and thus the total amount ought to have been Rs. 9,83,920/- with interest at the rate of 9% per annum ought to have been granted.

9. Learned advocate relied upon the following judgments.

(i) **<u>Ram Babu Tiwari Vs. United India Insurance Company Limited and others</u>** reported in **<u>(2008) 8 SCC 165</u>**.

(ii) **Mahantesh Vs. Netharavati and others** reported in **2022 ACJ 1213** of High Court of Karnataka.

(iii) **N. K. Sadashivappa Vs. The Branch Manager, M/s. Bajaj Allianz General Insurance Co. Ltd. & Anr.** in Civil Appeal No. 1786/2023.

(iv) **Pappu and ors. Vs. Vinod Kumar Lamba and anr.** in Civil Appeal No. 20962/2017.

10. In the case of **Ram Babu Tiwari** (supra), the Hon'ble Apex Court held that when the driver does not possess license at the time of accident, third party insurance-defence available to /exclusion of insurers' liability. In that case the High Court directed the insurer to make payment and then to recover the amount from the driver and owner. The same was upheld by the Hon'ble Apex Court.

11. In the case of **Mahantesh** (supra), the driver was having license to drive light motor vehicle, however, he was driving a heavy goods vehicle. In that case, the Insurance Company was exonerated from liability.

12. In the case of **N. K. Sadashivappa** (supra), the driver was having license to drive light motor vehicle while the motor vehicle which he was driving was a transport vehicle having a gross weight of 10,800 Kgs. The Tribunal and the High Court in that case had excluded the Insurance Company from reimbursing the compensation. The said

order was upheld by the Hon'ble Apex Court.

13. In the case of **<u>Pappu and ors.</u>** (supra), it is held that the burden of proof lies on the Insurance Company to prove the breach of condition. Mere plea of breach of condition will not absolve Insurance Company of liability.

14. In view of all these judgments, this Court has considered the judgment of the Tribunal. The Tribunal has discussed on issue No. 3 in respect of breach of condition. It is held that the Insurance Company had lead evidence of one Ganesh Vishwanath Yedke working as Junior Clerk in R.T.O. Office, Ambejogai at Exhibit – 31. He deposed that the license was issued to driver on 10.06.2008. On 17.06.2008 the driver was given license for vehicle in the category of transport. The same was renewable after every three years. The license was renewed and was valid till 23.03.2016. On the date of accident i.e. on 08.03.2016 the driver was not having license to drive vehicle in the category of transport. The Tribunal considered the evidence and submissions of the Insurance Company and also the judgment in the case of ***<u>New India Assurance Co. Ltd. Versus Suresh Chandra Agarwal</u>*** reported in ***<u>2009 (3) AJR 399</u>***. It has also considered the judgment in the case of ***<u>S. Iyyapan Versus United India Insurance Co. Ltd. and another</u>*** reported

in ***2013 ACJ 1944*** and two other judgments. The Tribunal considered that the license of the driver was in the category of transport vehicle i.e. M/HMV that was issued on 17.06.2008. The validity of the license was up to 22.03.2019 and thus on the date of accident driver was holding a valid license and there is no breach of condition.

15. This Court finds that, the Tribunal has rightly considered and appreciated this evidence and specifically answered issue No. 3 holding that there was no breach of condition.

16. This Court has seen the calculations worked out by the Tribunal. It does appear that the Tribunal has not considered 40% future prospects. The Tribunal has also not awarded Rs. 70,000/- towards consortium, loss of interest though it has granted Rs. 15,000/- each to claimant Nos. 2 to 6 towards loss of estate. This Court finds that there is no need to interfere with other amount except adding 40% future prospects. As observed the amount of compensation ought to have been Rs. 9,83,920/- instead of Rs. 6,52,800/-. Thus, the amount awarded is less by Rs. 3,31,120/-.

17. Thus, to conclude this Court finds that, the Tribunal has rightly considered the matter about the liability. The only mistake appears to be in not adding future prospects. Thus, this Court holds that the

claimants shall be entitled to receive additional amount of Rs. 3,31,120/- Hence, the following order is passed.

ORDER

I. The First Appeal No. 1428/2018 stands dismissed.

II. The First Appeal No. 1541/2021 is partly allowed.

III. The Insurance Company shall pay an amount of Rs. 3,31,120/- (Rs. Three Lakh Thirty One Thousand One Hundred Twenty only) within a period of four (04) weeks from today along with interest at the rate of 9% per annum from 31.03.2016 till realization. Rest of the award is maintained as it is.

IV. The respondents – original claimants in First Appeal No. 1428/2018 are entitled to receive remaining amount of compensation already deposited by appellant – Insurance Company in this Court.

V. Since claimant Dipali has become major during the pendency of the appeal, the amount of her share be given to her. So far as respondent Nos. 3 to 6 are concerned, they are still minors. The amount of their share be deposited in fixed deposit with a condition that the interest accrued upon the amount of the fixed deposit be credited to the account of respondent No. 1 every quarter.

VI. Both the appeals stand disposed off.

(KISHORE C. SANT, J.)

P.S.B.