IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

REVIEW APPLICATION (STAMP) NO.20071 OF 2023 IN
FIRST APPEAL NO.55 OF 2007 WITH
CIVIL APPLICATION NO.8260 OF 2023

Rukhmabai w/o Nimba Patil & ors. … APPELLANTS

VERSUS

Sahebrao Chaitram Patil & ors. … RESPONDENTS

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Shri S.S. Jadhavar, Advocate for applicants
Shri Girish Rane, Advocate for respondent No.1.
Shri A.B. Gatne, Advocate for respondent No.3.

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CORAM : R. G. AVACHAT, J.
DATE : 30th NOVEMBER, 2023

O R D E R :

Heard. Civil Application No.8260/2023 is allowed. Delay condoned.

2. This is an application for review of the order dated 13/10/2021, passed by this Court in First Appeal No.55/2007. By the said order, the appeal came to be allowed, granting the appellants enhancement in compensation. It was an appeal preferred against the judgment and award dated 25/7/2006,

passed by learned Member, Motor Accident Claims Tribunal, Dhule in Motor Accident Claim Petition No.516/2001. It was a death claim. The claimants were legal heirs of deceased Nimba Patil, who died on 3/5/2001 in a vehicular accident which occurred on 24/4/2001. It was an accident between the two vehicles, namely truck bearing Registration No.MH-19/J-3738 and motorcycle bearing Registration No.MH-18/5204. The deceased was riding pillion.

3. The learned Member, Motor Accident Claims Tribunal, Dhule, by his judgment and award dated 25/7/2006, partly allowed the claim petition, granting compensation of Rs.53,500/- with interest @ 7.5% p.a. thereon. The award was passed against the driver and owner of the truck, original respondents No.1 and 2. The respondent No.3 in the claim petition was the Insurance Company, which had admittedly granted insurance cover to the truck involved in the accident. The Tribunal held the Insurance Company to be not liable to pay any compensation for the following reasons :

> "11. Now, the only question that arises as to whether the L.Rs. of deceased who was pillion rider on the motorcycle on the date of accident are entitled to claim compensation from the

> respondent No.3. My answer to this point would be in negative. In this connection, I may refer to the decision of the Apex Court in the case of **United India Insurance Co. Ltd., Vs. Tilak Singh and Ors.,** reported in **2006(5) SRJ 513**. The Apex Court referring its earlier decision in the case of **Pushpabai and Ors. Vs. M/sRanjit Ginning and Pressing Co. (P) Ltd. & anr.**, reported in **(1977) 2 SC 745, T.V. Jose Vs. Chako P.M. Alias Thankachane and others** reported in **(2001) 8 SCC 748, New India Insurance Co. Vs. Asha Rani and others** reported in **(2003) 2 SCC 223**, held that the law on the subject is clear that a third party policy does not cover liability to gratuitous passengers who are not carried for hire or reward, consequently the Insurance Company was held not liable to pay the compensation. Since the deceased Nimba was travelling on motorcycle of deceased Subhash Damu, as a pillion rider, his risk was not covered under the policy of the offending truck. Consequently the respondent No.3 cannot be held liable to pay the compensation to the L.Rs. of deceased Nimba."

4. The original claimants/ petitioners preferred the First Appeal for enhancement of compensation and holding the Insurance Company liable to pay the same. It appears that, pending the First Appeal, the truck owner passed away. His L.Rs. were not brought on record. It further appears that, while the First Appeal was decided on its own merits, no objection was raised on the ground of failure to bring on record legal representatives of the owner of the truck.

5. This Court partly allowed the appeal in terms of the following order :

(i) The impugned award granting compensation of Rs.1,03,500/- is enhanced to Rs.3,06,000/-.

(ii) The respondents No.1 and 2 shall pay interest @ 7.5% p.a. on the amount of Rs.1,86,000/- from the date of the claim petition to the date of payment of the entire amount.

(iii) The respondents shall pay interest @ 7.5% p.a. on the sum of Rs.1,20,000/- from the date of this order to the date of payment of the said amount.

(iv) Due adjustment be given to the amount already paid/ deposited by the respondent – Insurance Company.

6. Heard. According to the learned counsel for the applicants, this Court committed error in not directing the respondent No.3 Insurance Company to pay the compensation. According to him, the Insurance Company did not raise any defence in the claim petition itself, which would have exonerated it from its liability or even order in the nature of pay and recover could have been passed. According to the learned counsel, when the respondent No.2 was deleted from the array of appeal memo, necessarily the

respondent No.3 Insurance Company became respondent No.2, and this Court impliedly directed both, the driver of the truck and the Insurance Company to pay the amount of compensation. According to him, while the award was being prepared, the office raised objection that the Insurance Company remained to be respondent No.3 and it has not been specifically directed to pay the amount of compensation. This necessitated the original claimants/ appellants to prefer the present application. He, therefore, urged for correction in the operative order passed in the First Appeal No.55/2007.

7. Learned counsel for the respondent Insurance Company raised the objection on the ground of Legal Representatives of the deceased truck owner to have not been brought on record in appeal and this application as well. According to the learned counsel, the review application is, therefore, not maintainable against the Insurance Company which is not directly liable to pay the compensation to the applicants, since it was a contract of an indemnity between the truck owner and the Insurance Company. Unless the truck owner is held liable, liability of the Insurance Company would not be there. The learned counsel also urged for directions to the applicants to pay the requisite court fee

stamp on this review application.

8. Considered the submissions advanced. Perused the judgment and award passed by the Tribunal. Also gone through the order passed by this Court in the First Appeal. Close reading of the pleadings and the evidence would undoubtedly suggest that the respondent Insurance Company did not raise any defence either to have no liability to pay the compensation or making out a case for passing order in the nature of Insurance Company first to pay the amount of compensation and then recover the same from the owner of the truck involved in the accident. The reasons given by the Tribunal for dismissing the claim petition against the Insurance Company were erroneous.

9. In First Appeal preferred against the award passed in the claim petition, the owner of the truck was one of the respondents (Respondent No.2). He passed away pending the appeal. Instead of bringing on record his legal representatives, the appellants preferred to delete him from the array of the petition. That time no objection was raised on account of his legal representatives being necessary parties. This Court ought to have directed the respondent

Insurance Company to be liable to pay the amount of compensation. Passing not such order was a gross error on the part of this Court. The same needs to be rectified. True, the legal representatives of the truck owner ought to have been brought on record in the First Appeal and in this application as well. Since the First Appeal was allowed to be decided without there being any objection in this regard, this Court now do not find it fit to direct the applicants to first bring on record the legal representatives of the deceased truck owner in this application. This Court had initially directed to do so, but after having gone through the facts and circumstances of the case, especially it being a death claim pertaining to the accident that took place way back in April 2001, this Court did not propose to have legal representatives of the deceased truck owner to be brought on record first and then decide the present application.

10. Clause (iv) of the operative order dated 13/10/2021 undoubtedly indicate that this Court was not with the findings recorded by the Tribunal exonerating the Insurance Company from the liability to pay the compensation.

11. For all the aforesaid reasons, the Review Application is allowed modifying the order dated 13/10/2021 passed in First Appeal No.55/2007 as under :

O R D E R

(i) The impugned award granting compensation of Rs.1,03,500/- is enhanced to Rs.3,06,000/-.

(ii) The respondent No.1 – Sahebrao Chaitram Patil and respondent No.3 – The United India Insurance Company Ltd. shall pay interest @ 7.5% p.a. on the amount of Rs.1,86,000/- from the date of the claim petition to the date of payment of the entire amount.

(iii) The respondent No.1 – Sahebrao Chaitram Patil and respondent No.3 – The United India Insurance Company Ltd. shall pay interest @ 7.5% p.a. on the sum of Rs.1,20,000/- from the date of this order to the date of payment of the said amount.

(iv) The entire amount under the award shall be paid by respondents No.1 and 3 – Insurance Company jointly and severally.

(v) Due adjustment be given to the amount already paid/ deposited by the respondent No.3 – The United India Insurance Company Ltd.

(vi) The applicants to pay requisite Court Fee on this application for review.

The Review Application stands disposed of.

(R. G. AVACHAT)
JUDGE

fmp/-