IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.2885 OF 2019

United India Insurance Company Ltd.,
Kisan Kranti Building,
Market Yard, Station Road,
Ahmednagar-414 001.
Through its Authorized Signatory/
Divisional Manager, Divisional Office,
Osmanpura, Aurangabad,
Dist. Aurangabad. **.. Appellant**

Versus

1. Chhaya Rajendra Patil
Age: 45 years, Occu.: Household,

2. Rohan Rajendra Patil,
Age: 22 years, Occu.: Education,

3. Ravisha Rajendra Patil,
Age: 20 years, Occu.: Education,

All R/o. Bhambora, Tal. Karjat,
District Ahmednagar

4. Mrs. Aruna Changdeo Dhawale
Age: 49 years, Occu.: Business,
R/o. Hanga, Tal. Parner,
Dist. Ahmednagar **.. Respondents**

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Mr. Mohit R. Deshmukh, Advocate for appellant.
Mr. D. S. Menorkar, Advocate for respondent Nos.1 to 3 (Absent)
Mr. K. N. Lokhande, Advocate for respondent No.4.

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CORAM : SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.

RESERVED ON : 12th December, 2023
PRONOUNCED ON : 20th December, 2023

<u>JUDGMENT</u> [Per Smt. Vibha Kankanwadi, J.] :-

. Present appeal has been filed by original respondent No.2 – Insurance Company to challenge the judgment and award passed in Motor Accident Claim Petition No.526 of 2016 on 05.04.2018 by learned Member, Motor Accident Claims Tribunal, Ahmednagar, whereby the claim petition filed by present respondent Nos.1 to 3, was partly allowed.

2. The claimants contended that claimant No.1 is the widow and claimant Nos.2 and 3 are the son and daughter of deceased Rajendra Patil, who expired in motor vehicular accident on 12.09.2016. Deceased Rajendra was returning from Ahmednagar to Shrigonda with his friend Bhausaheb Gawali on motorcycle bearing No.MH-16-BJ-1329. Deceased was driving the same and his friend was pillion rider. They were proceeding via Ahmednagar-Daund road and when they reached within the limits of Belwandi village, a tempo bearing No.MH-12-FD-4839 belonging to respondent No.1 came from Ahmednagar side in high speed rashly and negligently. The tempo gave dash to the motorcycle while overtaking, as a result of which deceased sustained grievous injury. He was taken to Samir Kulkarni Hospital, Ahmednagar, where he succumbed to the injuries. The accident was reported to police and offence came to be registered with Belwandi Police Station against the driver of the tempo. He has been prosecuted. The said tempo was insured with original respondent No.2 – Insurance Company on the date of the incident.

Deceased Rajendra was Junior Engineer with the office of Quality Control, Sub-Division Board, Daund, District Pune and was getting monthly salary of Rs.54,238/-. He had agricultural land admeasuring 3 H 93 R giving him annual income of Rs.25,00,000/- per annum. He was also getting income of Rs.10,00,000/- per annum from milk business and Rs.10,00,000/- per annum from petrol pump business. He could have got promotion and his salary would have increased up to Rs.65,000/- per month. Therefore, the claimants claimed compensation of Rs.3,00,000,00/- along with interest.

3. It appears that the matter proceeded *ex parte* against respondent No.1, as he failed to appear after service of notice, but later on appeared through Advocate, but had not filed written statement with the permission of the Tribunal.

4. Original respondent No.2 – Insurance Company filed written statement at Exhibit-17. Age, income and the manner in which the accident took place, as pleaded in the petition, has been specifically denied. It is admitted that the tempo was insured with it on the date of the alleged accident. The petition suffers from nonjoinder of driver of the tempo as party respondent. It has also been specifically pleaded that there is breach of terms of policy as the driver was not holding valid and effective driving licence to drive the particular type of vehicle and the tempo was not holding valid and effective permit and fitness certificate. Therefore, the

insurance company claimed exoneration from the liability to pay compensation.

5. The claimants have led evidence in the form of examining claimant No.1 Chhaya – widow of deceased Rajendra and C.W.2 Ravindra Nawale, the Clerk from the office of deceased to prove his salary. The claimants have produced on record the certified copies given by the police department. Neither respondent No.1, nor respondent No.2 has led any oral evidence or documentary evidence, but it appears that respondent No.2 has relied on the documents produced by the claimants themselves.

6. After taking into consideration the evidence on record and hearing both sides, the learned Tribunal has allowed the petition partly. Respondent Nos.1 and 2 were directed to pay compensation of Rs.66,72,869/- jointly and severally (inclusive of amount of NFL) with simple interest at the rate of 7% per annum from the date of filing of the petition till realization of the entire amount.

7. Heard learned Advocate Mr. Mohit R. Deshmukh for the appellant – Insurance Company and learned Advocate Mr. K. N. Lokhande for respondent No.4/original respondent No.1. Learned Advocate Mr. D. S. Menorkar for respondent Nos.1 to 3 is absent. Perused the record and proceedings.

8. It appears from the appeal memo that the insurance company is challenging the entire judgment and award on all points and, therefore, following points arise for determination. Findings and reasons for the same are as follows :-

POINTS

Sr. No.	Points	Findings
1.	Whether claimants have proved that deceased Rajendra Patil expired in the accident dated 12.09.2016 on Ahmednagar-Daund road and the said accident was caused due to the rashness and negligence on the part of the driver of tempo bearing No.MH-12-FD-4839 ?	In the Affirmative
2.	Whether the Insurance Company has proved that there are several breaches of terms and conditions of the insurance policy and, therefore, it is liable to be exonerated from the order of payment of compensation ?	In the Affirmative
3.	Whether the claimants are entitled to claim compensation ? If Yes, from whom and what is the quantum ?	In the Affirmative. As per the final order

REASONS

Point No.1 :

9. Learned Advocate for the appellant – Insurance Company has vehemently submitted that the claimants had not examined any eye

witness, but only relied on the police papers. On the basis of police papers, in fact, the Tribunal ought to have held that this is a case of composite negligence. The deceased was himself driving the motorcycle and could have taken his vehicle towards left to avoid the accident. This point ought to have been considered and the percentage of the negligence on the part of the deceased ought to have been carved out by the Tribunal.

10. It is to be noted that claimants have examined the widow C.W.1 Chhaya, but admittedly she is not the eye witness. Claimants have relied on the certified copies of the police papers. From those papers, it can be seen that the FIR was lodged by Bhausaheb Gawali, who was the pillion rider of deceased. Though Bhausaheb has not been examined, we can certainly go into the contents of the FIR Exhibit-43, as it is the certified copy which is admissible in evidence in respect of claim petitions. It has been clearly stated that they were proceeding from Ahmednagar to Shrigonda and the tempo had come from opposite direction, but it was overtaking the other vehicle going ahead of it. In the process of overtaking, the tempo had dashed motorcycle. The claimants are also relying upon the certified copy of the spot panchanama Exhibit-44, which shows that the width of the road was 24 feet having 5 feet side margins on both the sides. The tempo was overtaking a truck. There were tyre marks of the tempo and it is clear from the rough sketch which is part of spot panchanama that the spot of impact is towards east, which was the wrong side of the tempo.

In other words, the motorcycle was going from its correct side i.e. left side from north to south. The correct side for tempo was the western half, as it was going from south to north, but the impact is just near the eastern edge of the road. The accident took place due to the negligence on the part of the tempo driver is clearly established. Therefore, it is a clear case of *Res ipsa loquitur.* It was not necessary for the claimants to examine anybody to prove the accident. The claimants have filed inquest panchanama Exhibit-45 and postmortem report Exhibit-46. Both clearly show that Rajendra died due to accidental injuries. The point is, therefore, answered in the affirmative.

Point No.2 :

11. It is to be noted that issue No.3 framed by the learned Tribunal was in fact sufficient to consider the point as to on what count the Insurance Company intended to say that there is breach of terms of policy. Paragraph No.16 of the written statement Exhibit-17 filed by the Insurance Company was clear that the breach of terms of policy was raised on two counts, one absence of valid and effective driving licence of the driver of the tempo and second that tempo was not holding valid and effective permit and fitness certificate. The learned Tribunal has answered issue No.3 in negative. It is not in dispute that the insurance policy of the offending vehicle tempo was valid from 17.06.2016 to 16.06.2017, which was covering the date of accident i.e. 12.09.2016. Exhibit-54 is the

certified copy of the driving licence of the driver of the tempo, which was valid till 22.02.2018 and it included transport vehicle. Therefore, there is no breach on that count, but as regards the valid permit is concerned, though the learned Tribunal has taken note of Exhibit-50 and Exhibit-51, it appears that the period has not been considered. Learned Advocate for the appellant points out that Exhibit-50 is the goods carriage permit of the tempo in the name of one Nandu Gavhane, resident of Golegaon, Taluka Shirur, District Pune and it was valid from 31.03.2010 to 30.03.2015, however, it appears that he sold the vehicle to respondent No.1 and, therefore, she has obtained permit from Regional Transport Authority, Nashik i.e. Exhibit-51 in her name, but the date of expiry of permit is stated i.e. duration from 13.05.2011 to 12.05.2016. The accident took place on 12.09.2016 i.e. four months after the expiry of the permit as per Exhibit-51. When specific defence was raised by respondent No.2 and respondent No.1 had caused appearance, but failed to file written statement, yet she was not estopped from filing any document to show that after 12.05.2016 she has got the renewal of permit from the appropriate authority. Therefore, the position as it stands is from the record that was produced by the claimants that on the date of accident there was no valid permit

12. Learned Advocate for the appellant has relied on the decision in **Amrit Paul Singh and Another Vs. Tata AIG General Insurance Company Limited and others, (2018) 7 SCC 558,** wherein discussion

has been made in respect of Section 2(47) of the Motor Vehicles Act, 1988, which defines “transport vehicle”. Thereafter, Section 66 of the Motor Vehicles Act stipulates necessity for permits and the distinction has to be made between “route permit” and “permit” in Section 149 of the Motor Vehicles Act. In the said case, it was admitted position that the offending vehicle initially had a temporary registration and eventually the permanent registration and it was demonstrated that on the date of the accident, the said offending vehicle was not having a permit and it has been therefore clearly held that in such a situation the onus cannot be cast on the insurer. Therefore, according to him, there was no burden on the Insurance Company – original respondent No.2 to lead any evidence. It was in fact for original respondent No.1 to show that the offending vehicle was having valid and effective permit on the date of the accident. Therefore, the Insurance Company is not liable to pay the compensation. In the alternative, it was also prayed on the basis of **Amrit Paul Singh (Supra)** that the directions be given for pay and recover.

13. The learned Advocate Mr. Lokhande for respondent No.4 supported the reasons given by learned Tribunal and submitted that the Insurance Company has not led any positive evidence.

14. As aforesaid, Exhibit-50 was the permit in the name of earlier owner of the vehicle, but it is not in dispute that the ownership stood transferred on or around 12.05.2011 in the name of original respondent

No.1. Exhibit-47 is the certificate of registration of the offending vehicle. In view of the change in the ownership, it appears that she approached R.T.O., Nashik for issuing permit in her name and then after payment of necessary amount, it appears that the permit was granted as per Exhibit-51. Section 81 of the Motor Vehicles Act deals with duration and renewal of permits. Sub-section (1) of Section 81 of the Motor Vehicles Act prescribes that a permit other than the temporary permit issued under Section 87 or special permit issued under sub-section (8) of Section 88 of the Motor Vehicles Act shall be effective from the date of issuance or renewal thereof for a period of five years. Sub-section (2) of Section 81 of the Motor Vehicles Act provides that a permit may be renewed on an application made not less than fifteen days before the date of its expiry. Sub-section (3) of Section 81 of the Motor Vehicles Act then carves out an exception by saying that notwithstanding anything contained in sub-section 2 of Section 81, the Regional Transport Authority or State Transport Authority, as the case may be, may entertain an application for the renewal of a permit after the last date specified in that sub-section if it is specified that the applicant was prevented by good and sufficient cause from making an application within the time specified. Then the further sub-sections gives power to Regional Transport Authority to either reject or allow such applications and the rejection should be as per sub-section (4) of Section 81 of the Motor Vehicles Act. Sub-section (5) of Section 81 of the Motor

Vehicles Act then prescribes that where a permit has been renewed under this section after the expiry of the period thereof, such renewal shall have effect from the date of such expiry irrespective of whether or not a temporary permit has been granted under clause (d) of Section 87 of the Motor Vehicles Act and where a temporary permit has been granted, the fee paid in respect of such temporary permit shall be refunded. Here, in this case, respondent No.1 has not led any evidence. From the record it appears that respondent No.1 appeared in the matter on 05.01.2017. Written statement was filed by respondent No.2 on 30.06.2017 and on the same day issues were framed by the learned Tribunal. Evidence has been led thereafter, but it appears that learned Advocate for respondent No.1, then remained absent and has not taken part in the evidence at the time of evidence. In the present appeal also a specific ground was raised at paragraph (IV) and till today respondent No.4 has not filed any document to show that the said permit was ever got renewed in view of the provisions of Section 81(3) of the Motor Vehicles Act and it has the effect under Section 81(5) of the Motor Vehicles Act. The application as contemplated under Section 81(3) of the Motor Vehicles Act can be filed only by respondent No.1 and therefore, it was within her knowledge for which as per Section 106 of the Evidence Act the burden would be on her to adduce the evidence. Though the strict provisions of Evidence Act are not applicable to the benevolent provisions under the Motor Vehicles Act, yet it is but-natural that a person who is supposed to have personal knowledge should prove it. We are also then guided by the Hon'ble Supreme Court in **Amrit Paul Singh (Supra)**, wherein it has been specifically observed that the onus cannot be cast on the insurer. This aspect has not been considered by the learned Tribunal and, therefore, it erred in answering issue No.3 as negative. We, therefore, answer point No.2 in the affirmative, for the aforesaid reasons.

Point No.3 :

15. In view of the answer to point No.1 and the fact that the claimants are the legal representatives of deceased Rajendra, they are entitled to get compensation. The offending vehicle was insured on the date of the accident with original respondent No.2. No doubt, in view of the answer to point No.2 the Insurance Company has proved that there is breach of terms of policy, as the offending vehicle was not having valid and effective permit on the date of the accident, yet the question would be whether the amount of compensation can be recovered from both the respondents jointly and severally. The answer lies in the aforesaid decision of **Amrit Paul Singh (Supra),** wherein relying upon the principles stated in **National Insurance Co. Ltd. Vs. Swaran Singh, (2004) 3 SCC 297,** the order of pay and recover is required to be passed in this case, but certainly as against the claimants, both the respondents are liable to pay

compensation to them jointly and severally.

16. Now, as regards quantum, it appears that there is no error or illegality committed by the learned Tribunal in computation. The salary which deceased was fetching has been got proved through C.W.2. Due deductions for income tax and professional tax etc. have been considered. Note has also been taken of the decisions in **Sarla Varma and others Vs. Delhi Transport Corporation and Another, 2009 ACJ 1298** and **National Insurance Company Ltd. Vs. Pranay Sethi and Others, [SLP (Civil) No.25590 of 2014].** The only fact that is required to be noted is that by that time i.e. when the award was passed, the decision in **Magma General Insurance Company Limited Vs. Nanu Ram Alias Chuhru Ram and others, (2018 (4) TAC 345)** appears to have not been taken, but the original claimants have not filed any appeal or cross-objection for enhancement in the compensation and, therefore, we hold that the claimants were entitled to get compensation of Rs.66,72,869/- inclusive of NFL amount together with interest. The point is therefore answered accordingly.

17. In view of the findings to the points determined, the appeal deserves to be partly allowed to the extent of granting liberty to appellant – original respondent No.2 to recover the entire amount of compensation from original respondent No.1. With these observations, following order is

passed :-

ORDER

(i) The Appeal stands partly allowed.

(ii) The operative order/Award passed by the learned Member, Motor Accident Claims Tribunal, Ahmednagar on 05.04.2018 in Motor Accident Claim Petition No.526 of 2016 is maintained/confirmed as it is with following addition :-

> "4A] The original respondent No.2 – Insurance Company should pay amount of compensation to the claimants first and then is allowed to recover the said amount from original respondent No.1."

(iii) No order as to costs.

(iv) The award be prepared accordingly.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm