

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

FIRST APPEAL NO.2370 OF 2018

The New India Assurance Company Limited,
Through It's Authorized Signatory,
Senior Divisional Manager/Incharge Legal Hub,
Mahesh Compound, Adalat Road, Aurangabad.

Appellant
(orig resp. no.1)

VERSUS

1. Anju w/o Karam Vaid,
age 46 yrs, Occ. Household.
2. Karam s/o Sukhbir Vaid,
age 57 yrs, Occ. Student.
3. Neha d/o Karamsingh Vaid,
age 23 yrs, Occ. Education.

All R/o 1101, Jangid Tower,
Shanti Park, Meera Road (East),
Thane.

At Present R/o Bhadkal Gate,
Aurangabad, Tq. & Dist Aurangabad.

4. Rajendrasingh s/o Jarnailsingh Cheema,
age major, Occ. Business,
R/o Kannamwar Ward, Balapur,
Dist. Chandrapur (Maharashtra State)
5. Hardeepsingh s/o Chanansingh,
Age major, Occ. Driver,
R/o Plot No.814, NR-Budha Park,
C/o Rajesh Narayandas Sharma,
Budha Nagar, Nagpur,
Tq. & Dist. Nagpur.

..Deleted..

..Respondents..

(R-1 to 3 orig claimants.

R-4 & 5 orig resp 2 and 3)

Mr. Mohit R. Deshmukh, Advocate for appellant.

Mr. P.C. Mayure advocate for respondent nos.1 to 3.

Respondent no.4 - served.

CORAM : S.G. CHAPALGAONKAR, J.

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RESERVED ON : 12th JULY, 2023.

PRONOUNCED ON : 17 JULY, 2023.

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JUDGMENT :-

1. The appellant/insurer (original respondent no.1) has filed this appeal impugning the judgment and award dated 26.4.2018 passed by the Motor Accident Claims Tribunal, Aurangabad in MACP No.106 of 2016.

2. The respondent nos.1 to 3 herein had approached the Tribunal seeking compensation towards death of deceased Rahul, who was their bachelor son. The contention of the claimants is that, while Rahul was proceeding on his motorcycle, the truck bearing registration No.MH-34-AB-6235 came from opposite direction and collided against the motorcycle causing fatal injuries to Rahul. Deceased Rahul was 22 years of age and he was a student. According to the claimants, he was their care taker and would have been support of the advance age.

3. The claim was contested by the Insurance Company on the ground that the driver of the insured vehicle was not holding valid and effective driving license. The contentions regarding age, occupation and income of the deceased were denied.

4. The Tribunal had framed the issues based on the pleadings of the parties. The claimant no.2 recorded his evidence at exhibit 23. No evidence is recorded on behalf of the respondents. The respondent Insurance Company placed on record a copy of the driving license of the truck driver at exhibit 43 to contend that the driving license was not renewed after expiry and as on the date of the accident, the driver had no valid authorisation. The copy of the driving license placed at exh.43 was admitted in the evidence by consent of the parties. The application

was also submitted by the appellant-insurance company vide exhibit 38 to place on record copy of the driving license particulars. The Tribunal, after considering the evidence on record and contentions of the parties, allowed the claim petition thereby directing the respondent no.1 and 2 to jointly and severally pay the compensation of Rs.9,37,200/- to the claimants along with the interest @ 9% p.a.

5. Mr. Deshmukh, learned counsel appearing for the appellant in his endeavor to assail the judgment of the Tribunal and submits that the statutory defence available under section 149 (2) of the Motor Vehicles Act was specifically pleaded in the written statement filed by the Insurance Company. A copy of the driving license particulars of respondent no.5 was placed on record of the Tribunal at Exhibit. 43 and it was admitted by the respective parties. He would submit that the contents of the said document would show that validity of the transport license of the driver had expired on 13.5.2015. The accident took place on 28.6.2015. He would submit that even considering the grace period of 30 days, it can be gathered that driver had no license as on the date of the accident. He would therefore submit that the Tribunal ought to have accepted the defense of the insurer and exonerated from the liability. Mr. Deshmukh would further urge that Tribunal has erroneously decided the issue of negligence and granted excessive interest on compensation amount.

6. Mr. Mayure, learned counsel appearing for the respondents/claimants would submit that the truck driver was prosecuted for rash and negligent driving in pursuance of the FIR filed against him. The respondents have not adduced evidence to controvert the contents of the police papers. He would invite attention of this Court to the contents of the spot panchnama that shows that the truck went on wrong side and dashed against the motorcycle. Mr. Mayure would

further submit that the deceased was prosecuting his studies in Jawaharlal Nehru Engineering College. The assessment of the compensation is within the parameters of the principles laid down by the Apex Court in the case of National Insurance Company Ltd, Vs Paranay Sethi and others. Mr. Mayure, further submits that even this Court finds that there is breach of the conditions of the policy, the insurer cannot be exonerated from satisfying the award. At the most it may recover the compensation amount from the insured after satisfying award.

7. Having considered the submissions advanced and on perusal of the record and proceedings, it is evident that the Tribunal, based on the findings on the point of negligence on the police papers, particularly, the contents of the panchnama which clearly depicts fault of the truck driver. The FIR in crime no.116 of 2015 shows that the truck driver was charged of negligence. The respondents have not controverted the material evidence against them. In that view of the matter, no fault can be found in the conclusion drawn by the Tribunal while deciding the issue nos.1 and 2 against the respondents. In that view of the matter, it is difficult to accede with the submissions advanced on behalf of the appellant to consider contributory negligence of the deceased.

8. The second contention of the learned counsel appearing for the appellant that specific plea was raised in the written statement that the driver of insured vehicle was not holding valid driving license. The record further reveals that the appellant/insurance company had tenders particulars of the driving license issued by the Transport authority at Nagpur in favour of the truck driver i.e. Hardeepsingh. It shows that the driving license for transport category was valid till 13.5.2015. However, the same was not renewed thereafter. The accident in question took place on 28.6.2015. Therefore, even further 30 days are considered towards grace period to apply for renewal, driving license appears to be

invalid. No contrary material is brought on record to show that Driver had renewed his license. As held by Supreme court of India in case of **Pappu and ors VS Vinod Kumar Lamba reported in (2018) 3 SCC 208** the owner of vehicle is required to plead and place material on record contending that he had appointed authorized Driver and took reasonable care to comply statutory and contractual obligation and discharge his initial burden. In that view of the matter there is no impediment in accepting the defense of the insurer on the point of driving license. However, it is trite law that the insurer cannot avoid liability to pay the compensation to the victim of the accident although it succeeds in bringing home the defense of breach of policy as contemplated under section 149 (2) of the Motor Vehicles Act. Resultantly, the appellant/insurer can at the most seek the recovery rights from the insured, who has breached the terms of the contract.

9. The third contention of appellant that Tribunal awarded excessive interest on compensation amount deserves rejection, since no material placed on record of this court to show that Tribunal exercised its discretion u/s 171 of MV Act. in arbitrary manner or any material placed on record regarding prevailing interest rate missed consideration. In the result, the appeal deserves to be partly allowed by modifying the operative part of the order passed by the Tribunal. Hence, the order.

ORDER

- i. The appeal is partly allowed.
- ii. The respondent nos.1 and 2 shall jointly and severally pay a sum of Rs.9,37,200/- (Rs. Nine Lakh thirty seven thousand two hundred) (inclusive of 'No Fault Liability') to the claimants along with the interest @ 9% p.a. from the date of the filing of the claim petition.

- iii. On deposit/payment of the compensation amount to the claimants, the appellant/original respondent no.1 shall be at liberty to recover the amount paid/released in favour of the claimants in terms of this award by filing execution proceedings before the Tribunal in accordance with law.
- iv. The apportion of the compensation as indicated in the clause no.3 of the impugned order shall remain undisturbed.
- v. The compensation amount deposited by the appellant/insurer be disbursed to the claimant/respondent nos.1 and 2.
- vi. Award be drawn up accordingly.
- vii. Pending civil application, if any, also stands disposed off.

[S.G. CHAPALGAONKAR]
JUDGE

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aaa/-