IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.

FIRST APPEAL NO.805 OF 2009

The New India Assurance Company Ltd.,
through its Divisional Manager,
Division Office, Old Cotton Market,
Akola, District Akola

...APPELLANT

VERSUS

1. Smt. Anjanabai wd/o Kashiram Tayade,
Aged about 49 yrs., Household duties

2. Gajanan s/o Kashiram Tayade,
Aged about 32 yrs., Private Service,

3. Surendra s/o Kashiram Tayade,
Aged about 31 yrs.

All R/o. Sarkari Fail, Ward No.2,
Shegaon, Tq. Shegaon,
District Buldhana

4. The Divisional Controller,
Maharashtra State Road
Transport Corporation,
Division Office, Buldhana

5. Ravindra s/o Kashiram Tayade,
Aged 29 yrs., R/o. Sarkari Fail,
Ward No.2, Shegaon,
Tq. Shegaon, District Buldhana

...RESPONDENTS

Shri Akhilesh Potnis, Advocate h/f Shri M.M. Sudame, Advocate
for the appellant.
None for the respondents.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : JANUARY 05, 2023.

ORAL JUDGMENT :

None present for the respondents. Heard learned Counsel for the appellant.

2. By preferring this appeal, the appellant - The New India Assurance Company Ltd. has challenged the judgment and award dated 13/01/2009 passed in Motor Accident Claims Petition No.77/2002 by the Additional Member, Motor Accident Claims Tribunal, Khamgaon, District Buldhana by which compensation of Rs.1,83,800/- together with interest is directed to be paid to the respondents along with interest accrued thereon.

3. Brief facts in the nutshell are as under:

A] The claimants are the legal heirs of the deceased Kashiram Namdeo Tayade who have claimed the compensation on account of accidental death of Kashiram Tayade who died in an accident on 18/10/2001. As per the contentions of the claimants, the deceased Kashiram was aged about 45 years at the time of accident and was serving as Senior Clerk in Panchayat Samiti, Sangrampur, District Buldhana and drawing salary of Rs.7000/- per month. On 18/10/2001, at about 9.15 am, the deceased was proceeding on his Hero Honda motorcycle bearing No.MH-28-J-512 as a pillion rider from Shegaon to Varwat Bakal. Said motorcycle was driven by the opponent No.2 who is the son of the deceased. Opponent No.2 had driven the motorcycle by observing the traffic rules and regulations, however at the relevant time when their vehicle reached near village Varwat Khanderao one S.T. bus bearing No. MH-31-M-9916 came from the opposite direction and was proceeding towards the Shegaon and gave dash to the motorcycle of opponent No.2. It is further alleged that the driver of the said bus had driven the bus in a very rash and negligent manner without taking any precautions and without considering the road situation. As the S.T. bus was driven by its driver in a very rash and negligent manner, said accident took place. Regarding the said accident, offence was registered against the bus driver. Said bus was owned by the opponent No.1. The motorcycle was validly insured with the respondent No.3 - The New India Assurance Company Ltd. It is contended that as the accident took place due to the collusion of two vehicles and due to rash and negligent driving of the bus driver. The respondent Nos.1 to 3 are jointly and severally liable to pay compensation to the claimants.

4. Said Claim Petition was opposed by respondent Nos.1 to 3 by filing written statement on record. Respondent No.1 opposed the

petition on the ground that the said accident took place due to the rash and negligent driving of respondent No.2 who was driving the motorcycle due to which pillion rider fallen down and sustained grievous injuries whereas, as per the defence of respondent No.2-owner of the vehicle that he was driving the motorcycle with moderate speed and by observing the traffic rules and regulations.

5. Respondent No.3 has also contested the claim petition by filing written statement, on the ground that as the accident took place due to rash and negligent driving of S.T. bus driver, therefore, Insurance Company is not liable to pay the compensation. It is further the defence of the Insurance Company that the alleged vehicle is not insured with opponent No.3 at the time of accident. Moreover, the driver of the vehicle was not holding valid driving licence. Thus, opponent No.2 has contravened the terms and conditions of the policy and hence Insurance Company is not liable to pay the compensation.

6. The appellant as well as the respondents adduced the evidence before the Tribunal. After hearing both the sides and after considering the evidence on record the tribunal held respondent Nos.1 to 3 are liable to pay compensation.

7. Being aggrieved with the same, appellant - The New India Assurance Company Ltd. has challenged the award on various grounds including the ground that there was a breach of policy, and therefore, the Insurance Company is not liable to pay compensation, however, learned trial Court had not considered the same and wrongly saddled the responsibility of the compensation on the appellant.

8. Heard Shri Akhilesh Potnis, learned Counsel holding for Shri M.M. Sudame, learned Counsel for the appellant. He vehemently submitted that in fact, the offence is registered against the bus driver as the accident took place due to rash and negligent driving of the bus driver, however the Tribunal erroneously held opponent Nos.2 and 3 liable to pay compensation. The negligence of the bus driver was proved. He further submitted that vehicle was not validly insured with the appellant – Insurance Company. Moreover, opponent No.2 was not holding a valid and effective driving licence at the time of accident, therefore, Insurance Company is not liable to pay compensation. On the above said grounds, appeal deserves to be allowed.

9. None present for the respondent Nos.1 to 3 as well as respondent Nos. 4 and 5 are also not represented.

10. Perused the evidence on record. Admittedly, regarding the said accident, crime was registered against the bus driver. The recitals of the FIR Exhibit 46 shows that on the basis of report lodged by the police head constable Ejaj Hashmi, crime was registered against bus driver on an allegation that the bus was driven by the bus driver in the rash and negligent manner and caused the accident.

11. In support of the claim, claimants are relied upon the spot panchnama, inquest panchnama, post mortem report, etc. The vehicle i.e. motorcycle is validly insured with the appellant – Insurance Company for the period from 01/06/2001 to 31/05/2002. The alleged accident occurred on 18/10/2001 that is during the validity period of the insurance policy. The major challenge of the Insurance Company is that the Insurance Company is not liable to pay compensation as vehicle is not validly insured with the Insurance Company however, insurance policy which is filed on record at Exhibit 50 shows that vehicle is validly insured with the Insurance Company for the period from 01/06/2001 to 31/05/2002. Thus, the date of accident is covered under the policy. The challenge of the Insurance Company is that opponent No.2 was not having valid and effective driving licence to drive the motorcycle and hence Insurance Company is not liable to pay compensation. When Insurance company came with a specific defence that the vehicle driver

is not holding valid licence then burden on the Insurance Company to prove the same. Opponent No.2 - Ravindra s/o Kashiram Tayade step into the witness box and deposed that he was riding the motorcycle bearing No.MH-28-J-512. He is cross-examined at length and he denied that he was not holding valid driving licence. Besides this cross-examination, Insurance Company has not adduced the evidence by examining the officials of the Regional Transport Corporation. Thus, the Insurance Company failed to prove that the motorcycle rider was not holding valid driving licence and hence there is a breach of policy. Therefore, the submission on behalf of the appellant that the Insurance Company is not liable to pay compensation as motorcycle rider was not holding a valid driving licence, is not sustainable.

12. The award is also challenged on the ground that the amount of compensation awarded by the Tribunal is exhaustive, exorbitant one.

13. To prove the income of the deceased, claimants adduced the evidence of the wife of the deceased Smt. Anjanabai Tayade who testified that her husband was Government servant and serving in the office of Panchayat Samiti. At the time of accident, the age of the deceased was 48 years as per the post mortem report. Exhibit 51 is the payment slip from which it transpires that the deceased was drawing the

salary of Rs.7150/- including the HRA. The basic salary of the deceased was Rs.5000/- and Dearness Allowance was Rs.1900/-. Thus, the Tribunal has considered the income of the deceased as Rs.6900/- per month. One third amount for the personal expenses of the deceased was deducted. After deducting the one third amount yearly income of the deceased comes to Rs.55,200/-. As the deceased was aged about 48 years, the multiplier applied was 13 and the Tribunal comes to the conclusion that the amount of compensation comes to Rs.7,17,600/-. As the wife of the deceased was getting pension of Rs.3000/-, therefore, the amount of pension was deducted and the compensation of Rs.4,17,600/- was awarded to the claimants including the NFL amount. Thus, the learned Tribunal had taken into consideration the actual income of the deceased and benefit of pensions received by the wife of the deceased after his death.

14. The amount of compensation granted by the Tribunal appears to be reasonable and justifiable one. Thus, no ground is made out by the appellant to interfere with the said award. Thus, the appeal has no merits and liable to be dismissed. Hence, the appeal stands dismissed.

(URMILA JOSHI-PHALKE, J.)

**Divya*