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

**FIRST APPEAL NO.28 OF 2021
AND
FIRST APPEAL NO.339 OF 2022**

FIRST APPEAL NO.28 OF 2021

1. Smt.Shital wd/o Prasad Sarodaya,
aged about 38 years, occupation household.

2. Ku.Padmaja d/o Prasad Sarodaya,
aged about 17 years, occupation education.

3. Ku.Shrawani d/o Prasad Sarodaya,
aged about 11 years, occupation education.

(Nos.2 and 3 are minor through their
natural guardian mother Appellant No.1).

All r/o c/o Sachin Fursule, near Guru
Mandir, Karanja Lad, taluka Karanja Lad,
district Washim.

..... **Appellants.**

:: V E R S U S ::

1. Vishal s/o Manikrao Lokhande,
aged about 34 years, occupation driver,
r/o ST colony, Sharda nagar,
ward No.6, Dhantoli, Wardha,
taluka and district Wardha.

2. Datta Meghe Institute of Science
Wardha, through its Director,
Sawangi Meghe, taluka and district Wardha.

3. SBI General Insurance Co.Ltd.,
through its Branch Manager,
"Natraj", 101, 201, 301 junction of
Western Express Highway and Andheri
Kurla Road, Andheri (East),
Mumbai - 400069.

4. Radha Riddhi Associates,
Through its Director,
c/o SOS, Wana Dongari, Hingna Shiva
Sawanga, Nagpur – 440023. **Respondents.**

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Shri P.R.Agrawal, Counsel for Appellants.
Shri P.D.Meghe, Counsel for Respondent No.2 & 4.
Mrs.Mrunal Naik, Counsel for Respondent No.3.

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FIRST APPEAL NO.339 OF 2022

1. Datta Meghe Institute of
Medical Sciences, Sawangi,
(Meghe), tahsil district Wardha,
through its Registrar.

2. Radha Riddhi Associates,
Through its Director,
c/o SOS, Wanadongri,
Hingna Shiva Sawanga,
Nagpur. **Appellants.**

:: V E R S U S ::

1. Smt.Shital wd/o Prasad
Sarodaya, age: 38 years,
occupation: household
work.

2. Ku.Padmaja d/o Prasad
Sarodaya, age: 17 years,
occupation- student.
Being minor, through
natural guardian mother-
respondent No.1.

3. Ku.Shrawani d/o Prasad
Sarodaya, age: 11 years,
occupation- student,
being minor through
natural guardian mother-

respondent No.1.

Respondent Nos.1 to 3, r/o
c/o Sachin Fursule, near
Guru Mandir, Karanja Lad
district Washim.

4. Vishal s/o Manikrao
Lokhande, age: 34 years,
occupation driver, r/o ST colony,
Sharda Nagar, ward No.6,
Dhantoli, Wardha.

corrected address:

Shri Vishal s/o Manikrao Lokhande,
c/o Shri Pravin Kubde,
Ingle layout, S.T.colony,
Sharda Nagar, Wardha-442001.

5. SBI General Insurance Co.
Ltd. through its Branch
Manager, "Natraj" - 101,
102, 301 junction of
Western Express Highway
and Andheri Kurla Road,
Andheri (East) Mumbai –
400069.

..... **Respondents.**

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Shri P.D.Meghe, Counsel for Appellants.

Shri P.R.Agrawal, Counsel for Respondent Nos.1 to 3.

Mrs.Mrunal Naik, Counsel for Respondent No.5.

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CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 27/02/2023

PRONOUNCED ON : 28/04/2023

COMMON JUDGMENT

1. Both these appeals are arising out of the same
judgment and award dated 17.7.2020 passed by the learned

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Member of the Motor Accident Claims Tribunal (learned Member of the tribunal), Mangrulpir in MACP No.26/2014.

First Appeal No.28/2021 is preferred by the claimants for enhancement of compensation.

Whereas First Appeal No.339/2020 is preferred by the owner and challenged the findings of learned Member of the tribunal exonerating the insurance company.

The parties are hereinafter referred as per their original nomenclatures.

2. Brief facts necessary for disposal of these appeals are as under:

On 6.11.2013 , at about 6:30 am, Prasad Vinodrao Sarodaya (the deceased) was proceeding towards Wardha from Karanja in his own car bearing registration No.MH-32-C-4126. When his car reached near Shingnapur Phata, one school bus bearing registration No.MH-31-CB-8915, driven by respondent No.1 (in FA No.28/2021) who is also respondent No.4 (in FA No.339/2022) Vishal s/o Manikrao Lokhande (the driver of the offending school bus), in a rash and a negligent

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manner dashed against the said car of the deceased. Due to the severe dash, the deceased sustained grievous injuries and succumbed to the injuries. The claimants are the wife and children of the deceased. Regarding the said accident, a crime was registered at Nandgaon Khandeshwar Police Station vide Crime No.121/2013. As per the contentions of the claimants, the offending school bus was owned by respondent No.2 (in FA No.28/2021) and appellant No.1 (in FA No.339/2022) Datta Meghe Institute of Medical Sciences, Sawangi, (Meghe), tahsil district Wardha (the Institute) and validly insured with respondent No.3 insurance company. The respondent No.2 (in FA No.28/2021) is the present owner and respondent No.4 Radha Riddhi Associates was the previous owner of the offending school bus. The claimants, therefore claimed that the driver, the owner i.e. the Institute, the previous owner, and the insurance company all are jointly and severally liable to pay compensation. The claimants further claimed compensation on the ground that the deceased was 36 years old, Software Engineer, and was earning Rs.70,000/- per month and, therefore, they are entitled for just compensation.

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3. The Institute respondent no.2 and respondent no.4 the previous owner of the offending school bus resisted the claim by filing written statement. As per their defence, the offending school bus was insured with the insurance company vide cover note No.1088141 validly for 10.7.2013 to 9.7.2014. Hence, the insurance company is liable to indemnify the owners. They denied the allegations of a rash and negligent driving.

4. The insurance company also resisted the claim on the ground that the offending school bus was not insured with the insurance company. The policy bearing No.1088141 for the period 10.7.2013 to 9.7.2014 was cancelled on the request of the previous owner itself on 10.7.2013 and premium was refunded to the previous owner. Hence, the insurance company is not liable to pay the compensation.

5. To substantiate the contentions, the claimant No.1 adduced her evidence. Besides, her oral evidence, she placed reliance on police papers, FIR, spot panchanama, inquest panchanama, accident form, chargesheet, driving licence of the driver of the offending school bus and driving licence of

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the deceased. Besides her oral evidence, to prove the income, she also examined Mahendra Kamble who was serving in I.T. Department. No evidence was adduced on behalf of the Institute and the previous owner of the offending school bus. The insurance company has examined Krishnakant Manohar Santnani and Rahul Sudhir Surpaithankar to show that the policy issued in favour of previous owner of the offending school bus was cancelled on the basis of the instructions received from the previous owner i.e. respondent no.4.

6. After appreciating the evidence, learned Member of the tribunal came to the conclusion that previously the offending school bus was registered in the name of the previous owner and it was sold to the Institute. On the date of the accident, the Institute was the owner who has not insured the vehicle. The policy issued in the name of the previous owner was cancelled on the request of the previous owner as the vehicle was sold and exonerated the insurance company. Learned Member of the tribunal has awarded the compensation of Rs.40,17,145/- to the claimants and directed

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the respondent Nos.1, 2 and 4 to pay jointly and severally along with interest @7.5% per annum.

7. Being aggrieved and dissatisfied with the quantum of the compensation, First Appeal No.28/2021 was filed by the claimants for the enhancement of the compensation on the ground that learned Member of the tribunal had not considered the income of the deceased as per the income tax returns and awarded the compensation inadequately. Whereas, First Appeal No.339/2022 is filed by the Institute respondent no2 and respondent no.4 the previous owner of the offending school bus on the ground that learned Member tribunal erroneously exonerated the insurance company. Merely because the offending school bus was transferred, liability of the insurance company does not lapse and the insurance company is liable to pay the compensation.

8. Heard learned counsel Shri P.R.Agrawal for the claimants, learned counsel Shri P.D.Meghe for the Institute and the previous owner of the offending school bus, and learned counsel Mrs.Mrunal Naik for the insurance company.

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9. Learned counsel Shri P.R.Agrawal for the claimants submitted that the deceased was Software Engineer. The fact that the death of the deceased is caused in an accident which took place in the year 2013 is not in dispute. It is also not in dispute that the offending school bus was initially owned by the respondent no.4 and transferred to the Institute respondent no.2. Merely because the ownership was transferred, it is not sufficient to exonerate the insurance company. Merely on the transfer of the vehicle, the insurance policy does not lapse and the insurance company is liable to pay the compensation. He further submitted that learned Member of the tribunal had not considered the income of the deceased though the claimants have adduced the evidence by examining the Income Tax Officer. The evidence shows that during the life time, the deceased has paid the income tax and after his death, the claimants have paid the income tax. Learned Member of the tribunal had erroneously not taken into consideration the income tax returns which show the income of the deceased Rs.5,67,192/-. The income tax was paid by the claimants after the death of the deceased and awarded the inadequate compensation. The claimants are

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entitled to receive the enhanced amount of compensation. In support of his contentions, he placed reliance on the following decisions:

1. Rukmani Jethani and others vs. Gopal Singh and others, reported in 2021 ACJ 2683;
2. New India Assurance Co.Ltd. vs. Nandini Prabhakar Desai and others, reported in 2018 ACJ 122;
3. National Insurance Co.Ltd. and another vs. Ashok Kumar and others, reported in 2018 ACJ 2260;
4. ICICI Lombard General Insurance Co.Ltd. vs. Mangudi and others, reported in 2012 ACJ 1497;
5. Oriental Insurance Co.Ltd. vs. Sadhana Devidas Gujarathi and others, reported in 2022 ACJ 932;
6. Smt.Anjali and others vs. Lokendra Rathod and others, reported in 2023 AIR (SC) 44;
7. Malarvizhi and others vs. United India Insurance Company Limited and another, reported in 2019 (4) ACC 715;
8. New India Assurance Company Ltd. vs. Rula and others, reported in 2000 ACJ 630;
9. Prakash Chand Daga vs. Saveta Sharma and others, reported in 2019 AIR (SC) 66, and
10. Surendra Kumar Bhilawe vs. The New India Assurance Company Limited, reported in 2020 ACJ 1904.

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10. Learned counsel Shri P.D.Meghe for the Institute and the previous owner of the offending school bus submitted that learned Member of the tribunal has erroneously exonerated the insurance company. A mere transfer of the ownership of the vehicle is not sufficient to exonerate the insurance company. The cancellation of the insurance policy was not communicated to the insured. The third-party is entitled to recover the compensation even from the insurer apart from the driver and owner of the vehicle. The rights accrued in favour of the third-party would not lapse merely because the ownership was transferred. In support of his contention, he also placed reliance on following decisions:

1. **New India Assurance Co.Ltd. vs. Alpa Rajesh Shah and others, reported in 2014(2) Mh.L.J.17;**
2. **Oriental Insurance Company Limited vs. Yogendra Bhalchandra Patil and another, reported in 2006 SCC OnLine Bom 549;**
3. **Shivadevi Jadon and another vs. Shivkumar Sharma and others, reported in 2006(2) M.P.L.J.; 250;**
4. **Oriental Fire & General Insurance Co.Ltd. vs. Shantilata Das and others, reported in 2005 SCC OnLine 76;**
5. **New India Assurance Company Ltd. vs. Rula and others, reported in (2000)3 SCC 195;**

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6. Oriental Insurance Co.Ltd. vs. Balwant Singh Negi and others, reported in 2012 SCC OnLine 311;

7. United India Insurance Company Ltd. vs. Boya Shiva Kumar and another, reported in 2006 SCC OnLine AP 371, and

8. New India Assurance Company Limited, thr. its Divisional Manager vs. Anilkumar and another, reported in 2019 SCC OnLine Bom 2247.

11. Learned counsel Mrs.Mrunal Naik for the insurance company submitted that learned Member of the tribunal has rightly considered that on the date of the accident respondent No.4 was not registered owner in whose favour the policy was issued. The respondent No.4 has not complied with Section 157 of the Motor Vehicles Act, 1988 (the MV Act) by intimating the insurance company about the transfer of the ownership of the offending school bus. The policy was cancelled on the intimation of the respondent No.4 as the offending school bus was transferred and, therefore, the judgment and award passed by learned Member of the tribunal exonerating the insurance company is just and proper. As far as the enhancement is concerned, the income tax returns Exhibits-82 and 83 on which the claimants placed reliance on, were filed for the years 2012-2013 and 2013-

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2014 on the same day on 3.2.2014 which is sufficient to show that the said income tax returns were filed to claim more compensation. The income shown in the income tax returns is not supported by the account entries and, therefore, the evidence is not sufficient to hold that the income of the deceased was Rs.5,67,192/- in the year 2012-2013. Learned Member of the tribunal has rightly considered the income tax acknowledgement wherein the deceased has paid the income tax during his life time. In support of her contention, she placed reliance on the decision of the Karnataka High Court in the case of The Manager, Reliance Insurance Co.Ltd. vs. Smt.Rachana @ Pushpalatha K.Shetty and ors, decided on 13.10.2020 in MFA NO.8322/2016 and on the decision of the Honourable Apex Court in the case of K.Ramya & others vs. National Insurance Co.Ltd. and anr, in Civil Appeal No.7046/2020 decided on 30.9.2022.

12. Having heard learned counsel appearing for rival parties, it is not in dispute that the alleged accident took place on 6.11.2013 when the deceased was proceeding in Maruti Car bearing registration No.MH-32-C-4126. The involvement of the offending bus bearing registration No.MH-31-CB-8915

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is also not in dispute. Regarding the said accident, crime was registered against the bus driver vide Crime No.121/2013. The respondent Nos.2 and 4 challenged the judgment and award only on the ground that learned Member of the tribunal erroneously exonerated the insurance company by accepting that the policy was cancelled. Thus, admittedly the finding of learned Member of the tribunal regarding the rash and negligent driving by the driver of the offending school bus is not under challenge. Even, the evidence of the claimant No.1 if taken into consideration in the background of the police papers that is FIR, spot panchanama which are at Exhibits- 69 , 72 and 73 show that the alleged accident took place due to the rash and negligent driving of the offending bus driver. The crime was also registered against the driver of the offending school. The recital of the report Exhibit-70 shows that bus driver of the offending school bus had driven the offending vehicle in high and excessive speed and dashed against the martin car of the deceased. After due investigation, chargesheet was also filed against the driver of the offending school bus. Thus, the evidence sufficiently

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shows that the alleged accident occurred due to the rash and negligent driving of the driver of the offending school bus.

13. Before entering into crucial aspect of quantum of compensation, it is necessary to see whether learned Member of the tribunal has exonerated the insurance company rightly. After perusal of the evidence, the following points arise for my consideration:

1. Whether learned Member of the tribunal was justified in exonerating the insurance company from paying the compensation on the ground of cancellation of policy on account of transfer of ownership?

2. Whether the claimants are entitled for enhanced amount of compensation by considering Exhibits- 82 and 83, the Income Tax Returns?

14. As already stated by me that before entering into the quantum of compensation, it is necessary to see whether the insurance company is rightly exonerated by learned Member of the tribunal, the observations of learned Member of the tribunal show that the oral and documentary evidence prove that the offending school bus was sold to the respondent No.2 by the respondent No.4 and the insurance policy of the offending school bus was cancelled on the

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request of the respondent No.4 as the ownership was transferred. He further observed that registration certificate of the offending school bus shows that previously the bus was owned by the respondent No.4 and now it was transferred to the respondent No.2. Thus, on the date of the accident, it was the respondent No.2, the owner, and it was the respondent No.4, the previous owner of the offending school, who were held liable jointly and severally to pay the compensation.

15. Before entering into the merits of the case, it is necessary to see the definition of the owner of the vehicle. The expression "owner" is defined in Section 2(3) of the MV Act, which is as under:

"Section 2(3) - "owner" means a person in whose name a motor vehicle stands registered and where such person is a minor, the guardian of such minor and in relation to a motor vehicle which is subject of hire-purchase agreement, or an agreement of lease, or an agreement of hypothication, the person in possession of the vehicle under that agreement."

16. Thus, the person in whose name a motor vehicle stands registered is the owner of the vehicle. The use of the

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expression 'means' is a clear indication of the position that it is the registered owner who is regarded as the owner of the vehicle. Thus, in view of the definition, the registered owner would be the person who would be treated as the owner of the vehicle.

17. In the present case, before deciding whether learned Member of the tribunal has rightly exonerated the insurance company from the compensation or not, it is necessary to see the legal position if the offending school bus was transferred after the policy was obtained in the name of previous owner.

18. Section 146 of the MV Act clearly discloses that the statute intended to give protection to a third party in respect of death or bodily injury or damage to its property while issuing the vehicle in a public place. Thus, the insurance of the vehicle under Section 146 read with Section 147 is made compulsory. These two provisions are made to protect the rights of the third-party. Thus, it is seen that the compulsory insurance is for the benefit of third-party.

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19. Under Section 50, the transferor shall within 14 days of the transfer report the fact of transfer to the registering authority within whose jurisdiction the transfer is to be made effected. Thus, it is seen that the public liability to notify the transfer and securing no objection certificate under Section 50 read with Section 146, would make the original owner retain the insurable interest.

20. The Honourable Apex Court in the case of **G.Govindan vs. New India Assurance Company Limited and others**, reported in **AIR 1999 SC 1398** held as under:

“The registration of the vehicle in the name of the transferee is not necessary to pass title in the vehicle. Payment of price and delivery of the vehicle makes the transaction complete and the title will pass to the purchaser. When the policy of insurance obtained by the original owner of the vehicle is composite one covering the risks for his person, property (vehicle) and the third party claim, on passing of title the transferee cannot enforce his claim in respect of any loss or damage to his person and vehicle unless there is a novation. So far the third party risk is concerned the proprietary interest in the vehicle is not necessary and the public liability continues till the transferor discharges the statutory obligation under Ss. 29-A and 31 read with S.94 of the Act. Till he complies with the requirement of S.31 of the Act, the public liability will not cease and that constitutes the insurable interest to keep the policy alive in respect of the third party risks are

concerned. It must be deemed that the transferor allowed the purchaser to use the vehicle in a public place in the said transitional period and accordingly till the compliance of S.31. the liability of the transferor subsists and the policy is in operation so far it relates to the third party risks."

21. In the case of Pushpa @ Leela & others vs. Shakuntala & others, reported in (2011)2 SCC 240, the Honourable Apex Court has dealt with the aspect of liability of the insurance in case of transfer of the vehicle and defined the definition of ownership as well as aspect of transfer of ownership and held by referring its judgment in the case of Dr.T.V.Jose vs. Chacko P.M., reported in (2001) 8 SCC 748 that even though in law there would be a transfer of ownership of the vehicle, that, by itself, would not absolve the party, in whose name the vehicle stands in RTO records, from liability to a third person. We are in agreement with the view expressed therein. Merely because the vehicle was transferred does not mean that the appellant stands absolved of his liability to a third person. So long as his name continues in RTO records, he remains liable to a third person."

22. In the case of National Insurance Company Limited vs. Laxmi Narain Naren Dhut, reported in AIR 2007 SC 1563

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wherein also the Honourable Apex Court discussed the scope of Section 157 and held that this provision lays down that when the owner vehicle in relation where to a certificate of insurance is issued transfers to another person the ownership of the motor vehicle, the certificate of insurance together with the policy described therein shall be deemed to have been transferred in favour of the new owner of the vehicle with effect from the date of transfer. Sub-section (2) requires the transferee to apply within fourteen days from the date of transfer to the insurer for making necessary changes in the certificate of insurance and the policy described therein in his favour. These are the relevant provisions of Chapter XI which have a bearing on the question of insurer's liability in the present case.

23. In the case of Managing Director, KSRTC vs. New India Assurance Company Limited, reported in (2016)2 SCC 382 the Honourable Apex Court held that what is provided under Section 157 of the Act of 1988 is that the certificate of insurance and the policy described in the certificate shall be deemed to have been transferred in favour of the person to whom the motor vehicle is transferred with effect from the

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date of its transfer. On reading the provisions of Section 147 together with the provisions of Section 157 of the MV Act, it leaves no room for any doubt that there is deemed transfer of policy in case of transfer of vehicle. Hence, liability of insurer continues notwithstanding the contract of transfer of vehicle, such contractual liability cannot be said to be excluded by virtue of second proviso to Section 147(1) of Act of 1988. Higher purchase agreement, an agreement for lease or an agreement for hypothecation are covered under Section 2(3) of the Act of 1988. By virtue of the said provision, under the said agreements, the person in possession of the vehicle is considered to be an owner of the vehicle. It is further held by the Honourable Apex Court that Section 157 of the MV Act deals with the deemed transfer of certificate of insurance. The provisions of Section 157 was reproduced as under:

"157. Transfer of certificate of insurance.—
(1) Where a person in whose favour the certificate of insurance has been issued in accordance with the provisions of this Chapter, transfers to another person the ownership of the motor vehicle in respect of which such insurance was taken together with the policy of insurance relating thereto, the certificate of insurance and the policy described in the certificate shall be deemed to have been transferred in favour of the person to

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whom the motor vehicle is transferred with effect from the date of its transfer.

(2) The transferee shall apply within fourteen days from the date of transfer in the prescribed form to the insurer for making necessary changes in regard to the fact of transfer in the certificate of insurance and the policy described in the certificate in his favour, and the insurer shall make the necessary changes in the certificate and the policy of insurance in regard to the transfer of insurance."

It is apparent from Section 157(1) of the MV Act that certificate shall be deemed to have been transferred in favour of the person to whom the motor vehicle is transferred with effect from the date of its transfer. Section 157(2) of the Act provides that the transferee to apply within 14 days from the date of transfer in the prescribed form to make necessary changes in the certificate of insurance.

It is further held by the Honourable Apex Court that the policy of insurance is contractual obligation between the insured and the insurer. It has not been shown that while entering into the aforesaid agreement of lease for hiring the buses, any of the provisions contained in the insurance policy has been violated. It has not been shown that owner could not have given bus on hire as per any provision of policy. It was

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the liability of the registered owner to provide the bus regularly, to employ a driver, to make the payment of salary to the driver and the driver should be duly licenced and not disqualified as provided in the agreement though buses were to be plied on the routes as specified by the KSRTC and hiring charges were required to be paid to the registered owner. In the absence of any stipulation prohibiting such an arrangement in the insurance policy, we find that in view of agreement of lease the registered owner has owned the liability to pay. The insurer cannot also escape the liability.

It is further observed that apart from that what is provided under Section 157 of the Act of 1988 is that the certificate of insurance and the policy described in the certificate shall be deemed to have been transferred in favour of the person to whom the motor vehicle is transferred with effect from the date of its transfer. Even if there is a transfer of the vehicle by sale, the insurer cannot escape the liability as there is deemed transfer of the certificate of insurance.

24. The Honourable Apex Court in the case of **United India Insurance Company Limited, Shimla vs. Tilak Singh and**

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others, reported in (2006)4 SCC 404 in paragraph Nos.12 and 13 by referring the judgment in the case of Rikhi Ram and another vs. Sukharnia (Smt.) and others, reported in 2003 SCC (Cri) 735 held that the liability of an insurer does not cease even if the owner or purchaser fails to give intimation of transfer to the insurance company, as the purpose of the legislation was to protect the rights and interests of the third-party.

25. Thus, there is consistent view in the judgment of the Honourable Apex Court that though the ownership is transferred, the liability of the insurer does not cease.

26. In the light of the above well settled guided principles, the evidence in the present case requires to be discussed and appreciated. Admittedly, neither the driver of the offending school bus nor the witness on behalf of Institute respondent no,2 and previous owner of the offending school bus entered into the witness box. The respondent No.4 Radha Riddhi Associates was the owner of the offending school bus and was registered owner of the vehicle from 18.6.2007. The entries in the RC Book, the copy of which is at Exhibit-78,

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shows the NOC issued by the Deputy Regional Transport Officer, Wardha dated 31.10.2013 and the motor vehicle was sold to the Datta Meghe Institute. As per the Deputy Regional Transport Officer's order dated 31.10.2013, with passing permission the name of Datta Meghe Institute was registered as registered owner. The internal communication between respondent No.2 Datta Meghe Institute and respondent No.4 Radha Riddhi Associates dated 1.11.2011 shows that total 9 vehicles were handed over by the respondent No.4 to the respondent No.2.

27. The insurance company has adduced the evidence by examining Krishnakant Manohar Santnani which shows that the policy issued in the name of the respondent No.4 was cancelled as the entry was taken in the RC Book in the name of respondent No.2 which shows that the offending vehicle was transferred by the respondent No.4 to the respondent No.2. This witness was not cross examined by the respondent Nos.2 and 4. His evidence further shows that the policy was cancelled on account of change in ownership. The insurance company further examined Rahul Sudhir Surpaithankar vide Exhibit-54 who was serving as Operation Manager in SBI

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General Insurance Company. His evidence is to the extent that the Channel Manager Shahnawaz Qureshi had brought the proposal of the insurance policy of 132 school buses on 22.6.2013. There was exchange of communication through mail by Shahnawaz Qureshi. He also received the E-mails from Jai Ramesh Jain, Jairamesh Jain, Shalini Atulkar and Shahnawaz Qureshi about the cancellation of insurance policy. He further stated that along with the said E-mails he has received the letter from Radha Riddhi Associates about the sale of buses to Datta Meghe Institute of Medical Sciences, Wardha. The letter is at Exhibit-58. On the basis of the said letter, they processed the request of the insured for the cancellation of the policy. Accordingly, the policies of two buses including the offending school bus was cancelled on 10.7.2013. The communication regarding cancellation of the policy is at Exhibit-59. From the cross examination, it reveals that he admitted that the policy was issued after receipt of the proposal form. While issuing the policy, there was no registration certificate in the name of Datta Meghe Institute of Medical Sciences, Wardha. On the date of issuance of

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insurance policy, the vehicle was registered in the name Radha Riddhi Associates.

28. Learned Member of the tribunal while exonerating the insurance company from the liability held that the evidence of the insurance company shows that one Shahnawaz Qureshi who was the Channel Manager of corporate team of SBI General Insurance brought the proposal of the insurance policy of 132 school buses. The communication issued by said Shahnawaz Qureshi is at Exhibit-56. It is further observed by learned Member of the tribunal that Exhibit-57 is the communication regarding cancellation of insurance policy of two buses which is at Exhibit-57. The E-mails regarding cancellation of insurance policy are at Exhibit-57 along with the letter from Radha Riddhi Associates. As per the observation, insurance company processed the request of the insured for the cancellation of policy. In view of that, the policy of two buses including the offending school having policy No.1088141 was cancelled w.e.f.10.7.2013.

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29. Perusal of Exhibit-56 dated 18.6.2013 to 22.6.2013 are the various communications for issuing the insurance to 132 college buses. The subject mentioned in the communication of these E-mails shows that one Shahnawaz Qureshi sent a proposal on 18.6.2013 for accepting the insurance proposal for 132 buses. The communication further shows that he requested to the officials of the insurance company to proceed to accept the approval for insurance of 132 buses with total premium of Rs.41.63 lacs. The communication dated 16.6.2013 is to the effect that said Shahnawaz Qureshi sent a E-mail requesting to process the deal of the insurance of these buses owned by Datta Meghe Group of College which is a giant group. He requested that huge business potential is available for which they are trying to penetrate this group and requested to do the needful. It is further apparent from the said communication that finally the proposal for insurance of 129 buses was accepted. Exhibit-57 shows that it is the communication regarding the cancellation of the policy of two buses from 132 buses' list.

30. Learned counsel Mrs.Mrunal Naik for the insurance company submitted that on the request of Radha Riddhi

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Associates, the insurance policies issued against the two buses including the offending bus were cancelled. To substantiate her contention, she placed reliance on Exhibit-58 which is the communication by Radha Riddhi Associates to the Secretary/Trustee of the Datta Meghe Institute of Medical Sciences. The communication is reproduced hereunder for the reference purpose:

“Dear Sir/Madam,
With reference to above, we are hereby to hand over possession of following buses on receipt of consideration on sale of buses.”

The insurance company cancelled the policy on the basis of this communication. Admittedly, this communication was not addressed to the insurance company by Radha Riddhi Associates. It was internal communication between Radha Riddhi Associates and the Datta Meghe Institute of Medical Sciences. Not only the submission of learned counsel but also the evidence of insurance company shows that policy against the offending school bus was cancelled on the request of Radha Riddhi Associates. The insurance company considered Exhibit-58 as a communication which was not at all addressed to the insurance company. The sum and substance of this

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communication is only to the extent of transfer of possession of nine buses to the Datta Meghe Institute of Medical Sciences by the Radha Riddhi Associates. There was no request to cancel the policy against the two buses. Exhibit-59 is the letter regarding cancellation of policy which shows that policy number 1088141 is cancelled w.e.f.10.7.2013 due to "cancellation due to data entry error". It is further mentioned "insured's request." It is pertinent to note that Exhibit-58 is neither addressed to the insurance company to cancel the policy nor any request is made in the said letter to cancel the policy of two buses including the offending school bus. It is vehemently submitted by learned counsel Mrs.Mrunal Naik that the policy was cancelled as ownership was transferred. If it is to be accepted, the insurance company ought to have cancelled the policy of all 9 buses which were transferred to respondent No.2 by respondent No.4. Exhibit-61 is the extract of premium register which shows that premium was accepted on 30.6.2013 for insuring the offending school bus. The policy number 1088141 was issued for the period 10.7.2013 to 9.7.2013 by accepting the premium and the policy was cancelled w.e.f.10.7.2013. The ground raised by the insurance

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company is that the policy of the offending school bus was cancelled on the request of insured that is Radha Riddhi Associates.

31. Learned counsel Shri P.R.Agrawal for the claimants submitted that it is settled law that even though in law there would be transfer of ownership of vehicles, so long as name of transferor continues in RTO Records, he remains liable to third person.

32. In support of his contentions, learned counsel Shri P.R.Agrawal for the claimants placed reliance on the decision in the case of **Prakash Chand Daga vs. Saveta Sharma and others** cited *supra* wherein the Honourable Apex Court held that even though in law there would be transfer of ownership of the vehicle, that by itself would not absolve the party in whose name the vehicle stands in RTO Record, from liability to third person. Merely because the vehicle was transferred, it does not mean that such registered owner stands absolved of his liability to the third-person.

He further placed reliance on the decision in the case of **Surendra Kumar Bhilawe vs. The New India Assurance**

Company Limited cited surpa wherein also the Honourable Apex Court has held that certificate of insurance is deemed to be transferred in favour of transferee of vehicle with transfer of vehicle.

33. Learned counsel Shri P.D.Meghe for the Institute and the previous owner of the offending school bus also placed reliance on the judgment of this Court in the case of Oriental Insurance Company Limited vs. Yogendra Bhalchandra Patil and another cited *supra* held that the findings of the tribunal that the appellant failed to prove that the letter dated 11.8.1984 by which the policy was cancelled was duly served on the insurance. However, nothing is placed on record to show that cheque was dishonoured and letter cancelling the policy was in fact served by the appellant to the respondent No.2 or to the registering authority. The claims tribunal has not committed any error directing the appellant to satisfy the award which is passed against the insured.

He further placed reliance on the decision in the case of Shivadevi Jadon and another vs. Shivkumar Sharma and others cited *supra* wherein also the Honourable Apex

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Court held that cancellation of the insurance policy - not communicated to the insured by the insurer. It is open to the third-party to recover the compensation.

The Honourable Apex Court in the case of New India Assurance Company Ltd. vs. Rula and others cited *supra* also held that the rights accrued in favour of the third-party prior to cancellation of policy, held, would remain unaffected.

34. Thus, the settled law is that the liability of an insurer does not cease even if the owner or purchaser fails to give intimation of transfer to the insurance company, as the purpose of the legislation was to protect the rights and interest of the third-party. Thus, the situation in which the transferor fails to notify the insurer of the fact of transfer of ownership of the insured vehicle is no different, whether under Section 103-A of the old Act or under Section 157 of the New Act 1988 insofar as the liability towards a third-party is concerned.

35. It is clear from the language of sub-section (1) of Section 157 that when the vehicle is transferred together with

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the policy insurance relating thereto, the certificate of insurance and the policy described therein are deemed to be transferred in favour of transferee from the date of transfer of the vehicle, so far as third parties are concerned. This is a deeming provision and, therefore, only by virtue of the event of transfer of vehicle together with its insurance policy happening that the effect of even the transfer of insurance policy of the vehicle takes place. This provision in sub section (1) is independent provision contained in sub-section (2), which is ministerial in nature and comes into operation after the transfer of ownership of vehicle together with its insurance policy takes place. Under sub-section (2), the transferee is only required to take some steps, within fourteen days from the date of transfer, for formally transferring the insurance policy in the record of the insurance company. It does not contain any provision explaining the consequence of not taking any such procedural steps by the transferee. Absence of such a provision only emphasizes the fact that transfer of insurance policy is controlled by sub-section (1) only, and it takes place the moment there is transfer of ownership of a vehicle together with its insurance policy. The

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vehicle being a movable property, transfer of its ownership, which can be by way of sale or gift, would be governed by the provisions of the Sale of Goods Act, 1930 or the Transfer of Property Act, 1882 and under these provisions, essence of transfer of ownership is the transfer of property in the goods which can be ascertained from the conditions of the contract, intention of parties and/or delivery. That is the reason why sub-section (2) does not contain any provision stating consequence for non-compliance with it. If the transferee fails to apply within prescribed time or does not apply at all to the insurer for making necessary changes in regard to the factum of transfer in the certificate of insurance, it would not result in non-transfer of the insurance policy in favour of transferee.

36. Having considered the nature of provision as contained in sub section (1) and sub section (2) of Section 157 and the settled law by the judgment of the Honourable Apex Court which states that even though in law there would be a transfer of ownership of the vehicle, that by itself would not absolve the party, in whose name the vehicle stands in RTO Records, from liability to third-person merely because the

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vehicle was transferred does not mean that respondent No.3 stands absolved of liability.

37. It is consistently held by the Honourable Apex Court that both under old and the new M.V..Act, the legislature was anxious to protect the third-party (victim) interest. Thus, a victim or legal representatives of the victim cannot be denied the compensation by the insurer on the ground that the policy was not transferred in the name of transferee. It is further held that mere passing of title in the vehicle to the transferee will not put an end to this liability. For this purpose, the provisions under Section 31 of the old Act and under Section 157 (2) of new Act, the transferor shall within 14 days of the transfer report the fact of transfer to the registering authority. It is further consistently held that the liability of the transferor subsists and the policy is in operation so far it relates to the third-party risk.

38. Having considered the well settled law, if the facts in the present cases are examined, the contention of the insurance company that the policy was cancelled on account of request of the Radha Riddhi Associates is not substantiated

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by any evidence. The communication on which the insurance company placed reliance is Exhibit-58 which is not addressed to the insurance company with a request to cancel the policy. It is the communication between the Datta Meghe Institute of Medical Sciences and Radha Riddhi Associates only in respect of handing over the possession of the said policy and, therefore the contentions of the insurance company that the policy was cancelled on the basis of Exhibit-58 which was a request by the Radha Riddhi Associates is not sustainable and not acceptable.

39. In view of the well settled legal position, the insurance company cannot be absolved from the liability to pay the compensation to the third-party. Learned Member of the tribunal ignored the provisions under Section 157 of the MV Act and also ignored the settled law so far as the liability towards the third-party is concerned. Therefore, I have no hesitation to hold that the insurance company is wrongly and erroneously exonerated by learned Member of the tribunal from the liability to pay the compensation. The insurance company is liable to satisfy the liability to pay the compensation to the claimants. In view of that, I answer the

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point accordingly holding the insurance company liable to pay compensation.

40. It is well settled that the just compensation is to be awarded to the claimants. Section 168 of the MV Act deals with the concept of just compensation and the same has to be determined on the basis of reasonableness and by accepting the legal standard. It is also well settled that just compensation is to be awarded to the legal representatives of the person who died in an accident or the injured who sustained the accidental injuries in the accident. The concept of just compensation should be on the basis of fairness and reasonableness. Simultaneously, the compensation cannot be granted as a bonanza though the discretion vested in the tribunal is wide. It is obligatory on the part of the tribunal to be guided by the expression that just compensation. The determination has to be on the foundation of evidence brought on record as regards the age and income of the deceased and, thereafter, by applying the multiplier.

41. In these appeals, First Appeal No.28/2021 was filed by the claimants for enhancement of the compensation

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on the ground that learned Member of the tribunal had only considered the income tax return for assessment year 2011 – 2012 which was for the financial year 2010 – 2011, Exhibit-11, and discarded the income tax returns for assessment year 2012 –2013 (financial year 2011 – 2012) Exhibit-82 and assessment year 2013 –2014 (financial year 2012– 2013) on the ground that those returns were submitted after the death of the deceased in a vehicular accident.

42. Learned counsel Shri P.R.Agrawal for the claimants submitted that the deceased's income tax returns can be considered for computing his annual income in motor accident claim cases. To substantiate his contention, he placed reliance on the decision in the case of Smt.Anjali and others vs. Lokendra Rathod and others cited *supra* wherein the Honourable Apex Court had considered that the appellant had filed the deceased's income tax return for financial year 2009-2010 and held that the income tax return reflects the deceased's annual income. The Honourable Apex Court referred its judgment in the case of Malarvizhi and others vs. United India Insurance Company Limited and another cited *supra* wherein it was held that income tax return is a

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statutory document in which reliance be placed where available for computation of annual income.

43. Here, in the present cases, learned Member of the tribunal has considered Exhibit-81, the income tax return acknowledgement for the year 2011-2012 that is for financial year 2010-2011. The alleged accident took place on 6.11.2013. Admittedly, the income tax was paid for the years 2011-2012 and 2012-2013 on the same day that is on 3.2.2014. There is no dispute that income tax returns filed for the year 2010-2011 during the life time of the deceased which have a greater probative value. However, Exhibits-82 and 83 are of the year 2011-2012 and 2012-2013. For both the years, the income tax was paid on the same day that is on 3.2.2014 that is after the death of the deceased. As per Section 159 of the Income Tax Act, after the death of the assessee, his legal representatives are deemed to be assessee and thus liable for tax liabilities. It is held by this Court in the case of New India Assurance Co.Ltd. vs. Nandini Prabhakar Desai and others cited *supra* that the tax returns filed after the death of the assessee need not be discarded as a rule, but the court should be cautious and circumspect while placing

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reliance on the said returns, if income disclosed in the returns along with the documentary evidence in the form of account books/receipts is found to be cogent and acceptable, then the court should place reliance upon the same.

44. I have gone through the evidence of the claimants and the evidence of PW2 Mahendra Kamble who was serving in the I.T.Department. Perused the income tax returns. The income tax returns Exhibits-82 and 83 are filed on 3.2.2014 for the year 2012-2013 that is financial year 2011-2012 and financial year 2012-2013 on the same day. Admittedly, it is not supported by the any account book extracts. Though the bank statement was filed, it was not proved. The income tax returns are also not supported with any receipts. Thus, in absence of the evidence and considering the income tax returns for two years filed on the same day, learned Member of the tribunal has rightly discarded the evidence Exh, 82 ,83 and considered Exhibit-81 to consider the income of the deceased and, therefore, the contention of learned counsel Shri P.R.Agrawal for the claimants that learned Member of the tribunal has committed an error in calculating the amount of compensation by accepting the income mentioned in Exhibit-

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81 is not acceptable. Learned Member of the tribunal has rightly considered the income of the deceased on the basis of Exhibit-81 and, therefore the contention of the claimants that they are entitled to receive the compensation by accepting the income mentioned in Exhibits-82 and 83 is not sustainable.

45. Learned Member of the tribunal awarded the compensation of Rs.40,000/- to claimant No.1, the widow of the deceased, under the head of spouse consortium. The Honourable Apex Court in the case of National Insurance Company Limited vs. Pranay Shetty and others, reported in (2017)16 SCC 680 held that the concept of loss of consortium in legal parlance is the right of the spouse to the company, care, help, comfort, guidance, society, solace, affection and sexual relations with his or her mate. The said non pecuniary damages have not been properly understood by our Courts.

In the case of Magma General Insurance Co. Ltd vs Nanu Ram Alias Chuhru Ram, reported in 2018 Law Suit (SC) 904 by referring the judgment of the Constitution Bench in the case of National Insurance Company Limited vs. Pranay Shetty and others cited *supra* the Honourable Apex Court held

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that in legal parlance, "consortium" is a compendious term which encompasses 'spousal consortium', 'parental consortium', and 'filial consortium'. The right to consortium would include the company, care, help, comfort, guidance, solace and affection of the deceased, which is a loss to his family. Parental consortium is granted to the child upon premature death of a parent, for loss of parental aid, protection, affection, society, discipline, guidance and training. Filial consortium is the right of the parents to compensation in the case of accidental death of a child causes great shock and agony to the family.

46. In the light of the above principles laid down by the Honourable Apex Court, here in the present case also, it appears that learned Member of the tribunal has not considered the above said aspect and not awarded the consortium to the children, the claimant Nos.2 and 3. In view of the Honourable Apex Court judgment, the claimant Nos.2 and 3 are also entitled to receive Rs.40,000/- each under the head of parental consortium. Learned Member of the tribunal further only awarded the amount of Rs.15,000/- towards loss of estate to the claimant No.1. The Honourable Apex Court in

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the case of National Insurance Company Limited vs. Pranay Shetty and others cited *supra* held that the claimants are entitled to receive the compensation under the head of loss of estate at the rate of Rs.15,000/- each. In view of that , the claimant Nos.2 and 3 are entitled to receive compensation of Rs.15,000/- each towards the loss of estate. In view of that, the claimants are entitled to receive additional compensation of Rs.1,10,000/- in addition to the compensation awarded by learned Member of the tribunal.

47. In the light of the above discussion, First Appeal No.28/2021 filed by the claimants is partly allowed by allowing the compensation to the claimant Nos.2 and 3 under the head of parental consortium and loss of estate. And, First Appeal No.339/2022 filed by the Datta Meghe Institute of Medical Sciences and Radha Riddhi Associates deserves to be allowed. Hence, I pass following order:

ORDER

(1) First Appeal No.28/2021 is **partly allowed**. The judgment and award dated 17.7.2020 passed by learned Member of the

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Motor Accident Claims Tribunal, Mangrulpir in MACP No.26/2014 is modified.

(2) The claimant Nos.2 and 3 are entitled to receive the additional amount of compensation of Rs.1,10,000/- along with interest at the rate of 7.5% from the date of application.

(3) First Appeal No.339/2022 is **allowed**. The judgment and award dated 17.7.2020 passed by learned Member of the Motor Accident Claims Tribunal, Mangrulpir in MACP No.26/2014 exonerating the insurance company is quashed and set aside.

(4) The SBI General Insurance Company Limited is directed to satisfy the award passed by learned Member of the tribunal and pay additional amount of compensation awarded by this Court, as aforesaid, within a period of two months from the date of receipt of writ of this judgment.

With this, the first appeals are **disposed of**.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!

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