



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.1086 OF 2020
WITH
CIVIL APPLICATION NO.3376 OF 2020
IN FA/1086/2020

United India Insurance Company Ltd.,
Through its Administrative Officer (T.P. Hub)
Hari Shivram Lambhe,
Age 56 yrs., Occ. Service,
R/o United India Insurance Company Ltd.,
Divisional Office – I,
Osmanpura, Aurangabad.

... Appellant

... Versus ...

- 1 Dattatray Vishwanath Shounak,
Age 71 yrs., Occ. Nil,
R/o Shivajinagar, Hingoli,
Tq. & Dist. Hingoli.
- 2 Shaikh Rauf s/o Shaikh Kalu,
Age – Major, Occ. Business,
R/o Pahur Kasbe, Tq. Jamner,
Dist. Jalgaon.
- 3 Balaji Lahu Kendre,
Age – Major, Occ. Business,
R/o Shyamnagar, Latur,
Dist. Latur.
- 4 Reliance General Insurance Co. Ltd.,
Through its Branch Manager,
Branch at 8, Central Plaza,
99, Gold Finch Peth, Solapur,
Dist. Solapur.

... Respondents

...

Mr. S.S. Rathi, Advocate for appellant

Mr. P.N. Kalani, Advocate for respondent No.1

Mr. R.R. Imale, Advocate for respondent No.2

...

**CORAM : SMT. VIBHA KANKANWADI &
ABHAY S. WAGHWASE, JJ.**

RESERVED ON : 20th DECEMBER, 2023

PRONOUNCED ON : 10th JANUARY, 2024

JUDGMENT : (PER : SMT. VIBHA KANKANWADI, J.)

1 Present appeal has been filed by original respondent No.2 – Insurance Company to challenge the Judgment and Award passed by learned Member, Motor Accident Claims Tribunal, Hingoli in Motor Accident Claim Petition No.332/2012 on 02.11.2019, thereby holding the original respondent Nos.1 and 2 responsible to pay compensation, jointly and severally, to the claimants.

2 The original claimant No.1 is the father of Dr. Vipin Dattatraya Shounak, who was aged 25 years. Deceased Dr. Vipin had completed his M.B.B.S. and served as Medical Officer in Government Hospital, Shegaon, Dist. Buldhana. At that time he was earning Rs.35,000/- per month, however, he left the job in May, 2011 to pursue his post graduation in M.D.

He took admission in June, 2011 for the course of M.D. at M.I.M.S.R. Medical College, Latur. It will not be out of place to mention here that when the claim petition was filed, it was filed by two persons i.e. original claimant No.1 – father as well as mother of deceased Dr. Vipin, however, during the pendency of the petition mother expired. She is survived by the present respondent No.1 i.e. original claimant No.1.

3 It has been contended in the petition that Dr. Vipin was proceeding in Tavera jeep bearing registration No.MH-24/B-1646 on 11.02.2012 towards Bhusawal from Latur. All of them were intending to attend marriage of sister of their friend. The said Tavera jeep belong to respondent No.3 and it was insured with respondent No.4. The vehicle reached near village Sunasgaon on Aurangabad-Jalgaon road around 11.30 p.m., at that time Tata Truck bearing No.MH 04-C-1631 came from opposite direction and gave dash to Tavera jeep. The truck belong to respondent No.1 and was insured with respondent No.2. According to the original claimants, accident has taken place due to the rashness and negligence on the part of driver of both the vehicle. As a result of the accident and injuries caused to the passengers Dr. Vipin died on the spot and the other friends had received severe injuries. Dr. Vijay, who is the brother of deceased Dr. Vipin, lodged report with Jamner Police Station on 12.02.2012, thereupon offence vide

Crime No.25/2012 came to be registered against the driver of the truck. The claimants had claimed compensation of Rs.4,25,00,000/- by contending that the deceased would have earned at least amount of Rs.1,00,000/- per month. Interest @ 18% per annum from the date of the filing of the petition till its realization has been prayed.

4 Original respondent No.1 filed written statement at Exh.30 and denied all the allegations. Income, age and the manner in which the accident had alleged to have taken place as stated in the petition has been denied. It has been contended that the accident took place due to the sole negligence on the part of the driver of Tavera jeep. It is stated that the truck was validly insured with respondent No.2 and his driver was holding valid and effective driving licence to drive the truck on the date of accident, therefore, there is no breach of terms of policy. It was contended that the driver of both the vehicles has not been made party to the claim petition, and therefore, the petition suffers from non-joinder of necessary party.

5 Original respondent No.2 filed written statement at Exh.21. It has also denied age, income and the contents about manner in which the accident took place as alleged in the petition. It is denied that the truck involved in the accident was insured with it on the date of the accident. But contended that the driver was not holding valid and effective driving licence,

therefore, there was breach of terms of policy. It is also contended that there was no valid permit to the truck on the date of accident.

6 Respondent No.3 has filed written statement at Exh.24. He admitted that he is the owner of Tavera jeep. Though initially it appears that it was tried to be contended that the Tavera jeep is not involved in the accident; yet, later on it is stated that the driver of the jeep was not driving the vehicle rashly and negligently. The accident had taken place due to the negligence on the part of respondent No.1 and the Tavera jeep was insured with respondent No.4.

7 Respondent No.4 filed written statement at Exh.16. All the contents are denied specifically except the fact that Tavera jeep was insured with it. It is contended that there is breach of terms of policy and, therefore, the insurance company should be exonerated. It is also stated that the Tavera jeep driver was not negligent or rash.

8 Taking into consideration the rival contentions issues came to be framed. Only the claimants have led oral as well as documents evidence, but it appears that the respondent Nos.1, 2 and 3 failed to adduce evidence and respondent No.4 filed a pursis that it does not want to lead any evidence. Taking into consideration the evidence on record and hearing both sides the

learned trial Judge has come to the conclusion that Dr. Vipin died in road accident involving both the vehicles, however, the truck driver while driving truck bearing registration No.MH-04/C-1631 was responsible for the accident. He was rash and negligent. Original respondent No.2 failed to prove that there is breach of terms of policy. Compensation of Rs.46,23,400/- has been awarded together with interest @ 9% per annum from the date of filing of the petition till actual realization of the amount. This Judgment and Award is under challenge in the appeal filed by original respondent No.2 – insurance company of the truck.

9 Heard learned Advocate Mr. S.S. Rathi for the appellant, learned Advocate Mr. P.N. Kalani for respondent No.1 and learned Advocate Mr. R.R. Imale for respondent No.2.

10 It has been vehemently submitted by learned Advocate Mr. S.S. Rathi for the appellant that the learned trial Judge has failed to consider that as per the contention of the original claimant No.1 himself the accident had taken place due to the negligence on the part of driver of both the vehicles and, therefore, it could not have been held that the rashness and negligence was that of only one vehicle. There was head on collision between the two vehicles and, therefore, it ought to have been held that it was a case of contributory negligence. Saddling the compensation only on original

respondent Nos.1 and 2 was erroneous.

11 It has been further vehemently submitted that the learned trial Judge has not considered the point as to whether the father, who was not dependent on the earnings of deceased, would have been entitled to get the compensation. CW 1 Dattatraya has admitted in the cross-examination that he has retired from the post of Executive Engineer, which was a Government job. Though he denied that he is getting pension, it is hard to believe that for any reason he would not have been getting the pension. Further, in his examination-in-chief itself it has come on record that after Dr. Vipin passed M.B.B.S., he got a temporary job in the Government Hospital and it has been so disclosed by CW 2 Mohansingh Thakur, who was the Senior Clerk in Saibai Mote Civil Hospital, Shegaon, but he left the job after 30.06.2011 and then he was taking higher medical education i.e. M.D. That means, he was not earning on the date of accident. Still the learned Tribunal calculated the loss by presuming that he would have earned at least Rs.33,910/- per month. At the most, the father would have entitled to the compensation under the head loss of estate, loss of filial, funeral expenses etc. but, certainly there was no loss of dependency or income as though the father can be said to be a legal representative; yet, he was not dependent on the earnings of the deceased. Here, the deceased was not earning at all.

12 The learned Advocate appearing for the respondent No.2 – appellant relied on the decision in **Smt. Sarla Verma and others vs. Delhi Transport Corporation and another** [(2009) 6 SCC 121], especially paragraph No.15, which runs thus -

“15. Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent/s and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependent and the mother alone will be considered as a dependent. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependents, because they will either be independent and earning, or married, or be dependent on the father. Thus even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependent, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However, where family of the bachelor is large and dependent on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third.”

The deceased in this case was also a bachelor. The learned

Advocate further relied on **Farzana d/o Abbas Bhai and another vs. Maharashtra State Road Transport Corporation** [2016 (4) Mh.L.J. 602], decision by the Single Bench of this Court, wherein after relying on **Gujarat State Road Transport Corporation, Ahmedabad vs. Ramanbhai Prabhatbhai and another** [(1987) 3 SCC 234] and **Manjuri Bera vs. Oriental Insurance Company Ltd. and another** [(2007) 10 SCC 643] it was held that - “*Aspect of dependency has to be pleaded and proved by claimants before any compensation is granted to them.*” In the case before the Hon’ble the Single Bench it was held that the original claimants had not led any evidence to indicate their dependency on deceased and, therefore, it was held that they had failed to prove that they were dependent on the deceased for being entitled to receive compensation. Learned Advocate for the appellant, therefore, prayed for allowing the appeal.

13 Per contra, the learned Advocate appearing for the original claimant No.1 – respondent No.1 submitted that in the sister petition i.e. arising out of the same accident, petition was filed bearing Motor Accident Claim Petition No.264/2012 before learned Member, Motor Accident Claims Tribunal, Latur, wherein also respondent No.2 – appellant was party and it was decided on 18.09.2011 that the accident had taken place due to the sole negligence on the part of the driver of the truck owned by respondent No.1.

The said decision would be binding on the appellant as no appeal has been preferred by insurance company. Though the original claimant No.1 was not the eye witness to the incident; yet, even the insurance company had not led any evidence to prove that the driver of the Tavera vehicle was also responsible for the accident. The learned Tribunal in this case had taken into account the police papers and also the decision by Member, Motor Accident Claims Tribunal, Latur as the judgment has been produced at Exh.65 and, therefore, it has been rightly held that the accident took place due to the negligence on the part of driver of the truck owned by respondent No.1 and insured with respondent No.2 and, therefore, respondent Nos.1 and 2 were liable to pay compensation jointly and severally.

14 It has been further submitted that initially when the petition was filed, even the mother of the deceased was a party. Even if for the sake of argument it is accepted that father alone would not have been entitled to receive the compensation; yet, when it comes to the fact that even the mother was alive and would have received the compensation, then as a legal representative of original claimant No.2 he would now be entitled to get entire amount of compensation. Learned Advocate relied on following case laws -

- 1) **Sarla Verma (Smt) and others vs. Delhi Transport Corporation**

and another [(2009) 6 SCC 121];

2) **National Insurance Company Limited vs. Pranay Sethi and others** [(2017) 16 SCC 680];

3) **The New India Assurance Company Limited vs. Smt. Saira Imtiaz Lambe** [2015 SCC OnLine Bom 7005];

4) **Manjuri Bera (Smt) vs. Oriental Insurance Company Limited and another** [(2007) 10 SCC 643];

5) **Sachin Shrawan Wabale (Patil) and others vs. Narsingh Poladsingh Rajput and another** in First Appeal No.3399 of 2011 with companion matter on 19.10.2018.

By referring to **Manjuri Bera (Smt.)** (supra) he submitted that it has been observed that - *“According to Section 2(11) of the Code of Criminal Procedure ‘legal representative’ means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased.”* Then taking note of the earlier decision it has been observed that *“A legal representative is one who suffers on account of death of a person due to a motor vehicle accident and need not necessarily be a wife, husband, parent and child.”* Therefore, the father is also included. It was specifically stated by original claimant No.1 that though he was a Government servant and retired; yet, he was not getting pension. It was due to the inquiry pending against him. Further, though deceased had left his job

for persuading his higher studies, it has been rightly considered by the learned Tribunal that he was capable of earning Rs.33,910/- which he used to get before he left or discontinued his service in Government. Potential to earn was required to be considered and, therefore, the calculation in respect of compensation is perfectly correct. The appeal, therefore, deserves to be dismissed.

15 Taking into consideration the rival contentions following points are arising for determination, findings and reasons for the same are as follows.

Sr. Nos.	POINTS	FINDINGS
01	Whether claimant – respondent No.1 has proved that the accident was caused due to the sole rashness and negligence in the driving of truck driver while driving truck bearing No.MH-4/C-1631 ?	In the affirmative.
02	Whether the claimant – respondent No.1 was entitled to file the petition and receive the compensation ? If yes, whether the compensation that has been awarded by the Tribunal is correct and legal ?	In the affirmative.

REASONS**Point No.1 :**

16 At the outset, we would like to say that even if the original claimants might have contended that both the drivers were responsible for the accident; yet, it depends upon the admissible evidence, because many times on the safer side such averments are made, so that it should not happen that the claimants have not claimed compensation on both sides. In many cases none of the claimants are the eye witnesses and, therefore, they would depend on the information supplied to them by the various authorities. Here, apart from making the said statement the claimants had produced the police papers, in which the offence came to be registered against the truck driver and, therefore, we need not go with the statement made by the claimant. Rather it has been extracted from him by the respondents in the cross that he has not witnessed the accident.

17 The most important fact is that in the sister claim which came to be decided by Motor Accident Claims Tribunal, Latur i.e. Motor Accident Claim Petition No.264/2012 was the injury claim and, therefore, the injured person who is an eye witness, his account was available to the learned Member and based on the evidence that was led in the said matter it was

held that the said accident took place due to the sole negligence on the part of driver of the truck. Perusal of Judgment in the said petition, certified copy of which has been produced at Exh.65, would show that specific issue was framed – As to whether respondent No.3 (present appellant – insurance company) proved that the accident occurred due to rash and negligent driving of Tavera jeep ? And the finding was given ‘In the negative’. In fact, we had adjourned the matter to enable the learned Advocate for the appellant to take instructions as to whether the insurance company has challenged the findings in Motor Accident Claim Petition No.264/2012 making it as well as truck owner only liable to pay compensation. After instructions, he submitted that the insurance company has not preferred any appeal to this Court. He tried to justify by saying that as the amount was very less that was granted to the claimant therein that decision was taken. We are not impressed by the said explanation. When it comes to the question of responsibility/liability to pay compensation, then the amount of compensation that has been awarded carries no importance. The liability has to be challenged independently. The said finding in the sister petition arising out of same accident is definitely binding on the insurance company and, therefore, the appellant is in fact, now, estopped from making submissions that it was the case of contributory negligence. In fact, no such contention has been raised in the written statement. The insurance company has not led

any evidence to either prove that it was sole negligence of Tavera jeep or the driver of the Tavera jeep has contributed to the accident.

18 The spot panchnama certified copy Exh.41 specifically makes a mention that the truck had gone to the wrong side and after giving dash to the Tavera jeep had further gone to the wrong side. The prosecution was against the truck driver. Therefore, there was sufficient evidence adduced by the claimant to prove that the said accident took place due to the sole negligence on the part of truck driver of the truck owned by respondent No.1 and insured with respondent No.2. Point No.1 is therefore, answered in the affirmative.

Point No.2 :

19 Taking note of the observations in paragraph No.15 of **Sarla Verma** (supra), **Gujarat State Road Transport Corporation, Ahmedabad** (supra), **Manjuri Bera** (supra) and **Anju Mukhi and another vs. Satish K. Bhatia and others** [(2010) 15 SCC 630] it can be certainly observed that right to apply for compensation is to the legal representative who has been then defined under Section 2(11) of the Code of Civil Procedure. Section 166(1) (c) of the Motor Vehicles Act, 1988 says that an application for compensation where death has resulted from the accident can be by all or any of the legal

representatives of the deceased. We cannot forget that when the claim petition was filed, at that time, mother of deceased Vipin was alive and she was claimant No.2, however, by application Exh.31 her name came to be deleted in view of the fact that she died on 31.12.2014. Meaning thereby, she was surviving by claimant No.1 – the husband. At no point of time it appears that respondent Nos.1 and 2 had raised any objection. Submissions were, however, made at the time of final hearing stating that since the father is receiving the pensionary benefits was not dependent on deceased Vipin. At no point of time, it was argued on behalf of the insurance company that the claimant Dattatraya cannot inherit or succeed to the compensation amount which the mother could have received, if she would have got the said amount and then would have expired. Even in **Manjuri Bera** (supra) it is not stated that there is total bar in filing the petition by such a person who was not dependent on the income of the deceased. It is rather held that such person would be then entitled to get the compensation under other heads like loss of estate, loss of love and affection, No Fault Liability etc. Therefore, right to apply for compensation cannot be disputed. Here, in this case, the facts are further different. Mother who is the Class-I heir as per Hindu Succession Act of deceased Vipin was certainly entitled to get compensation and after her death the present respondent No.1 Dattatraya – in the capacity as her husband, is entitled to receive the said compensation. The learned Tribunal

has correctly given the said finding in favour of the original claimant Dattatraya.

20 Thus, it can be concluded that claimant was entitled to receive compensation from respondent Nos.1 and 2, jointly and severally. Another fact to be noted is that CW 1 Dattatraya has stated that he was not getting pension and was dependent on deceased Vipin. In view of aforesaid reasons we need not consider the dependency of Dattatraya on Vipin and even if it is held that he was not dependent, still then he would be entitled to get the compensation as the legal representative of original claimant No.2. CW 1 Dattatraya though undertook to produce on record the reason as to why he was not getting pension, it appears that no documentary evidence has been produced and no evidence to that effect has been adduced. Unless it is proved, it cannot be accepted that a retired Government servant is not getting pension. However, for the aforesaid reasons he is entitled to get the compensation.

21 Now, the question of quantum of compensation will arise. It has come on record and even it was the pleadings of the original claimants that for certain period only Dr. Vipin served in Government Hospital and then left the job. He had taken admission in M.D. His salary slip has been proved by CW 2 Thakur, in respect of salary, which Dr. Vipin used to get while in

service. It was the fixed salary of Rs.33,910/-. Important point to be noted is that when he left the job around 30.06.2011, he had already taken admission in May, 2011 for the M.D. Course. Definitely, after the completion of the said course he would have got the job and taking into consideration his qualification, though taken as M.B.B.S. only, it would have given him at least Rs.33,910/- per month and, therefore, the calculation made by the learned trial Judge on the basis of said amount is perfectly correct. In other words, the education qualification and the previous employment together with the fact that he was taking education in post graduation was required to be considered and his compensation could not have been assessed on the basis of notional income. The learned trial Judge has taken into consideration the decision in **Sarla Verma** (supra) as well as **Pranay Sethi** (supra) while making the calculations. In an ordinary course we could have considered the decision in **Magma General Insurance Company Limited vs. Nanu Ram Alias Chuhru Ram and others** [2018 (4) TAC 345] for granting amount under the head of loss of estate and loss of filial, but there is no petition for enhancement by respondent No.1. Under the said circumstance, the impugned Judgment and Award is perfectly legal and based on sound principles of law. The point is therefore, answered in the affirmative.

dismissed with costs. Hence, following order.

ORDER

- 1 The First Appeal stands dismissed with costs.
- 2 Award be drawn accordingly.
- 3 Civil Application stands disposed of.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)

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