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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.237 OF 2016

The Reliance General Insurance Company
Through its Authorized Signatory /
Branch Manager,
C-9 & C-10, ABC Complex
Adalat Road, Aurangabad

APPELLANT

VERSUS

1. Rekha w/o Manojkumar Chauhan
Age - 47 years, Occ - Service
R/o Samarth Nagar, Behind Zilla Parishad
Jalna, Taluka and District - Jalna
2. Ratnakar s/o Achyutrao Wadhekar
Age - 49 years, Occ - Service
R/o Mangu Jalgaon, Taluka - Ghansawangi
District - Jalna,
At present R/o Sonal Nagar,
Near House of Jalke Patrakar Jalna
Taluka & District - Jalna

RESPONDENTS

.....
Mr. A. S. Usamnapur, Advocate for the Appellant
Mr. R. J. Nirmal, Advocate for Respondent No.1
Mr. K.R. Yadav h/f Mr. S. J. Salunke, Advocate for Respondent No.2
.....

[CORAM : NITIN B. SURYAWANSHI, J.]

RESERVED ON : 5th SEPTEMBER, 2024
PRONOUNCED ON : 7th OCTOBER, 2024

JUDGMENT:

1. This appeal, filed by the Insurance Company, under section 173 of the Motor Vehicles Act, challenges Judgment and Award dated 23rd March, 2015, passed by the Motor Accident Claims Tribunal, Jalna in MACP No. 245 of 2010.

2. Facts, which are not in dispute, are that, on 25th October, 2010, Manojkumar Indersing Chauhan was proceeding on motorcycle No MH-21/AA-7075 from Ranjani to Jalna, as a pillion rider. Ratnakar Achyutrao Wadhekar (present Respondent No.2), his colleague teacher, was driving the motorcycle. He gave dash to one cow, who come in the way, due to which Manojkumar fell down and received serious injuries to his head. He was admitted in hospital, however, he succumbed to the injuries. FIR is lodged by the claimant with Sadar Bazar Police Station and Crime No. 294 of 2010 for offence punishable under section 279, 337, 338 304-A of the Indian Penal Code and under section 236/177 of the Motor Vehicles Act was registered against present respondent No.2.

3. Claimant filed claim application contending that deceased was 45 years old and was getting monthly salary of Rs.30,488/-. Compensation of Rs.36,30,752/- was, therefore, claimed.

4. The second respondent – driver of the motorcycle filed his written statement and admitted that he was along with the deceased at the time of the accident, however, he denied that the accident occurred due to his rash and negligent driving. He contended that cow had given dash to the motorcycle.

5. Insurance Company opposed the claim, by filing written statement. The Tribunal, after recording evidence, partly allowed the claim against the owner and the Insurance Company and directed them to jointly and severally pay an amount of Rs.27,56,000/- along with interest @ 7.5% p.a. to the claimant. The Insurance Company is aggrieved by the quantum of compensation awarded by the Tribunal.

6. Heard learned advocate for the appellant - insurance Company, learned advocate for respondent No. 1 - claimant and learned advocate for respondent No.2 - owner of the motorcycle. Perused the appeal memo, the impugned Judgment and Award, the record and the citations relied on by the learned advocates for the parties.

7. Learned advocate for the appellant - Insurance Company assailed the impugned Judgment and Award contending that at the time of accident the driver / owner of the motorcycle was holding learner's licence, therefore had no effective driving licence. Therefore, by relying on Rule 3 of the Central Motor Vehicle Rules, he submits that the same cannot be said to be a valid driving licence and hence, in view of breach of conditions of the policy, the Insurance Company could not be held liable to pay the compensation. He also challenged the quantum of

compensation awarded by the Tribunal, contending that the claimant – wife of the deceased being in service, cannot be said to be dependent on the deceased. According to him, there is an arithmetical error in calculations of the compensation amount. In item No. 5 of paragraph No. 17 of the impugned judgment and Award, 30% excess income is calculated at Rs.6,54,000/-, which should be Rs.5,88,000/-. He submits that considering the fact that mother of the deceased was also claimant, who expired during pendency of the claim petition, the Tribunal ought to have deducted 50% amount towards personal expenses of the deceased. From the income of the deceased, 30% income tax ought to have been deducted, in view of the decision of the Apex Court in ***“Shamwati Sharma and Others V/s Karam Singh and Others” 2010 AIR SCW 4391***. In support of his submissions, he relied on following judgments :

- I. *“Rama Nand Pandey and Others V/s Nisha Tiwari and Others” 2005 ACJ 1968*
- II. *“The Branch Manager, National Insurance Company Limited V/s M. Selvam and Others” 2023 ACJ 2100*
- III. *“National Insurance Co. Ltd V/s Veena and Others” 2018 ACJ 1558*
- IV. *“Oriental Insurance Co. Ltd., V/s Nanjappan and Others” 2004 ACJ 721*

8. Per contra, learned advocate for the claimant supported the impugned Judgment and Award. By relying on the judgment of **“National Insurance Co. Ltd., V/s Swaran Singh and Others” 2004 (3) SCC 297**, he submits that at the most, the Insurance Company needs to be directed to pay compensation amount and recover it from the owner of the motor cycle. He submits that merely because claimant was in service, it cannot be said that she was not dependent on the deceased. He submits that contention in respect of income tax deduction was not raised by the Insurance Company before the Tribunal.

9. Learned advocate for respondent No. 2- owner, by relying on observations of the Tribunal in para 13, wherein **Swaran Singh’s** judgment (*supra*) is discussed, submits that owner is not liable to pay compensation. He also relied on paragraph No. 93 of **Swaran Singh’s** judgment (*supra*) and submitted that the owner is not liable to pay the compensation amount. In support of his submissions, he also relied on **“Ram Chandra Singh V/s Rajaram and Others” AIR 2018 SC 3789**.

10. Accidental death of Manojkumar is not in dispute, so also the fact that he was 45 years old at the time of the accident and was in service as Assistant Secondary Teacher in Saraswati Bhuvan High School, Ranjani and was drawing monthly salary of

Rs.30,488/-. It is a matter of record that second respondent was holding learner's licence (Exhibit-64) on the date of the accident, issued to him on 20th October, 2010. The accident has taken place on 25th October, 2010 and subsequently, he has obtained permanent driving licence.

11. In paragraphs No.93 and 94 of the **Swarn Singh** (*supra*), the Apex Court has observed :

“93, The Motor Vehicles Act, 1988 provides for grant of learner's licence. [See Section 4 (3), Section 7 (2), Section 10 (3) and Section 14]. A learner's licence is, thus, also a licence within the meaning of the provisions of the said Act. It cannot, therefore, be said that when a vehicle is being driven by a learner subject to the conditions mentioned in the licence, he would not be a person who is not “duly licenced” resulting in conferring a right on the insurer to avoid the claim of the third party. It cannot be said that a person holding a learner's licence is not entitled to drive the vehicle. Even if there exists a condition in the contract of insurance that the vehicle cannot be driven by a person holding a learner's licence, the same would run counter to the provisions of Section 149 (2) of the said Act.

94. The provisions contained in the said Act provide also for grant of driving licence which is otherwise a learner's licence. Section 3 (2) and 6 of the Act provide for restriction in the matter of grant of driving licence. Section 7 deals with such restrictions on granting of

learner's licence. Sections 8 and 9 provide for the manner and conditions for grant of driving licence. Section 15 provides for renewal of driving licence. Learners licences are granted under the Rules framed by the Central Government or the State Government in exercise of their rule - making power. Conditions are attached to the learner's licences granted in terms of the statute. A person holding learner's licence would, thus, also come within the purview of "duly licenced" as such a licence is also granted in terms of the provisions of the Act and the Rules framed thereunder. It is now a well settled principle of law that rules validity framed become part of the statute. Such rules are, therefore, required to be read as a part of the main enactment. It is also a well settled principle of law that for the interpretation of statute an attempt must be made to give effect to all provisions under the rule. No provision should be considered as surplusage."

12. In the light of aforesaid observations, there is no merit in the contention of the Insurance Company that the second respondent was not holding effective driving licence, on the date of the accident and, therefore, there is breach of terms and conditions of the insurance policy and hence, the Insurance Company is not liable to pay the compensation. Considering the aforesaid ruling, the Tribunal has observed that, *"However, taking into consideration, the peculiar facts and circumstances of the case, it is not a case where and it can be gathered that there is*

serious lapse on the part of respondent no.1, which will justify to make applicable the principle of 'pay and recover'. Because the motorcycle cannot be termed to be a heavy vehicle, further it can be said that the respondent no.1 was not holding any licence at all". By observing this, the Tribunal has rightly held that the Insurance Company has failed to prove that there was breach of terms and conditions of the insurance policy so as to apply the principle of "pay and recover".

13. In **M Selvam** (*supra*), learned Single Judge of Madurai Bench of Madras High Court has held that learner's driving licence cannot be regarded as effective driving licence, unless the driver is accompanied by instructor, who is duly licenced person. Therefore, it is held that learner's licence if it is utilized without being accompanied by the instructor, cannot be effective licence so as to attract indemnification clause in the Insurance Policy.

14. In **Rama Nand Pandey** (*supra*), learned Single Judge of Delhi High Court has held that at the time of accident, driving licence was expired and it was renewed subsequently. In these facts, as on the date of the accident, driver was not having a valid driving licence and renewal of licence cannot be deemed to have retrospective validity from the date of expiry of earlier

licence.

Both these rulings are of no help to the Insurance Company, in view of the decision of the Apex Court in ***Swaran Singh*** (*supra*).

15. In ***Veena and Others*** (*supra*), learned Single Judge of this Court at Nagpur, in the facts of that case, has held that there was breach of policy by the insured. Tribunal, instead of exonerating the Insurance Company issued 'pay and recover' order. In appeal, filed by the Insurance Company, seeking direction to the owner to furnish security for entire compensation amount, this Court issued such direction to the owner.

As it is already held that the Insurance Company has failed to prove breach of terms and conditions of the Insurance Policy, this decision is of no help to the Insurance Company.

16. In ***"Shyamwti Sharma"*** (*supra*), the Apex Court has held that since salary of the deceased was within taxable range, 30% amount should be deducted towards income tax. In the present case, as per income tax slabs prevailing in 2010, 10 % amount needs to be deducted towards income tax, while calculating income of the deceased.

17. There is no substance in the contention of the Insurance

Company that since the claimant is in service, she cannot be said to be dependent on the deceased. It is a matter of record that the deceased was Assistant Secondary Teacher in Saraswati Bhuvan High School, Ranjani and was drawing salary of Rs.30,488/- per month. The Tribunal, however, erred in deducing 1/3 amount towards his personal expenses. In view of the fact that there was only one claimant, the Tribunal ought to have deducted 50% amount towards personal expenses of the deceased in terms of ***“National Insurance Co. Ltd V/s Pranay Sethi” 2017 ACJ 2700 (SC).***

18. The Tribunal has taken net salary of the deceased at Rs.16,350/- per month. Salary Bill of October, 2010, produced on record, shows that gross salary of the deceased was Rs.30,488/- per month. By making deductions towards refund of loan from PF, Profession Tax, co-operative society's deduction, LIC and RD, total Rs.10,709/- were deducted and net salary of the deceased was shown as Rs.19,779/-. It is not clear as to on what basis the Tribunal has taken net salary of the deceased at Rs.,16,350/-. Even if income tax is to be deducted from the salary of the deceased, as per the prevailing rate, in the year 2010, there would be 10% deduction from the salary towards income tax. Thus, by deducting PF Amount and Profession Tax monthly salary of the deceased would come to Rs.28,188/-. Annual salary

of the deceased would come to Rs.3,38,256/-. From this 10% will have to be deducted towards income tax, which would come to Rs.3,04,430/- (Rs.3,38,256 - 33825). The Tribunal has wrongly deducted 1/3 towards personal expenses, which in the facts of the present case needs to be deducted @ 50% which comes to Rs.1,52,215/-. 30% future prospects will be required to be added in this amount which comes to Rs.1,97,879/-. By applying multiplier of 10, it comes to Rs.19,78,790/-.

19. In the light of above, the claimant is entitled for following compensation. :

S. N.	PARTICULARS	AMOUNT
01	Monthly Salary	30,488
02	Less PF (30488 – 2100)	28,388
03	Less Profession Tax (28388 – 200)	28,188
04	Total annual income (28188 X 12)	3,38,256
05	Less 10% towards income tax	3,04,430
06	Less 50% towards personal expenses	1,52,215
07	Plus 30% future prospects	1,97,879
08	Multiplier applied of 10	19,78,790
09	Towards Loss of Love and Affection	1,00,000
10	Hospital and Medical Expenses	15,000
11	Funeral Expenses	25,000
12	Total Compensation	21,18,790
13	Compensation Awarded by Tribunal	27,56,000
14	Claimant is held entitled to reduced compensation	21,18,790

20. In this case, the Tribunal has awarded compensation of

Rs.27,56,000/-, which is required to be reduced to Rs.21,18,790/-

21. In the result, first appeal is partly allowed.

22. Judgment and Award passed by Motor Accident Claims Tribunal, Jalna in MACP No. 245 of 2010 is modified to the effect that claimant is held entitled for compensation of Rs.21,18,790/-.

23. Rest of the Award is maintained.

24. Appellant - Insurance Company shall deposit the compensation amount in the Tribunal, if not already deposited, along with interest as directed by the Tribunal, within 12 weeks from the date of uploading of this judgment.

25. On deposit of compensation amount of the Insurance Company, the claimant shall be entitled to withdraw the same, along with interest.

**[NITIN B. SURYAWANSHI]
JUDGE**