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

FIRST APPEAL NO. 2183 OF 2017

1. Smt. Swaroopa wd/o Nitin Chitlange
   Age: 32 years, Occ: Household,
   R/o: A-2, Sweekrut Residency,
   Behind Apex Hospital, Bassaiye
   Nagar, Aurangabad

2. Kum. Vidhi d/o Nitin Chitlange,
   Age: 6 years, Occ: Nil,
   Minor u/g of her real mother
   appellant No. 1

3. Sou. Sunita W/o Nandkishor
   Chitlange
   Age: 53 years, Occ: Household,
   R/o. As above

4. Nandkishor s/o Sitaram Chitlange,
   Age: 58 years, Occ: Service, **...Appellants**
   R/o. As above

Versus

1. Sk. Isak s/o Sk. Rashid,
   Age: Major, Occu. Driver,
   R/o. Near Electric D.P. Kadri
   Nagar, Misarwadi, Aurangabad

2. Suresh S/o Sampatrao Nade,
   Age: Major, Occu: Business,
   R/o. Misarwadi, Aurangabad

3. New India Insurance Co. Ltd.
   Through its Divisional Manager,
   Divisional Office at Adalat Road,
   Aurangabad **...Respondents**

WITH
FIRST APPEAL NO. 3213 OF 2016

The New India Assurance Company Ltd
D.O. No. 1, Adalat Road, Aurangabad

Through its Authorized Signatory
Ravikant Kadam,
Age: 26 years, Occ: Service,
R/o. Aurangabad **...Appellant**

Versus

1. Smt. Swaroopa wd/o Nitin Chitlange
Age: 32 years, Occ: Household,
R/o: A/2, Sweekrut Residency,
Behind Apex Hospital, Bassaiye Nagar, Aurangabad

2. Kum. Vidhi d/o Nitin Chitlange,
Age: 6 years, Occ: Nil,
Minor u/g of her real mother present Respondent No. 1

3. Sou. Sunita W/o Nandkishor Chitlange
Age: 53 years, Occ: Household,
R/o. A/2, Sweekrut Residency,
Behind Apex Hospital, Bassaiye Nagar, Aurangabad

4. Nandkishor s/o Sitaram Chitlange,
R/o. A/2, Sweekrut Residency,
Behind Apex Hospital, Bassaiye Nagar, Aurangabad

5. Sk. Isaq s/o Sk. Rashid,
Age: 45 years, Occu. Driver,
R/o. Near Electric D.P. Kadri Nagar, Misarwadi, Aurangabad

6. Suresh S/o. Sampatrao Nade,
Age: 50 years, Occ: Business,
R/o. Misarwadi, Aurangabad **...Respondents**

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Mr. A. P. Bhandari, Advocate for Appellant in FA/2183/2017 and for Respondent Nos. 1 to 4 in FA/3213/2016
Mr. M. M. Ambhore, Advocate for Appellant in FA No. 3213/2016 and for Respondent No. 3 in FA/2183/2017

Mr. S. P. Boinwar h/f Mr. A. N. Raut, Advocate for Respondent Nos. 1 and 2 in FA/2183/2017

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CORAM : R.M. JOSHI, J.

DATE : JANUARY 18, 2024

JUDGMENT:

1. These Appeals are preferred under Section 173 of Motor Vehicle Act, 1988 (for short "**M. V. Act**") by original claimants and insurer taking exception to the judgment and order dated 23.12.2015 passed in MACP No. 729/2011.

2. By consent of both contesting parties, appeals are taken up for final hearing at the stage of admission.

3. Parties are referred to by their nomenclature in the original proceedings for the sake of convenience.

4. Claimants are wife, daughter and parents of Nitin Chitlange who died in motor vehicular accident occurred on 23.03.2011. Owner and driver of the offending vehicle as well as insurer were made party to the claim Petition. It is the case of the claimants that on 23.03.2011 at around 10.45 am deceased Nitin,

an Advocate by profession was proceeding on his motorcycle bearing no. MH-26-J-8683 from High Court to other Courts at Aurangabad. When he reached near compound wall of High Court in front of Lokmat Bhavan one tractor bearing no. MXV-5527 which was proceeding towards Baba Petrol Pump gave dash in the negligent manner to his motorcycle from back side. In the said accident, Nitin sustained serious injuries. Immediately, he was taken to MGM Hospital, where he was given first aid. He thereafter was admitted in Kamalnayan Bajaj Hospital and treated there for the period of 23.03.2011 to 07.04.2011 and further from 18.04.2011 to 22.05.2011. In between he was shifted to Apex Hospital for treatment up to 22.05.2011. He was again required to be taken to Kamalnayan Bajaj Hospital where during treatment he breath last on 12.07.2011. According to the claimants, accident has occurred due to rash and negligent driving by driver of the tractor. Crime bearing no. I-57/2011 came to be registered with Mukundwadi Police Station against him. According to the claimants, deceased Nitin aged about 28 years, completed his degree in law in year 2005 and started practice in High Court and other Courts. He was earning Rs. 27,668/- per month with annual income of Rs. 3,32,260/-. He was the only son of his parents i.e. claimant nos. 3 and 4. Deceased had one daughter aged about one year at the relevant time. Claimants contended about incurring medical expenses of Rs. 30 lacs. Under different heads compensation of Rs. 2,29,30,000/- was claimed.

5. Owner and driver of tractor filed common written statement at Exh. 14 denying the claim and averments made by the claimants in the Petition. They specifically denied age, income and occupation of the deceased. Involvement of the vehicle in the accident is also denied. It is claimed that accident has occurred due to the negligence of the deceased. It is further claimed that tractor was duly insured with insurer under valid insurance policy for the period of 23.03.2011 to 21.03.2012. It is also claimed that driver was having valid driving license.

6. Insurer filed written statement at Exh. 15 denying the claim of the claimants. It is specifically averred that the driver of the tractor did not have valid and effective license and hence, for breach of

terms of the policy, insurer is not liable to pay compensation.

7. Issues were framed at Exh. 16. Claimant examined Claimant No. 1 Swaroopa Chitlange, Exh. 18, Dr. Bhavan Takalkar, Exh. 37, Dr. Sahastrabudde, Exh. 45, Amit Zalte, Accountant from Kamalnayan Bajaj Hospital, Exh. 49. Pharmacist Patil, Exh. 53, Pharmacist Shah, Exh. 54, Pharmacist Mantri, Exh. 54, Mr. Ambekar, Accountant of Ruby Hospital, Pune, Exh. 69, Pharmacist Gandhi, Exh. 75, Mr. Mandale, Income Tax Inspector, Exh. 80.

8. Apart from oral evidence, claimants also placed reliance on documentary evidence i.e., certified copy of charge-sheet Exh. 19, FIR Exh, 20, spot panchnama, Exh. 21, inquest panchnama, Exh. 22, provisional pm report Exh. 23, pm report, Exh. 24, form comp. AA Exh. 25, insurance cover note, Exh. 26, driving license of respondent no. 1 Sk. Isak, Exh. 27, RC book of tractor and trolly Exh. 28 and 29, MLC Exh. 38, discharge card and apex hospital, exh. 39, MLC Exh. 46, authority letter issued by Ruby Hall Clinic, Pune Exh. 70, discharge card exh. 71, income tax returns for

the assessment year 2009-10, 2010-11 and 2011-12 exh. 81 to 83.

9. Driver Sk. Isak examined himself at Exh. 85 and also led evidence of Milind Sasane Exh. 94, clerk from RTO Office and Usha Dhamne, Exh. 103. Owner and driver of tractor relied upon driving license Exh. 97, MDL information Exh. 98 and insurance cover note Exh. 26-A. Insurer did not lead any oral or documentary evidence.

10. Learned Counsel for the claimants submits that the Tribunal has committed error in not considering income tax returns filed for the assessment year 2011-12 and on the basis of evidence on record, there was no reason or justification for not considering the same. According to him, Tribunal has also erred in not granting compensation towards future prospects and compensation granted is not adequate. He also claimed that rate of interest granted by the Tribunal is low as compared to the rate of interest of the year 2011 to 2015. In response to the submissions made by the learned Counsel for the insurer about absolvement of the liability of the insurer on the ground that the

driver of the tractor was not holding valid and effective license, it is submitted that the Hon'ble Apex Court in case of ***Mukund Dewangan Vs. Oriental Insurance Company Ltd, (2017) 14 SCC 663*** has held that the transport vehicle, the gross weight which does not exceed 7500 kg would be a light motor vehicle and also motor car or tractor or a roadroller, unladen weight of which does not exceed 7500 kg. The driver having license class of light motor vehicle is competent to drive transport vehicle. According to him, similar is the view taken in case of ***Sant Lal v. Rajesh and Others, (2017) 8 SCC 590***.

11. Learned Counsel for the insurer opposed the said submissions by contending that the learned Tribunal has rightly discarded the income tax return filed for the year 2011-12 as the same were filed after the death of deceased. In respect of his submissions, he placed reliance ***Bajaj Alliance General Insurance Co. Ltd v. Rambha Devi and Others, 2023 SCC OnLine SC 1165***, ***V. Subbulakshmi and Others v. S. Lakshmi and Another, (2008) 4 SCC 224,*** ***National Insurance Co. Ltd vs. Pranay Sethi and Others, (2017) 16 SCC 680*** & ***Sumitra***

Dwarkanath Sirsat and Ors Vs. Shivanand Hamumantappa Bisirotti & Ors, ALL MR 2016-5-2013. Thus, according to him, there would be no reason or justification in order to enhance compensation as sought by the claimants. On the point of breach of conditions of policy, it is contended that on the basis of driving license it can be seen that the driver was not having license to drive tractor with trolley and as such, he was not having valid license to drive goods transport vehicle and hence, it amounts to breach of condition of policy. In the result, according to him, the insurer cannot be held liable for the payment of compensation.

12. Claimant No. 1 i.e., wife of the deceased in her evidence has deposed about the negligence of the driver of the tractor in occurrence of the tractor. To substantiate the said contentions reliance is placed on police papers as noted herein above. Except for the vague suggestions that the driver of the tractor was not responsible for the accident, nothing is elicited from her cross-examination in order to discard testimony of this witness. It is settled law that on the basis of genuine police papers claimants are

permitted to prove factum of accident. In this case, there is no doubt raised in respect of genuinness of police papers, hence, there is no impediment to rely upon it. Once the initial burden is discharged by the claimants to prove the factum of accident, the onus shifts on owner and insurer to prove otherwise. Though driver Sk. Isak was examined, his testimony is not sufficient to hold that he was driving the vehicle with utmost care and that he was not responsible for the occurrence of accident.

13. On the point of causing of injuries to the deceased in the said accident as well as medical treatment, evidence led by the claimants of Dr. Takalkar and Dr. Sahastrabuddhe clearly shows that on account of sustainment of injuries in the accident he was admitted in hospital and was treated till his death. No serious dispute is made by other side in respect of deceased sustaining injuries in the accident in question. Claimants have also examined pharmacists, as noted herein above, in order to prove expenses incurred towards medicines. Accountants of Bajaj as well as Ruby Hospitals were examined in order to prove

treatment bills. The claimants thus were successful in proving the medical expenses on the basis of documentary evidence to the extent of Rs. 27,78,493/-. Learned Tribunal has also considered the said evidence on record and has rightly accepted proof thereof.

14. On the point of income claimants have specifically contended about deceased having degree in law in the year 2005 and since then practicing in High Court and other Courts. Thus, on the date of accident he had six years practice under his belt. The claimants have relied upon income tax returns filed for assessment year 2009-10, 2010-11, 2011-12. In order to prove the same, income tax inspector Mr. Mandale, Exh. 80 examined.

15. Claimant No. 1 in her testimony has deposed about qualification and profession of deceased and also has stated about the income tax returns being filed by him. The factum of filing of income tax returns by the deceased is proved through Ashok Mandale, DW. 80. He was income tax inspector attached to Aurangabad Office at the relevant time. He deposed about PAN card number of the deceased and returns filed in respect of his

income i.e. Exh. 81 to 83. In the cross-examination conducted by owner and the driver it is suggested that there is no certificate over the Exh. 81 to 83. Learned Tribunal has accepted proof of income tax returns and in absence of any case being made out by other side, creating any doubt about genuineness thereof, this Court also finds it appropriate to accept the same as the one filed with Income Tax Department. Income Tax Ispector admitted that last income tax return is filed online after his death i.e., on 30.07.2011. Perusal of the cross-examination of this witness as well as claimant No. 1 no suggestion is found to have been made in respect of the income tax return for the assessment year 2011-2012 to be bogus or fabricated or even inflated. Needless to record that the income of the deceased person in the hands of the heirs is also taxable and hence, it is obligatory on their part to submit income tax returns. There is no suggestion made to the claimant no. 1 that she or any other claimant had filed bogus income tax returns of the deceased by showing inflated income for the purpose of claiming compensation. Had such question put to the claimant or income tax inspector it would have been open for claimants to justify it. Without raising any doubt about correctness or genuineness of last returns, it was not open for learned Tribunal to discard the same merely on ground that it is filed after death of deceased. Prejudice has been caused to claimants by such observations, without case being made out to that effect by other side.

16. Learned Tribunal has refused to accept the said returns filed on the ground that the same is filed after death of the deceased. There is nothing brought on record by the owner or insurer to show that the income tax returns of assessment year 2011-12 is fabricated/inflated document. For the purpose of ascertaining income of the deceased it is just and necessary to see as to the what income he would have earned during the relevant period. There is no dispute made with regard to the income tax returns of the assessment year 2009-10, 2010-11. There is nothing on record to show that the professional work of deceased had decreased during the relevant year. On the contrary, cross-examination conducted of the claimants show that deceased was having work at High Court as

well as in other Courts. It is matter of common knowledge that with experience professional like or Advocate gets more and more work. Unless there is evidence to show decline in his work, there would be no justification to hold so.

17. In case of V. Subbulakshmi and Ors (supra) Hon'ble Apex Court has upheld refusal of consideration of income tax returns filed after death of deceased. From the perusal of the said judgment it is not clear on what ground the document was kept out of consideration. Merely because the income tax returns is filed after death of assessee, it cannot be treated as not reflecting his true income. In respectful view of this Court, for want of knowledge of facts and circumstances in which said judgment is passed, it cannot be applied to the present case. As discussed above, there is absolutely no material on record to indicate that the income of deceased reflected in the income tax retuurn for A.Y. 2011-12 is not genuine and hence not acceptable.

18. Income of the deceased for the year 2009-10 was Rs. 1,46,210/- whereas income for the assessment

year of 2010-2011 was Rs. 2,55,182/- which shows more than 50% increase in his income. As compared to the income tax filed of the year 2011-12 his income is seen Rs. 3,22,260/- per annum. By simple mathematical calculations, the said increase is below 50% and as such not disproportionate as compared to previous year's income. In absence of any evidence to show that the deceased did not work during financial year 2010-11 i.e. assessment year 2011-12 or that his practice declined, there was no justification in not considering the said income for the purpose of computation of quantum of compensation. Hence, income of deceased is accepted @ Rs. 3,22,260/- pa. The deduction towards personal expenses of deceased and multiplicant adopted by the Tribunal is not in dispute. After deduction of 1/3rd personal expenses of deceased, multiplicant comes to Rs. 2,14,840/-. Deceased was aged 28 years and hence, multiplier of 17 is applied. The amount of compensation towards loss of income works out to be Rs. 36,52,280/-.

19. The Tribunal has granted additional 50% of income towards future prospects relying upon in case of ***Rajesh and Others Vs. Rajbirsisingh and Ors, 2013 ACJ***

1403. The Hon'ble Apex Court in case of Pranay Sethi (supra) has held that in case of self employed deceased person an addition of 40% of the established income should be granted towards future prospectus. By following the said dictum instead of 50% as granted by the Tribunal, the said future prospectus needs to be considered upto 40%. Learned Tribunal has granted Rs. 25,000/- towards consortium and Rs. 25,000/- towards love and affection. By following the dictum of Hon'ble Apex Court in case of ***Magma General Insurance Co. Ltd Vs. Nanu Ram @ Chuhru Ram and Others, (2018) 18 SCC 130***, this Court finds it appropriate to grant Rs. 40,000/- each to wife, child and parents towards filial consortium. Hence, amount of compensation payable is determined as follows:

Sr. No.	**Heads**	**Calculations in Rs.**
1.	Loss of income Rs.3,00,776/- x 17 multiplier (total income Rs. 3,00,776 (after deducting personal expenses) + 40% future prospects Rs.85,936)	51,13,192/-
2.	Medical Expenses	23,78,493/-
3.	Filial Consortium (Rs. 40,000/-) to each claimants	1,60,000/-
4.	Funeral Expenses	15,000/-
5.	Loss of Estate	15,000/-
	Total	**76,81,685/-**

20. Claimants are also challenging the interest

rate awarded by the Tribunal @ 6% pa and instead claiming 9% interest on the amount of compensation. It is discretion of the Tribunal to award interest or compensation amount towards denial/withholding thereof. There is nothing to show that the discretion is exercised non judiciously. Further there is no material on record to indicate any other average rate of interest was prevailing during relevant period. The survey of judgments of Hon'ble Apex Court on the point of payment of interest indicates that the rate of interest gratned @ 12% earlier was reduced to the extent of 9%, owing to the changes in economy. Reserve Bank of India has reduced rate of interest and Banks started offering interest @ 9% p.a. with passage of time rate of interest offered by Banks has further decreased. Having regard to the same, this Court finds no reason to cause interference therein.

21. Insurer's contentions about absolvement from the liability rests upon the case that the driver of the tractor was not holding valid and effective license at the relevant time. In this regard, written statement filed by the insurer though states about driver was not

having valid and effective license, however, does not specifically takes plea that he was not competent to drive tractor with trolley attached to the same. There is a suggestion made by the insurer to the driver Sk. Isak about he not holding valid and effective license, which is denied by him. As against this, driver and owner have examined Mr. Sonavane clerk working with RTO, Aurangabad who specifically deposed about the driver of tractor having valid license to drive tractor with trolley attached thereto. In the cross-examination insurer was not able to bring any admission on record to prove otherwise. Even otherwise, the judgments in case of Mukund Dewangan it is held that a vehicle below weight of 7500 kg would be light motor vehicle. In the instant case, there is no evidence to show that the weight of tractor with trailor exceeds it. Apart from this, in case of Sant Lal (supra) it is held that it is not necessary to obtain endorsement on license for light motor vehicle since the tractor with trolley is light motor vehicle. Considering the facts on record and law settled by Hon'ble Apex Court, this Court finds no reason to absolve insurer from liability to pay compensation as breach of condition of policy is not proved.

22. In view of this, this Court finds no substance in challenge to the impugned judgment and award sought by insurer. Hence, First Appeal No. 3213 of 2016 is dismissed. Since claimants have succeeded in seeking enhancement of compensation, First Appeal No. 2183/2017 is partly allowed. Hence, the order:

O R D E R

(a) First Appeal No. 2183/2017 is partly allowed. Impugned judgment and award dated 23.12.2015 passed in MACP No. 729/2011 is modified. Total compensation is Rs. 76,81,685/- as determined above.

(b) Claimants to pay Court fee on enhanced compensation as per rules.

(c) Rest of judgment and award to remain unchanged.

(d) Amount deposited (along with interest) by insurer is permitted to be withdrawn by Claimants.

(e) No order as to costs.

(f) In view of disposal of Appeals, pending applications, if any, are also disposed of.

(g) The difference of compensation be deposited within a period of six weeks.

(R. M. JOSHI, J.)

Malani