IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD

FIRST APPEAL NO. 281 OF 2022

New India Insurance Company Ltd.,
Through its Divisional Manager/
Authorized Signatory, Mahesh Auto
Compound, Adalat Road, Aurangabad. ....Appellant.

Versus

1. Jyoti Ravindra @ Ravi Salve,
Age 38 years, Occu. Household,

2. Amrapali Ravindra Salve,
Age 20 years, Occu. Student,

3. Ashwini Ravindra Salve,
Age 18 years, Occu. Student,

4. Swapnil Ravindra Salve,
Age 14 years, Occu. Student,

5. Harshal Ravindra Salve,
Age 11 years, Occu. Student,

6. Bansi Ganpat Salve,
Age 61 years, Occu. Nil,

Respondent No. 4 & 5 are minor
Children under guardianship of
their real mother respondent no.1.
All R/o. Sneha Nagar, Sillod,
Tq. Sillod, Dist. Aurangabad.

7. Ajmatkhan Majamilkhan Pathan,
Age 21 years, Occu. Business,
R/o. Borgaon Sarwani, Tq. Sillod,
Dist. Aurangabad.

8. Pathan Ajazkhan Raufkhan,
Age Major, Occu. Business,
R/o. Borgaon Sarwani, Tq. Sillod,
Dist. Aurangabad.

9. Shaikh Jabir Shaikh Laddu,
Age Major, Occu. Business,
R/o. Borgaon Sarwani, Tq. Sillod,
Dist. Aurangabad. ....Respondents

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Mr. S.S. Rathi, Advocate for appellant.

Mrs. A.S. Mantri, Advocate for respondent Nos. 1 to 6

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CORAM : KISHORE C. SANT, J.
CLOSED ON : 25/06/2024
DELIVERED ON : 03/07/2024

JUDGMENT :

1) The appeal is by original respondent No. 4 – Insurance Company challenging the judgment and order dated 24.1.2017 passed by the learned Member, Motor Accident Claims Tribunal, Aurangabad in MACP No. 488/2014. By way of impugned judgment and order, the learned Member has directed the original respondent Nos. 1 to 4 to pay to the claimants/present respondent Nos. 1 to 6, an amount of Rs.7,50,000/- towards the compensation along with interest at the rate of 9% p.a. from the date of filing of the claim petition till realisation including the no fault liability amount. Present respondent No. 7, 8 and 9 are original respondent Nos. 1, 2 and 3, who are driver, earlier owner of the vehicle and subsequent purchaser of the offending vehicle i.e. motorcycle bearing No. MH-20/AK-1398.

2) Facts, in short, giving rise to the present appeal are as below :-

On 4.1.2013 deceased Ravindra, husband of respondent No. 1 and father of respondent Nos. 2 to 5 and son of respondent No. 6 was riding on his motorcycle bearing No. MH-20/D-9234 and was proceeding from Kannad to Sillod. When his motorcycle was near a bridge of Sarola Phata, the offending motorcycle came in high speed and gave dash to the motorcycle of deceased Ravindra. Deceased suffered head injury and multiple other injuries. Though he was taken immediately to private hospital, unfortunately, he died on 6.11.2013 due to the injuries. He was admitted in ICU and was required to spent Rs. 1,20,000/- towards the medical expenses on his treatment.

3) Since the claimants lost earning member of the family, they lodged claim petition in the Court at Aurangabad. In the claim petition, they claimed that the deceased was earning Rs.12,000/- p.m. by running a garage of automobile repairing at Sillod. His age was claimed to be 34. The above amount of compensation was claimed considering the above factors.

4) The respondents/owners accepted that the motorcycle belonging to respondent No. 3. It is, however, denied that the driver/owner respondent No. 1 was driving the motorcycle in rash and negligent manner. It is also stated that the motorcycle was insured with the present appellant/original respondent No. 4.

5) It is the defence of the Insurance Company that the deceased was riding the motorcycle in rash and negligent manner and it is the case of contributory negligence. The vehicle of the deceased was found right in the middle of the road. It is further defence of the Insurance Company that the driver of the offending vehicle was not having a valid driving license to drive the motorcycle. The license produced on record shows that he was having license to drive, the light motor vehicle and for this reason also, the Insurance Company is not liable to pay the amount as there is patent

breach of conditions.

6) The learned Member of the Tribunal by considering the evidence on record and material produced before it, held that the appellant is liable to pay an amount of Rs.7,50,000/- including NFL to the claimants. It awarded Rs. 6,07,500/- towards loss of dependency suffered by the claimants, Rs. 50,000/- towards love and affection, transportation of dead body, Rs. 50,000/- towards consortium to claimant No. 1 and Rs. 10,000/- towards funeral expenses and amount of Rs. 32,500/- towards medical bill.

7) In an appeal, the learned advocate for the Insurance Company vehemently argued that the learned Member of the Tribunal failed to consider that it is the case of contributory negligence. He further vehemently argued that the driver of the offending motorcycle was not possessing the valid driving license to drive the motorcycle. Though this defence was taken, there is no discussion on this point and also on the point of contributory negligence. He submits that in the present case, admittedly there is no eye witness examined. Thus, from the attending circumstances, the Tribunal ought to have considered that it is the case of contributory negligence. From the panchanama in the police papers, it is clearly seen that the motorcycle of the deceased was in the middle of the road and that aspect itself is not considered.

8) In support of his contentions, he relied upon the judgment reported in **2008 AIR (SCW) 4712 in the case of A.P.S.R.T.C. & Anr. Vs. K. Hemalatha & Ors.** The Hon’ble Apex Court, in the said case has considered both the

terms i.e. 'contributory negligence' and 'composite negligence'. He submits that thus, in the present case, it is contributory negligence since the deceased himself was driving the motorcycle in negligent manner and thus, he is also contributed to the accident and certain amount ought to have been deducted from the amount of compensation.

9) Next judgment relied upon by the Insurance Company is reported in **2010 (5) Mh.L.J. 147 in the case of the Manager, United India Insurance Co. Ltd. Vs. Kamalabai Mukunda Kumare and Ors**. This Court at Nagpur in the said judgment has held that when there is fundamental breach of the policy, they the Insurance Company shall not be liable to pay the compensation. In the said case, it was held that the person driving the vehicle of a class which is not authorized to drive can be treated as a breach of condition of policy and in such cases, the Insurance Company will have to be relieved from it's liability to reimburse the insurer.

10) The learned advocate for the appellant/Insurance Company, thus, prays for allowing the appeal and to absolve the Insurance Company qua liability to pay the amount of compensation.

11) The learned advocate for the claimants submits that the Tribunal has rightly considered the notional income of the deceased to be Rs. 4500/- and applying the principles in the case of **Smt. Sarla Verma and Ors. Vs. Delhi Transport Corporation and Anr. reported in 2009 (2) T.A.C. 677 (S.C.)**, the Tribunal has rightly awarded the compensation. There is no evidence on record to show that there was contributory negligence. The contents of

F.I.R. clearly show that this complaint is lodged against the offending vehicle. So far as liability of Insurance Company is concerned, she relies upon the judgment reported in **(2018) 3 SCC 208 in the case of Pappu and Ors. Vs. Vinod Kumar Lamba and Anr.** The Hon'ble Supreme Court in the said case held that there was breach of condition and directed the Insurance Company to pay the compensation first and to recover the same from the owner of the vehicle.

12) On considering the submissions and after going through the record, this Court finds that there is no perversity committed by the learned Member of the Tribunal. Merely finding of the motorcycle of the deceased in the middle of the road by itself would not be sufficient to come to the conclusion that there was contributory negligence. The Court has rightly considered the admission of the claimant that deceased was of 45 years of age at the time of accident. From the cross, however, it is seen that there was no suggestion given of the contributory negligence accepting that the incident took place in the middle of the road which is denied. From the P.M. report, it is seen that the cause of death is mentioned as head injury. Column No. 17 of the P.M. report show multiple injuries. The Court has considered the medical bills which were produced.

13) So far as the judgments relied upon by the learned counsel for the Insurance Company are concerned, this Court finds that the judgment in the case of **A.P.S.R.T.C. & Anr. Vs. K. Hemalatha & Ors.** is not applicable to the present case. In the judgment of **the Manager, United India Insurance Co. Ltd. Vs. Kamalabai Mukunda Kumare and Ors.**, though it is held that in

the case of breach of conditions, the Insurance Company will not be liable, however, considering the judgment relied upon by the learned counsel for the respondents/original claimants in the case of **Pappu and Ors. Vs. Vinod Kumar Lamba and Anr.**, it is made clear that the Insurance Company is liable to pay at the first instance with liberty to recover the same from the owner of the vehicle. In the present case, since the Insurance Company has shown that the driver of the offending vehicle was not possessing the valid driving license, the Insurance Company is at liberty to recover the amount from the owner of the vehicle as on the date of the accident.

14) For all these reasons, this Court finds that no case is made out for interference in the impugned judgment and award passed by the learned Member of the Tribunal. The first appeal, therefore, stands dismissed. The Insurance Company may proceed to recover the amount from the owner of the offending vehicle.

[KISHORE C. SANT, J.]

15) After pronouncement of the judgment, the learned advocate for the respondent No. 1/Original Claimant No. 1, the wife of the deceased prayed for direction to the office to allow the respondent No. 1/Original Claimant No. 1, wife of deceased to withdraw the amount deposited by the appellant/Insurance Company in this Court.

16) Office to allow the respondent No. 1/Original Claimant No. 1, wife of the deceased to withdraw the amount deposited by the appellant/Insurance Company in this Court along with the accrued interest thereon.

[KISHORE C. SANT, J.]

SSC/