IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1412 OF 2019
AND
CIVIL APPLICATION NO. 5472 OF 2019

Bajaj Allianz General Insurance Co. Ltd.
Through its Branch Manager,
A/p. Sundar Arcade, Kadbi Mandi, Jalna,
Tq. & Dist. Jalna ..APPELLANT

VERSUS

1. Manohar Jadamal Wadhava
   Age: 56 years, Occu.: Nil,

2. Bharti Manohar Wadhava
   Age: 51 years, Occu.: Household,

   Both R/o S.R.P. Road, Nath Nagar,
   Behind Radhakrishna Mandir,
   Jalna, Tq. & Dist. Jalna

3. Yogesh Prakash Ghodke
   Age: 43 years, Occu.: Truck Owner,
   R/o Chikurde, Tq. Walwa,
   Dist. Sangli

4. Shabbir Annu Shaikh
   Age: 30 years, Occu.: Driver,
   R/o Bawdhan, Tq. Wai,
   Dist. Satara ..RESPONDENTS

AND
FIRST APPEAL NO. 824 OF 2021

1. Manohar Jadamal Wadhava
   Age: 56 years, Occu.: Nil,

2. Bharti Manohar Wadhava
   Age: 51 years, Occu.: Household,

   Both R/o S.R.P. Road, Nath Nagar,
   Behind Radhakrishna Mandir,
   Jalna, Tq. & Dist. Jalna ..APPELLANT

VERSUS

1. Bajaj Allianz General Insurance Co. Ltd.
   Through its Branch Manager,
   A/p. Sundar Arcade, Kadbi Mandi, Jalna,
   Tq. & Dist. Jalna
   Through its signatory/Branch Manager,
   ABC Complex, MIDC, Chikalthana,
   Near Prozone Mall, Aurangabad,
   Tq. & Dist. Aurangabad

2. Yogesh Prakash Ghodke
   Age: 43 years, Occu.: Truck Owner,
   R/o Chikurde, Tq. Walwa,
   Dist. Sangli

3. Shabbir Annu Shaikh
   Age: 30 years, Occu.: Driver,
   R/o Bawdhan, Tq. Wai, Dist. Satara ..RESPONDENTS

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Mr. M.R. Deshmukh, Advocate for appellant in FA/1412/2019 and for respondent no. 1 in FA/824/2021
Mrs. L.R. Thakur, Advocate for respondent nos. 1 and 2 in FA/1412/2019 and for appellants in FA/824/2021
Mr. M.V. Salunke, Advocate h/f Mr. V.D. Salunke, Advocate for respondent nos.3 and 4 in FA/1412/2019 and for respondent nos.2 and 3 in FA/824/2021

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CORAM : R.G. AVACHAT AND NEERAJ P. DHOTE, JJ
RESERVED ON : 30th AUGUST, 2024
PRONOUNCED ON : 04th SEPTEMBER, 2024

JUDGMENT (PER : R.G. AVACHAT, J.) :

1. Present appeals arise from a judgment and award dated 31st January, 2019 passed by the Member of Motor Accident Claims Tribunal, Jalna (‘MACT’) in Motor Accident Claim Petition, No. 20 of 2018 (‘MACP’).

2. First Appeal, No. 1412 of 2019, has been preferred by Bajaj Allianz General Insurance Co. Ltd. (original Respondent No.3). The subsequent appeal has been preferred by the original claimants, who

preferred original petition for compensation on account of death of their son – Gautam, in an accident involving a motor vehicle on 06th March, 2016. For the sake of convenience, the parties are referred to as per their status in the MACP and First Appeal, No. 824 of 2021. In short, the appellants in these appeals would be referred to as claimants and the others as respondents, as per their serial numbers in the MACP.

3. The facts, in brief, giving rise to the present appeals are as follows:-

Gautam (deceased) was the only son of the claimants. He was in the age groups of 24-25 years. On 06th March, 2016, he was on his way back home to Jalna alongwith his friend in a motor vehicle, Honda Amaze, MH-21-V-7125. While their car was passing along Bangalore-Pune highway near village Kini, a milk tanker, MH-10-AW-2020, being driven by Respondent No.2 ('driver'), first hit the road divider. The tanker jumped the divider and dashed against Honda Amaze car, Gautam was traveling in. As a result of the accident, Gautam died.

4. The tanker belonged to Respondent No.1 at the relevant time. It had an insurance cover granted by Respondent No.3 – insurance company.

5. The claimants (parents of Gautam) preferred the MACP with the averments therein that Gautam was a post-graduate in Business Administration. He was working as an agent. Income-tax returns for the two

years preceding his death and one of the year in which he breath his last were produced in evidence. Income of the deceased was increasing each year. Learned Member of the MACT, considering the income tax returns of the year preceding the year in which he passed away took into consideration and awarded compensation by applying multiplier, in view of the age of the deceased. Since Gautam died bachelor, learned Member deducted one half of the annual income of the deceased towards his personal and living expenses, after adding 40% of the annual income towards future prospect, in view of direction no.(iv) given by the Constitution Bench of the Apex Court in case of ***National Insurance Co. Ltd. Vs. Pranay Sethi and Ors., AIR 2017 SC 5157***. The total amount of compensation awarded by the learned Member is Rs.1,26,71,206/- to be paid with 12% interest thereon from the date of filing of the petition till its realisation. The amount of compensation was directed to be paid by Respondent Nos. 1 and 3 jointly and severely.

6. Learned counsel for the claimants would submit that only one of the claimants was granted Rs.40,000/- towards loss of consortium. According to her, the deceased died bachelor. Nothing has been awarded on account of loss of marriage prospect. According to learned counsel, the income of the deceased, as is appearing in the income tax returns filed in the year in which he breath his last, ought to have been taken into consideration for grant of compensation. She would further submit that since the deceased was the only child of the claimants and loss of life could not be valued in terms of money, the claim ought to have been granted in toto . According to

her, there is even no reason for this Court to interfere with the rate of interest on amount of compensation.

7. Learned counsel for Respondent No.3 – insurance company would, on the other hand, submit that a specific defence was raised in the written statement regarding the driver of the offending truck to have had no valid and effective license to drive the tanker at the relevant time. Learned counsel has relied on a judgment of the Apex Court in case of ***Pappu and Ors. Vs. Vinod Kumar Lamba, AIR 2018 SC 592***. He then took us through the evidence of an officer from the office of RTO, Satara. According to him, two driving licenses of same number can not be issued in one year. The driving license produced on record was fake. There was no evidence adduced by the owner of the vehicle to show that after having inspected the driving license of Respondent No.2, he employed him as a driver on his tanker. Date dates of issuance of said license were adverted to. According to learned counsel, Respondent No.2 obtained the license to drive a Public Services Utility Vehicle ('PSUV') in December 2011. The Motor Vehicles Act, 1988 ('MV Act') defines the term of PSUV independently. There is nothing to indicate him to have had a valid and effective driving license to drive the heavy vehicle like milk tanker. Learned counsel then submitted that the MACT has granted exorbitant rate of interest on the amount of compensation. He ultimately urged for allowing the insurance company's appeal.

8. Learned counsel for the tanker owner would, on the other hand, submit that evidence of the witness examined on behalf of Respondent No.3 – insurance company itself indicates that the driver was holding a valid and effective driving license. The license issued in his name was first in point of time. Another license of the same number was issued in a camp held at Faltan, Dist. Satara by the office of RTO, Satara. He would further submit that the driver was examined as a witness on behalf of Respondent No.3 – insurance company. The driver had come with his driving license and admitted in his cross-examination to have had held a valid and effective driving license. According to him, Respondent No.3 – insurance company failed to make out the defence of the driver to have had no valid and effective driving license to drive the tanker when it met with the accident on the give day. He supported the impugned judgment and award.

9. Considered the submissions advanced. Perused the evidence on record and the judgment impugned herein.

10. Following points arise for our consideration :-

(i) Did the insurance company prove Respondent No.2 – driver did not hold valid and effective driving license at the relevant time? If yes, what is its consequence?

(ii) Whether the claimants are entitled for enhancement of compensation?

(iii) Whether Respondent No.3 – insurance company proved the rate of interest on the amount of compensation is exorbitant, and therefore, need to be scaled down?

(iv) What order?

REASONS : **POINT NO. (i)** :

11. The offending vehicle i.e. the milk tanker falls within the category of heavy vehicle. It was also a transport vehicle. License (Exh.24) of Respondent No.2 - driver indicates that it was issued on 10th January, 2008. The license was renewed on 01st April, 2014. He was authorised to drive the transport vehicle from 27th March, 2017. He was authorised to drive PUSV with effect from 05th December, 2011. True, Section 2(35) of the MV Act defines 'Public Service Vehicle' to mean any motor vehicle used or adapted to be used for the carriage of passengers for hire or reward, and includes a maxicab, a motocab, contract carriage and stage carriage. From the definition itself it indicates the same to be a different category of vehicle. Sub-section (47) of the very Section defines the term 'Transport Vehicle' which means a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle. While Sub-section (16) thereof defines 'Heavy Goods Vehicle' to mean any goods carriage the gross vehicle weight of which, or a tractor or a road-roller the unladen weight of either of which, exceeds 12,000 kgs. By no stretch of imagination it could be said that the tanker involved in the accident was not a Heavy Goods Vehicle, besides being a Transport Vehicle.

12. Respondent No.3 – insurance company examined D.W.1 – Yuzavendra, an employee from the office of RTO, Satara. He appeared before the Court in response to a summons issued at the instance of Respondent No.3 – insurance company. It is in his evidence that on 17th

January 2008, RTO, Satara issued a driving license, no. 388 in the name of Sudam Dashrath Kate. It was pertaining to authorising him to drive motorcycle and car. The said license was issued manually. A true copy thereof was filed at Exh.68. He had brought before the Court original record. He was categorical to state that in one calender year no two driving licenses of the same number could be issued.

This witness was subjected to a searching cross-examination, wherein he testified that the license in the name of Sudam Kate was issued in a camp held at Faltan (taluka place). He tendered in evidence the driving license issued in the name of Respondent No.2 (driver). The same finds place at Exhibit 69. According to him, the said license was issued on 10th January, 2008 i.e. seven days before the license was issued in the name of Sudam Kate. True, both the licenses bear the same number, 388. The fact, however is that the license issued in favour of Respondent No.2 is first in point of time. The license in the name of Sudam Kate was issued manually in a camp held at Faltan. According to this witness, entire record of the office of RTO Satara has been computarized in the year 2007. He was categorical to state that computarization was done of the record pertaining to the main office of RTO Satara. According to him, both the licenses (Exh.68 and 69) were altogether different. The license issued in favour of Respondent No.2 authorized him to drive motorcycle, Light Motor Vehicle and Heavy Motor Vehicle as well. According to this witness, Respondent No.2 was authorized to drive PSUV in the year 2012. This witness was categorical to state that Respondent No.2 was authorized to drive truck, bus, tempo and tanker vide license (Exh.25). According to him, the said license was issued to him by his office (RTO, Satara).

13. He also tendered in evidence a communication (Exh.66) issued by the Deputy Regional Transport Officer, Satara reinforcing his oral evidence before the Court. What was referred to by learned counsel for the insurance company was a history sheet pertaining to the driving license/s issued in favour of Respondent No.2 time to time. Insurance company then examined Respondent No.2 (driver) as its witness. During his cross-examination, he admitted to have had held a valid and effective driving license. The evidence of an employee of RTO Satara has specifically deposed to that Respondent No.2 had obtained a license in the year 2012 to drive taxi and buses, so he was authorized to drive truck, bus, tempo and tanker. Exhibit 24 is the said license.

14. The fact that Respondent No.2 hold a license to drive heavy vehicles like truck, bus, tempo and tractor since before the accident took place, goes a long way to conclude Respondent No.3 – insurance company to have failed to make out its defence that Respondent No.2 – driver did not hold valid and effective driving license and as such, it was a breach of terms and conditions of the policy of insurance. When the witness examined on its behalf categorically testified that both the licenses issued in the name of Sudam Kate and Respondent No.2 are valid and effective, the witness was not cross-examined by the insurance company which had called him as its

witness. At the cost of repetition it is observed that the license issued in respect of Respondent No.2 is first in point of time than the one issued in the name of Sudam Kate and the same, therefore, could not be termed to be a fake license.

<u>POINT NO.(ii)</u> :

15. Deceased - Gautam died bachelor. He was in the age group of 24-25 years. Three income tax returns, two of the years next before the year he breath his last while the third one pertains to the year in which he passed away. Those income tax returns find place at Exhibits 44, 45 and 46 respectively. Learned Member relied on the judgment of the Apex Court in case of ***V. Subbalakshmi and Ors. Vs. S. Lakshmi and Anr., 2008 ACJ 936 [Supreme Court],*** to ignore the income tax return of the year in which Gautam passed away. The earlier two returns pertain to the financial years 2013-14 and 2014-15. The annual income of the deceased shown in those returns was Rs.11,61,379/- and Rs.12,01,471/- respectively. Learned Member relied on the income tax return for the year next before the year in which Gautam passed away. After considering the statutory deduction such as income tax and professional tax, learned Member considered annual income of the deceased at Rs.9,98,965/-. It added thereto a sum of Rs.1,130/- since the deceased had received refund. Thus, annual income of the deceased for calculating the compensation comes to Rs.10,00,095/-. In view of direction no. (iv) given by the Apex Court in the case of Pranay Sethi (supra), the Member of MACT added 40% thereof towards future prospect.

Since Gautam died bachelor, 50% thereof (total income) was deducted towards his personal and living expenses. There is no dispute about applying the multiplier considering the age of the deceased. Learned Member arrived a a figure of Rs.1,26,01,206/- towards loss of dependency. Rs.15,000/- each has been awarded for funeral expenses and loss of estate, rightly so. In view of the directions of the Apex Court in case of Pranay Sethi's case (supra), the parents of the deceased were entitled for compensation on account of loss of filial consortium. In this case, both the claimants were independently entitled for Rs.40,000/-. Learned Member, however granted in all Rs.40,000/-. In our view, therefore, the claimants are entitled for additional sum of Rs.40,000/- towards filial consortium. As such, the total amount of compensation awarded by the MACT gets enhanced by Rs.40,000/- only. We answer the point accordingly.

POINT NO. (iii) :

16. It has been directed to pay interest @ 12% p.a. on the amount of compensation from the date of filing of the petition to the date of realisation of the entire amount. Learned Member relied on the judgment of Apex Court in case of ***Magma General Insurance Co. Ltd. Vs. Nanuram @ Chuhru Ram and Ors., (2018) 18 SCC 130*** .

17. In case of ***National Insurance Co. Ltd. Vs. Mannat Johal and Ors., AIR 2019 SC 2079***, it has been observed in paragraph no.13, as under :-

"13. ...The Tribunal had awarded interest at the rate of 12% p.a. but the same had been too high a rate in comparison to what is ordinarily envisaged in these matters. The High Court, after making a substantial enhancement in the award amount, modified the interest component at a reasonable rate of 7.5% p.a. and we find no reason to allow the interest in this matter at any rate higher than that allowed by High Court."

18. Moreover, in case of ***Dharmpal and Ors. Vs. U.P. State Road Transport Corporation, (2008) 12 SCC 208***, it has been held as under :-

"8. As per Section 171 of the Motor Vehicle Act, 1988 (hereinafter referred as 'Act') where the claim for compensation made under the act is allowed by the Claims Tribunal, the tribunal may direct that in addition to the amount of compensation simple interest shall also be paid at such rate from such date not earlier than the date of making claim.

9. In National Insurance Co. Ltd. v. Keshav Bahadur reported in AIR 2004 SC 1581 this Court has held that the provisions require payment of interest in addition to compensation already determined. Even though the expression "may" is used, a duty is laid on the Tribunal to consider the question of interest separately with due regard to the facts and circumstances of the case. It was clearly held in the said decision that the provision of payment of interest is discretionary and is not and cannot be bound by rules.

10. Interest is compensation for forbearance or detention of money, which ought to have been paid to the claimant. No rate of interest is fixed under Section 171 of the Act and the duty has been bestowed upon the court to determine such rate of interest. In order to determine such rate we may refer to the observations made by this Court over the years. In the year 2001 in the case of Kaushnuma Begaum (Smt.) and Ors. v. New India Assurance Co. Ltd. and Ors. reported in [2001] 1 SCR 8 on the question of rate of interest to be awarded it was held that earlier, 12% was found to be the reasonable rate of simple interest but with a change in economy and the policy of Reserve Bank of India the interest rate has been lowered and the nationalized banks are now granting interest @ 9% on fixed deposits for one year. Accordingly, interest @ 9% was awarded in the said case. We may at this stage also refer to the following observations of their Lordships in the aforesaid decision which are relevant to the present case:

> *24. Now, we have to fix up the rate of interest. Section 171 of the MV Act empowers the Tribunal to direct that 'in addition to the*

amount of compensation simple interest shall also be paid at such rate and from such date not earlier than the date of making the claim as may be specified in this behalf'. Earlier, 12% was found to be the reasonable rate of simple interest. With a change in economy and the policy of Reserve Bank of India the interest rate has been lowered. The nationalized banks are now granting interest at the rate of 9% on fixed deposits for one year. We, therefore, direct that the compensation amount fixed hereinbefore shall bear interest at the rate of 9% per annum from the date of the claim made by the appellants....

11. In the year 2002, in United India Insurance Co. Ltd. and Ors. v. Patricia Jean Mahajan and Ors. reported in [2002] 3 SCR 1176 this Court held that the interest is payable on the equitable grounds to the aggrieved person who is deprived of using the money which is due and payable to him. Following the observations made in the case of Kaushnuma Begaum (supra) interest @ 9 % was awarded in this case also. It was held as follows:

39. In our view the reason indicated in the case of Kaushnuma Begum (supra) is a valid reason and it may be noticed that the rate of interest is already on the decline. We therefore, reduce the rate of interest to 9% in place of 12% as awarded by the High Court.

12. In the year 2003 in the case of Abati Bezbaruah v. Dy. Director General, Geological Survey of India and Anr. reported in [2003] 1 SCR 1229 it was held that the question as to what should be the rate of interest, in the opinion of this Court, would depend upon the facts and circumstances of each case. Award of interest would normally depend upon the bank rate prevailing at the relevant time. After referring to the aforementioned decisions interest @ 9% was awarded in the said case.

13. However, in the year 2005 in Tamil Nadu State Transport Corporation Ltd. v. S. Rajapriya reported in AIR 2005 SC 2985 this Court again taking note of the then prevailing rate of interest on bank deposits directed for lowering the rate of interest fixed by the Tribunal at 9% per annum and altered the same to 7.5% per annum.

18. The accident in the present case took place on 06^{th} March, 2016. None of the parties to these appeals brought to our notice what was the rate of interest on bank deposits in the year 2016. In our view, grant of interest @ 12% p.a. was excessive and exorbitant. We, therefore, reduce the same to Rs.8% p.a."

19. In view of above, both the appeals stand disposed of as partly allowed in terms of following order :

(I) The amount of compensation awarded by the Tribunal stands enhanced by Rs.40,000/- i.e. Rs.1,26,71,206 + Rs.40,000/- = Rs.1,27,11,206/-. (Rupees One Crore, Twenty Seven Lakhs Eleven Thousand Two Hundred Six)

(II) The direction in the award to pay interest @ 12% p.a. on the amount of compensation from the date of filing of petition to the date of actual payment is modified by figure 8% p.a. instead of 12% p.a.

(III) It is informed that the insurance company has deposited entire amount under the impugned award with this Court. The claimants had been permitted to withdraw 50% thereof. The balance amount in deposit with this Court immediately (forthwith) be paid to the claimants in terms of modified award with the interest accrued thereon.

(IV) The balance amount, if any, be paid back to the insurance company, necessarily with the interest accrued thereon.

(V) Civil application stands disposed of accordingly.

(VI) Parties to act upon authenticated copy of this order so far as regards disbursement of remaining amount to be paid to the claimants.

(NEERAJ P. DHOTE, J.) **(R.G. AVACHAT, J.)**

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