IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 304 OF 2019

	Bajaj Allianz General Insurance Co. Ltd.	)	
	Near Collector Office, Powai Naka, Satara	)	Appellant
	Versus		
1	Shalan Ashok Gaikwad	)	
	Deceased hence deleted as per order passed below	)	
	Exh.48	)	
2	Ashok Gopal Gaikwad	)	
	Age : 50 Years, Occ : Labour work,	)	
	Both Residing at Agashivnagar, Behind Kirloskar	)	
	Karkhana, Malkapur, Tal – Karad, District – Satara	)	
3	Rakesh Shamrao Patil	)	
	Age – 27 Years, Occu – Agriculture,	)	
	Residing at Kalgaon, Tal – Patan, District-Satara	)	Respondents

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Mr. Sarthak Diwan, Advocate for the Appellant.

Mr. Girish R. Agarwal a/w. Ms. Naina P. Boraste, Advocate for Respondent.

CORAM : ARUN R. PEDNEKER, J.

DATED : 21st June, 2024.

ORAL JUDGMENT :

1. Heard learned counsel for the parties.

2. In the instant First Appeal the Appellant/ Insurance Company has challenged the award passed by the Motor Accident Claims Tribunal, Satara granting compensation to the extent of Rs.9,27,000/- to the claimants towards the accidental death claim. The claimants are the parents of the deceased. During the pendency of the proceedings claimant No.1 i.e. the mother of the deceased has passed away.

3. The brief facts of the case are summarised as under:

(a) One Shashikant was riding motorcycle bearing Reg. No. MH-11/AR 7375 which was hit by motorbike coming from opposite direction bearing Reg. No. MH-50/D 7900 while overtaking another vehicle. The deceased succumbed to the injuries on 07.11.2013. Thereafter, the claimants filed claim petition before the Tribunal claiming compensation and also prayed for medical expenses of Rs.2,48,243/-. The deceased at the time of accident was 25 years old and doing labour work and was earning Rs.8,000/- to 10,000/- per month. The Tribunal on consideration of the evidence held that the driver of the motorcycle MH-50/D 7990 was responsible for the accident and granted compensation of Rs.9,27,000/-.

4. The Judgment of Tribunal is challenged in the present First Appeal. The judgment of the Tribunal is challenged by the Insurance company primarily on two grounds. First ground is that, negligence is not of the rider of motorcycle bearing No. MH-50/D 7900 and the accident has occurred on account of negligence of deceased Shashikant.

The police in the instant case has filed chargesheet and has recorded statements of four witnesses and the chargesheet is filed against the vehicle driver of the motorcycle bearing Reg. No. MH-50/D 7990. There is no independent evidence laid before the Tribunal in the matter. Since there is no independent evidence and on preponderance of probabilities as the case is made out only against the vehicle bearing No. MH-50/D 7900, I see no error in the order passed by the Tribunal in holding the driver of motorcycle bearing No. MH-50/D 7900 responsible for the accident.

5. The second issue raised by the Insurance Company is, the driver of the insured vehicle MH-50/D 7990 was not holding a valid licence.

As regards the second issue, Mr. Sachin Patil who was riding motorcycle MH-50/D 7990 was not holding effective and valid driving licence, the witness of the Insurance Company in his cross examination admitted that he has not verified the driving licence of Sachin Patil from the R.T.O. so also Dyandeo Raje, Police Station Hawaldar at Exhibit-40 deposed that C.R.No. 355 of 2013 is filed against Sachin Patil under

Sections 279, 337 and 338 of Indian Penal Code and under Section3/181 of Motor Vehicles Act. This witnesses in his cross examination admitted that the record of R.T.O. in respect of driving licence of Sachin Patil is not verified.

6. On the face of these two depositions when there is no contra evidence pointed out by the learned counsel for the insurance company, the finding of the Tribunal that Sachin Patil was not holding a valid driving licence is not established is a plausible findings, in view of the law laid down by the Hon'ble Supreme Court in the case of ***Narchinva V. Kamath Vs. Alfredo Anotonio Doe Martins, AIR 1985, SCC 1281.***

So also the Bombay High Court in the case of ***"New India Assurnace Co. Ltd. Vs. Arvind P. Kulkarni and Ors."*** in First Appeal No. 100 of 1999, in the context of proof of driving licence has held at paragraph Nos. 4 and 5 as below :

> *"4. I have considered the submissions. It is true that no issue has been framed on the aspect whether the driver of the auto rickshaw holding a licence. As the evidence on this aspect has been already adduced, the submission of the appellant is being dealt with. The appellant examined one Sadashiv Patil, who was on duty as ASI at Gargoti police station on the date of the accident. He stated that the driver of the auto rickshaw was guilty of negligence. Therefore, he lodged a complaint against him. In paragraph 2 of his deposition he stated that the driver was charge sheeted for not possessing a driving licence. He merely stated that the driver did not show him a driving licence.*
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> *5. It must be noted here that it is not the case of the said witness that he made investigation and inspected the record of the Regional Transport Officer and found that the driver was not holding the licence or was not issued*

> *the licence. All that the witness stated is that the driver did not show him licence. This is not a case where police officer stated that he carried out investigation and found that the driver had never obtained a licence and was not holding a driving licence. As in the case of Rukmini (supra) the appellant did not summon the driver and **did not make any effort to produce the record of Regional Transport Officer regarding grant of licence. Therefore, it cannot be said that the appellant discharged the burden of proving that the driver of the auto rickshaw was not holding a driving licence.**"*

7. In view of the law discussed above, the contentions raised by the learned counsel for the Insurance Company thus cannot be accepted merely because the chargesheet is filed on the basis that the motorcycle driver did not have a valid licence. The same cannot be accepted in the absence of verification of the record from RTO so also it is clear from the deposition of Dnyandeo Raje, Police Hawaldar that he has not verified the licence of Sachin Patil. As such, the findings given by the Trial Court that the insurance company was not able to establish that Sachin Patil was not holding valid driving licence is an acceptable finding. In view of the same, both the contentions raised by the learned counsel for the Insurance Company are rejected.

8. Having perused the final order passed by the Tribunal, it appears that the Tribunal has not granted some of the components of compensation which are ordinarily required to be granted in terms of the various judgments passed by the Hon'ble Supreme Court.

It is a settled law that the claimants have to be granted just compensation even if there is no appeal or cross objection filed by the claimants.

In the case of ***Jitendra Khimshankar Trivedi Vs. Kasam Daud Kumbhar and Ors. (2015) 4 SCC 237***, the Hon'ble Supreme Court at paragraph No.12 has observed as under:

> *"12. The power of the courts in awarding reasonable compensation was emphasized by this Court in Nagappa vs. Gurudayal Singh, Oriental Insurance Co. Ltd. V. Mohd. Nasir and Ningamma v. United India Insurance Co. Ltd. As* ***against the award passed by the tribunal even though the claimants have not filed any appeal, as it is obligatory on the part of courts/tribunals to award just and reasonable compensation, it is appropriate to increase the compensation.***

9. Considering the Judgment of Hon'ble Supreme Court in the case of *Jitendra Khimshankar (Supra)*, I pass the order granting components of future prospects and loss of consortium, etc. The monthly income of the appellant is of Rs.6,000/- as determined by the Tribunal. Total income per year comes to Rs.72,000/-.

As per the view of Hon'ble Apex Court in the case of ***National Insurance Co. Ltd. vs. Pranay Sethi, 2017 ACJ 2700(SC)*** , the claimant is entitled for 40% future prospects. Additional of 40% for future prospects in total income per year comes to (Rs.72,000 +28,800) Rs.1,00,800/-.

Further ½ deduction towards personal and living expenses has to be deducted which works out to Rs.50,400/-. Pecuniary loss after applying multiplier of 18 as deceased was 25 year old at the time of accident would work out to Rs.9,07,200/-. Loss of consortium is added in view of judgment of ***Pranay Sethi, (supra),*** @ Rs.40,000/- for each of parents. In the instant case Rs.80,000/- is granted towards loss of consortium for both the parents. Total compensation payable to the claimants works out to Rs.10,17,200/-.

10. Considering above calculations the claimants are entitled for following compensation:

No.	Particulars	Rs.	Amount (Rs.)
1	Total income per year	6000 X 12	72,000/-
2	40% to be added in total income per year	72,000 + 28,800	1,00,800/-
3	½ deduction towards personal and living expenses	1,00,800 /2	50,400/-
4	Pecuniary loss after applying multiplier of 18 (as deceased was just 20 years old)	50,400 X 18	9,07,200/-
	Total compensation payable to claimants		9,07,200/-
5	Loss of consortium	(40,000 X 2)	80,000/-
6	Funeral expenses		15,000/-
7	Loss of Estate		15,000/-
	Total		**10,17,200/-**
	Amount awarded by Tribunal		6,70,000/-
	Amount to be enhanced		**3,47,200/-**

(A) The enhanced amount will carry interest of 7.5% from the date of filing of Claim petition before the Tribunal.

The Insurance Company to deposit the balance amount along with 7.5% interest from the date of application filed before the Tribunal within 8 weeks of uploading of this judgment. Amount already paid to the claimants to be deducted.

11. The Appeal is disposed of. All pending applications, if any also disposed of.

(ARUN R. PEDNEKER, J.)