IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

FIRST APPEAL NO.124 OF 2023

APPELLANT On. R.A. Ori. Resp. No.1	:		**HDFC Ergo Gen. Insurance Co. Ltd.**, Through its Branch Manager, 403-A, 4th floor, Shree Shyam Tower, Near NIT Building, Kingsway, Civil Lines, Nagpur, Tq. & Dist. Nagpur
			..VERSUS..
RESPONDENTS On R.A. Ori. Claimant-1	:	1	**Suresh Motiram Sawasakar,** Age about 53 yrs, Occ. Labour
On R.A. Ori. Claimant-2		2	**Sau. Vimal Suresh Sawasakar**, aged about 51 years, Occu. Household
On R. A. Ori. Claimant-3		3	**Ashirwad Suresh Sawasakar**, aged about 23 years, Occu. Education All R/o Nanhori, Tq. Brahampuri, Dist. Chandrapur
Ori. Resp. No.2		4	**Vitthal Keshav Korankar,** Age abut 36, Occupation : Owner & Rider, R/o Chandmari Nagar, Wathoda Layout, Nagpur, Tq. & Dist. Nagpur
Ori. Resp. No.3		5	**Mohammad Zahir**, Age about 55, Occupation : Labour, R/o Jafar Nagar, Nagpur, Tq. & Dist. Nagpur.

Mr H. N. Verma, Advocate for Appellant.
Mr S. A. Chaudhari, Advocate for Respondent Nos.1 to 3.

TAMBE

CORAM : M. W. CHANDWANI, J.
DATED : 9th SEPTEMBER, 2024.

ORAL JUDGMENT

1. Heard.

2. **Admit**.

3. By this appeal, the appellant has challenged the impugned award dated 12.10.2022, passed by the Motor Accident Claims Tribunal, Chandrapur, in Motor Accident Claims Petition No.13 of 2016, thereby directing the original respondent Nos.1 and 2 to jointly and severally pay the compensation amount of Rs.12,42,600/- to the original claimants including the amount of No Fault Liability alongwith interest @ 6% per annum from the date of petition till its realization.

4. Bare facts, which give rise to the present appeal, can be summarized as under :

Respondent Nos.1 and 2 are the parents and respondent No.3 is the brother of deceased Darshan Suresh Sawarkar (hereinafter referred to as “the original claimants”). The original claimants have filed a claim petition before the M.A.C.T., Chandrapur alleging that on 04.12.2015, deceased Darshan was a pillion rider on the motorcycle of the original respondent No.2 – Vitthal Keshav Korankar. When they reached near the bridge of Kanhan Petrol Pump, the original respondent No.2 lost his control over the offending vehicle and gave a dash to the wall of the bridge, wherein they fell off the bridge and received multiple injuries on the vital parts of their bodies. In the said accident, Darshan died on the spot due to head injury and other multiple injuries. The matter was reported to Kanhan Police Station, District Nagpur. The offending motorcycle bearing registration No.MH-31-BL-5800 was insured with the original respondent No.1 – Insurance Company. The Tribunal after hearing both the sides, directed the original respondent No.1 – appellant and original respondent No.2 to jointly and severally pay the compensation amount of Rs.12,42,600/- to the original claimants including the amount of no fault liability alongwith interest @ 6% per annum from the date of petition, till its realization. Feeling aggrieved with the impugned award, the present appeal came to be filed under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the M. V. Act, 1988" for short), by the appellant.

5. Mr Verma, learned counsel appearing on behalf of the appellant submits that the Insurance Company has filed its written statement *vide* Exh-19 opposing the contentions and claim, as put forth by the original claimants. He submitted that at the time of the accident, the rider of the offending vehicle was not having a valid and effective driving licence and therefore, he breached the terms and conditions of the policy. The insurance policy was "liability only policy", issued in terms of Section 147 of the M. V. Act, 1988. The risk of a pillion rider was not covered under such policy. However, the Tribunal

erroneously assumed the liability of the insurer and passed an award holding the owner and insurer of the motorcycle jointly and severally liable to pay the compensation.

6. Taking his argument further, he submits that the Tribunal did not consider the vital aspect of the case that the original respondent No.2 purchased the offending motorcycle from the original respondent No.3 much prior to the accident. However, as per the policy on record, there was no contract of insurance between the appellant and original respondent No.2. The Tribunal while passing the impugned award, imposed the liability upon the insurer and the original respondent No.2, whereas the insured has been exonerated. Therefore, he submitted that, in absence of any contract of insurance between the insurer and the original respondent No.2 and the insured being exonerated, no liability can be fastened upon the Insurance Company. To buttress his submissions, he seeks to rely on the decision of this Court in the case of ***United India Insurance Co. Ltd., vs. Archana Sanjay Sanap and Ors***. First

Appeal No.2541 of 2013 decided on 06.05.2024 and ***National Insurance Co. Ltd. vs. Balakrishnan and anr.***, ***AIR 2013 SC 473***.

7. Perusal of the impugned award goes to suggest that the death of Darshan was caused due to injury to vital organs in a vehicular accident that occurred on 04.12.2015 in which, the offending motorcycle bearing registration No.MH-31-BL-5800 was involved. It also goes to suggest that the police officials visited the spot of accident, prepared the spot panchanama and held that the original respondent No.2 was responsible for the said accident.

8. Insurance policy on record goes to show that the offending motorcycle was insured by the Insurance Company under a “Two Wheeler Liability Only Policy” in the name of Mohd. Zahir i.e. the original respondent No.3. It also shows that the risk covered was only of “Third Party Liability” and by making a payment of additional premium, the risk of personal accident of owner-driver limited to Rs.1,00,000/- was covered.

But, no premium was paid to the Insurance Company by the owner of the motorcycle to cover the risk of passenger/person i.e. the pillion rider sitting on the motorcycle. It is a settled position of law that in case of "Liability only Policy", the pillion rider does not fall within the domain of "Third Party."

9. A reference can be made to the decision of the Hon'ble Supreme Court in the case of ***Oriental Insurance Company Ltd. vs. Sudhakaran K. V.***, *AIR 2009 SC 2729*, wherein the Hon'ble Supreme Court in para 19 has held as under :

> *"**19.** The law which emerges from the said decisions, is: (i) the liability of the insurance company in a case of this nature is not extended to a pillion rider of the motor vehicle unless the requisite amount of premium is paid for covering his/her risk (ii) the legal obligation arising under Section 147 of the Act cannot be extended to an injury or death of the owner of vehicle or the pillion rider; (iii) the pillion rider in a two wheeler was not to be treated as a third party when the accident has taken place owing to rash and negligent riding of the scooter and not on the part of the driver of another vehicle."*

10. Considering the aforesaid position of law, since the deceased, a pillion rider, cannot be treated as third party, he

would not get third party coverage under the insurance policy issued by the insurer to the owner/insured. Therefore, the Tribunal ought not to have passed the impugned award holding the insurer liable for payment of compensation to the original claimants. Moreover, no order of pay and recover can be passed in the facts and circumstances of the case, as there was no liability of the insurer at all to satisfy the award for want of coverage of the deceased as a passenger of the offending vehicle and him not being a third party.

11. Before parting, let me state that the original respondent No.3 claimed that he has sold the offending vehicle to the original respondent No.2 before the date of accident, and therefore, it is the original respondent No.2, who is the owner and who was driving the offending vehicle, is responsible. It is a matter of record that in the certificate of registration, still the original respondent No.3 is shown as owner. Therefore, the original respondent No.3 as a registered owner of the offending vehicle and the original respondent No.2, who was driving the

vehicle at the time of accident, are jointly and severally, liable to pay the compensation to the original claimants.

12. In view of the above discussion, the appeal is partly allowed and para (II) of the impugned award dated 12.10.2022 passed in M.A.C.P. No.13 of 2016 is modified as under :

"The original respondent No.2 – Vitthal Keshav Korankar and the original respondent No.3 - Mohammad Zahir, are jointly and severally liable to pay compensation amount of Rs.12,42,600/- to the original claimants including the amount of NFL alongwith interest @ 6% from the date of filing of petition, till its realization."

13. Rest of the impugned award of the Tribunal shall remain intact.

(M. W. CHANDWANI, J.)

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