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

FIRST APPEAL NO.393 OF 2019

Appellants : (Ori. Claimants on R.A.) :

1) Smt. Jaya wd/o Sadashiv Surjuse,
Aged about 32 years, Occu. Household Works.

2) Pavan s/o Sadashiv Surjuse,
Aged about 13 years, Occu. Education.

3) Shubham s/o Sadashiv Surjuse,
Aged about 11 years, Occu. Education.

4) Bharat s/o Sadashiv Surjuse,
Aged about 8 years, Occu. Education.

5) Sakhubai wd/o Sukhdev Surjuse,
Aged about 67 years, Occu. Nil.

No.2 to 3 are U/G of applicant No.1.
All R/o Akolkhed, Tq. Akot, Dist. Akola.

– Versus –

Respondents : (Ori. Respondents on R.A.) :

1) Sopan s/o Wasudevrao Jayle,
Aged about Major, Occu. Driver,
R/o At Akoli Jahangir, Tq. Akot, Dist. Akola.

2) ICICI Lombard General Insurance Co. Ltd.,
Notice to be served on Branch Office at
ICICI Lombard General Insurance Co. Ltd. at
VIMCO Tower, S.T. Bus Stand Road,
Opp. Hotel Ramgiri, Amravati,
Tq. & Dist. Amravati.

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Mr. P.R. Agrawal, Advocate for the Appellants.
Mr. V.B. Bhise, Advocate for Respondent No.1.
Mr. R.D. Bhuibhar, Advocate for Respondent No.2.

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CORAM	:	**M.W. CHANDWANI, J.**
RESERVED ON	:	**11th JUNE, 2024.**
PRONOUNCED ON	:	**24th JUNE, 2024.**

J U D G M E N T :

This appeal preferred under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as "Act" for short) assails the judgment and order dated 13/07/2017 passed by the Motor Accident Claims Tribunal, Akot, District Akola (hereinafter referred to as "Tribunal" for short) in M.A.C.P. No.5/2015.

02] The appellants are the dependents of deceased Sadashiv Surjuse, who died in a vehicular accident on 18/06/2015. Appellant No.1 is the widow, appellant Nos.2 to 4 are children; and appellant No.5 is the mother of deceased Sadashiv Surjuse. Respondent No.1 is the owner and driver of the motorcycle (Hero Passion Pro) bearing registration No.MH-30-AQ-4846, whereas, respondent No.2 is the insurer of the said motorcycle.

03] The claim petition was preferred under Section 166 of the Act by the appellants being dependants of the deceased and have claimed compensation for accidental death. The Tribunal by the impugned judgment and award partly allowed the petition directing respondent No.1, the owner of vehicle, to pay Rs.10,29,000/- to the appellants including the 'no fault liability' as compensation along with interest at the rate of 8% per annum from the date of the claim petition till its full realization. The Tribunal absolved respondent No.2-Insurer and dismissed the petition against it. Feeling aggrieved with the dismissal of claim petition against the Insurer as well as on the premise of awarding lesser compensation, the appellants have filed the present appeal.

04] Mr. P.R. Agrawal, learned Counsel appearing for the appellants would submit that the Tribunal erred in absolving respondent No.2 from its liability by dismissing the claim petition against it. Though the Tribunal held that respondent No.1 was not holding a valid driving licence on the date of accident, the Tribunal ought not to have exonerated respondent No.2-Insurer, especially when the appellants are the third party. The liability of the Insurer to satisfy the decree at the first instance is a statutory duty, where the decree is passed in favour of third party. In the wake of Section 149 of the Act, it is obligatory on the part of the Insurance Company to satisfy award and then recover the amount from the owner. According to him, the Tribunal ought to have directed respondent No.2-Insurer to pay the amount of compensation to the claimants and thereafter recover the same from the owner/respondent No.1.

05] *Per contra,* Mr. R.D. Bhuibhar, learned Counsel appearing on behalf of respondent No.2 vehemently submits that the Tribunal has rightly exonerated the insurer, since there is a fundamental breach of policy.

According to him, the driver of the vehicle was not holding a valid driving licence. The insurance policy stipulates that the driver of the vehicle must have a valid driving licence. In the present case, the owner, who himself drove the vehicle, did not possess the licence on the date of the accident. Therefore, there is a fundamental breach of insurance policy. Therefore, the insurer is not liable to make the payment and it is the owner, who has to pay the compensation to the appellants. He took me to the insurance policy, which contemplates that the driver must possess a valid driving licence at the time of accident/incident.

06] Perusal of the impugned order goes to show that the driving licence produced by respondent No.1 is issued to him on 09/11/2015, whereas the date of accident is 18/06/2015. Therefore, the Tribunal was right in holding that respondent No.1 was not holding a valid driving licence at the time of accident.

07] The question here is that, if a driver of the vehicle, which is involved in the accident, does not hold a valid driving licence at the time of accident, whether the Insurance Company can be absolved from its liability to third party. The law in this regard is already settled by the decision of the Supreme Court in the case of ***National Insurance Company Ltd. vs. Swaran Singh and others – (2004) 3 SCC 297.*** which has been followed in the case of

Shamanna and another vs. Divisional Manager, The Oriental Insurance Co. Ltd. and others – 2018 ACJ 2163. In the decision in the case of *Shamanna* (supra), the Supreme Court, after discussing the principle laid down in the case of *Swaran Singh* *(supra)* and effect of the decision of the Supreme Court in the case of ***National Insurance Co. Ltd. vs. Bommithi Subbhayamma and others – (2005) 12 SCC 243*** as well as the decision in the case of ***Oriental Insurance Co. Ltd. vs. Brij Mohan and others – (2007) 7 SCC 56,*** observed that the principle laid down in the decision of the *Swaran Singh* will hold the field and in paragraphs 11 and 12 of the decision observed as under :

> *"11. In the present case, to deny the benefit of 'pay and recover', what seems to have substantially weighed with the High Court is the reference to larger Bench made by the two-Judge Bench in* ***National Insurance Co. Ltd. v. Parvathneni and another - (2009) 8 SCC 785,*** *which doubted the correctness of the decisions which in exercise of jurisdiction under Article 142 of the Constitution of India directing insurance company to pay the compensation amount even though insurance company has no liability to pay. In Parvathneni case, the Supreme Court pointed out that Article 142 of the Constitution of India does not cover such type of cases and that "if the insurance company has no liability to pay at all, then, it cannot be compelled by order of the court in exercise of its jurisdiction under Article 142 of the Constitution of India to pay the compensation amount and later on recover it from the owner of the vehicle". The above reference in Parvathneni case has been disposed of on 17.09.2013 by the three-Judges Bench keeping the questions of law open to be decided in an appropriate case.*
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> *12. Since the reference to the larger bench in Parvathneni case has been disposed of by keeping the questions of law open to be decided in an appropriate case, presently the decision in Swaran Singh case followed in Laxmi Narain Dhut and other cases hold the field. The award passed by the Tribunal directing the insurance company to pay the compensation amount awarded to the*

> *claimants and thereafter, recover the same from the owner of the vehicle in question, is in accordance with the judgment passed by this Court in Swaran Singh and Laxmi Narain Dhut cases. While so, in our view, the High Court ought not to have interfered with the award passed by the Tribunal directing the first respondent to pay and recover from the owner of the vehicle. The impugned judgment of the High Court exonerating the insurance company from its liability and directing the claimants to recover the compensation from the owner of the vehicle is set aside and the award passed by the Tribunal is restored."*

08] In view of the law enunciated above, if there is a fundamental breach of the policy, the Insurance Company has to pay the compensation amount awarded to the claimants and thereafter recover the same from the owner of the vehicle in question. Therefore, in the wake of this legal position, dismissal of the claim of the appellants against the Insurer by the Tribunal is not correct. Therefore, I find substance in the argument of the learned Counsel for the appellants that at the first instance, respondent No.2 has to pay the compensation amount to the appellants and thereafter respondent No.2 may recover the same from respondent No.1.

09] This takes me to the next submission of the learned Counsel for the appellants. Though in the memo of appeal, the appellants sought enhancement of the notional income fixed by the Tribunal at the rate of Rs.6,000/- per month, the learned Counsel for the appellants did not press this ground. However, Mr. Agrawal, learned Counsel for the appellants vehemently submits that the Tribunal has not considered the future prospect of the deceased. Had he been alive, certainly he would have progressed in his career and would have earned more money. According to him, the deceased was below the age of 40 years and was self-employed, and, therefore, addition of 40% of the established income should be added in view of the decision of the Supreme Court in the case of ***National Insurance Co. Ltd. vs. Pranay Sethi and others - 2017 (16) SCC 680.***

10] I find substance in the argument of the learned Counsel for the appellants that in the wake of decision of the Supreme Court in *Pranay Sethi* (supra), the appellants are entitled for an addition of 40% of the established income towards future prospects. This position is not disputed by the learned Counsel for the respondents.

11] Turning to the submission of loss of consortium, the Tribunal has granted amount of Rs.1,25,000/- towards damages for severance, suffering and trauma, love and affection as a consequence of the death. In the decision of the *Pranay Sethi* (supra), the Supreme Court has held that spouse shall be entitled at the rate of Rs.40,000/- towards loss of consortium. The Supreme Court has also fixed the figure towards the funeral expenses and loss of estate at Rs.15,000/- each. The amount fixed under the above heads are subject to enhancement at the rate of 10% after every three years from the year 2017 onwards.

12] Consideration of consortium to parents and children again came up for consideration before the Supreme Court in the case of ***Magma General Insurance Company Limited vs. Nanu Ram alias Chuhru Ram & Ors. – (2018) 18 SCC 130***, wherein the Supreme Court in paragraphs 21 to 23 of the decision of the Supreme Court has observed as under :

> *"21. Constitution Bench of this Court in Pranay Sethi (supra) dealt with the various heads under which compensation is to be awarded in a death case. One of these heads is Loss of Consortium. In legal parlance, "consortium" is a compendious term which encompasses 'spousal consortium', 'parental consortium', and 'filial consortium'. The right to consortium would include the company, care, help, comfort, guidance, solace and affection of the deceased, which is a loss to his family. With respect to a spouse, it would include sexual relations with the deceased spouse.*
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> *21.1 Spousal consortium is generally defined as rights pertaining to the relationship of a husband wife which allows compensation to the surviving spouse for loss of "company, society, co-operation, affection, and aid of the other in every conjugal relation.*
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> *21.2 Parental consortium is granted to the child upon the premature death of a parent, for loss of "parental aid, protection, affection, society, discipline, guidance and training."*
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> *21.3 Filial consortium is the right of the parents to compensation in the case of an accidental death of a child. An accident leading to the death of a child causes great shock and agony to the parents and family of the deceased. The greatest agony for a parent is to lose their child during their lifetime. Children are valued for their love, affection, companionship and their role in the family unit.*
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> *22. Consortium is a special prism reflecting changing norms about the status and worth of actual relationships. Modern jurisdictions world over have recognized that the value of a child's consortium far exceeds the economic value of the compensation awarded in the case of the death of a child. Most jurisdictions therefore permit parents to be awarded compensation*

under loss of consortium on the death of a child. The amount awarded to the parents is a compensation for loss of the love, affection, care and companionship of the deceased child.

23. The Motor Vehicles Act is a beneficial legislation aimed at providing relief to the victims or their families, in cases of genuine claims. In case where a parent has lost their minor child, or unmarried son or daughter, the parents are entitled to be awarded loss of consortium under the head of Filial Consortium. Parental Consortium is awarded to children who lose their parents in motor vehicle accidents under the Act. A few High Courts have awarded compensation on this count. However, there was no clarity with respect to the principles on which compensation could be awarded on loss of filial Consortium."

13] In view of the law enunciated by the Supreme Court, appellant No.1, appellant Nos.2 to 4 and appellant No.5 would be entitled to Spousal Consortium, Filial consortium and Parental Consortium, respectively at the rate of Rs.40,000/- each.

14] In view thereof, the appellants are entitled for following compensation :

1.	Monthly notional income of the deceased fixed by the Tribunal	Rs.	6,000/-
2.	Annual income of the deceased (Rs.6000/- x 12)	Rs.	72,000/-
3.	**Add** – 40% future prospects as per the judgment of National Insurance Co. Ltd. vs. Pranay Sethi (2017) 16 SCC 680	(+) Rs.	28,800/-
		Rs.	1,00,800/-
4.	**Less** – ¼th deduction as per the judgment of Sarla Verma vs. Delhi Transport Corporation – (2009) 6 SCC 121	(-) Rs.	25,200/-

5.	Salary for multiplier	Rs.	75,600/-
6.	**Multiplier** of 16 as per the judgment of Sarla Verma vs. Delhi Transport Corporation – (2009) 6 SCC 121, applicable for the age group of 31 to 35 (Rs.75,600 x 16)	(x) Rs.	12,09,600/-
7.	**Add** : Loss of Consortium : Rs.40,000/- for each claimant as per the judgment of Magma General Insurance Co. Ltd. vs. Nanu Ram (2018) 18 SCC 130 followed in United India Insurance Co. Ltd. vs. Satinder Kaur – AIR 2020 (SC) 3076 (10% increase as per Prayan Sethi's Judgment) (Rs.40,000/- x 5)	(+) Rs.	2,00,000/-
8.	**Add** : Loss of Estate	(+) Rs.	15,000/-
9.	**Add** : Funeral Expenses	(+) Rs.	15,000/-
10.	Total compensation payable to the claimants	Rs.	14,39,600/-

15] In view of the above said discussion, the award passed by the impugned order is modified as under :

I. Respondent Nos.1 and 2 are jointly and severally liable to pay Rs.14,39,600/- to the claimants including 'no fault liability' as a compensation under Section 166 of the Act with interest at the rate of 9% per annum from the date of claim petition till its realization.

II. After the compensation is paid to the appellants, respondent No.2 is entitled to recover the compensation from respondent No.1.

III. Rest of the impugned judgment and award of the Tribunal shall remain intact.

IV. The appeal is partly allowed and disposed of in the aforestated terms with no order as to costs.

V. Award be drawn accordingly.

(M.W. CHANDWANI, J.)

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