



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

FIRST APPEAL NO.855 OF 2022

1. Prabha w/o Narayan Sonawane,
Age : 43 years, Occu.: Household
2. Sandeep s/o Narayan Sonawane,
Age : 21 years, Occu.: Education
3. Komal d/o Narayan Sonawane,
Age ; 19 years, Occu.: Household,

All R/o.: Bhorkheda, Tq. Bhokardan,
District : Jalna

... **APPELLANTS**
(Orig. Applicants)

VERSUS

1. ICICI Lombard Insurance,
ICICI Lombard House, 414,
Veer Savarkar Marg,
Near Sinddhi Vinayak Temple'
Prabhadevi, Mumbai- 400025
2. Amol s/o Eknath Kale,
Age : Major, Occu. Private Service,
R/o.: Shivana, Tq. Sillod,
District : Aurangabad
3. Narayan s/o Shrirang Sonawane,
Age : Major, Occu. Nil
R/o.: Bhorkheda, Tq. Bhokardan,
District : Jalna

... **RESPONDENTS**
(Ori. Respondents)

....
Mr. Sandeep N. Lute, Advocate for the Appellants
Mr. Omprakash V. Waghmare, Advocate for Respondent Nos.2 & 3
....

CORAM : SANJAY A. DESHMUKH, J.

DATED : 08/01/2025.

ORAL JUDGMENT :

1. This appeal is preferred against judgment and award passed by the learned Member, Motor Accident Claim Tribunal, Aurangabad (hereinafter referred to as 'the Tribunal') in M.A.C.P. No.408 of 2016, dated 13/12/2021.

2. Claim :

i) Sagar Sonwane, 21 years old, son of appellant No.1/ applicant No.1 was a pillion rider travelling by the motorcycle bearing registration No. MH-21 AY-6615, which was owned by respondent No.3. Respondent No.2 was riding that motorcycle in a rash and negligent manner. While overtaking, he collided with another motorcycle bearing registration No. MH-20-DH-2510. The rider of that motorcycle died on the spot. Sagar sustained serious injuries. He was admitted in A.I.M.S. hospital, Aurangabad in ICU from 15/01/2016 to 25/02/2016. Thereafter, he was shifted to Government Hospital, Aurangabad. However, on 01/03/2016 during treatment, he succumbed to the injuries.

ii) A crime No.19 of 2016 came to be registered against respondent No.2. A post-mortem was conducted and the dead body of Sagar was handed over to his parents.

iii) According to the applicants / claimants Sagar was doing a private job at Sainath Krushi Seva Kendra and earning Rs.7,000/- per month.

iv) The appellant No.2 is brother and appellant No.3 is sister of Sagar. The appellants / claimants were depending on his income of salary. They prayed for compensation of Rs.14,52,000/-.

3. Respondent No.1- Insurance company strongly opposed the claim and denied the material contentions raised in the appeal. It is contended that respondent No.3, who is the owner of the motorcycle had committed breach of conditions of the insurance policy of motorcycle . The motorcycle was driven by deceased Sagar. Therefore, the appellants are not entitled for compensation as the policy is third party policy. It is prayed for dismissal of the appeal.

4. Respondent Nos.2 and 3 the driver and owner of offending motorcycle also opposed and denied the claim. They submitted that the said motorcycle was insured with respondent No.1. It is

lastly contended that respondent No.1 – Insurance company is liable to pay the compensation to the appellants.

5. The learned Tribunal held that negligence of rider of motorcycle is not proved and the claim application was dismissed.

6. The learned counsel for the appellants submitted that there is sufficient evidence on record to prove the occurrence of accident, however, it was not properly appreciated by the learned Tribunal. He further pointed out that the judgment in Motor Accident Claim Petition No.202 of 2016 dated 09/08/2018 decided by the same learned Tribunal but by different presiding officer, in which the claim of the dependents of another motorcycle rider, who died in the same accident, was allowed and awarded with compensation of Rs.8,77,450/-. He submitted that the appellants' evidences were not properly appreciated by the Tribunal. The reasons and findings of the learned Tribunal are not legal and correct. He lastly, submitted to allow the appeal, set aside the impugned judgment and award by awarding compensation.

7. The learned counsel Mr. Omprakash Waghmare for respondent Nos.2 and 3 strongly opposed the appeal. He

submitted that reasons and findings of the Tribunal are legal and correct and it does not require interference. He submitted to dismiss the appeal being devoid of merits.

8. Following points emerged for consideration:

- i) *Was it proved by the appellants / claimants that Sagar died in the vehicular accident and they were dependent on his income ?*
- ii) *Are the impugned judgment and award illegal, incorrect and requires interference ?*

9. The learned Tribunal held in para 38 of impugned judgment that there is no evidence of rashness and negligence of rider of motor cycle. The accident is not proved. The negligence need not be proved.

10. Such cases are to be decided summarily on preponderance of probabilities and strict proof is not necessary. The rider of the motorcycle is prosecuted for rash and negligent driving of it by which Sagar was travelling as pillion rider. Appellant (AW-1) deposed mostly as per the pleading of appellants her evidence is not shaken in the cross-examination. The accident report Exhibit-51, spot panchanama Exhibit-52, post-mortem report Exhibit-57

and inquest Exhibit-56 which are not disputed by the respondents, it is proved that said vehicular accident was occurred and Sagar died due to the injuries suffered by it. No eye witness is necessary for proving it. However, Insurance company failed to prove that Sagar was riding that motorcycle and therefore Insurance company is not liable to pay compensation as there is breach of the conditions of insurance policy of the offending motorcycle. The learned Tribunal erred in holding that there is no evidence about rashness and negligence on the part of the rider of the motorcycle by which Sagar was travelling as a pillion rider when rider respondent No.1 is prosecuted for rash and negligent driving. There is no any independent evidence to hold that Sagar was riding that motorcycle and hence the appellants are not entitled for the compensation. The appellants' evidence is not disproved by respondent No.1 – insurance company failed to prove the said defence.

11. As far as driving license of respondent No.2 is concerned, it is proved by the evidence of respondent No.1 that he was having light motor vehicle licence only. It means he was able to drive vehicle. It is not necessary that there shall be license to drive the motorcycle of particular type in each case as per law laid down by the

Honourable Supreme Court **S. Iyyapan Vs. United India Insurance Company Limited and another**, reported in, **(2013) 7 SCC 62** and **National Insurance Company Limited Vs. Swaran Singh and others**, reported in, **AIR 2004 SC 1531**. Hence, evidence of the respondent No.1 is not helpful to it in this regard. Further, the claim of parents of rider of the another motorcycle is allowed by the Tribunal in MACP No.202 of 2026 by judgment and award dated 9th August, 2018.

12. The learned counsel for the appellants submitted that though it is case of composite negligence, the responsibility of respondent No.1 – insurance company cannot be denied in view of the judgment of this Court in the case of **HDEC CHUBB General Insurance Co. Ltd. Vs. Sau. Archana w/o. Suhas Dandawate & Ors.**, reported in, **2024(1) ALL MR 184**, in which this Court has held as under:-

“The liability in the case of composite negligence, normally should not be apportioned, as both the wrongdoers are jointly and severally liable for the whole loss. It is the choice of the petitioner either to claim compensation from both the tort feasons or any of them. Thus, the tentativeness for the purpose of contribution between two joint tort

feasors do not at all affect the right of the petitioner to recover the full damages.”

13. Considering the matter before this Court and after re-appreciation of entire evidence, this Court is of the view that the insurance company is liable to pay the compensation to the claimants jointly and severally in view of the valid insurance policy. The breach of the policy condition is not proved by it. The learned Tribunal erred in this regard and wrongly rejected the claim of the claimants.

14. The dependency of the appellants is proved. His income as deposed by applicant No.1- Prabha (AW-1) and Ajay Patni (PW-4) is proved that deceased Sagar was earning Rs.7,000/- per month and all the appellants were depending upon his income. It is not disproved that the appellants are dependents and therefore, they are certainly entitled for compensation.

15. The salary of deceased Sagar was of Rs.7,000/- per month is proved from the evidence of witness Shubham Raut (AW-2). The Sagar was of 21 years old and unmarried. Therefore, the half of his monthly income is to be deducted towards his personal expenses. After deducting half of his monthly income towards his personal

expenses i.e. Rs.3,500 X 12, the yearly income of the deceased Sagar comes to Rs.42,000/-. The relevant multiplier of 17 is applicable to the case of the appellants. After applying multiplier of 17 to the annual income of Rs.42,000/-, the loss of earning of deceased Sagar comes to Rs.7,14,000/-. In addition to it, the appellants are entitled for Rs.10,000/- for fetching the dead body to their house and for funeral expenses. They are also entitled for Rs.2000/- for loss of property and Rs.50,000/- for loss of love and affection and company.

16. From the evidence of Ajay Patni (CW-4) who works as an Accountant at A.I.M.S. Hospital, Aurangabad, it is proved that hospital bill of treatment of deceased Sagar was of Rs.1,78,000/-, which was paid by the applicants. From evidence of Pawansing Rajput (CW-5) it is proved that he has received medicine bill of treatment of deceased Sagar of Rs.3,39,622/-. Thus, total amount of medical bills and hospital bill of deceased Sagar is of Rs.5,17,622/-. The appellants are entitled for it.

16. As per the precedential law of ***National Insurance Co. Ltd vs Pranay Sethi and others, reported in AIR 2017 SC 5157***, the claimants are entitled for 50% i.e. Rs.3,57,000/- amount out of the

compensation amount as loss of future prospectus. The appellants are thus entitled for total amount of compensation of Rs.16,50,622/-.

18. For the reasons discussed above, the evidence of respondent No.1 and the argument of learned advocate for respondent Nos. 2 & 3 is not acceptable that claim application cannot be allowed as discussed and held above on re-appreciation of entire evidence with matter before this court, the reasons and findings in the impugned judgment and award are certainly illegal and incorrect. It requires interference and it deserves to be set aside. The impugned judgment and award deserves to be set aside. The appeal deserves to be allowed. The claim deserves to be allowed. Therefore, point Nos.(i) and (ii) are answered in the affirmative. Hence, following order.

ORDER

1. The appeal is allowed and the impugned judgment and award is set aside. The claim of appellants is allowed.
2. The appellants / claimants are entitled for compensation of Rs.16,50,622/- (Sixteen lakhs fifty thousand six hundred and twenty two only) with @ 9% p.a. interest from the date of filing of the appeal till realization of the entire amount.

3. Out of the said amount, Rs.2,00,000/- (Two lakhs) each be deposited in the fixed deposit in the name of appellant Nos.1 to 3 for five years only in any of the nationalized bank.
4. Rest of the amount be paid to the claimants accordingly.
5. The appellants / claimants are directed to pay deficit court fees on enhanced amount of compensation.
6. Record and Proceeding be sent back.

(SANJAY A. DESHMUKH, J.)