



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.91 OF 2025

National Insurance Company Ltd.
Through its Branch Manager
Malu Building Hanuman Chowk
Main Road Latur. Through its
Divisional Manager (TP HUB) Hazare Chambers
Railway Station Road, Aurangabad
District : Aurangabad

.....APPELLANT
(orig. respondent no.3)

VERSUS

- 1) Shakilabi W/o Husain @ Husainali Masuldar,
Age 36 years, Occu. Household,
For herself and on behalf of her minor
Children i.e. Respondents No. 2 to 4.
- 2) Sohel S/o Husain @ Husainali Masuldar,
Age 17 years, Occu. Education,
- 3) Aman S/o Husain @ Husainali Masuldar,
Age 14 years, Occu. Education,
- 4) Muskan D/o Husain @ Husainali Masuldar,
Age 12 years, Occu. Education,
- 5) Fateahemad S/o Amin Masuldar,
Age 65 years, occu. Nill,
- 6) Ratanbi W/o Fateahmed Masuldar,
Age 60 years, Occu. Nil,

All R/o Kharola, Tq. Renapur,
Dist. Latur.
- 7) Balu @ Balraje S/o Ankush Patil
Age 29 years, Occu. Agri & Business,
R/o Kharola, Tq. Renapur Dist. Latur

- 8) Pruthviraj S/o Dayananad Mohite,
Age 40 years, Occu. Agriculture,
R/o Kasargaon Tq. & Dist. Latur

.....RESPONDENTS

(R.Nos.1 to 6 are orig. claimants
R.Nos. 7 & 8 original respondents No. 1 and 2)

Mr. Sudhir V. Kulkarni, Advocate for the appellant
Mr. N. D. Kendre, Advocate for the respondent nos.1 to 6

CORAM : SANJAY A. DESHMUKH, J.
DATED : 24TH NOVEMBER 2025

JUDGMENT :-

1. This appeal is preferred against the judgment and award passed by the learned Member, Motor Accident Claims Tribunal, Latur District Latur in Motor Accident Claim Petition No.108 of 2018 dated 20.12.2023.

2. Claimants'/respondents' claim is that on 15.01.2018, Husain @ Husainali was proceeding towards his house at Mominpura by foot. When he reached near a bore-well on Kharola-Renapur road, a car bearing no.MH.24/V-3371 gave dash against him from behind. In the said accident, Husain sustained serious injuries and was taken to P.H.C., Kharola. After examining him, doctor declared him dead. The Claimants have sought compensation as they are dependents of late Husain @ Husainali.

3. Appellant/Insurance Company objected to the said claim denying all the material contentions in the claim petition. It is contended that driver of the offending car was not holding a valid driving licence at the relevant time. He was holding only a learner's licence. It is lastly prayed that there is a breach of the policy conditions. Hence, Insurance Company is not liable to pay the compensation and the owner is liable to pay the compensation.

4. During the arguments, learned Advocate Mr. S. V. Kulkarni, for the appellant submitted that it is an admitted fact that the driving licence of the driver of offending car was only a learner's licence and therefore, there is a breach of the policy conditions. He submitted that findings of the learned Trial Court in this regard are not legal and sustainable, as there is clear breach of the insurance policy conditions.

5. Learned Advocate Mr. S. V. Kulkarni for the appellant further submitted that Husain's income was not properly considered, though it is alleged that he was serving with the contractor. There is no reliable evidence of his salary certificate as the contractor's registration number is not appearing on the salary certificate at Exhibit-36. It is therefore prayed that the impugned judgment and award be set aside by allowing the appeal. He is relying upon the judgments of *New India Assurance Co. Ltd Vs. Mandar Madhar*

Tambe and Others, reported in *(1996) 2 Supreme Court Cases 328* and *Bhuwan Singh Vs. Oriental Insurance Company Limited and Anr*, reported in *(2009) 5 Supreme Court Cases 136*.

6. Learned Advocate Mr. N. D. Kendre for the respondents/claimants strongly opposed the appeal and submitted that the holding of the learner's licence by the driver of the offending car is not disputed. He therefore relies upon the judgment of *National Insurance Company Vs. Swaran Singh and Ors*, reported in *(2004) 3 SCC 297*, wherein the Hon'ble Supreme Court has held as under:

“93. Motor Vehicles Act, 1988 provides for grant of learner's licence. [See Section 4(3), Section 7(2), Section 10(3) and Section 14]. A learner's licence is, thus, also a licence within the meaning of the provisions of the said Act. It cannot, therefore, be said that a vehicle when being driven by a learner subject to the conditions mentioned in the licence, he would not be a person who is not “duly licensed” resulting in conferring a right on the insurer to avoid the claim of the third party. It cannot be said that a person holding a learner's licence is not entitled to drive the vehicle. Even if there exists a condition in the contract of insurance that the vehicle cannot be driven by a person holding a learner's licence, the same would run counter to the provisions of Section 149(2) of the said Act.”

7. Learned Advocate for the claimants lastly submitted that reasonable amount of compensation by considering income of the deceased Husain is awarded by the learned Member, Motor Accident Claims tribunal and no interference is warranted in it. It is submitted to dismiss the appeal.

8. Perused the Record and Proceedings, particularly the impugned judgment and oral and documentary evidence on record. It is not disputed that the driver of the offending car was holding a learner's valid driving licence at the time of the accident. The only question is whether the liability to pay the compensation on account of breach of the policy conditions lies with the owner of the car or not. In the judgment of ***National Insurance Company Vs. Kripal Kaur and Others***, reported in **2024 ACJ 90**, the Punjab and Haryana High Court in its judgment at paragraph no.18 has made the following observations:

“18. The purpose of Rule 3 of 1989 Rules is that a person with their learner's licence is expected to drive a vehicle only for the purpose of learning. While learning to drive a motor vehicle, a holder of learner's licence must be accompanied by an instructor so as to make an effective driving licence to drive such a vehicle. It is also the mandate of rule 3 (ibid) that such an instructor must be sitting in a position to control or stop the vehicle in case of any necessity. The purpose of making this rule is to ensure the safety of not only the learner but also of other persons using the road. Thus, a person holding a learner's licence, if not accompanied by an instructor as laid down in rule 3(b) of 1989 Rules would not be holding a valid licence in consonance with the judgment of the Apex Court in Swaran Singh case (supra), where it was laid down that vehicle must be driven by a learner subject to conditions mentioned in the licence and only then he can be treated as a person who is duly licenced.”

9. Thus, Rule 3(b) of the Central Motor Vehicles Rules, 1989 provides that holding of a learner's licence is sufficient, and it does not amount to a violation of the policy conditions, as held in the case of *National Insurance Company Vs. Swaran Singh* (supra). The learned Tribunal was correct in deciding the issue of the learner's licence of the driver of the offending vehicle and there is no substance in the grounds of the objection raised in this appeal in this regard.

10. As far as income of the deceased Husain is concerned, the learned Trial Court in the paragraph no.20 of impugned judgment held that salary certificate at Exhibit-36 is not reliable to hold that the deceased was getting a salary of Rs.15,000/- per month and, therefore held that a notional income of Rs.9,000/- per month would be proper for the purpose of determining the amount of compensation. The learned Tribunal considered the education of the deceased Husain, who was a graduate.

11. The learned Tribunal after considering the age of the deceased Husain, applied the proper multiplier of 14 and also awarded 30% towards loss of future prospects. It further considered the loss of consortium to the wife, children and parents. Finally it awarded a reasonable amount of compensation of Rs.17,24,200/- (Rs. Seventeen lac twenty four thousand two hundred only). There is no

illegality or perversity in the impugned judgment and award of the learned Tribunal with regard to the quantum of amount of compensation also.

12. There is no substance in the grounds of objections of the appeal. Hence, following order:

ORDER

- a. First Appeal is dismissed with no orders as to costs.
- b. Pending Civil Applications, if any, stand disposed of.

(SANJAY A. DESHMUKH, J.)