IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

938 FIRST APPEAL NO. 1943 OF 2024

Chatrabhuj Digambar Dashrath and others ...Appellants

Versus

Dadarao Laxman Bhalekar and others ...Respondents

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Advocate for Appellant : Mr. Swapnil S. Patil
Advocate for Respondent No.2-A: Mr. Navin Shah
Advocate for Respondent No.3 : Mr. Abhijit Choudhari

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CORAM : **SANJAY A. DESHMUKH, J.**
DATED : **19th NOVEMBER 2025**

PER COURT :-

1. This appeal is preferred against the judgment and award passed by the learned Member, Motor Accident Claims Tribunal, Jalna, dated 21.4.2017 in M.A.C.P. No. 33 of 2012, whereby the claim of the claimant was partly allowed against the owner and driver of the offending vehicle i.e. tractor of Mahindra make, bearing registration No. MH-21-AD-327.

2. The claimants came with a case that deceased Arjun was the son of appellant Nos. 1 and 2, husband of appellant No.3 and father of appellant Nos. 4 to 7. The accident in question took place on 27.12.2011 on Ghansawangi - Ambad road in front of house of one

Kulkarni at about 7.00 p.m. Deceased arjun was proceeding by a motor cycle and he died on the spot. The crime was registered and the charge sheet was filed against the driver of the offending tractor. All these claimants were depending upon the income of deceased Arjun. Therefore, they claimed compensation.

3. The respondent Nos. 1 and 2 strongly opposed the claim petition and contended that their vehicle is insured with respondent No.3 and therefore, they are not liable to pay the compensation.

4. The respondent No.3 insurance company denied the material contentions raised by the claimants and contended that there is material breach of terms and conditions of insurance policy. It is a case of contributory negligence on the part of the rider of the motorcycle. The exorbitant amount is claimed. The trolley was not insured with the insurance company. Therefore, insurance company is not liable to pay the compensation.

5. The learned Tribunal, by framing the necessary issues, held that the claimants have proved their case and claim was partly allowed by awarding the compensation of Rs.10,93,000/- with interest at the rate of 8% p.a.

6. During the course of arguments, learned advocate for the appellants pointed out the impugned judgment and award and submitted that the Tribunal failed to consider that the insurance company is liable to pay the compensation to the claimants. It wrongly held that there was breach of policy conditions and it was used for commercial purpose. He submitted that reasons assigned by the Tribunal are not correct. As far as the insurance policy of the offending tractor is concerned, he is relying upon the judgment of Hon'ble Supreme Court in the case of ***Royal Sundaram Alliance Insurance Company Limited vs. Honnamma and others, 2025 GoJuris (SC) 528,*** in which the Hon'ble Supreme Court held that the trailer of the tractor cannot be driven independently and become part of the motor vehicle when attached to the tractor. The tractor is root and primary cause of the accident and therefore, merely because there is breach of the policy of the trolley or instrument of the insurance, the insurance company cannot be exonerated from liability. He submitted that the amount of compensation was not properly carved out by the Tribunal by considering the evidence on record as well as in view of the judgment of the Supreme court in the case of ***National Insurance Co. Ltd vs Pranay Sethi : 2017 (16) SCC 680*** and in the case of ***Sarla Verma vs. Delhi Transport Corporation : (2009) 6SCC 121***. He submitted that there are total 7 claimants who are depending upon the income of deceased Arjun.

Therefore, 1/3rd deduction is not legally justifiable. Learned advocate for the appellants therefore submitted that in the light of above, the first appeal be allowed by modifying the judgment and award of the Tribunal.

7. Learned advocate Mr. Choudhari, representing the respondent No.3 - insurance company, strongly opposed the appeal and submitted that the reasons and findings of the learned Tribunal are correct. As far as the joint liability of the insurance company is concerned, he submitted that there is no substance on the ground of objections of appeal, as the evidence is properly appreciated by the Tribunal. He lastly prayed to dismiss the appeal.

8. Learned advocate Mr. Navin Shah, for the respondent No. 2-A submitted that the insurance policy of the offending tractor was valid at the time of occurrence of accident and in view of the judgment of ***Royal Sundaram (supra)***, the insurance company is liable to pay compensation. It is lastly prayed to dismiss the appeal.

9. Perused the record and proceeding, particularly the impugned judgment and award and the evidence on record. The following points emerged for consideration: -

i) Was the Learned Tribunal illegal and incorrect in appreciating the evidence and considering the liability of the insurance company?

10. The insurance company came with a case that no separate premium of the trolley is paid and therefore, the insurance company is not liable to pay the compensation to the appellants However, the in view of the judgment in the case of ***Royal Sundaram (supra)*** the Trailer cannot be driven independently and when the tractor is the root and primary cause for occurrence of the accident, the insurance company cannot be exonerated from liability only because separate premium of the trolley was not paid. The reasons and findings of the learned Tribunal in this regard are not legal and correct and it deserve to be set aside.

11. As far as awarding of compensation to the claimants is concerned, the learned Tribunal rightly concluded the net income of deceased Arjun and held that Rs.6000/- p.m. was his income. The claimants are seven in numbers who were depending upon the income of deceased Arjun. Considering the age of deceased Arjun and in view of law laid down by the Hon'ble Supreme Court in the case of ***Sarla Verma (supra)*** the claimants are entitled for addition of 40% from the date of his death. Thus, the monthly income of deceased Arjun comes to Rs.8400/-. Considering the number of

dependents on deceased Arjun, 1/5th amount is to be deducted out of Rs.8400/-, for his personal expenses which comes to Rs.6720/- p.m. If the said amount is multiplied by 12, then yearly income of deceased comes to Rs.80,640/-. Considering the age of deceased Arjun, the multiplier of 16 is proper multiplier. If yearly income of Rs.80,640/- is multiplied by 16, the total amount comes to Rs.12,90,240/-. In view of the judgment in the case of ***National Insurance Co. Ltd vs Pranay Sethi (supra),*** the claimants are entitled for Rs.30,000/- for funeral expenses and loss of estate. The claimant No. 3 wife of Arjun is entitled for loss of estate for Rs.40,000/- and amount of Rs.2,80,000/- for loss of consortium. The claimants are thus entitled for total compensation of Rs.16,40,240/- with interest @ 8% p.a. from the date of filing of the claim petition. Therefore, point Nos. 1 is answered affirmatively.

12. The impugned judgment and award are therefore, deserves to be partly set aside and modified. The appeal deserves to be allowed. Hence, the following order:-

O R D E R

I. The appeal is allowed.

II. The respondents i.e. the legal representatives of respondent Nos. 2 and 3, are jointly and severally liable to pay compensation of Rs.16,40,240/- with interest @ 8% pa. from the date of filing of the petition till its realization.

III. Rest of the judgment and award is confirmed.

IV. The respondents shall deposit the enhanced amount of compensation within eight weeks from today with interest accrued thereon.

V. The claimants to pay deficit court fees on the enhanced amount of compensation.

VI. The award be drawn up accordingly.

(SANJAY A. DESHMUKH, J.)

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