IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

906 CIVIL APPLICATION NO. 11049 OF 2025
IN FA/1298/2014

BAJAJ ALLIANZ GENERAL INSURANCE CO. LTD. AURANGABAD
VERSUS
ASHA SATISH TAMBADE AND OTHERS
...
Mr. M. R. Deshmukh, Advocate for Applicant
Mr. S. K. Naikwade, Advocate for Respondent Nos.1 to 5
...

CORAM : AJIT B. KADETHANKAR, J.
DATE : 07.10.2025

PER COURT :-

1. Heard Mr. Deshmukh, learned counsel representing the appellant/Insurance Company as also Mr. Naikwade, learned counsel representing the original claimants. At the instance of the parties, the appeal is disposed of finally at the stage of admission.

2. Feeling aggrieved by the judgment and order dated 08.04.2014 passed by the learned Motor Accident Claims Tribunal, Been in Motor Accident Claim Petition No.177 of 2009, the appellant/Insurance Company has lodged the present appeal under Section 173 of Motor Vehicles Act.

3. The sum and substance of the defence of the Insurance Company during the trial, as also the objection to the impugned judgment and order is

that the driver of the insured vehicle was not possessing a valid and effective driving licence to drive the insured class of vehicle on the date of the accident. However, the learned Tribunal, despite noting this defence and accepting that in such circumstances the insurer cannot be held liable to compensate the claimants, passed a direction of "pay and recover". Being aggrieved by this direction, the present appeal has been filed. Another objection raised in the appeal by the Insurance Company pertains to the quantum of compensation granted by the learned Tribunal. It appears that the grant of future prospects and the consideration of the entire salary were questioned by the appellant while filing the appeal.

4. Mr. Deshmukh, learned counsel for the appellant/Insurance Company in all fairness submits that the law is now well settled by the Hon'ble Supreme Court, which has clarified that in cases where the Insurance Company takes the defence regarding the driver's licence, a "pay and recover" direction is appropriate to meet the ends of justice and achieve the object of this socially beneficial legislation. He graciously brings to the notice of this Court the law laid down by the Hon'ble Supreme Court in ***S. Iyyapan vs. United India Insurance Company Limited and Another reported in (2013) 7 SCC 62***, particularly paragraphs 16 to 19, as well as in ***Pappu and Others vs. Vinod Kumar Lamba and Another, reported in (2018) 3 SCC 208***. In view of

this settled position, it can be seen that the interest of the appellant/Insurance Company has already been protected by the learned Tribunal. The learned Tribunal has passed "pay and recover" direction accordingly.

5. As far as the issue of quantum is concerned, it is also no longer *res integra* that in cases like the present one, where the deceased was a primary school teacher, future prospects are payable on the salary. In view of this legal position, nothing survives in the appeal.

6. As such, the First Appeal is dismissed without any order as to costs.

7. The amount if any, deposited by the appellant/Insurance Company in this Court is permitted to be withdraw by the claimants in the proportion if any, directed by the learned Tribunal.

8. Any solvent surety/security/undertaking, if given by the claimants for any earlier withdrawal, stands discharged.

9. Pending Civil Applications, if any, also stand disposed of.

[AJIT B. KADETHANKAR, J.]

PRW