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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.3408 OF 2021
WITH
CIVIL APPLICATION NO.14053 OF 2021 IN FA/3408/2021
WITH
CIVIL APPLICATION NO.13043 OF 2024 IN FA/3408/2021

The New India Assurance Co. Ltd.,
Through its In-charge (Legal Hub),
D.O. No. I, Adalat Road, Aurangabad,
Avinash Achyutrao Bugdani,
Age 56 Year, Occu.: Service,
Assistant Manager,
R/o. Aurangabad, Dist. Aurangabad.

... APPELLANT
(Orig. Respondent No.2)

Versus

1. Dagdu S/o. Kanhaiyalal Patil,
Age: 51 years, Occu.: Nil.
2. Sau. Mangalabai Dagdu Patl,
Age: 46 years, Occu.: Household,
Both R/o. Vishwanath,
Tq. Dist. Dhule.
3. Rameshwar S/o. Pandharinath Gawade,
Age Major, Occu.: Driver,
R/o. Mohadi Upnaga,
Tq Dist. Dhule.

(Deleted as per Court's Order
dated 24.06.2025)

4. Ratnabai Icharam Choudhary,
Age Major, Occu: Owner of India Car
No.MH-04/DN-8871
R/o. Gagne, Tq. Dist. Dhule.

... RESPONDENTS
(R-1 & 2 Orig. Claimants)
(R-3 & 4 Orig. R-1 &2)

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Mr. S.R. Bodade, Advocate for Appellant

Mr. Mahesh Patil, Advocate for Respondents No.1 and 2

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CORAM : ABHAY S. WAGHWASE, J.**RESERVED ON : 15 JULY 2025****PRONOUNCED ON : 01 AUGUST 2025****JUDGMENT:-**

1. This appeal is at the instance of the insurance company/original respondent No.3, hereby taking exception to the judgment and award dated 23.08.2021 in M.A.C.P No.42 of 2015 filed by present respondents No.1 and 2/original claimants on account of accidental death of Vijay on 19.11.2014.

BRIEF FACTS GIVING RISE TO THE APPEAL ARE AS UNDER:

2. On 19.11.2014, the deceased Vijay Dagdu Patil was riding his motorcycle bearing registration No. MH-18/AH-8260, accompanied by his friend Hiralal. While they were in the vicinity of the Dhule-Amalner Road, an Indica car bearing registration No. MH-04/DN-8871, coming from the opposite direction in a rash and negligent manner, and gave dash to the motorcycle of the deceased Vijay, causing grievous and fatal injuries. His parents, i.e., his father and mother, filed Accident Claim Petition No. 42 of 2015, holding the driver of the Indica

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car solely responsible for the accidental death of their son, and sought compensation to the tune of Rs. 10,00,000/-. It was their case that, deceased Vijay was the contractor of digging wells and earned Rs.10,000/- per month. That he was barely 22 years of age at the time of the accident. Due to his untimely death, the claimants lost their source of earning. That the deceased Vijay was the sole bread earner of the family, and therefore, the claimants sought compensation under various heads from the driver of the vehicle, the owner, as well as the insurer.

3. On issuance of notices, respondents No. 1 and 2, i.e., the driver and owner of the vehicle, failed to appear before the Tribunal; therefore, the petition proceeded *ex parte* against them. Only the insurance respondent No. 3, i.e., the present appellant, appeared and resisted the claim, denying all contentions raised in the claim petition, including the involvement of the Indica car. The insurance company has also taken the statutory defence that the driver of the Indica car did not possess a valid and effective driving licence. That, there was no evidence of negligence on the part of the Indica car driver, and that the driver of the motorcycle was solely responsible for the accident.

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4. After appreciating the entire evidence on record, the learned Tribunal held that the driver of the Indica car, its owner, and the insurer are jointly and severally liable to pay compensation of Rs. 10,85,000/- along with interest at 8% per annum.

Feeling aggrieved by the award dated 23.08.2021, the insurance company has preferred the instant appeal on various grounds mentioned in the appeal memo.

5. Learned counsel for the insurance company would submit that there is incorrect appreciation of evidence as well as law by the Tribunal. That the Tribunal has not considered that the driving licence of the deceased, Vijay, was not on record; therefore, an adverse inference needs to be drawn. Consequently, the FIR was lodged at a belated stage, for which no plausible explanation was given. He pointed out that, in fact, the FIR was against an unknown vehicle, and since there was no distinct evidence of the involvement of the Indica car, the Tribunal ought not to have directed the insurance company to bear the responsibility of compensation. He further pointed out that the deceased, Vijay, was admittedly a bachelor; therefore,

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50% of the amount ought to have been deducted towards his personal expenses. However, the Tribunal failed to do so and instead deducted only one-third of the amount towards personal and living expenses. Therefore, the entire approach of the Tribunal is improper. He also claimed that the compensation awarded was exorbitant and excessive, even when the claimants failed to prove the actual income of the deceased, Vijay. On these grounds, he urges to allow the appeal by setting aside the impugned judgment and award.

6. Learned counsel for respondents No.1 and 2/original claimants supported the findings and urged not to disturb the well reasoned order passed by the Tribunal.

7. Heard learned counsel for appellant/insurance company and learned counsel for respondents No.1 and 2/original claimants. Perused the impugned judgment and award.

8. On re-appreciation of the entire evidence, it is emerging that there is no serious challenge to the occurrence of accident on 19.11.2014, wherein deceased Vijay was riding motorcycle bearing No. MH-18/AH-8260 and the said vehicle met with an accident with indica car bearing No. MH-04/DN-8871.

9. Here, it is noted that there is eyewitness account from almost five witnesses, namely Dnyaneshwar Suklal Patil, Sandeep Daga Patil, Duryodhan Dharmi Patil, Nilesh Prabhakar Patil, and Hiralal Gopichand Pawar. Coupled with their evidence and taking into account the FIR, though lodged at a belated stage, and the investigation revealing the involvement of the Indica car, there is no reason to doubt its involvement. Spot panchanama clearly shows that there is negligence on the part of the Indica car driver in giving dash to the motorcycle. There is no reason to doubt the prosecution's story, despite the FIR being lodged against an unknown vehicle, particularly in light of the statements of independent witnesses.

10. Another ground agitated before this Court by the insurance company is that the claimants failed to produce the driving licence for the motorcycle rider, and there is an admission on behalf of the father that he is unable to furnish a copy of the licence. Therefore, learned counsel for the insurance company urges this Court to draw an adverse inference

11. Going by the law settled in ***National Insurance Company Limited v. Swaran Singh***, (2004) 3 SCC 297, wherein it has been held that the mere absence of a licence, or the production of a fake or invalid licence at the relevant time, is not a valid defence available to the insurer against the insured or a third party. The burden lies on the insurer to establish a breach of the policy. It is categorically observed that mere non-production of licence or evidence by the insured cannot be considered as discharging of burden of the insurer. Having regard to such observations of the Hon'ble Apex Court, this Court finds no merit in the ground raised that an adverse inference should be drawn on failure of the father of the deceased to produce the driving licence on record. No such automatic adverse inference can be drawn in view of the above settled law.

12. As regards the third ground of challenge that the Tribunal has failed to deduct 50% towards personal expenses is concerned, it appears that the Tribunal has deducted one-third of the income amount. In view of the ratio laid down in ***National Insurance Company Limited Vs. Pranay Sethi and Others***, (2017) 16 SCC 680, since the deceased was a bachelor at the time of the accident, 50% ought to have been deducted. Therefore, this ground has substance and requires consideration.

13. Learned counsel for the insurance company also submitted that there was contributory negligence on the part of both vehicles. However, apart from such plea, there is no evidence to support such a submission. On visiting spot panchanama and statement of eyewitness, it is a clear case that the Indica car is solely responsible for the accident. Therefore, the question of contributory negligence does not arise.

14. The last ground raised before this Court is that an excess and exorbitant income was considered in the absence of evidence. On perusal of the impugned judgment, it is emerging that claimants had set up a case that deceased Vijay was a contractor of digging wells and earning Rs.10,000/- per month. In paragraph 13, the Tribunal has categorically noted that there is no evidence in this regard; therefore, notional income of Rs. 5,000/- per month has been considered. This Court finds that the consideration of such income is justified.

15. In view of the above discussion, this Court is of the opinion that the Tribunal has erred in deducting 1/3 amount towards personal and living expenses from the total income of the deceased, which should ought to have been deducted 50%.

16. Having regard to the above reasons and discussion, the award of the Tribunal is reassessed as under:

	Head	Amount (Rs.)
1	Annual Income (Rs.5,000 x 12)	Rs.60,000/-
2.	Future Prospects 40% i.e. 24,000 (60,000 + 24,000)	Rs.84,000/-
3.	(-) 1/2 deduction towards personal and living expenses (84,000 – 42,000/-)	Rs.42,000/-
4.	Multiplier 18 (42,000 x 18)	Rs.7,56,000/-
5.	Non-pecuniary Losses:- Loss Filial Consortium = Rs.44,000/- Loss of Estate = Rs.16,500/- Funeral Expenses = Rs.16,500/-	Rs. 77,000/-
6.	Total compensation awarded	Rs. 8,33,000/-
7.	Compensation awarded by the Tribunal	Rs. 10,85,000/-
8.	Excess Compensation (10,85,000 – 8,33,000)	Rs. 2,52,000/-

16. In the result, the following order:

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ORDER

- (I) The First Appeal is partly allowed as under:
- (II) Impugned judgment and award dated 23.08.2021, passed by the Member of M.A.C.T., Dhule in M.A.C.P. No.42 of 2015 is modified.
- (III) The over all compensation is reduced from Rs.10,85,000/- to Rs.8,33,000/-, which shall carry interest @ 8% per annum.
- (IV) The excess amount of Rs.2,52,000/- along with proportionate interest accrued during the pendency of the present Appeal shall be refunded to the Appellant/Insurance Company.
- (V) The balance amount along with interest, if any, shall be released to respondents No.1 and 2/original claimants in terms of the order passed by the Claims Tribunal.
- (VI) Modified award be prepared accordingly.
- (VI) The Appeal is allowed in above terms.
- (VII) Civil Application Nos.14053 of 2021 and 13043 of 2024 are also stand disposed of

**ABHAY S. WAGHWASE,
JUDGE**