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

**FIRST APPEAL NO.1271 OF 2019
WITH
CA/7555/2025 IN FA/1271/2019**

The New India Insurance Co. Ltd.,
Branch Manager,
Abbott Buildding, Ist Floor, Near Ashoka Hotel,
Kings Road, Ahmednagar – 414001

Through its Divisional Manager/
Authorized Signatory,
Mahesh Auto Compound, Adalat Raod,
Aurangabad. … APPELLANT
(Orig. Respondent No.2)

Versus

1. Minakshee Gokulkdas Gosavi,
   Age: 51 years, Occu.: Nil.

2. Poonam Gokuldas Gosavi,
   Age: 29 years, Occu.: Education,

3. Pooja Gokuldas Gosavi
   Age: 27 years, Occu.: Education,

4. Prasad Gokuldas Gosavi,
   Age: 25 years, Occu.: Education

   All R/o. Sangamner, Tqluka Sangamner,
   District Ahmednagar.

5. Arjun Shivshankar Rawni,
   Age: Major, Occu. Business,
   R/o. H.No. 16 at Baghodi,
   Post Saria Cirdih, District Girdih,
   Jharkhand – 815 301 … RESPONDENTS
   (R-1to 4 Orig. Claimants)
   (R-5 Orig. R-1)

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Mr. S.R. Bodade, Advocate for Appellant
Mr. R.B. Dhakane, Advocate for Respondents No.1 a to 4

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CORAM : ABHAY S. WAGHWASE, J.
RESERVED ON : 24 JULY 2025
PRONOUNCED ON : 07 AUGUST 2025

JUDGMENT:-

1. This is an appeal filed by the Insurance Company taking exception to the judgment and award dated 17.07.2015 passed by the learned M.A.C.T, Sangamner in M.A.C.T. No.96 of 2011.

BRIEF FACTS GIVING RISE TO THE APPEAL ARE AS UNDER:

2. The present respondents No.1 to 4 set up the above claim against the owner of the truck and its insurer on the premise that, on 18.12.2010, deceased Gokuldas, who was in the employment of Public Works Department, Sub-Division, Sangamner, was behind the wheels of Government Jeep bearing No. MH-04-Y-175. When the said vehicle reached the vicinity of village Naigaon, a truck bearing No. HR-38-K-2361, coming from the Malkapur side at an excessively high speed and on the wrong side of the road, and gave a dash to the jeep, causing grievous injuries to the deceased Gokuldas. He succumbed on the spot. Crime was registered against truck driver, as accident has occurred due to his entire negligence. The wife, daughters, and son of the deceased Gokuldas filed Accident Claim Petition

No. 96 of 2011, seeking compensation to the tune of Rs. 19,00,000/- on the ground that they were his dependents and had lost their source of income due to his death. The deceased Gokuldas was the sole bread earner of the family; therefore, the claimants sought compensation under various heads from the owner of the vehicle as well as the insurer.

3. In response to the notices issued by the Tribunal, respondent No.1 filed written statement at Exhibit-14 denying negligence and rather set up the case of negligence of deceased Gokuldas (jeep driver). Respondent No. 2, the insurance company, also filed a written statement at Exhibit-25, taking the stand that the deceased himself was rash and negligent. The second ground raised for objection was that the driver of the offending truck was not holding a valid driving licence, which amounted to a breach of the insurance policy; therefore, the insurance company sought dismissal of the claim petition against it.

4. The necessary issues were framed by the Tribunal, and by judgment and award dated 17.07.2015, the claim petition was partly allowed, directing respondents No. 1 and 2 to pay

compensation jointly and severally to the tune of ₹14,11,404/-, along with interest at the rate of 8% per annum.

Feeling aggrieved by the award dated 17.07.2015, the insurance company has taken exception to the above award by filing the instant appeal on various grounds spelt out in the appeal memo.

5. The thrust of the learned counsel for the insurance company is that, firstly, the sole negligence of the truck driver is not established. Secondly, the truck driver, i.e., the driver of the offending vehicle, was not holding a valid licence on the date of the accident; therefore, there was a breach of the policy condition, and the insurance company is not liable to pay compensation.

6. Learned counsel for the insurance company has taken a specific plea, with contentions raised in the written statement filed by the company, stating that the insurance company engaged a private investigator who conducted a thorough investigation at the R.T.O. office in Kolkata, which has jurisdiction to issue the licence to the offending truck. The insurance company is in receipt of communication dated

29.08.2013 from R.T.O. office conveying that photocopy of the driving licence is fake. Learned counsel submitted that, unfortunately, due to a communication gap, the investigator's report could not be placed on record before the Tribunal; hence, a civil application for additional documents has been filed. For all the above reasons, the liability of the insurance company as fixed by the Tribunal has been questioned in this appeal.

7. Per contra, learned counsel for the respondents/claimants supported the impugned judgment and award passed by the Tribunal, contending that every aspect put forth before the Tribunal has been correctly appreciated, and therefore, the impugned judgment and award, being legally justified, should not be interfered with. On the contrary, he sought enhanced compensation, as according to him, insufficient compensation has been awarded by the Tribunal.

8. Heard learned counsel for appellant/insurance company and learned counsel for respondents No.1 to 4/original claimants. Perused the impugned judgment and award.

9. On re-appreciation of the entire evidence, it emerges that on behalf of the original claimants, the widow of the deceased

Gokuldas has adduced her evidence at Exhibit-26. Apart from her testimony, she has also placed on record the FIR (Exhibit-31) and the spot panchanama (Exhibit-32). On studying these documents, particularly the spot panchanama, this Court is convinced that the truck had left its correct side of the road, gone onto the wrong side, and given a dash to the jeep. Therefore, with such quality of evidence on record, no fault can be found with the Tribunal's finding that the truck driver was solely responsible for the accident. Even in appeal, the insurance company has not seriously questioned such findings of negligence recorded by the Tribunal.

10. The only issue hotly contested by the insurance company is that, the driver of the offending truck was not holding a valid licence, and since it amounts to breach of the policy conditions, the insurance company seeks to be absolved of liability.

11. Admittedly, except for taking such a plea, the insurance company has neither taken effective steps nor examined the R.T.O. authority or the investigator whom it claims to have engaged. Now, civil application has been filed seeking permission to produce additional evidence on record, i.e. the

communication dated 29.08.2013. However, the very investigator on whose report the said communication is relied upon has not been examined.

12. It is well settled that when a specific defence is taken by the insurance company to avoid liability on the ground of breach of policy conditions, the fundamental burden lies on the insurance company to establish the same. Apart from placing reliance on the said communication allegedly received from the R.T.O. authority at Kolkata, there is no other material on record so as to accept the case of the insurance company regarding the breach of policy condition.

13. Admittedly, the claimants have placed on record a photocopy of the driving licence of respondent No. 1 at Exhibit-37. Before the Tribunal, no evidence was brought on record by the insurance company to demonstrate that the said licence was not genuine, which is precisely the stand taken in the first appeal. Consequently, the sole ground of breach of policy condition raised on appeal has no substance. This Court finds no reason to interfere with the findings and conclusions reached by the Tribunal.

14. Learned counsel for respondents No. 1 to 4, the original claimants, has sought just compensation, i.e. rather enhanced compensation. It is contended that such enhancement can be claimed without filing an appeal.

15. In view of the ratio laid down in ***Nagappa Gurudayal Singh and Others,*** (2003) 2 SCC 274 and ***Khimshankar Trivedi and Others Vs. Kasam Daud Kumbhar*** and others, (2015) 4 SCC 137, it is settled position that, claimants need not file distinct appeal or cross appeal seeking enhancement.

16. In the present case, a perusal of the impugned judgment and award reveals that the computations and calculations made by the learned Tribunal are set out in paragraphs 21 and 22 of the impugned judgment. This Court finds no fault in considering the monthly salary as Rs. 13,499, deducting one-fourth of the amount towards personal and living expenses, and applying a multiplier of 11. At the time of the accident, the deceased was 51 years of age; therefore, there is no question of adding future prospects in view of the ratio laid down in ***Sarla Verma and Others vs. Delhi Transport Corporation and Another***, AIR 2009 SC 3104.

17. However, it is noticed that, the Tribunal has awarded Rs.25,000/- towards loss of consortium only to claimant No.1 (present Respondent No.1) and Rs.10,000/- each to claimants No.2 to 4 (Present respondents No.2 to 4). All the claimants are equally entitled to loss of consortium in their individual capacities as the wife, daughters, and son of the deceased. So also, the Tribunal has awarded Rs.10,000/- towards funeral expenses. Similarly, the Tribunal seems to have forgotten to award distinct compensation under the head of 'loss of estate'. Therefore, modification in the award to that extent is also required to be made.

18. In view of the ratio laid down in ***National Insurance Company Limited v. Pranay Sethi*** and Others, 2017 (16) SCC 680, claimants are entitled for Rs. 40,000/- each, i.e. 1,60,000/- plus 30% (Rs.48,000/-) which comes to **Rs.2.08,000/-** towards loss of consortium. Rs. 15,000/- plus 30% (Rs.4,500/-), which comes to **Rs.19,500/-** towards loss of estate and Rs.15,000/- plus 30% (Rs.4,500/-), which comes to **Rs.19,500/-** towards funeral expenses.

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

	Head	**Amount (Rs.)**
1	Annual Income (Rs.13,499 x 12) As calculated by the Tribunal	Rs.1,61,988/-
2.	(-) 1/4 deduction towards personal and living expenses (1,61,988 – 40,497) As deducted by the Tribunal	Rs.1,21,491/-
4.	Multiplier 11 (1,21,491 x 11) As applied by the Tribunal	Rs.13,36,401/-
5.	Non-pecuniary Losses:- Loss Consortium = **Rs.2,08,000** Loss of Estate = **Rs.19,500/-** Funeral Expenses = **Rs.19,500/-** Transportation Charges = Rs.10,000	Rs. 2,57,000/-
6.	**Total compensation awarded**	**Rs. 15,93,401/-**
7.	Compensation awarded by the Tribunal	Rs. 14,11,401/-
8.	**Enhanced Compensation (15,93,401 – 14,11,401)**	**Rs. 1,82,000/-**

20. In the result, the following order:

ORDER

(i) Appeal filed by the Insurance Company is dismissed with no order as to costs

(ii) Impugned judgment and award dated 17.07.2015, passed by the Member of M.A.C.T., Sangamner in M.A.C.P. No.96 of 2011 is modified.

(iii) Appellant-insurance company to pay enhanced compensation of Rs.**1,82,000**/- to claimants within 12 weeks from today along with interest @ 8% per annum from the date of registration of claim petition till its realization.

(iv) Modified award be prepared accordingly.

(v) Respondents No.1 to 4/original claimants to pay court fees on enhanced compensation as per rules.

(vi) On deposit of the amount by Insurance Company, respondents No.1 to 4/original claimants are permitted to withdraw the same.

(vii) Civil Application No.7555 of 2025 also stands disposed of.

ABHAY S. WAGHWASE,
JUDGE

S P Rane