IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 598 OF 2022

United India Insurance Co. Ltd.
Through its Divisional Manager,
Osmanpura, Aurangabad. ... Appellant
(Orig. Respondent No.1.)

Versus

1. Bashir Ahemad S/o. Khajamiya Shaikh (Dead)

2. Shakila Begum W/o. Bashir Ahemad,
Age : 43 years, Occu. : Household,

3. Shaikh Shahid S/o. Bashir Ahemad,
Age : 19 years, Occu. : Student,

4. Huma Kausar D/o. Bashir Ahemad,
Age : 16 years, Occu. : Student,
Minor U/g of her real mother
Respondent No.2.

All R/o. Plot No.14, Lane No.1,
Near Asifiya Colony, Ghati,
Aurangabad.

5. Sanjay Asaram Mohite,
Age : Major, Occu. : Owner & Driver,
R/o. Bhavan Manik Nagar,
Sillod, Tq. Sillod, Dist. Aurangabad. ... Respondents
(R-1 to 4, Orig. Claimants)
(R-5 Orig. R-2)

......

Mr. A. G. Kanade, Advocate for Appellant (Through V. C.).
Mr. G. R. Syed, Advocate for Respondent Nos.2 to 4.

......

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 11 JULY 2025

PRONOUNCED ON : 22 AUGUST 2025

JUDGMENT :

1. Insurance Company is hereby taking exception to judgment and order dated 13.08.2015 passed by learned Member, Motor Accident Claims Tribunal, Aurangabad in M.A.C.P. No. 716 of 2012 awarding compensation to the claimants by partly allowing the claim and directing original respondent nos.1 and 2 to jointly and severally pay Rs.12,42,300/- along with interest at the rate of 9% per annum.

2. Learned counsel for Insurance Company pointed out that, above numbered claim petition was set up by respondent Nos.1 to 4, who were heirs of deceased Shaikh Asif Ahemad on account of his demise in road traffic accident dated 15.07.2012. It is pointed out that, above claim was resisted by Insurance Company, who was arraigned as respondent no.1 in original claim petition by setting up case of breach of policy and secondly, learned Tribunal has not deducted amount towards personal expenses. Therefore, according to him, there is infirmity in the judgment and order of Tribunal and hence, he urges for allowing the appeal to such extent.

3. Per contra, learned counsel for claimants fairly submitted that, if the court is inclined to allow the appeal, then

order of pay and recovery be passed and appeal to that extent be allowed by modifying judgment and order of Tribunal.

4. After hearing the above submissions and on going through the impugned judgment dated 13.08.2015, it is emerging that, claim petition was set up by heirs of deceased Shaikh Asif Ahemad, who was allegedly traveling from Vaijapur to Aurangabad on motorcycle bearing no. MH-20-BS-8343 and was allegedly given dash by another motorcycle bearing no.MH-19-AR-4283. Case set up by deceased that deceased was skilled worker and under various heads claim of Rs.6,00,000/- was asserted.

5. The above claim petition was contested by only Insurance Company by tendering the written statement at Exh.19 denying sole responsibility of rider of offending motorcycle insured by it. It was asserted that deceased was also driving his motorcycle in rash and negligent matter.

6. Learned counsel for appellant has taken this court through his case set up in Tribunal, more particularly in para 7 of the judgment, wherein Insurance Company had denied the liability on the ground that driver of the offending motorcycle bearing no. MH-19-AR-4283 was not holding valid driving licence and this

amounted to breach of condition of policy and thereby liability of Insurance Company is denied.

7. It is his serious objection that in spite of breach of policy, Insurance Company has been liable to pay compensation along with owner rider of offending motorcycle.

8. After going through the impugned judgment, it transpires that, while answering issue no.1 on the point of rash and negligence driving, learned Tribunal has taken into account evidence of PW1 coupled with investigation papers and has recorded a finding that accident took place due to rash and negligent driving of offending motorcycle bearing No.MH-19-AR-4283.

9. As regards to stand taken regarding breach of policy, there seems to be discussion in answering issue no.2, which commences from para 12, wherein defence of breach of condition of policy has been set up by present appellant - Insurance Company. Learned Tribunal has observed in para 12 that having taken such stand, Insurance Company under obligation to prove with positive evidence that driver of motorcycle bearing MH-19-AR-4283 was not holding valid driving licence. While answering

the said issue, learned Tribunal has discussed the evidence of R.T.O. Officer, who was summoned by Insurance Company, who deposed on their behalf i.e. Milind Arjunrao Sasane, who is in his evidence at Exh.68 testified that, R.T.O. authority has not issued licence in the name of Sanjay Asaram Mohite, who was the rider of the motorcycle bearing No.MH-19-AR-4283. In the light of his evidence, learned counsel for Insurance Company seems to have made submission that Insurance Company has discharged its burden of proving their stand of breach of policy. Therefore, insurance company is exonerated from the liability to pay the compensation.

10. By issuing notice Exh.73 rider of offending vehicle was also called upon to produce driving licence. However, Exh.73 placed on record would show that, said notice was not served upon rider of motorcycle bearing No. MH-19-AR-4283.

11. Resultantly, learned Tribunal has held that, Insurance Company has failed to discharge the obligation to prove that rider was not having valid licence and as such there is breach of policy. Surprisingly, in para 14 of the judgment, learned Tribunal has held that witness R.T.O. Officer cannot be said to be a witness on the point of valid licence.

12. In the considered opinion of this court, very witness of R.T.O. authority, who is competent to issue licence, when has stepped into witness box and has testified that his office has not issued any licence and in spite of being called when rider of the motorcycle bearing No.MH-19-AR-4283 failed to contest or produce valid licence, the best available evidence which was adduced by Insurance Company, in the considered opinion of this court, ought to have been appreciated and considered further holding that Insurance Company has demonstrated that there is breach of policy and further ought not to have made Insurance Company also jointly liable along with rider of motorcycle bearing No. MH-19-AR-4283. There is apparently no driving licence and this amounts to breach of policy.

13. As regards to deduction towards personal expenses is concerned, there is discussion in para 21 of the impugned judgment, wherein income of deceased is Rs.4,000/- per month. Notional income Rs.2,000/- is added under the head of future prospects and thereby base income is considered as Rs.6,000/- per month. However, while carrying deduction towards personal expenses, deduction made by tribunal is one fifth instead of 50% regarding which specific ground is raised by virtue of clause (IV) of the appeal memo.

14. 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. Deceased was undisputedly bachelor and he has widowed mother, younger brother and a sister. Therefore, under such circumstances, deduction towards personal expenses ought to have been 50%, but learned Tribunal has erred in considering the same and therefore, interference in the same is also called for.

Further, in the considered opinion of this court, learned tribunal has granted amount towards loss of consortium and loss of love and affection only Rs.1,00,000/-, but for all claimants. In view of the ratio laid down in ***Pranay Sethi*** *(supra)* ***and Magma General Insurance Co. Ltd. Vs. Nanu Ram alias Chuhru Ram and Others, (2018) 18 SCC 130 and Nagappa Vs. Gurudayal Singh and Others, (2003) 2 SCC 274,*** claimants are entitled for Rs.40,000/- each, i.e. 1,20,000 /- plus 30% (Rs.36,000/-) which comes to Rs.1,56,000/- towards consortium and loss of love and affection. Rs.15,000/- plus 30% (Rs.4,500/-), which comes to Rs.19,500/- towards loss of estate.

In view of the aforesaid discussion, claimant is entitled for following compensation :

Sr. No.	Heads	Amount (Rs.)
1.	Annual Income (i.e. 4000 x 12)	48,000/-
2.	Future Prospects 50% i.e. 24,000 (48,000 + 24,000)	72,000/-
3.	Less 50% deduction towards personal expenses. (Rs. 72,000 – Rs. 36,000)	36,000/-
4.	Multiplier of 18 (36,000 X 18)	6,48,000/-
5.	Loss consortium and Love and affection = 1,56,000/- Funeral expenses = Rs.25,000/- (as per tribunal) Medical Expenses = 80,500/- (as per tribunal) Loss of Estate =19,500/-	2,81,000/-
6.	**Total compensation to be paid**	**9,29,000/-**
7.	Compensation awarded by Tribunal	**12,42,300/-**
8.	**Total Excess Compensation (i.e. Rs.12,42,300 – 9,29,000)**	**3,13,300/-**

15. In the result, the following order :

ORDER

(I) The First Appeal is allowed.

(II) Impugned judgment and award dated 13.08.2015, passed by the Member of M.A.C.T., Aurangabad in M.A.C.P. No.716 of 2012 is modified.

(III) The over all compensation is reduced from Rs.12,42,300/- to Rs.9,29,000/-, which shall carry interest @ 9% per annum.

(IV) The excess amount of Rs.3,13,300/- along with proportionate interest accrued during the pendency of the present Appeal shall be refunded to the Appellant/Insurance Company.

(V) After deducting the aforesaid amount from the total compensation, the balance amount, if any, shall be released to respondents Nos.2 to 4/original claimants along with accrues interest thereon.

(VI) Modified award be prepared accordingly.

(VII) As the insurance company is exonerated from the liability to pay compensation, insurance company is entitle to recover the amount of compensation as per modified award from the owner as per law.

(VIII) The Appeal is disposed off in above terms.

(ABHAY S. WAGHWASE, J.)

Tandale