IN THE HIGH COURT OF JUDICATURE AT BOMBAY BENCH AT AURANGABAD

FIRST APPEAL NO. 2166 OF 2024 WITH CIVIL APPLICATION NO. 9584 OF 2024 IN FIRST APPEAL NO. 2166 OF 2024

Mahanandabai Gyandevo Shinde and others .. Appellants

Versus

Narayan Ambadas Gawali and others .. Respondents

Shri Ram B. Deshpande, Advocate for the Appellants.
The respondent Nos. 1 and 2 are absent, though served.
Shri Mohit R. Deshmukh, Advocate for the Respondent No. 3.

CORAM : SHAILESH P. BRAHME, J.
DATE : 09TH JUNE, 2025.

FINAL ORDER :

. Heard Mr. Ram B. Deshpande, learned advocate for the appellants and Mr. Mohit R. Deshmukh, learned advocate for the respondent No. 3. None appears for the respondent Nos. 1 and 2, though served. Already notices for final disposal were issued and both the parties were intimated that appeal would be decided at the admission stage.

2. Appellants who are original claimants are challenging judgment and award dated 02.04.2024 passed by the learned Member, Motor Accident Claims Tribunal, Ambajogai in M. A. C.

P. No. 94 of 2016 awarding compensation of Rs. 8,54,000/- inclusive of NFL amount payable by the respondent No. 1 with further interest at the rate of Rs. 8% per annum. The predominant grievance of the appellants is that the respondent No. 3/Insurance company should not have been exonerated from joint and several liability of payment of compensation with interest. Appellants are not disputing the quantum or any other finding except finding recorded for issue No. 3.

3. Learned counsel for the appellants tenders on record judgment and award dated 22.11.2024 passed by the self same Tribunal in M. A. C. P. No. 93 of 2016. It was claim of the dependents of another deceased person involved in the same accident. The respondents are held jointly and severally liable to pay compensation and interest at the rate of Rs. 9% per annum was awarded. On the ground of parity appellants are entitled to succeed in the appeal.

4. Learned counsel for the appellants has filed on record photo copy of the driving license of the driver of the offending vehicle, which was before the Tribunal in the collateral proceedings referred to above. He prays to allow the application for additional evidence.

5. Per contra, Mr. Mohit R. Deshmukh, learned advocate for the respondent No. 3/Insurance Company submits that a plausible and reasonable view has been taken by the Tribunal.

Appellants failed to adduce requisite evidence and Tribunal is justified in holding that Insurance Company had proved fundamental breach of policy. It is submitted that reliance on the judgment of the Tribunal in the companion matter is impermissible. It is further submitted that application for additional evidence is liable to be rejected.

6. I have considered rival submissions of the parties. I have also gone through the record and proceedings. It is not disputed that present appeal is preferred to limited extent of exoneration of the respondent No. 3/Insurance Company from joint and several liability. No other findings are under challenge.

7. Respondent Nos. 1 and 2 did not appear before the Tribunal and against them matter proceeded ex-parte. Respondent No. 3/insurance company also did not adduce any oral evidence. It is also not disputed that in the accident in question Shivdas Babasaheb Kshirsagar was pillion rider of the motorcycle and Gyandev Namdev Shinde was driving the motorcycle. Both of them died in the accident. M. A. C. P. No. 93 of 2016 was filed by the dependents of Shivdas Kshirsagar against the respondents. By judgment and award dated 22.11.2024, Tribunal awarded compensation of Rs. 17,54,000/- with interest at the rate of Rs. 9% per annum recoverable from respondents holding them liable jointly and severally.

8. I have gone through the judgment dated 22.11.2024 passed

by the Tribunal in M. A. C. P. No. 93 of 2016. The respondent No. 3/Insurance Company had taken same defence. However, in that claim a photo copy of the driving license of the respondent No. 1 was placed on record. The respondent No. 1/driver of the vehicle had appeared and contested the matter. It was case of the respondent No. 1 that he was having valid driving license. By reasoned order Tribunal overruled plea of the insurance company that driving license of the respondent No. 1 was not valid and effective. I have carefully considered findings recorded in para No. 20 of the said judgment holding the insurance company liable jointly and severally. It would be just and proper to reproduce relevant operative part of the judgment, which is as follows.

O R D E R

“1. The Claim Petition is partly allowed.

2. Claim Petitioners Nos. 1 to 4 are entitled to get total compensation for the accidental death of Shivdas s/o. Babasaheb Kshirsagar, overall worth Rs. 17,54,000/- (Rs. Seventeen Lakhs Fifty Four Thousands only) inclusive of no fault liability compensation.

3. Respondents Nos. 1 to 3 respectively Narayan Ambadas Gawali, Dhanaji Narsing Pachange and Bajaj Allianz General Insurance Company Ltd., are jointly and severally ordered to pay above said amount of compensation to the Claim Petitioner above with simple interest at the rate of 9% per annum from the date of petition till the present award and then till realization of entire amount by way of account payee cheque, demand draft or electronic transfer within next 30 days from this

Award."

9. It is informed by both the sides that the respondent No. 3/Insurance Company has satisfied the award passed in M. A. C. P. no. 93 of 2016. If that is so, then principles of parity would attract more rigorously.

10. Appellants have taken proper recourse to the competent authority in serving a copy of license. The self same license was relied in the similarly placed matter and the insurance company was recorded to be liable jointly and severally with the driver and the owner of the vehicle. I find merit in the application seeking production of additional evidence. It deserves to be allowed.

11. In the present case, matter proceeded ex-parte against the respondent Nos. 1 and 2. Appellants who were dependents, in all probabilities could not have secured driving license when the matter was in the Tribunal. I find substance in the submissions of Mr. Ram B. Deshpande, learned advocate for the appellants. The respondent No. 3-Insurance Company is liable to pay the compensation jointly and severally. The findings recorded in para No. 40 of the impugned judgment exonerating the Insurance Company on the ground of fundamental breach of policy are unsustainable.

12. It further reveals from the record and the impugned

judgment that no reasons are assigned to exonerate the respondent No. 2/owner of the vehicle. In fact, in para No. 40 he was recorded to be liable vicariously. I have no hesitation to hold that all the respondents are liable to pay the compensation jointly and severally.

13. It is contended by the learned advocate for the appellants that interest should have been awarded to the tune of Rs. 9% per annum, relying on the judgment passed in companion matter. Considering the similarity of the circumstances, I find merit in the submissions.

14. For the reasons recorded above, I pass following order.

O R D E R

A. First Appeal is allowed partly.

B. Impugned judgment and award dated 02.04.2024 passed by the learned Member, Motor Accident Claims Tribunal, Ambojogai in M. A. C. P. No. 94 of 2016 to the extent of exonerating the respondent Nos. 2 and 3 and awarding interest at the rate of Rs. 8% per annum shall stand modified.

C. The respondent Nos. 1 to 3 are jointly and severally liable to pay an amount of Rs. 8,54,000/- (Rs. Eight Lakhs Fifty Four thousands only) to the appellants inclusive of NFL amount with interest at the rate of 9% per annum from 15.09.2016 till realization of the amount of compensation.

D. Rest of the operative part of the award dated 02.04.2024 shall stand confirmed.

E. Award be drawn up accordingly.

[SHAILESH P. BRAHME J.]

bsb/June 25