IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

FIRST APPEAL NO. 412 OF 2023

New India Assurance Co. Ltd.,
Divisional Manager, Gorakshan Road,
Akola, Tq. and District Akola,
through the Regional Manager,
Nagpur Regional Office at 1st Floor,
Riaan House, Opposite Kasturchand
Park, Mohan Nagar, Nagpur – 440001. .... APPELLANT

VERSUS

1) Kavita wd/o Gopal Goley,
Age about 38 years,
Occupation – Household,

2) Gaurav s/o Gopal Goley,
Age about 14 years,
Occupation – Education,

3) Prachi d/o Gopal Goley,
Age about 8 years,
Occupation – Education.

4) Lilabai wd/o Devrao Goley,
Age about 65 years, Occ.- Nil.

Respondent Nos. 2 and 3, being
minor, through their mother,
Respondent No.1.

All R/o Kenwad, Tq. - Risod,
District Washim.

5) Uddhav Arjun Dewade,
Age 43 years, Occupation – Driver,
At Mohaja Devade, Tq. Pathardi,
District Ahmadnagar.
(Driver of Tanker No.MH 17 BY 9696)

6) Babaji Pandurag Temgire,
Age about 45 years,
Occupation – Business,
R/o Rahata, Tq. & District Ahmadnagar,
(Owner of Tanker No.MH 17 BY 9696) …. **RESPONDENTS**

Mr. B.P. Bhatt, Advocate for the appellant,
Ms. S.H. Bhagat, Advocate for respondent Nos. 1 to 4.

CORAM : ABHAY J. MANTRI, J.
DATE : 19th JUNE, 2025

ORAL JUDGMENT :

Heard. **Admit**. With the consent of the learned counsel for the parties, the appeal is taken up for a final hearing forthwith.

2. This appeal is directed against the judgment and award dated 04-01-2022 passed by the learned Chairman, Motor Accident Claims Tribunal, Washim (hereinafter referred to as the "***Tribunal***"), whereby partly allowed the claim petition of respondent Nos.1 to 4 and awarded compensation of Rs.20,25,000/- inclusive of the no fault liability amount.

3. It is the case of the claimants that on 13-06-2018 at about 2.15 a.m., deceased Gopal Devrao Goley, along with his friends, was standing on the roadside near the Bolero Van. At that time, one Milk Tanker bearing registration No.MH-17/BY-9696 (hereinafter referred to

as the "***Tanker***") came in a high-speed, rash, and negligent manner and gave a dash to the parked Bolero Van from the back side, which hit the deceased who was standing near the Bolero Van. In the accident, the deceased sustained grievous injuries and succumbed to them. Accordingly, one Baban Soma Wakude lodged a report about the incident at Police Station Shirpur, which was registered vide Crime No.100/2018 for the offences punishable under Sections 279 and 304 of the Indian Penal Code against the driver of the offending Tanker. The police conducted the panchanama, carried out the investigation, and filed a charge sheet against the Tanker driver.

4. It is further contended that the deceased was approximately 44 years old and owned a Tractor, which he used for agricultural purposes, and earned an amount of Rs. 30,000 per month. He was also earning Rs. 15,000 per month from the agricultural land. He also possessed a Car, which was being used for travelling purposes on rent. Thus, he was earning a total amount of Rs. 45,000/- per month. Claimant No.1 is the widow, claimant Nos. 2 and 3 are the son and daughter, and claimant No.4 is the mother of the deceased.

5. Respondent Nos. 5 and 6 are the driver and owner of the Tanker, respectively, and the Tanker was insured with the appellant

Insurance Company. Due to the loss of the deceased Gopal, the claimants have filed a petition for claiming compensation of Rs. 40,00,000/- against the appellant and respondent Nos. 5 and 6, as they are jointly and severally liable to pay the said compensation.

6. Respondent Nos. 5 and 6, though served, did not appear; hence, the claim petition was proceeded *ex parte* against them.

7. Respondent No.3 (herein appellant) filed the written statement and resisted the claim on the ground that the driver of the Tanker was not holding a valid driving licence and thereby respondent No.6 committed a breach of the terms and conditions of the policy; hence, it is not liable to pay the compensation. It has denied the averments in the petition in toto and, therefore, prayed for dismissal of the petition.

8. After considering the pleadings of both parties, the Tribunal framed issues. Issue No.1 was recast. Pursuant to the issues, the claimants adduced their evidence. They examined Claimant No.1 and proved the documents on record, and then closed their evidence. However, respondent No.3 did not adduce any evidence in support of its defence, but filed a pursis stating that it does not want to lead evidence.

9. After appreciation of the evidence and considering the documents on record, the Tribunal held that the appellant and respondent Nos. 5 and 6 are jointly and severally liable to pay the compensation to the claimants to the tune of Rs. 20,25,000/- along with interest @ 6% p.a.

10. After hearing learned counsel for both parties and going through the original record and proceedings, the following points arise for consideration :

(i) Whether the appellant has proved that the owner of the tanker/respondent No.6 has committed a breach of the terms and conditions of the insurance policy?

(ii) Whether the amount of compensation awarded under the head of love and affection and consortium is excessive?

(iii) Whether any interference is required in the impugned judgment and award ?

11. Mr. B.P. Bhatt, learned Advocate for the appellant, vehemently contended that the driver of the Tanker was not holding valid driving licence and thereby the owner of the Tanker has committed breach of terms and conditions of the insurance policy, and on that ground alone, the appellant is required to be exonerated; alternatively he submitted

that at the most the appellant would be liable to pay compensation to the claimants and recover the same from the owner of the Tanker. However, the Tribunal has not considered the defence of the insurance company in its proper perspective and erred in discarding the same. As such, he urged that the insurance company is not liable to pay compensation to the claimants.

12. As against this, Ms. S.H. Bhagat, learned Advocate for the respondent Nos. 1 to 4/original claimants, has submitted that the appellant has not led any evidence in support of its case and thereby failed to prove that the driver of the offending Tanker was not holding a valid licence. Therefore, the findings recorded by the Tribunal are just and proper; hence, no interference is warranted in them.

13. On perusal of the record, it evident that the appellant had not come with a specific defence that driver of the Tanker was not holding the valid driving licence and, therefore, insurance company is not liable to pay compensation, but, in the written statement, he has vaguely stated that the claim is liable to be dismissed on account of breach of terms and conditions of the policy as the driver of the Tanker was not having the valid driving licence at the time of accident. However, the appellant has not adduced any evidence in support of its defence. Had

it been the fact that if it were a specific defence of the appellant, then certainly it would be incumbent on it to make an application under Order XIV Rule 5 of the Civil Procedure Code to the tribunal to frame the additional issue in that regard as it was necessary to determine the controversy between the parties regarding the breach of policy, but the appellant failed to do so. Moreover, the appellant did not put the suggestion to the claimant No.1 during her cross-examination regarding the breach of the policy by the owner of the Tanker. The said facts also lead to drawing an adverse inference about the defence of the appellant. Even assuming that the issue was not framed, in such an eventuality, the appellant was also not restrained or prohibited from adducing the evidence in support of its defence. But it was at liberty to adduce evidence in support of its defence to demonstrate that the driver of the offending Tanker was not holding a valid driving licence at the time of the accident, and thereby the owner of the Tanker had committed a breach of the policy. However, the appellant failed to adduce any evidence in support of its defence.

(a) Similarly, during the argument before the Tribunal, the Advocate for the insurance company did not raise the said issue. Had it been the fact that if the appellant's crucial defence were of about the breach of terms and conditions of the Policy, then certainly they would have taken the appropriate steps before the Tribunal for framing the additional issue as well as leading the evidence in support of their defence, but the appellant neither filed a written application for framing the additional issue nor led any evidence in support of their evidence. Considering the above discussion, it is apparent that the burden lies on the appellant to demonstrate that respondent No. 6 has committed a breach of the policy; in such an eventuality, it was incumbent on them to prove this fact by adducing cogent evidence. However, they failed to discharge the burden that lies on it. In such circumstances, non-framing of the issue by the Tribunal would not cause prejudice to the appellant's rights. Thus, it is evident that the appellant failed to prove that the driver of the Tanker was not holding a valid driving licence; thereby, respondent No. 6 has committed a breach of the policy. Therefore, I do not find any substance in the argument of the learned Advocate for the appellant in that regard. Hence, I answer point No.1 in the negative.

14. Mr. Bhatt, learned Advocate for the appellant, contended that the Tribunal has erred in awarding excess compensation on the point of love and affection as mentioned at Sr. No.7 of the table in para no.20 of the judgment, for which the claimants are not entitled. To substantiate his contentions, he has relied on the judgments of the Hon'ble Apex Court in the cases of ***Shriram General Insurance Co. Ltd. v. Bhagat Singh***

Rawat and others, 2023 ACJ 2330 and ***Savitribai and others v. Divisional Manager, National Insurance Co. Ltd., 2024 ACJ 497***. Hence, he urged that the claimants are not entitled to the compensation as awarded under the said head, and therefore, it should be liable to be reduced.

15. On the other hand, Ms. S.H. Bhagat, learned Advocate for the respondents No. 1 to 4, submitted that as per the judgment in ***Magma General Insurance Co. Ltd v. Nanu Ram, 2018 ACJ 2782 (SC)*** as well as the judgments cited by the learned Advocate for the appellant, the claimants are entitled to the compensation as awarded under the head of love and affection/filial consortium and, therefore, no interference is called for in the impugned judgment and award.

16. Perused the judgment in the case of ***Bhagat Singh Rawat*** and others (supra), wherein in paragraph 7, the Hon'ble Apex Court has observed that

> "As per the dictum laid down in the case of Pranay Sethi, the claimants are entitled to the amount of Rs. 50,000/- and Rs. 40,000/- respectively under the two heads. *The total amount is Rs. 90,000/- is* liable to pay."

As per the judgment and award impugned, the amount of Rs. 1,00,000/- was granted under the head of loss of love and affection and Rs. 25,000/- was granted under the head of loss of consortium.

17. To determine the above controversy it would be proper to refer the judgment in the case of ***United India Insurance Company Limited v. Satinder Kaur Alias Satwinder Kaur and others, (2021) 11 SCC 780***, wherein the Three Judges Bench of the Hon'ble Apex Court, after considering the ratio laid down in the case of ***Pranay Sethi*** as well as ***Magma General*** *insurance Co. Ltd.* (supra), held that -

> *"To provide uniformity with respect to the grant of consortium, and loss of love and affection, after considering the various orders of the High Courts as well as the Tribunals on the said points, the Hon'ble Apex Court has recognised three conventional heads under which compensation can be awarded viz. loss of estate,* ***loss of consortium*** *and funeral expenses. The loss of consortium head further divided in three categories; spousal consortium, parental consortium, and filial consortium and observed that under these three heads, the claimants are entitled for the loss of consortium and in the said judgment they have granted an amount of Rs. 40,000/- under the head of spousal consortium, Rs.40,000 X 3 = Rs.1,20,000/- under the head of* ***parental consortium*** *as there were three children* ***and*** *under the head of* ***filial consortium*** *the surviving parents is entitled to Rs.40,000/- each.*

As per the above mandate in the case at hand, under the head of **spousal consortium** claimant No.1 is entitled for compensation of Rs.40,000/-, *under the head of* ***parental consortium*** claimant Nos.2 and 3 are entitled for compensation of Rs.40,000/- X 2 = Rs.80,000/- and claimant No.4 being the mother is entitled for compensation of Rs.40,000/, *under the head of* ***filial consortium,*** *thus in total* they would entitle to Rs.1,60,000/- under the head of consortium and the Tribunal has granted total compensation under the head of love and affection and consortium of Rs.1,25,000/- i. e. less than the above amount as calculated. Therefore, I do not find substance in the argument advanced by the learned Advocate for the appellant in that regard; so also, the judgments relied on by him in support of his arguments are of hardly any assistance. Hence, I do not find substance in the ground raised by the appellant in that regard. Thus, I answer point No.2 in the negative.

18. Thus, to sum up the above discussion, it appears that the judgment and award passed by the Tribunal are just and proper, and no interference is called for in it in the present appeal. Hence, I answer point No.3 in the negative.

19. As a result, the appeal, being bereft of merit, stands dismissed. The parties shall bear their own costs.

(ABHAY J. MANTRI, J.)

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