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

FIRST APPEAL NO.955 OF 2018

Bharti Axa General Insurance
Company, 3rd Floor, Archit Kon,
Near Big Bazar, Off College Road,
Nasik-through its Regional Office
located at 1st Floor, B Block, Vishnu
Vaibhav Complex, Palm Road, Civil
Lines, Nagpur-440 001, through its
Manager (Legal), Shri Idris Zahid Kanwala. **...APPELLANT**
(Orig. Resp. No.2)
(On R.A.)

...V E R S U S...

1. Sau. Radhabai Atmaram Jaitalkar,
Aged 60 years, Occ: Household,

2. Smt. Dipalji Dattatraya Jaitalkar,
Aged 30 years, Occ: Household

3. Om Dattatraya Jaitalkar,
Aged 18 years, Occ: Education
(Age of respondent No.3 is corrected
as per Hon'ble Court's order dated 04.07.2024)

4. Vaishnavi Dattatraya Jaitalkar,
Aged 9 years, Occ: Nil,
No.4 is minor through her natural guardian
mother i.e. respondent no.2.

All R/o Shara, Tq. Lonar,
Dist. Buldana. (Orig. claimant Nos.2 to 5)
(On R.A.)

5. Dipak Atmaram Davhale,
Aged Major, Occ: Agriculturist,
R/o Shara, Tq. Lonar,
Dist. Buldana. (Orig. Resp. No.1)
...RESPONDENTS

Mr. R.D. Bhuibhar, Advocate for Appellant.
Mr.Vinay Rathi, Advocate h/f Mr. P.B. Patil, Advocate for respondent nos.1 to 4.

CORAM :- M.W. CHANDWANI, J.
ARGUMENTS WERE HEARD ON :- 07.10.2024
JUDGMENT PRONOUNCED ON :- 02.01.2025

JUDGMENT:

1. Correctness of the impugned judgment and award dated 18.04.2018 passed by the Motor Accident Claims Tribunal, Buldana (for short, "Tribunal") in M.A.C.P. No.42/2013 is questioned in this appeal, whereby the Tribunal has awarded compensation of Rs.5,30,800/- to the dependents of deceased Dattatraya Atmaram Jaitalkar (driver of the car), who died in a vehicular accident on 13.12.2012.

2. Brief facts of the case are that, on 13.12.2012, the driver of a car bearing registration No.MH-28-V-4722 alongwith with the owner of the car (respondent no.5) and one Shankar Dole were proceeding to Hyderabad. At about 11.00 pm, when they reached at Chaundhi Amba Shiwar situated on Basmat-Aundha Nagnath Road, the offending truck came from the opposite direction and due to the glare of its headlight, the driver lost control over the car and dashed against a tree. In the said accident, the driver died on the spot, therefore, the dependents i.e. respondent nos.1 to 4 filed a claim petition under Section 163-A of the Motor Vehicles Act, 1988 (for short "**MV Act**").

3. The appellant-Insurance Company of the said car resisted the claim mainly on the ground that the said car was used for hire and reward and therefore, there is a breach of policy and hence, sought rejection of the claim petition. The learned Tribunal by overruling the objection allowed the petition and awarded the compensation as referred above. Feeling aggrieved with the said amount, the present appeal came to be filed mainly on the ground that the learned Tribunal has not considered the objection of the appellant regarding breach of policy.

4. Mr. Bhuibhar, learned counsel for the appellant submitted that the car was taken on hire and reward by Shankar Dhole from respondent no.5 and in that situation, the occupant of the car could not claim compensation as he is not a third party and hence, his case is not covered in the insurance policy which has been purchased by respondent no.5. According to him, this aspect has not been considered by the learned Tribunal and erroneously allowed the petition by holding the appellant liable to pay the compensation. To buttress his submission he seeks to rely upon the case of ***National Insurance Company Vs. Balkrishan and another*** [1].

1 **(2013) 1 SCC 731**

5. *Per contra*, Mr. Vinay Rathi, learned counsel for respondent nos.1 to 4 submitted that the car in question is insured with the appellant, it is a comprehensive policy and extra premium for driver has been paid, therefore, the Tribunal has rightly awarded the compensation. He also relied on the same decision of Supreme Court in the case of ***Balkrishna*** (supra).

6. Having heard the learned counsel for the respective parties and having gone through the impugned award and depositions, it transpires that the deceased was driving the vehicle at the time of incident and was employed with respondent no.5 as his driver. The policy under which the said car was insured is a comprehensive policy. Perusal of the cover note reveals that the premium for the coverage of the driver has already been paid. Therefore, the submission made by the learned counsel for appellant that occupant cannot claim as third party does not stand, particularly when the policy is comprehensive one.

7. Rather, the decision in the case of ***Balkrishna*** (supra) relied by the appellant supports the case of respondent nos.1 to 4 wherein the Supreme Court has held that an “Act Policy” stands on a different footing from a “Comprehensive/Package Policy”. As the circulars have made the position very clear and the IRDA, which is presently the statutory authority, has commanded the insurance companies stating that a "Comprehensive/Package Policy" covers the liability, there cannot be any dispute in that regard. The earlier pronouncements were rendered in respect of the "Act Policy" which admittedly cannot cover a third party risk of an occupant in a car. But, if the policy is a "comprehensive/package policy", the liability would be covered. IRDA has clarified the position by issuing Circulars dated 16.11.2009 and 03.12.2009. Therefore, a "comprehensive/ package policy" would cover the liability of the insurer for payment of compensation for the occupant in a car.

8. Since, the policy is a comprehensive policy and separate premium has been paid for covering the liability of the driver, it is not open to the appellant to deny its liability towards compensation payable to the dependents of the deceased driver of the car. More so, the appellant has not placed insurance policy on record to show that inspite of payment of premium covering the risk of driver of the vehicle the insurer is not liable to pay compensation on account of death of the driver. Therefore, there is no merit in the submission of the learned counsel for the appellant.

9. It is a matter of record that the claim petition has been filed under Section 163A of the MV Act wherein a fixed amount of compensation is payable to the dependents of the deceased. Therefore, the Tribunal should not have granted the compensation on the basis of loss of dependency of respondent nos.1 to 4 and should not have granted compensation under other heads. However, the Tribunal erroneously granted a total compensation of Rs.5,30,800/- which is more than the capped amount prescribed under Section 163A of the MV Act, which was Rs.2,50,000/- on the day of passing of award. It is to be noted that by way of amendment in the year 2022, which came into force from 01.04.2022, Section 163-A has been deleted and Section 164 has been amended wherein, the amount of compensation payable to the dependents/injured has been fixed. In cases filed under Section 164, the claimant/injured is not required to prove the negligence on the part of the offending vehicle and the amount payable is Rs.5,00,000/- in case of death and Rs.2,50,000/- in case of grievous injury.

10. Now, the question arising in this appeal is whether the amendment will apply to pending claim petitions. To substantiate his statement, learned counsel for respondent nos.1 to 4 relied upon the case of ***Durgaram Vs. Arjunan and others*** [1] decided by the Madras High Court. In that case it was held that, if the matter is to be adjudicated after passing of the amended Act, the benefit of the amended Act can be granted to pending applications. It is a settled law that the provisions in respect of compensation on account of vehicular accident is a beneficial piece of legislation. The case in hand was decided on 18.04.2018 and the present appeal was filed on 30.08.2018. Needless to mention that filing of the appeal is continuation of the original proceedings. Pending this appeal, the amended Act came into force. Therefore, I see no difficulty in coming to the conclusion that the benefit of the amendment can be extended to the respondent nos.1 to 4. Respondent nos.1 to 4 are entitled to the compensation amount of Rs.5,00,000/- (Rs. Five Lakhs) in view of amended Section 164 of the MV Act. Hence, I proceed to pass the following order:

ORDER

i. The appeal is partly allowed.

ii. The impugned award dated 18.04.2018 passed by the Member, Motor Accident Claims Tribunal, Buldana in M.A.C.P. No.42/2013 is modified as under:

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1 **CMA Nos. 1141/2022, decided on 21.11.2023**

The appellant and respondent no.5 shall jointly and severally pay an amount of Rs.5,00,000/- (Rs. Five Lakh) alongwith proportionate costs and interest at the rate of 9% per annum from the date of claim petition till its realization.

iii. The excess amount deposited by the appellant-Insurance Company, if any, be refunded to the appellant.

iv. The appeal is disposed of.

JUDGE

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