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

FIRST APPEAL NO.692 0F 2013

I.C.I.C.I. Lombard Motor Insurance
Civil Lines, Chandrapur Branch,
Chandrapur, through Branch
Manager, I.C.I.C.I. Lombard
General Insurance Company Ltd.
5th Floor, Landmark, Plot No. 56,
Wardha Road, Ramdaspeth,
Nagpur-10. .. Appellant

VERSUS

1. Smt. Geeta wd/o Nitesh @ Nitin
Wankhede, Aged 31 years,
Occ. : Household,

2. Ku. Ayushi D/o Nilesh @ Nitin
Wankhede, Aged 7 years,
through non-applicant no.1

3. ~~Smt. Laijabai W/o Kachru Wankhede~~,
~~Age 71 years, Occ. : Household~~,
All R/o.C/o. Smt. Vanita S. Upre,
Virur Station, Talulka Rajura,
District : Chandrapur.

Resp.No.3
deleted as per
order dated
18/1/21.

4. C. Abraham Vattakuzhiyil,
Age: Major, Occ.: Driver cum
Business, R/o. Saint Annne General
Stored, Arjuna Complex, Old Bus
Stand, Near Hotel Arjun Bar and
Restaurant, Allapalli Road, Ballarpur,
District : Chandrapur. .. Respondents

Shri R.D. Bhuibhar, Advocate for Appellant.
Shri S.R. Charpe, Advocate for Respondent No.1 to 3.
Shri Sumit R. Mendiretta, Advocate for Respondent No.4.

WITH

CROSS OBJECTION NO.15 OF 2015
IN
FIRST APPEAL NO.692 OF 2013

1. Smt. Geeta wd/o Nitesh @ Nitin Wankhede, Aged about 31 years, Occ : Household,

2. Ku. Ayushi D/o Nilesh @ Nitin Wankhede, Aged about 7 years, Occ : Nil

3. ~~Smt. Laijabai w/o Kachru Wankhede~~, ~~Aged about 71 years, Occ : Household~~,

Deleted as per court order dated 18.01.21,

Respondent No.1 for herself and mother guardian for respondent No.2, All R/o.C/o. Vanita S. Dupare, Virur Station, Taluka Rajura, District : Chandrapur. .. Cross Objectors/ Respondents

VERSUS

1. I.C.I.C.I. Lombard Motor Insurance Civil Line, Chandrapur, Through Branch Manager, I.C.I.C.I. Lombard General Insurance Company Ltd. 5th Floor, Landmark, Plot No. 56, Wardha Road, Ramdaspeth, Nagpur.

2. C. Abraham Vattakuzhiyil,
Age : Major, Occ.: Driver cum
Business, R/o. 9/2 , Integrated
Unit Colony (Forest), Ballarpur and
Owner of Scorpio bearing
registration no. MH-34/K-3540.. Respondents

Shri S.R. Charpe, Advocate for Cross Objectors.
Shri R.D. Bhuibhar, Advocate for Respondent No.1
Shri Sumit R. Mendiretta, Advocate for Respondent No. 2.

CORAM : PRAVIN S. PATIL, J.
DATED : 18.11.2025

JUDGMENT :

1. By way of present appeal, the challenge is to the judgment and order dated 29.4.2013 passed by the learned Motor Accident Claims Tribunal, Chandrapur in Motor Accident Claim Petition No.144/2007 with Cross-Objection No.15/2015.

2. In the present appeal No.692/2013 the insurance company has challenged the judgment and order passed by the Motor Accident Claims Tribunal, Chandrapur on two grounds, firstly, that the licence of the driver of offending vehicle (Exh.44) produced by the claimants before the

Tribunal was fake and, therefore, same should not have been relied upon by the learned Tribunal and secondly, the calculation made by the learned Tribunal towards the compensation is not proper. Hence, on these two grounds, the appeal is filed before this court.

3. In cross-objection, the claimants/cross-objector raised a grievance that though the claimants had produced sufficient evidence on record to demonstrate that the earning of the claimant was Rs.10,000/- per month, same was not considered properly and thereby awarded the less compensation. It is further stated that the proper multiplier is not made applicable by considering the age of the deceased. On these grounds, cross-objection filed before this court.

4. Both the matters being arising out of the same judgment, I am deciding both the matters by this common judgment.

5. At the outset, it is stated that the whole controversy in the present appeal is revolving around the

fact that the driving licence of the driver of offending vehicle was fake document produced by the claimants before the Tribunal.

6. In view of this factual aspect, the owner of the vehicle i.e. respondent no.4 in First Appeal No.692/2013 filed Civil Application No.2728/2019 before this court stating that by invoking the powers under Order 41, Rule 27 of the Code of Civil Procedure, he may be permitted to produce the additional documents on record i.e. the copy of driving licence of the driver issued by the office of Regional Transport Officer, Chandrapur. So also he has produced on record the extract of the driving licence issued by the Deputy Regional Transport Officer, Chandrapur dated 2.7.2014 to establish the fact that the driver was holding the valid licence till 29.11.2020. On filing of this application, this court by order dated 15.2.2021 observed that the licence produced by the respondent no.4 being issued by the competent authority, the appellant-insurance company has an opportunity to ascertain the authenticity of the said licence and accordingly the matter was adjourned.

In the further order dated 9.3.2021, the matter was further adjourned to enable the appellant to seek necessary instructions and make a statement as regards to the admissibility of the licence. However, the record shows that the insurance company did not made any statement before this court about the admissibility and hence this application remain pending on the file of this court.

7. The learned counsel for the respondent no.4 has relied upon the judgment of the Hon'ble Supreme Court of India in the case of ***Wadi .vs. Amilal and others, reported in 2015 (1) SCC 677***, wherein the Hon'ble Supreme Court has observed in para 5 as under :

> "*5. Now it is clear that Rule 27 deals with production of additional evidence in the appellate court. The general principle incorporated in sub-rule (1) is that the parties to an appeal are not entitled to produce additional evidence (oral or documentary) in the appellate court to cure a lacuna or fill up a gap in a case. The exceptions to that principle are enumerated thereunder in clauses (a), (aa) and (b). We are concerned here with clause (b) which is an enabling provision. It says that if the appellate court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, it may allow such document to be produced or witness to be examined. The requirement or need is that of the appellate court bearing in mind that the interest of justice is paramount. If it feels that*

> *pronouncing a judgment in the absence of such evidence would result in a defective decision and to pronounce an effective judgment admission of such evidence is necessary, clause (b) enables it to adopt that course. Invocation of clause (b) does not depend upon the vigilance or negligence of the parties for it is not meant for them. It is for the appellant to resort to it when on a consideration of the material or record it feels that admission of additional evidence is necessary to pronounce a satisfactory judgment in the case."*

8. So also it will be expedient to refer the other judgment of the Hon'ble Supreme Court in the case of ***Sanjay Kumar Singh .vs. State of Jharkhand, reported in AIR 2022 SC 1372***, wherein the Hon'ble Supreme Court of India has observed in para 4 as under :

> *"4. It is true that the general principle is that the appellate court should not travel outside the record of the lower court and cannot take any evidence in appeal. However, as an exception, Order 41 Rule 27 CPC enables the appellate court to take additional evidence in exceptional circumstances. It may also be true that the appellate court may permit additional evidence if the conditions laid down in this Rule are found to exist and the parties are not entitled, as of right, to the admission of such evidence. However, at the same time, where the additional evidence sought to be adduced removes the cloud of doubt over the case and the evidence has a direct and important bearing on the main issue in the suit and interest of justice clearly renders it imperative that it may be allowed to be permitted on record, such application may be allowed. Even, one of the circumstances in which the production of additional evidence*

> *under Order 41 Rule 27 CPC by the appellate court is to be considered is, whether or not the appellate court requires the additional evidence so as to enable it to pronouncement judgment or for any other substantial cause of like nature. As observed and held by this Court in the case of A. Andisamy Chettiar v. A. Subburaj Chettiar, reported in (2015) 17 SCC 713: (AIR 2016 SC 79), the admissibility of additional evidence does not depend upon the relevancy to the issue on hand, or on the fact, whether the applicant had an opportunity for adducing such evidence at an earlier stage or not, but it depends upon whether or not the appellate court requires the evidence sought to be adduced to enable it to pronounce judgment or for any other substantial cause. It is further observed that the true test, therefore is, whether the appellate court is able to pronounce judgment on the materials before it without taking into consideration the additional evidence sought to be adduced."*

9. After going through both the judgments of the Hon'ble Supreme Court of India, it is clear that if the court want to examine any documents which are enable it to pronouncement of judgment, it may allow such documents to be produced because the interest of justice is paramount while dealing with such application. So also it is held that if the documents which the party want to produce as an additional evidence on record and it is having some bearing to decide the pending proceeding and it is helpful to pronounce judgment and for substantial cause, then in

such circumstances such application are always to be allowed.

10. In the present case, admittedly the proceedings are arising out of the Motor Vehicles Act. This act being a beneficial legislation and it is the duty of the court to see that the claimants who are ultimately the sufferer due to the road accident of the earning member of the family should get justice as early as possible. I am of the opinion that in view of the law laid down by the Hon'ble Supreme Court of India, it will be justified in the present matter to allow Civil Application No.2728/2019 and considering the fact that documents produced by the respondent no.4 prima facie authentic as same were obtained from the Regional Transport Office, Chandrapur.

11. Reverting back to the fact of the present appeal, it is admitted fact that on 15.7.2007 deceased Nitesh alias Nitin s/o Kachru Wankhede went with Rajiv Narayan Wankar for official work. On that day, when they were returning back by motorcycle, the offending vehicle which was coming from other side lost the control and gave

terrible dash to the motorcycle of the deceased. In view of that dash the deceased as well as Rajiv Wankar fell down on the road. The deceased due to fatal injuries on his head and other parts of the body was referred to the Government Hospital, Ballarsha. But looking towards his seriousness, he was referred to General Hospital, Chandrapur. On examination by the Doctor he was declared dead.

12. The claimants who are legal heirs of the deceased filed Claim Petition before the Tribunal stating thereby that the deceased was running one welding unit which was duly certified under the provisions of the Bombay Shop and Establishment Act. He was having a Trade Certificate of Welder and, therefore, his earning was near about Rs.10,000/- per month. Accordingly, they have claimed the compensation of amount of Rs.8,00,000/- before the Tribunal.

13. It is further stated, after occurrence of incident, the police case was registered against the driver of the offending vehicle. During the course of investigation,

police machinery has collected the documents and registered the case against the driver of the offending vehicle. The claimants before the Tribunal has collected the said documents and produced the same before the Tribunal in Claim Petition. Accordingly, the documents (Exh.44) placed on record which was obtained by them from the police investigating officer. In response to the notice issued by the Tribunal, the insurance company appeared before the Tribunal and took a stand that the driving licence which is produced by the claimants of the driver of the offending vehicle is fake and illegal.

14. On behalf of the claimants, the cross-objector no.1 Geeta wd/o Nitesh @ Nitin Wankhede (Exh.22) entered into the witness box to prove her case and one Rajiv Wankar (Exh.46), who was eyewitness/pillion rider of the incident. On behalf of the respondent-insurance company, the evidence of Sachin Laxmanrao Kale was recorded who was working as a Junior Clerk in the office of Deputy Sub-Regional Transport Office, Chandrapur.

15. In the light of above said factual position, the learned Tribunal has held that the claimants have failed to prove his monthly income as Rs.10,000/- and thereby considered his monthly income at the rate of Rs.4,500/- only. The learned Tribunal in respect of the fake licence, held that in view of the driving licence produced from the police record, same is treated as a valid driving licence at the relevant time and accordingly awarded the compensation of Rs.6,55,000/- along with the statutory benefits to the claimants.

16. In the background of above said factual position, in the present appeal, the issue raised by the appellant-insurance company is that the learned Tribunal has committed an error by relying upon the driving licence (Exh.44) which if seen from naked eyes, there is manipulation over the same. Hence, the insurance company in such circumstances ought to have exonerated from the payment of compensation in the matter. The owner of the vehicle is only responsible for the payment of compensation in the matter.

17. In the present appeal, as stated above, the respondent no.4, owner has taken certain pains and produced on record the driving licence of the driver of offending vehicle and to support the same has also obtained the extract of driving licence from the office of Deputy Regional Transport Office, Chandrapur dated 2.7.2014. If these documents are perused carefully, I am of the opinion that the driving licence produced by the respondent no.4 is prima facie seems to be authentic in the matter. Furthermore, same driving licence seems to be valid till 29.11.2020. As such, considering this documents which is now made available on record, I am of the opinion that the issue regarding validity of licence is now settled down and, therefore, I hold that the driver of the offending vehicle was holding the valid licence at the time of accident.

18. In respect of calculation towards the compensation, the counsel for the cross-objector states that the annual income of the deceased ought to have been

considered Rs.95,000/- per annum, whereas, the counsel for the insurance company states that there is no cogent evidence available on record to reach to the conclusion that the deceased was having the earning of Rs.95,000/- per annum. According to the insurance company, except the certificates, nothing was placed on record as to what was the income of the shop, whether the necessary taxes were paid by the appellant or the account was properly maintained or not, is not produced before the Tribunal. Therefore, the amount claimed by the claimants is exorbitant.

19. The learned counsel for the cross-objector has relied upon the judgment of the Hon'ble Supreme Court of India in the case of ***Kala Devi and Others .vs. Bhagwan Chauhan and Others , reported in 2015 (2) SCC 771***. According to him, in the said appeal the accident was of year 2003 and the deceased was merely a driver of the vehicle. However, the Hon'ble Supreme Court, considering the fact that he was a driver and as per the Minimum Wages Act, his monthly income was considered Rs.9,000/-

and accordingly granted compensation in the matter. Applying the said yardstick, it is the submission of the cross-objector that in the present case, admittedly the deceased was running the welding shop. The shop was duly registered under the Bombay Shop and Establishment Act. The deceased was having the trade certificate as a welder. It is also pointed out that he was the only earning member in the family and from his earning he has purchased the plot on 12.1.2006 and in his account recently he has deposited Rs.83,600/-. Hence, according to me, considering this aspect, his monthly income ought to have been consider at higher side by the learned Tribunal.

20. After going through the judgments of the Hon'ble Supreme Court of India and the documents which cross-objector placed on record, I am of the opinion that the monthly income of the deceased can be considered at the rate of Rs.7,000/-. Accordingly, as per the law laid down by the Hon'ble Supreme Court of India in the case of ***Sarla Verma (Smt) and others .vs. Delhi Transport Corporation and another, reported in (2009) 6 SCC 121*** and ***National***

Insurance Company Limited .vs. Pranay Sethi and others, reported in (2017) 16 SCC 680, the cross-objector will be entitled for the compensation as under :

Monthly Income of Deceased	Rs. 7,000/-
Annual Income (Rs.7,000 x 12 Months)	Rs. 84,000/-
Add- Future Prospects (Addition 40%)	Rs. 33,600/-
Annual Income after adding future prospects (Rs. 84,000 + 33,600)	Rs. 1,17,600/-
Less- One Third deduction (Rs. 1,17,600-1/3)	Rs. 39, 200/-
Amount comes to	Rs. 78,400/-
Add- Multiplier '17' as per Sarla Verma (Rs. 78,400 x 17)	Rs. 13,32,800/-
Add- Consortium (Rs. 40,000 x 3)	Rs.1,20,000/-
Add- Loss of Estate	Rs. 15,000/-
Add- Funeral Expenses	Rs. 15,000/-
Total	**Rs.14,82,800/-**

21. In view of above, the interference of this court is necessary in the judgment and order passed by the learned Motor Accident Claims Tribunal, Chandrapur dated 29.4.2013. Hence, I proceed to pass the following order :

O R D E R

1) The Appeal as well as Cross-Objection is partly allowed.

2) It is declared that the claimants/cross-objectors are entitled for the compensation of

Rs.14,82,800/- including no fault amount with interest at the rate of 9% per annum from the date of filing of the Claim Petition i.e. 17.08.2007, till realization of the same.

3) The rest of the judgment and order is hereby confirmed.

4) The appellant-insurance company is hereby directed to deposit the enhanced compensation amount to the Registry of this court within a period of three months.

5) The claimants-cross-objectors are permitted to withdraw the same after deposit of amount by the insurance company before this court subject to satisfaction of Registrar (Judicial).

(Pravin S. Patil, J.)

Gulande