



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
FIRST APPEAL NO.566 OF 2013**

United India Insurance Company Ltd.,
Through its Divisional Office,
Divisional Manager, Ahmednagar.

..Appellant
(Orig. Respdt. No.3)

Versus

1. Smt. Sangeeta W/o Annasaheb Shermale,
Age: 25 years, Occu.: Household,
R/o: Samnapur Tq. Sangamneir
Dist: Ahmednagar
 2. Vijay S/o Annasaheb Shermale,
Age: 7 yrs. Occu: NIL
R/o: Samnapur Tq. Sangamneir
Dist: Ahmednagar
 3. Ku. Sakshi D/o Annasaheb Shermale,
Age 4 yrs. Occu: NIL
R/o: Samnapur Tq. Sangamneir
Dist: Ahmednagar (Orig. Claimant Nos.1 to 3)
- Resp Nos. 2 & 3 are minors &
U/g of resp no. 1 who is real
Mother of them. R/o as above
& summons be served through
Respondent no. 1
4. Lakshman S/o Hanumant Sodnar
Age: major Occu: driver
R/o: Samnapur Tq. Sangamneir
Dist: Ahmednagar (Orig. Respdt. No.1)
 5. Ayyaz Khan Ahmad Khan Pathan,
Age: major Occu: business.
R/o: Naikwadpura Tq. Sangamneir
Dist: Ahmednagar (Orig. Respdt. No.2)
 6. Irfan Gani Bagwan,
Age: major Occu: Business
R/o: house no. 1763/64,
Bagwanpura, Tq. Sangamneir
Dist. Ahmednagar (Orig. Respdt. No.4)

**AND
FIRST APPEAL NO.1549 OF 2014**

1. Smt. Sangeeta W/O Annasaheb Shermale,
Aged 25 years, Occu.- Household,
2. Vijay Annasaheb Shermale,
Aged 7 years, Occu- student,
3. Miss. Sakshi Annasaheb Shermale,
Aged 4 years, Occu- Nil.

Appellants No 2 & 3 are minors
represented by Appellant No 1,
their real mother. Appellants No 1
to 3 R/O- At & PO- Samnapur, Tal-
Sangamner, Dist- Ahmednagar.

..Appellants
(Orig. Claimants)

Versus

1. United India Insurance Company Ltd;
through its Divisional Manager,
Division Office, Ahmednagar. (Orig. Respdt. No.3)
2. Laxman Hanumanta Sodnar,
Aged- Major, Occu- Driver,
R/o- Samnapur, Tal- Sangamner,
Dist- Ahmednagar.. (Orig. Respdt. No.1)
3. Ayyaz Khan Ahmed Khan Pathan,
Aged- Major, Occu- Business,
R/o- Naikwadpura, PO & Tal- Sangamner
Dist- Ahmednagar. (Orig. Respdt. No.2)
4. Irfan Gani Bagwan,
Aged- Major, Occu- Business,
R/o- Bagvanpura, PO & Tal- Sangamner,
Dist- Ahmednagar. (Orig. Respdt. No.4)

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Mr. S. V. Kulkarni, Advocate for the Appellant in FA/566/2013.

Mr. V. Y. Bhide, Advocate for the Appellants in FA/1549/2014.

Mr. V. Y. Bhide, Advocate for Respondent Nos.1 to 3.

Mr. R. L. Kute, Advocate for Respondent Nos.5 and 6.

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CORAM : S. G. CHAPALGAONKAR, J.

RESERVED ON : 18th APRIL, 2024.

PRONOUNCED ON : 06th MAY, 2024.

JUDGMENT:-

1. These appeals are filed under Section 173 of the Motor Vehicle Act impugning judgment and award dated 26.09.2012 passed by the Motor Accident Claim Tribunal, Ahmednagar in M.A.C.P. No.80/2010 under Section 166 of the Motor Vehicle Act.
2. With the consent of the parties, matter is taken up for final hearing.
3. The appellant-insurer filed First Appeal No.566/2013 aggrieved by the liability to pay compensation fastened against him, whereas claimants are aggrieved by inadequate compensation assessed by the Tribunal.
4. The brief facts of the case can be narrated as under:

On 02.09.2007, late Annasaheb Shermale was traveling in Tempo bearing Registration No.MH-17-A-9186 from Ahmednagar towards Samnapur. While Tempo reached at village Nimgaonjali, the driver lost control over the vehicle. Resultantly, it dashed to the road side tree. Inmates of the vehicle suffered injuries. Late Annasaheb succumbed to the injuries suffered in accident. The claimants/dependents of the deceased lodged M.A.C.P. No.80/2010 before the Tribunal raising claim for compensation of Rs.7,00,000/- invoking provisions of Section 166 of the Motor Vehicle Act 1988, contending that the deceased had been to the market in the offending Tempo for selling Cauliflower. After selling the goods, in return journey fatal accident occurred. Late Annasaheb was earning his livelihood from agriculture and milk business and maintaining family. His earning is estimated to Rs.1,20,000/- to Rs.1,25,000/- per annum. Since the claimants/dependents have lost earning hand, they raised claim for compensation alleging rash and

negligent driving on the part of the Tempo driver. They asserts that the vehicle was owned by respondent no.2 and insured with respondent no.3 at the time of accident.

5. The claim was opposed by the respondents by filing respective written statements. It is not disputed that Late Annasaheb lost his life because of accident involving offending vehicle. The owner and driver refuted the claim denying allegations of negligence on the part of the driver, whereas the appellant-insurer refuted the claim stating that deceased being gratuitous passenger in goods carriage, the risk is not covered under the policy. They also asserts that the goods carriage was used for carrying passengers on hire and reward basis, that amounts to breach of terms and conditions of the policy which is valid defence to avoid liability in terms of Section 149(2) of the Motor Vehicle Act.

6. The Tribunal recorded evidence of the parties. The claimants relied upon the evidence of CW-1-Sangeeta. The insurer relied upon the evidence of Mr. Shirish Kulkarni at Exhibit-63. The Tribunal after considering the evidence on record concluded that the deceased died on account of accident in question and assessed the compensation to the tune of Rs.4,00,000/- payable to the claimants by insured and exonerated insurer, accepting its defence of breach of policy. However, directed insurer to satisfy the award at first instance and recover the compensation amount from respondent nos.1, 2 and 4 by filing execution.

7. Mr. Kulkarni, learned Advocate appearing for the appellant-insurer submits that the deceased was traveling as gratuitous passenger in goods carriage. The risk of such person is not covered under the policy. The deceased cannot be termed as third party

within the meaning of Section 147 of the Motor Vehicles Act. Therefore, the Tribunal ought to have exonerated the insurer without putting further liability to satisfy the award at first instance and then recover the compensation amount.

8. Per contra, Mr. Bhide, learned Advocate appearing for the original claimants submits that the Tribunal has rejected the defence of the insurer that the deceased was gratuitous passenger. The insurer is exonerated accepting defence in terms of Section 149(2) of the Motor Vehicle Act i.e. use of vehicle for carrying passenger on hire and reward basis, contrary to the permit. He would further submits that the Tribunal has passed inadequate award. Late Annasaheb had dual income from agriculture as well as milk business. The Tribunal considered notional income @ of Rs.3000/- per month but nothing is added towards future prospects. The paltry sum is awarded towards non-pecuniary heads. Therefore, he seeks enhanced compensation.

9. Mr. Kute, learned Advocate appearing for respondent nos.5 and 6 supports award as passed.

10. Having considered submissions advanced on behalf of the respective parties and after going through the record and proceedings, it can be gathered that there is no dispute regarding accidental death of Annasaheb arising out of use of offending Tempo bearing Registration No.MH-17-A-9186. The accident was reported to the police station and offence was registered against the Tempo driver on the basis of the statement given by Laxman Shermale, who was one of the occupant of the offending vehicle at the time of accident. He stated that Tempo was hired by farmers for transportation of Cauliflower to Ahmednagar market and after unloading the goods while they were in return journey, the

accident in question took place. Late Annasaheb suffered fatal injuries in the accident. The claimants have pleaded same case in the claim petition. The evidence of claimant no.1-Sangeeta has been recorded before the Tribunal, in which she stipulates that Late Annasaheb was returning in the vehicle after selling goods in the market alongwith empty bags and nets. It appears that she has been cross-examined on behalf of the insurer. She denied the suggestion that no goods were carried in the vehicle at the time of accident. However, she admits that the passengers were traveling on payment of fare. The Tribunal accepted the defence of the insurer that the vehicle was used for carrying passengers on hire and reward basis. Consequently, fastened the liability to pay the compensation on owner and driver of the offending vehicle. However, directed the insurer to satisfy the award at first instance and recover the compensation amount from other respondents.

11. Mr. Kulkarni, learned Advocate appearing for the Insurance Company submits that the vehicle in question was registered and insured as goods carriage. It has carrying capacity of only two persons. Even assuming contentions of the claimants as true and correct, only inference can be drawn that deceased was gratuitous passenger.

12. Although, *prima facie*, such contention appears to be correct, the fact remains that the vehicle in question was hired for carriage of goods. The deceased and others had boarded in the vehicle alongwith goods at inception of journey towards Ahmednagar Market. In return journey, the accident took place. The possibility that the empty bags and nets as stated by the CW-1-Sangeeta were carried in the vehicle cannot be ruled out. In this background, Mr. Bhide, learned Advocate appearing for the claimants relies upon the observations of the High Court of Himachal Pradesh in case of

National Insurance Company Ltd. Vs. Kamla & Ors.¹,

particularly in paragraph no.10, which states as under:

“The allegations made by the petitioners in the petition as well as in the evidence were that the deceased had gone after hiring the truck with his vegetable and was coming in the same vehicle when the accident took place. The learned Counsel for the claimants/respondent Nos. 1 to 4 had relied upon the decision of Hon'ble Punjab and Haryana High Court in National Insurance Company Ltd. v. Urmila & Ors., 2008 ACJ 1381, wherein it was observed that a passenger was returning after selling his goods when the vehicle turned turtle due to rash and negligent driving. Insurance Company seeks to avoid its liability on the ground that the deceased was no longer owner of the goods as he had sold them off. It was observed that the deceased had hired the vehicle for transporting his animals for selling and was returning in the same vehicle. It was held that the deceased was not an unauthorised/gratuitous passenger in the vehicle till he reached the place from where he had hired the vehicle.”

13. Similarly he relies upon the observations of the **Division Bench** of Punjab and Haryana High Court in case of ***National Insurance Company Limited Vs. Urmila and Others²*** in paragraph no.11, which states as under:

“Here, in the instant case, it is well established on the file that on the day of occurrence of the accident, Dilbag Singh deceased, after selling his animals, was returning to his village from where he had hired the aforesaid offending vehicle. In this view of the matter, we are of the considered opinion that Dilbag Singh (deceased) cannot be termed to be an unauthorized/gratuitous passenger in the insured vehicle till he reaches the place from where he had hired the insured vehicle.”

14. Similarly he relies upon the observations of Division Bench of this Court in case of ***Balasaheb Shamrao Salunkhe (Dead) through Lilavati B. Salunkhe & Ors. Vs. Laxmibai Yashwant Jadhav & Ors.³***, particularly in paragraph no.12, which states as under:

¹ 2011 ACJ 1550.

² 2008 ACJ 1381.

³ 2010 ACJ 2555.

“In Nasibdar Suba Fakir's case, the Division Bench has already held that Rule 118 of the Bombay Motor Vehicles Rules allows the carriage of passengers of goods vehicle in certain circumstances. It has been held that there is no prohibition by virtue of anything contained in Rule 118 against the hirer of a goods vehicle from travelling in the same goods vehicle. In the circumstances, the Tribunal ought to have held that the deceased was travelling with the goods in the hired vehicle as the owner of goods which were being transported in it. No evidence was placed on record by the Insurance Company to controvert this fact and, therefore, the Insurance Company was equally liable to pay compensation.”

15. If aforesaid observations considered in reference to the fact of the present case, it is difficult to hold that the deceased was traveling as the gratuitous passenger. On the other hand, it will have to be accepted that he was traveling as owner of the goods because at inception of his journey he boarded Tempo in the capacity of owner of goods as he had hired the vehicle for transportation of Cauliflower towards market and possibly returning in the same vehicle alongwith empty bags and nets. No specific evidence is brought on record on behalf of the insurer to show that vehicle was absolutely empty and no goods were carried when the accident took place. The theory put forth by the claimants is supported by the contents of the FIR. The Tribunal has, therefore, recorded the finding that the deceased cannot be treated as gratuitous passenger, but since claimant no.1-Sangeeta admitted in her evidence that passengers were carried on hire and reward basis, the Tribunal accepted the defence of the insurer in terms of Section 149(2) of the Motor Vehicle Act. Consequently, the Tribunal passed an award in the nature of pay and recovery. No fault can be found in the approach of the Tribunal.

16. The claimants have filed First Appeal No.1549/2014 raising the claim for enhanced compensation. It is apparent that the Tribunal assumed notional income of the deceased to the tune of

Rs.3000/- per month in absence of any material to draw inference regarding actual income of the deceased. The claimant no.1- Sangeeta admits that the deceased had only 1 acre agriculture land and she do not possesses evidence regarding milk business as alleged. It is trite that in case of victim's income from the agriculture, only loss of supervision can only be considered to his dependants. In the present case, the Tribunal has considered loss of earning. However, nothing is added towards loss of supervision. The deceased himself was cultivating lands, therefore, in such cases, the loss of labour that deceased was putting into cultivation of the land as well as loss of supervision would be admissible. The Tribunal ought to have considered the dual loss on account of both the counts to the tune of Rs.4000/- per month, looking to the valuation of money in the year 2007. The Tribunal ought to have added 40% towards future prospects. Since, there were three dependents, the $\frac{1}{3}$ rd amount needs to be deducted towards personal and living expenses of the deceased. The claimants would be entitled for enhanced compensation for loss of consortium, loss of estate and funeral expenses. Since the Tribunal has awarded paltry sum under those counts. Looking to the age of deceased as 30 years 7 months, multiplier of '16' would apply. Applying the aforesaid principles of assessment, the compensation can be reassessed in tabular form as follows:

Sr. No.	Heads	Amount (Rs.)
1	Annual Income (Rs.4000 x 12)	Rs.48,000/-
2	Addition of 40% towards future prospects (Rs.48,000/- + Rs.19,200/-) =	Rs.67,200/-
3	$\frac{1}{3}$ rd deduction towards personal and living expenses. $\text{Rs.67,200} / 3 = \text{Rs.22,400/-}$ $67,200 - 22,400/-$	Rs.44,800/-
4	Applying multiplier of '16' (Rs. 44,800 x 16)	Rs.7,16,800/-

5	Rs.25,000/- each towards loss of consortium (Rs.25,000/- x 3)	Rs.75,000/-
6	Rs.15,000/- towards funeral expenses	Rs.15,000/-
7	Rs.5000/- towards loss of estate	Rs.5000/-
TOTAL		Rs.8,11,800/-

17. In view of the findings and assessment of the compensation, the Award passed by the Tribunal needs to be modified. Hence, following order: -

ORDER

- i. First Appeal No.566/2013 filed by the Insurer is dismissed.
- ii. First Appeal No.1549/2014 filed by the claimants is partly allowed.
- iii. The judgment and award dated 26.09.2012 passed by the Motor Accident Claim Tribunal, Ahmednagar in M.A.C.P. No.80/2010 is modified.
- iv. The Claim Petition under Section 166 of the Motor Vehicle Act is allowed against original respondent nos.1, 2 and 4. The claimants shall be entitled for compensation of Rs.8,11,800/- (Rs. Eight Lakhs Eleven Thousand Eight Hundred only) from original respondent nos.1, 2 and 4 jointly and severally inclusive of amount of 'NFL' alongwith interest at the rate of 7.5% p.a. from the date of filing of the claim petition till realization of the amount. However, respondent no.3-Insurer shall satisfy the award at the first instance and proceed to recover the amount so paid from original respondent nos.1, 2 and 4 by filing execution of this award.
- v. On deposit of the compensation amount, it be disbursed to the claimants in proportion of the apportionment made by the

Tribunal in Clause No.3(A) and (B) of the original award dated 26.09.2012.

vi. The amount, if any, deposited by the Insurer be transmitted to the Tribunal, which shall be disbursed to claimants alongwith enhanced compensation amount under this award.

vii. Award be drawn accordingly on payment of deficit court fee.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/May-2024