IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
FIRST APPEAL NO.749 OF 2020

1. Bharti W/o Sunil Dhat,
Age: 29 years, Occ. Household,
R/o. Shivneri Colony, Shriram Nagar,
Beed, Dist. Beed.
At present residing at Solapur
Dist. Solapur.

2. Kamal Nawanath Dhat,
Age: 50 years, Occu. Nil,
R/o. Shivneri Colony, Beed.

2A. Ravindra Nawanath Dhat,
Age: 44 years, Occu. Service,

2B. Amol Nawanath Dhat,
Age: 40 years, Occu. Agri,
Both R/o. Shivneri Colony, Shriram Nagar,
Beed, Tq. & Dist. Beed. ..Appellant
(Orig. Claimants)

Versus

1. Navnath Dagdu Dhat,
Age: 62 years, Occu. Agri,
R/o. Shivneri Colonay, Shriram Nagar,
Beed, Dist. Beed.

2. Pandurang Shivram Mhetre,
Age: major, Occu. Vehicle Driver,
R/o. Nalwandi Post Pimpalner,
Tq. & Dist. Beed.

3. National Insurance Company Ltd.,
through Branch Manager,
Hazari Chambers, Station Road,
Aurangabad, Tq and Dist. Aurangabad ..Respondents
(Orig. Respondents)

...

Mr. K. J. Suryawanshi, Advocate for the Appellants.
Mr. A. A. Kulkarni, Advocate for Respondent Nos.1 and 2.
Mr. A. B. Kadethankar, Advocate for Respondent No.3.

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CORAM : S. G. CHAPALGAONKAR, J.

RESERVED ON : 10th AUGUST, 2023.
PRONOUNCED ON : 28th AUGUST, 2023.

JUDGMENT:-

1. The appellants/original claimants aggrieved by the judgment and award dated 19.09.2019 passed by the Motor Accident Claims Tribunal, Beed in Motor Accident Claim Petition No.271/2017 filed present appeal under Section 173 of the Motor Vehicle Act. (Hereinafter, parties are referred as per their original status before the Tribunal for the purpose of convenience and brevity).

2. The claimants had approached the Tribunal at Beed under the provisions of Section 166 of the Motor Vehicle Act, thereby raising claim for compensation of Rs.96,13,756/- towards accidental death of Sunil Navnath Dhat. The claimants contend that deceased Sunil was traveling in Maruti Swift Car bearing Registration No.MH-23-AD-0755 from Parali towards Beed. The respondent no.2 was driving car in rash and negligent manner. He lost his control. Resultantly, car collided to road side tree. The occupants of the car suffered injuries in the said accident. Sunil was seriously injured. He was shifted to Civil Hospital, Beed where he was declared dead. The offence was registered against car driver with Police Station Pimpalner vide Crime No.248/2017.

3. The claimants further contend that Sunil was aged about 35 years and he was an engineering graduate. He was engaged as Government contractor. He had many civil construction works in hand from Municipal Corporation so also Government Authorities and private individuals. His annual income was Rs.7,81,564/- for the year 2016-2017 as per the Income Tax Returns submitted by him for the year 2016-2017.

As such, claimants raised the claim against respondents seeking compensation, attributing negligence against car driver.

4. The claim was contested by respondent no.3-Insurer of the car on the ground that the insured car was owned by the father of the deceased. Deceased was traveling as occupant in the car. He was using car for his own benefit, as such, he stepped into the shoes of insured. Hence, he cannot be termed as third party. It is further pleaded that by additional contract, the personal accidental cover is provided to the occupants to the extent of Rs.1,00,000/- each. Therefore, the liability of insurer would be limited to that extent. It is further pleaded that contents of FIR,show that the deceased was bachelor. The claimant no.1 has to established her relationship as wife of the deceased. The Tribunal after framing the issues, recorded evidence of parties. The claimants relied upon the evidence of claimant no.1-Bharti. She has further relied upon the evidence of Bhanudas Jadhav, Chartered Accountant to prove Income Tax Returns submitted by the deceased from the year 2013 till his death. The Tribunal after hearing the parties, concluded that the deceased cannot be treated as third party. He stepped into the shoes of the owner, as such, dismissed claim observing that no claim can be maintained by claimants under Section 166 of the Motor Vehicle Act.

5. Mr. Suryawanshi, learned Advocate appearing for the appellants would submit that the offending car was insured under Private Car Package Policy. The risk of the occupants deemed to have been covered under such insurance policy. The Tribunal under erroneous conception of law and by misinterpretation of the insurance contract, dismissed the claim. He would further submit that the deceased was Engineering graduate, holding Government license as contractor. He had

large number of construction sites. He was regularly paying Income Tax. The evidence on record depicts that from 2013 onwards there is consistent growth in his income. The claimants were dependent on him. The Tribunal ought to have taken pragmatic view of the matter and passed the award.

6. Per contra, Mr. Kadethankar, learned Advocate appearing for respondent no.3-Insurer submits that the vehicle was owned and insured in the name of respondent no.1 Navnath Dhat i.e. father of the deceased. Apparently, the car was used by the deceased for his own benefit. He would submit that pleadings in the claim petition itself show that the deceased had attended some work at Parali and then returning back to home. The driver employed by family was driving the car. In this situation, the deceased would be treated as stepped into shoes of the owner for all the purposes. The death of owner would not give rise to the claim under Section 166 of the Motor Vehicle Act. The defense to that effect was raised in the written statement and rightly appreciated by the Tribunal. Mr. Kadethankar to buttress his submissions relies on legal proposition espoused in judgements of supreme court in cases of ***New India Assurance Company Ltd. Vs. Sadanand Mukhi and Others Ningamma and Anr. Vs. United India Insurance Company Ltd.***

7. He would further submit that the Certificate of insurance is placed on record of the Tribunal. The premium of Rs.250/- is accepted to cover the risk of the occupants to the extent of Rs.1,00,000/- each. It being a contractual liability, governed strictly by the covenant between the parties. Therefore, the liability of the insurer in case of death of occupant cannot be enlarged beyond limit prescribed by specific terms of the contract. Therefore, he would justify the dismissal of the claim.

8. Having considered the submissions advanced by the learned Advocate appearing for the respective parties, the contentious issue that require consideration in this appeal is whether the deceased while traveling in a car owned by his father would assume the status of owner by operation of law or otherwise? or whether he being the occupant in a car insured under package policy would be entitled to be considered as third party and consequently his legal representative would be entitle to raise claim for compensation against owner of car (father of the deceased) and its insurer?.

9. The controversy as regards to the insurance cover to the occupants of car is no more *res integra*. It is well settled that the occupant of the private car would not fall within the meaning of third party in terms of Section 147 of the Motor Vehicle Act. However, the position would be different, when it comes to the liability of insurer, who has issued a package policy. The package policy is distinguishable from the third-party/liability only policy. Such distinction can be gathered from very title of the policy apart from the payment of the premium. If the premium is charged for third party cover as well as own damage cover based on Insured Declared Value (IDV) of the vehicle, the policy would assume the status of the package policy. It appears that, initially the Tariff Advisory Committee (TAC) was monitoring subject of framing the terms and conditions of the motor policies. The Circular M.V. No.1 of 1978 dated 18th March, 1978 was issued by the Tariff Advisory Committee, which was retrospectively made applicable with effect from 25th March, 1977. In that circular, it was clarified that the insurer shall extend the benefit of insurance cover, even to the occupant carried in the private car. Similarly, circular dated 2nd June, 1986 was issued for benefit of pillion riders of two-wheeler covered under the Standard Motor

Package Policy. The Insurance Regulatory and Development Authority (IRDA) vide its circular dated 26th March, 2008 issued under File and Use Guidelines has reiterated that insurers are not permitted to abridge the scope of standard covers available under the erstwhile tariffs beyond the options permitted in the erstwhile tariffs. All general insurers are advised to adhere to the afore-mentioned circulars and any non- compliance of the same would be viewed seriously by the Authority. The aforesaid circular is referred by the High Court of Delhi in the matter of ***Yashpal Luthra Vs. United India and Ors., the Authority***[1]. Thereafter the Supreme Court of India in the matter of ***National Insurance Company Limited Vs. Balakrishnan and Another***[2] considered the applicability of the aforesaid circulars and recorded the findings as under:

> *"26. In view of the aforesaid factual position, there is no scintilla of doubt that a "comprehensive/package policy" would cover the liability of the insurer for payment of compensation for the occupant in a car. There is no cavil 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. We may hasten to clarify that 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. These aspects were not noticed in the case of Bhagyalakshmi (supra) and, therefore, the matter was referred to a larger Bench. We are disposed to think that there is no necessity to refer the present matter to a larger Bench as the IRDA, which is presently the statutory authority, has clarified the position by issuing circulars which have been reproduced in the judgment by the Delhi High Court and we have also reproduced the same."*

10. In the present case, the Insurance Certificate Cum Policy Schedule is on record of the Tribunal at Exhibit-41. Apparently, the

1 **2011 ACJ 1415.**
2 **(2013) 1 SCC 731.**

premium is collected towards own damage Section (A) as well as liability Section (B). The insurance cover is provided on various captions. Apparently, there cannot be any dispute that the insured vehicle was covered under a package policy. Once the finding is recorded that the vehicle in question was cover under the package policy, particularly in respect of the private cars, there is no scintilla to doubt that the risk of the occupants would be covered as if third party, although statutory provisions does not contemplate coverage of the occupants of private cars. Since the deceased was occupant in a car at the time of accident, the insurer has no voice to deny the liability towards his death.

11. The contention of the insurer that since the car was owned by the father of the deceased, he would step into the shoes of the owner and no claim for his death can be maintained cannot be accepted. The owner of the private car would obviously purchase vehicle for enjoyment and use of his family members or friends. It is not commercial vehicle by which the owner would generate the income. The basic object behind enlarging insurance cover to the occupants under the circulars referred above is to extend sort of protection to the occupants of private car like family members is writ large. The owner of the private car obtains the private car package policy by paying huge premium as compare to the vehicle insured for liability only/statutory policy. In turn, he gets insurance cover for his family members. The Tariff Advisory Committee in its circulars issued in the year 1978 and thereafter, IRDA in its circulars issued in the year 2008 and 2009 has mandated the insurance cover to the occupants of the private car insured under the package policy. Therefore, only because the deceased- occupant was family member of the owner of the vehicle, by no stretch of imagination, he can be termed as owner to the benefit of the insurer for the purpose of denying the liability or objecting the maintainability of the claim seeking compensation

for death of occupant. The observation of the Supreme Court of India in the matter of ***New India Assurance Company Ltd. Vs. Sadanand Mukhi and Others***[3] or ***Ningamma and Anr. Vs. United India Insurance Company Ltd.***[4] cannot be construed to mean that the occupant of the car Or in a given case of pillion rider of the motor cycle owned by family members would assume the status of owner while using the vehicle. Those observations are made when the person was either riding the motorcycle after borrowing it from its owner or driving car after borrowing it from its owner for his own use and met with an accident. In such case, rider or driver may not be in a position to raise the claim against owner of the vehicle.

12. In the fact of the present case, respondent no.2 was driving the car. It was owned by respondent no.1. The deceased was occupant. In this factual backdrop, the insurer cannot avoid liability for aforesaid reasons. The finding of the Tribunal is based on misconception of the law. The Tribunal while recording the findings against the aforesaid issue has relied upon the judgment in case of ***Jagtar Singh @ Jagdev Singh Vs. Sanjeev Kumar and Others***[5]. However, reliance appears to be completely misplaced. It is trite that, the occupant of the private car cannot be treated as third party. However, the position stands apart, when it comes to the package policy. Another reason recorded by the Tribunal is that claimant no.2-Kamal is shown as nominee of the deceased in the policy hence she is owner of the vehicle insured. However, it has no relevance for deciding the issue in hand. The claimant no.2 is widow of the owner. Her nomination by husband is natural on the policy, that itself would not dis-entitle her to raise the claim towards death of her son out of use of the vehicle. The purpose of nomination is to receive compensation amount towards damage of the vehicle or theft of

3 **2009 (1) T.A.C. 425**
4 **2009 AIR SCW 4916**
5 **2017 DGLS (SC) 1419.**

the vehicle, in case owner of the vehicle do not survive. It appears that, the Tribunal has completely misread the provisions of Section 166 of the Motor Vehicle Act, when it observed that the person like the deceased in present case would step into the shoes of owner of the vehicle. In that view of the matter, findings recorded by the Tribunal against issue no.3 will have to be quashed and set aside.

13. In view of the aforesaid findings regarding the liability of respondents to pay the compensation, it is explicit to work out the just compensation. The claimants have recorded the evidence of CW-2 Bhanudas Jadhav, who is Chartered Accountant. He filled Income Tax Returns of the deceased since 2011-2012. The copies of the balance-sheet and Income Tax Returns are made part of the Tribunal's record at Exhibits 29 to 32. Apparently, the income of the deceased from 2013 onwards till his death was increased consistently for four years. The learned Advocate appearing for the claimants and the respondents have jointly submitted work-sheet of the compensation amount. The Tribunal has also recorded the findings regarding average annual income of the deceased after deducting the Income Tax, which comes to Rs.6,25,550/-. Similarly, considering the age of the claimant, addition of 40% amount towards future prospects can be made. As per the age of the deceased as on death of the deceased, multiplier of '15' will apply. At the time of filing of the claim petition, only wife and mother can be considered as dependents of deceased, hence 1/3rd amount will have to be deducted towards his personal and living expenses. The claimants would be entitled for non-pecuniary loss of Rs.70,000/-, which include loss of consortium, loss of estate and funeral expenses.

14. In view of the aforesaid observations, the claimants are entitled for the compensation amount as under: -

Sr. No.	Heads	Amount (Rs.)
1	Average Annual Net Income after deducting Income Tax	Rs.6,25,550/-
2	Addition of 40% towards future prospects (Rs.6,25,550 + Rs.2,50,220/-) =	Rs.8,75,770/-
3	1/3th deduction towards personal and living expenses. Rs. 8,75,770 / 3 = Rs.2,91,923/- 8,75,770 – 2,91,923	Rs.5,83,847/-
4	Applying multiplier of '15' (Rs. 5,83,847 x 15)	**Rs.87,57,705/-**
5	Rs.70,000/- towards loss of consortium, loss of estate and Funeral Expenses	**Rs.70,000/-**
TOTAL		**Rs.88,27,705/-**

15. In that view of the matter, the appeal deserves to be allowed. Hence, following order: -

ORDER

i. The Appeal is allowed.

ii. The judgment and award passed by the Motor Accident Claims Tribunal, Beed in M.A.C.P. No.271/2017 dated 19.09.2019 is quashed and set aside.

iii. The respondents are jointly and severally held liable to pay the compensation of Rs.88,27,705/- (Rs. Eighty Seven Lakh Twenty Seven Thousand Seven Hundred and Five only) to the claimants inclusive of amount of 'NFL' along with the interest @ 6% p.a. from the date of filing of the claim petition.

iv. On deposit of compensation amount, claimant No. 1/ Widow of deceased would be entitled to receive 70% Compensation amount balance be paid to claimant No. 2 / her heirs.

iv. Award be drawn up on payment of deficit court fees.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/August-2023