MHND010018122018	Presented on : 22-06-2018 Registered on : 26-06-2018 Decided on : 11-10-2022 Duration : Y.: M. D's 04:03:19 **Exhibit No.:- 56**

IN THE COURT OF CHAIRMAN, MACT, NANDED
(Presided Over by Shrikant L.Anekar)

Motor Accident Claim Petition No. 224/2018.

1) Sunita w/o Sureshrao Magar,
Age: 42 yrs. Occu; Household.

2) Suresh S/o Dadarao Magar,
Age 45 yrs., Occu; Nil,
Both R/o Sindgi Tal. Kalamnuri,
Dist;Hingoli.

..Claimants

Versus

1) Prakash S/o Laxman Fatekar,
Age Major, Occu; Business,
R/o Loni (Bk), Tal. Ardhapur,
Dist; Nanded.

2) Divisional Manager,
National Insurance Company Ltd.,
G.G.Road, Nanded.

..Respondents.

Shri K.S.Patil, Adv. for the claimants.
Ex-parte for the Respondent No.1
Shri G.S.Aundhekar, Adv. for Respondent No.2.

JUDGMENT
(Delivered on 11th day of October, 2022)

By this petition under Section 166 of the Motor Vehicles Act, the petitioners are seeking compensation on account of death of Satish Suresh Magar, who died in a vehicular accident dated 23.12.2017. Petitioners are mother and father of the deceased.

2] Brief facts, in nutshell are as under:

Deceased Satish Suresh Magar on fateful day i.e. on 23.12.2017 alongwith one Sopan, was proceeding on motorcycle bearing registration No.MH-26/AX-8933 to their village at Sidngi. The brother of deceased namely Sopan Magar was riding the motorcycle and deceased was pillion rider. When they reached at Nandapur to Umra Phata road, at that time the rider of the motorcycle drove the same in high speed and in rash and negligent manner. Thereby the motorcycle turned turtle and both were fell down on the road and sustained grievous injuries.

3] In said incident, deceased Satish Suresh Magar sustained grievous injuries over his person. He was shifted to Civil Hospital Hingoli and then at Global Hospital Nanded. He was admitted in Global Hospital for a period from 23-12-2017 to 25-12-2017. But during treatment, he succumbed due to accidental injuries on 25-12-2017. Claimants incurred huge expenses towards medical treatment of the deceased.

4] After due investigation, Crime No.359/2017 for the offences punishable under Sections 279 and 304-A of the Indian Penal Code, 1860 came to be registered with Kalamnuri Police Station against the rider of the motorcycle no. MH-26/AX-8933. As such, the incident occurred due to rash and negligent driving of rider of motorcycle, who was driving the said vehicle in high and excessive speed, therefore, he was responsible for the incident occurred, injuries sustained to the deceased which resulted into his death.

5] As per petitioners, at the time of incident, deceased was aged about 22 years old, he was taking education in B.E. at Chatrapati Shahu College of Engineering, Aurangabad. He also completed his diploma in mechanical engineering and also successfully completed the short term course of study in AUTO CAD. As per petitioners the deceased was running coaching classes by name and style as *SP Coaching classes* at Aurangabad and also obtained Shop Act Licence in that name. He was charging Rs.25,000/- as tuition fees from each students. According to the petitioners from that source, deceased was easily earning Rs.50,000/- per month and spending all his income for maintenance and welfare of the petitioners.

6] As per petitioners, due to death of the deceased, the petitioners have lost their son and his love and affection. The petitioners were totally dependent upon the deceased. Due to unfortunate death of the deceased, the petitioners suffered physically, mentally and economically, they are in financial crisis.

7] Respondent No.1 was the registered owner of the said motorcycle bearing registration no. MH-26/AX-8933 and the said motorcycle was duly insured with respondent No.2 insurance company at the time of incident. As such, the claimants have prayed for total compensation of Rs.25,00,000/, along with interest @ 18% p.a. from the Respondents No.1 and 2 jointly or severally.

8] Respondent No.1 though served with summons, failed to appear. Therefore, the petition is proceeded ex-parte against the respondent No.1.

9] Respondent No.2, insurance company appeared and filed its written statement at Exh-12. It has taken each and every averment made in the petition and has specifically denied the same. It is denied by the respondent no. 2/insurance company that the incident took place due to the involvement of said motorcycle and it was being driven in rash and negligent manner. It is denied that the incident occurred due to fault on the part of the rider of the motorcycle. It is further submitted that at the time of incident, the rider of the motorcycle was not holding valid and effective driving license. Therefore, there is breach of terms and conditions of insurance policy and insurance company is not liable to pay any compensation. So also the pillion rider is not covered under the policy. Age and income of deceased, injuries sustained to him and expenses incurred towards hospitalization, are denied by the respondent no. 2. It is further submitted that the claim amount is exaggerated. Lastly, it is prayed for dismissal of petition with costs.

10] From the pleadings of the parties, the then Presiding Officer has framed the issues (Exh-19). Issues are reproduced as under and I have recorded my findings on each of them for the reasons given below:-

SR. NO.	ISSUES	FINDINGS
1	Whether petitioners prove that on 23-12-2017 at about 07:30 p.m. deceased Satish Suresh Magar died out of use of motorcycle bearing registration No. MH-26/AX-8933 belongs to respondent No. 1, which was driven in rash and negligent manner ?	Yes.
2	Whether the respondent No.2 proves that the driver of the motorcycle bearing registration No. MH-26/AX8933 was not holding valid and effective driving licence at the time of accident and respondent no. 1 committed breach of terms and conditions of insurance policy ?	No
3	Whether the petitioners are entitled for the compensation ? If yes, to what extent ? From whom ?	Yes Rs.16,12,661/- from respondent no. 1 and 2 jointly or severally.
4	What order and relief ?	As per the final order.

R E A S O N S

11] Petitioner No.2 i.e. father of deceased on behalf of both the petitioners, has filed his Examination-in-chief/ affidavit at Exh.20 as P.W.-1. He deposed about the incident on the basis of knowledge derived by him. He has reiterated all the facts which are mentioned in the petition. The petitioners have also relied on police papers and others certain documents i.e. copy of

Form No. 54 (Exh. 28), FIR (Exh.29), copy of Spot panchnama (Exh.30), copy of inquest panchnama (Exh. 31), *Post-mortem* report (Exh.32), Copy of registration certificate (Exh. 33), Copy of driving licence (Exh. 34), Copy of insurance policy (Exh. 35), certificate of Rashtra Bhash (Exh. 36), Certificate from Head of Department (Exh. 37), Shop Act licence (Exh. 38), declaration (Exh. 39) Guarantee letter (Exh. 40) Live and Licence Agreement (Exh. 41), Certificate issued by Endurance Technologies (Exh. 42), Certificate issued by Durovalves India (Exh. 43), Certificate of Merit (Exh. 44), Certificate issued by Indo German (Exh. 45), Certificate of Tech. Education Board (Exh.46), Certificate of Tech. Events (Exh. 47), Mark list of University (Exh. 48 and 49).

12] During cross-examination by Respondent No.2/ insurance company, the petitioner No.2 admitted that he has not filed any document to show that deceased was earning Rs. 50,000/- per month. He further admitted that he has not filed any Identity Card regarding admission of the deceased. He also admitted that he has not filed appointment order of Endurance Technology and Indo German. He also admitted that he has not filed any document showing income from coaching classes.

13] The petitioners have closed their evidence vide evidence close pursis (Exh.50). Respondent no.2 insurance company has not led any evidence either oral or documentary and filed evidence close pursis (Exh. 52).

14] I have heard the learned Advocate Shri Kumbhekar for the petitioners and learned Advocate Shri. Aundhekar for insurance company. Perused the entire record. Gone through the written notes of argument (Exh.54) and various authorities cited at bar.

<u>AS TO ISSUES NO. 1 to 4</u>:

15] Since issues are interlined, they are taken up for common discussion. So far as incident resulting the death of Satish Suresh Magar (PW-1) is concerned, the same is not under much controversy. The claimants have relied upon evidence of Suresh at Exh. 20, who deposed about incident on the basis of record. The claimants have relied upon F.I.R. (Exh.29), wherein the registration number of the offending motorcycle is very much mentioned. The learned advocate for respondent insurance company has strongly contended that there is delay in lodging F.I.R. questioning the involvement of the vehicle. I have given thoughtful consideration to it, but unable to accept the same, this is because after due investigation, the police have found that vehicle bearing no. MH-26/AX-8933 was involved in the said accident. So also in cross-examination claimant no.2 clarified that due to demise of the deceased, his mother was in Coma and therefore there is delay of lodging the complaint.

16] So far as rash or negligent act is concerned, as could be seen that deceased was pillion rider on the offending motorcycle and due to rash and negligent driving of the same, it turned turtle. The spot *panchnama* relied on by claimants at Exh.30, would show that though the spot of incident was not a dangerous spot to ride motorcycle, it turned turtle on the fault of rider of the motorcycle itself.

17] The claimants have relied on inquest panchnama (Exh.31) and *post-mortem* notes (Exh.32), which show that deceased died due to head injury in the road accident. With this material on record, there is direct nexus between negligent act by the rider of the motorcycle and the death of the deceased.

18] It was contended by the learned advocate for the insurance company that the motorcycle on which the deceased was pillion rider is not covered under the policy. To this issue the learned Counsel for the petitioner relied on the judgment of Hon'ble High Court of Delhi in ***Yashpal Luthra and anr. Vs. United India Insurance Company, MAC APP No. 176/2009*** dated 17-12-2009 and judgment of Hon'ble Madras High Court in ***United India Insurance Company Ltd. Vs. Satish Kumar, CMA No. 2696/2011*** dated 28-02-2019.

19] Admittedly the vehicle was insured with the respondent no. 2 and covers the period of accident. On perusal of insurance policy Exh.35, it is clear that the comprehensive /package policy of a two wheeler. The comprehensive policy itself means a package policy and it coves liability of pillion rider.

20] So far as quantum of compensation is concerned, as per claimants, the deceased was aged about 22 years and was earning Rs.50,000/- per month by way of coaching classes. On this point, the counsel of the claimant relied on the judgment of Hon'ble Supreme Court in ***Smt. Meena Pawaia & Ors. Vs. Ashraf Ali in Civil Appeal No. 6724/2021*** dated 18-11-2021. However, learned counsel for the respondent no. 2/ insurance company relied on the judgment of ***Kamalnarayan Deshmukh and another Vs. Om Prakash Sahu and others 2015 ACJ 2407***.

21] On considering the above authorities, in present case, it is claimed by Suresh Magar (PW-1) that the deceased was taking education in B.E. and also had possessed various educational qualifications. No doubt, documents showing educational qualification of the deceased are filed on record, but same cannot be accepted for considering the income source of the deceased. The claimants have filed on record Shop Act License (Exh.38) showing that the deceased was running coaching classes. However, in support of this, virtually there is no evidence except bare words of the claimant about the extent of income. Nothing is produced on record to show the strength of students, their fees structure, receipts of tuition fees or any transaction of said coaching classes. Therefore, though the said income source of the deceased can be accepted, its extent can not be. In this regard useful reference can be taken from the judgment of Hon'ble Supreme Court in **Smt. Meena Pawaia's case** (Supra). It is held in concluding para 8 of the said judgment that:

> *While awarding the future economical loss, when the deceased died at the young age 21-22 years and was not earning at the time of death/accident, as per catena of decisions of this court, the income for the purpose of determining the future economic loss is always done on*

the basis of guesswork considering many circumstances namely the educational qualification and background of the family, etc. Therefore, looking to the educational qualification and the family background and as observed herein above, the deceased was having a bright future studying in the 3rd year of civil engineering, we are of the opinion that the income of the deceased at least ought to have been considered at least Rs. 10,000/- per month, more particularly considering the fact that the labourers/ skilled labourers were getting Rs.5000/- per month even under the Minimum Wages Act in the year 2012".

22] The facts before the Hon'ble Supreme Court in **Smt. Meena Pawaia's case (Supra)** and the case at hand are identical and therefore the said authority is squarely applicable to the present case. Therefore, the income of the deceased from all sources could be taken to Rs.10,000/- per month.

23] As per claimants, the deceased was 22 years of age, but no documentary evidence is produced on record to support the same. The *post-mortem* Report (Exh. 32), age of the deceased is mentioned as 23. Hence, this Tribunal has considered the age of deceased between the age group of 21 to 25.

24] As discussed above Tribunal has considered the age of deceased as 23 years. Therefore, deceased would fall in slab of age group between 21 to 25 years. Therefore, as per ***Sarla Verma's case (2009 ACJ 1298 S.C.)*** the proper multiplier would be of '18'. As held that the deceased was 23 years at the time of accident, therefore future prospect of 40% of the above monthly income will have to be added. Thus, total income of the deceased could be taken to Rs.10,000+4,000=Rs.14000/- per month. Considering that deceased was bachelor and only parents were dependent upon him, therefore deducting ½ i.e. 50% on account of personal expenses, the dependency of claimants would come to Rs.7,000/- per month and Rs.84,000/- per annum. Therefore, yearly dependency of claimants comes to Rs. 84,000/- x 18 (multiplier)= **Rs.15,12,000/-** (Rs. Fifteen Lakh Twelve Thousand only).

25] In addition to it, claimants are entitled for **Rs.70,000/-** on account of love and affection, future expenses, loss of estate, etc. as held by Hon'ble Supreme Court in ***National Insurance Vs. Pranay Sethi (2017 ACJ 2700).***

26] Claimants have sought compensation in the form of reimbursement of medical bills. It is seen from the record that deceased was admitted in the hospital for which, expenses were made by the claimants. In so far as, medical expenditure for the treatment of deceased is concerned, there is no so much challenge as to the treatment and expenditure incurred. Therefore, claimants are entitled to it at actuals (as per bills on the record). The claimants have filed medical and hospital bills below Exh. 4/15 totaling Rs.30,661/-. Therefore, the claimants are entitled to its reimbursement at actually, which comes to **Rs.30,661/-** (in words Rs. Thirty Thousand Six Hundred Sixty One only). Thus, under all heads the claimants are entitled to **Rs.16,12,661/-(in words Rs. Sixteen Lakhs Twelve Thousand Six Hundred Sixty One only)** towards compensation.

27] Now coming to inter se liability of the respondents, the respondent No.1 being owner of the motorcycle is liable to compensate the claimants. The respondent insurance company has set up plea of breach of policy conditions. The policy of the motorcycle is produced at Exh.35. While taking all defence, mere suggestions were made to the claimant No.1 that the insurance company is not liable to pay compensation. However, the insurance company has not adduced any evidence to prove the breach of policy conditions. Therefore, this issue cannot be said to be proved by the respondent/insurance company. Respondent/ Insurance Company is bound to honour the contract of indemnity for the acts of Respondent No.1. Thus, I hold that respondent No.1 being owner and respondent No.2 being insurer, they are jointly or severally liable to pay compensation to the petitioners. Hence, the petitioners are entitled to recover amount of compensation under joint and several liabilities of Respondents No.1 & 2.

28] So far as interest on the compensation amount is concerned, it has to be in consonance with the bank rate. Hence, the petitioners are entitled to interest @ 7% p.a. till realization of the amount.

29] In the result, the petition deserves to be allowed. Hence, I answer Issue No. 1 to 3 accordingly and in answer to issue no.4, the following order is passed :

-O R D E R –

1. Claim petition is partly allowed with proportionate costs.
2. Claimants are entitled to recover **Rs.16,12,661/-(in words Rs. Sixteen Lakhs Twelve Thousand Six Hundred Sixty One only)** as compensation including amount of 'No Fault Liability', alongwith interest @ 7% per annum till the realization of compensation amount, jointly or severally from Respondent Nos. 1 and 2.
3. Out of compensation amount, an amount of Rs.5,00,000/-(Five Lakhs) each be kept in Fixed Deposit Receipts in the name of petitioners No.1 & 2 in any nationalized bank of their choice for a period of three years.
4. The balance amount along with interest accrued on the compensation amount, till said date, be paid to the claimants equally by account payee Cheque.
5. Respondent No.2/insurance company to comply directions contained in case of ***Mrs. Gauri Deepak Patel & ors. Vs. New India Assurance Co. Ltd. & Anr. (2011 ACJ 1782)*** for the purposes of deducting income tax at source, while making payment of compensation to the claimants.
6. Award be drawn up accordingly.

(Dictated and pronounced in open Court).

SHRIKANT LAXMIKANT ANEKAR

Digitally signed by SHRIKANT LAXMIKANT ANEKAR
Date: 2022.10.13 12:52:27 +0530

Date 11.10.2022

(Shrikant L.Anekar)
Principal District Judge &
Chairman , MACT, Nanded.

CERTIFICATE

I affirm that the contents of this P.D.F. file Judgment are same word to word, as per the original judgment.

Name of Stenographer	:-	Anand P Deshmukh, Grade-II
Court name	:-	Chairman, MACT, Nanded.
Date	:-	11.10.2022
Judgment signed by Presiding officer on	:-	13.10.2022
Judgment uploaded on	:-	13.10.2022