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

FIRST APPEAL NO.1053/2015

ARSS Infrastructures Project Ltd.,
House No.61, Joint Post Tarsa,
Tarsa City, Tahsil Mouda, Distt. Nagpur. ... Appellant
(Ori. Respondent No.1)

- Versus -

1. ~~Sewakdas @ Shivaji S/o Lahanuji Sahare~~,
~~aged 48 Yrs., Occu. Catering business~~. Dead.

2. Mrs. Yamunabai W/o Sewakdas @ Shivaji
Sahare, aged 42 Yrs., Occu. Housewife.

Both R/o Pawaddawana, Tah. Mouda,
Distt. Nagpur. (Ori. Claimant No. 1 and 2)

3. The Branch Manager,
Oriental Insurance Co. Ltd.,
Bhubaneshwar, through its Nagpur
Branch, Legal Cell, Shukla Bhavan,
West High Court Road, Dharampeth,
Nagpur. (Ori. Respondent No.2)
... Respondents

Mr. Rahul Tajne, Advocate with Ms. A.J. Arve, Advocate for the Appellant.
Mr. Kunal P. Mirache, Advocate for the Respondent Nos.1 and 2.
Mr. D.N. Kukday, Advocate for the Respondent No.3.

CORAM: NEERAJ P. DHOTE, J.
DATED : 13.02.2026.

ORAL JUDGMENT

This is an Appeal under Section 173 of the Motor Vehicles Act, 1988 (for short "M.V. Act") by the owner of the offending vehicle against the judgment and order dated 10.09.2014 passed by the learned Motor Accident Claims Tribunal, Nagpur in Claim Petition No.928/2012 absolving the Insurance Company from the liability to pay the compensation.

2. The Respondent No.2 is the original Claimant. The Respondent No.3 is the Insurance Company of the offending vehicle. The offending vehicle was the truck (tipper) owned by the Appellant. Deceased Akash was the son of Respondent No.2. On 09.07.2012, when the deceased was traveling on the motorcycle, he was knocked down by the offending truck. Deceased suffered injuries to which he succumbed. The Respondent No.2 filed the Claim Petition before the learned Motor Accident Claims Tribunal, Nagpur for compensation. The Appellant and the Insurance Company resisted the Claim Petition by filing their respective written statements. The parties led their evidence before the learned Tribunal. The learned Tribunal decided the Claim Petition by judgment and order dated 10.09.2014 partly allowing the Claim Petition and directing the Appellant to pay the compensation of Rs.3,41,500/- with interest at the rate of 7.5% per annum from the date of Claim Petition till its realization. The Claim Petition was dismissed against the Respondent No.3 Insurance Company.

3. Heard the learned Advocate for the Appellant, the learned Advocate for the Respondent No.2 and the learned Advocate for the Respondent No.3. With their assistance perused the papers.

4. It is submitted by the learned Advocate for the Appellant that, the learned Tribunal exonerated the Insurance Company on the ground that, the driving licence of the driver of the offending vehicle was not valid. The Appellant being Company had verified the licence of the driver and, therefore, the liability cannot be fastened on the Appellant on the ground that, the driver was not having a valid and effective driving licence. It is submitted that, the Appellant applied for issuing summons to the witness of the concerned office of the Regional Transport, however, witness did not turn up. It is submitted that, on the only ground that, the licence was not valid and effective at the time of accident, Insurance Company cannot be absolved. In support of his contention, he relied on the decision in *IFFCO Tokio General Insurance Company Limited V/s. Geeta Devi and others*, (2004) 13 SCC 755.

5. It is submitted by the learned Advocate for the Insurance Company that, in the written statement the defence was raised that, the driver of the offending vehicle was not holding a valid licence in the category of 'HGV' which was an essential condition to drive the offending vehicle and thus, the driver was not holding a valid licence and hence as per the terms of the policy, the Insurance Company was not liable to pay the compensation. He submits that, the Insurance Company had also applied for issuance of summons to the concerned office of the Regional Transport and the official

communication was received from the said office stating that, an endorsement in respect of renewal of the licence was not made by their office. He submitted that, considering the material available on record, the learned Tribunal has rightly appreciated the evidence absolving the Insurance Company. It is submitted that, the Appeal be dismissed.

6. The learned Advocate for the Respondents/Claimants submitted that, further enhancement in the compensation may be granted as the learned Tribunal has not granted the just and fair compensation as per the decision of the Hon'ble Supreme Court in *National Insurance Company Limited V/s. Pranay Sethi and ors.*, (2017) 16 SCC 680. It is submitted that, the deceased was 18 years of age and was the student and, therefore, appropriate compensation should have been awarded.

7. Perusal of the above referred judgment cited by the learned Advocate for the Appellant shows that, it was the matter arising out of the Motor Vehicles Act. It was the accident claim. The Tribunal therein found that, the driver of the tempo had fake driving licence and opined that, the Insurance Company would not be liable to pay the compensation. Paragraph Nos.9, 10, 17 and 18 from the judgment in IFFCO Tokio Insurance Company Limited (supra) are reproduced below:-

> *"9. As regards the contention that the driver of the vehicle was not duly licensed as he possessed a fake licence, it may be noted that neither Section 149(2)(a)(ii) of the 1988 Act nor the "Driver Clause" in the subject insurance policy provide that the owner of*

the insured vehicle must, as a rule, get the driving licence of the person employed as a driver for the said vehicle verified and checked with the Transport Authorities concerned. Generally, and as a matter of course, no person employing a driver would undertake such a verification exercise and would be satisfied with the production of a licence issued by a seemingly competent authority, the validity of which has not expired. It would be wholly impracticable for every person employing a driver to expect the Transport Authority concerned to verify and confirm whether the driving licence produced by that driver is a valid and genuine one, subject to just exceptions. In fact, no such mandatory condition is provided in any car insurance policy and it is not open to the petitioner insurance company, which also did not prescribe such a stringent condition, to cite the failure of the deceased vehicle owner to get Ujay Pal's driving licence checked with the RTO as a reason to disclaim liability under the insurance policy.

10. In effect and in consequence, the petitioner Insurance Company cannot blithely claim that the deceased vehicle owner did not conduct due diligence while employing Ujay Pal as a driver, by now insisting upon a condition which was neither prescribed in the statute nor in the insurance policy. More so, an unrealistic condition that every person employing a driver must get the driving licence of such driver verified and confirmed by the RTO concerned, irrespective of the actual necessity to do so.

17. More recently, in Ram Chandra Singh v. Rajaram, the issue before this Court was whether an insurance company could be absolved of liability on the ground that the insured vehicle was being driven by a person who did not have a valid driving licence at the time of the accident. This Court found that no attempt was made to ascertain whether the owner

> *was aware of the fake driving licence possessed by the driver and held that it is only if the owner was aware of the fact that the licence was fake but still permitted such driver to drive the vehicle that the insurer would stand absolved. It was unequivocally held that the mere fact that the driving licence was fake, per se, would not absolve the insurer.*
>
> *18. Applying the aforestated edicts to the case on hand, it may be noted that the petitioner Insurance Company did not even raise the plea that the owner of the vehicle allowed Ujay Pal to drive the vehicle knowing that his licence was fake. Its stand was that the accident had occurred due to the negligence of the victim himself. Further, the insurance policy did not require the vehicle owner to undertake verification of the driving licence of the driver of the vehicle by getting the same confirmed with the RTO. Therefore, the claim of the petitioner Insurance Company that it has the right to recover the compensation from the owners of the vehicle, owing to a wilful breach of the condition of the insurance policy viz. to ensure that the vehicle was driven by a licenced driver, is without pleading and proof."*

8. There is no dispute in respect of the ratio of the above decision. Coming to the case at hand there is no dispute that, the summons was issued to the office of Regional Transport of the concerned State for examining the witness. Admittedly, no witness had turned up from the said office and the learned Tribunal received the communication below Exh.74. Undisputedly, the Appellant had placed on record original licence of the driver below Exh.53. The learned Tribunal in the light of the said document at Exh.74, which was the communication received from the concerned office of Transport, suspected the genuineness of the licence below Exh.53. The Appellant examined the witness who was the Project Manager

and power-of-attorney of the Appellant Company. He filed his evidence affidavit. In para 6 of the said evidence affidavit it is stated that, the insurance cover was applicable even on the date of accident and the driver of the vehicle was holding a valid and lawful licence to drive the offending vehicle. This witness of the Appellant was cross-examined by the claimants and also by the Insurance Company. The cross-examination of this witness done on behalf of the Company reads as under:

> *"11. Cross-examination by Adv. Smt. S.G.Kasbekar for Respondent No.2.*
>
> *I am working in the company for last 4 years and in the present project is for last 2 years. The driver Mahendra is working in our company for last 3 years, but I do not know his exact date of appointment. I have not personally appointed him as driver. The company has appointed the driver. The company has verified the licence of Mahendra. I do not have personal knowledge whether the company has verified the driving licence of Mahendra before appointing him. It is not correct to say that the driving licence of Mahendra is fake.*
>
> *Re-examination : Nil"*

9. The above evidence of the witness examined by the Appellant Company clearly goes to show that, the Company had verified the licence of the driver. Applying the principle laid down in the above judgment IFFCO Tokio Insurance Company Limited (supra), cited by the learned Advocate for the Appellant, it can safely be said that, the Company did the needful while appointing the driver of the offending vehicle. The ratio of the above referred judgment in case of IFFCO Tokio Insurance Company Limited (supra) is applicable to the case at hand. Therefore, in the facts and circumstances of the case, the decision of the learned Tribunal absolving the Insurance

Company from paying the liability cannot be approved. There is no dispute that, the offending vehicle was covered by the insurance policy. Thus, the liability for paying the compensation will have to be made joint and several between the Appellant and the Respondent No.2.

10. On the point of quantum, the learned Advocate for the Appellant cited the decision in *V. Mekala V/s. M. Malathi and another*, 2014(6) JT 212 which was the injury claim of the student and the notional income of Rs.10,000/- was considered. According to the learned Advocate for the Claimants, had the deceased been alive he would have become Class-I Officer and, therefore, his monthly income be considered Rs.10,000/- per month. He fairly admitted that, the educational documents of the deceased were not exhibited before the learned Tribunal as only xerox copies were filed. Even if the said documents are taken into consideration, considering the uncertainties in life, it cannot be said with certainty that, the deceased would have become Class-I Officer had he been alive. The learned Tribunal has considered the notional income of the deceased as Rs.3,000/- per month with an appropriate multiplier. The only aspect would be that, of the compensation towards the conventional heads i.e. funeral expenses, loss of estate and consortium. Undisputedly, the factual aspects of the said case and the case at hand are different. Considering the material available on record, the learned Tribunal has rightly considered the notional income of the deceased. However, there should be an addition towards the funeral expenses and loss of estate of Rs.15,000/- each and Rs.40,000/- under the head of consortium. This amount will have to be included

in the amount of dependency determined by the learned Tribunal Rs.3,24,000/-. There will have to be 40% addition towards future income on the basis of the notional income which comes to Rs.3,24,000/- ÷ 40/100 = Rs.1,29,600/-. Hence, amount of compensation awarded by the learned Tribunal stands modified from Rs.3,41,500/- to Rs.5,23,600 (Rs.324,000 + Rs.15,000/- + Rs.15,000/- + Rs.40,000/- + Rs.1,29,600/-). The amount of compensation is to be paid by the Appellant and the Insurance Company jointly and severally. The Appeal stands disposed of in the above terms.

(NEERAJ P. DHOTE, J.)

Tambaskar.