IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR

FIRST APPEAL NO. 510 OF 2007

1. Rambhau S/o Awadut Gawai
   Age 42 Years, Occ. Labour

2. Rajkumar S/o Rambhau Gawai
   Aged 20 Years, Occ. Education

3. Rajesh S/o Rambhau Gawai
   Aged 18 Years, Occ. Education
   All R/o Tembursonda, Tq. Chikhaldara
   Dist. Amravati : APPELLANTS

...**VERSUS**...

1. Shivlal S/o Shalikram Belsare (dead)
   Legal Heirs of Respondent No.1

   a) Ratu Shivlal Belsare
      Age : Adult, Occ.: Not known

   b) Shalikram Bhaya Belsare
      Age : Adult, Occ. Not known

   c) Jiji Shalikram Belsare
      Aged Adult, Occ. Not known

   R-1(c) deleted as per Court's order dt. 19.09.2019

   All R/o Bhandri, Post Kohana,
   Tq. Chikhaldara, Dist. Amravati

2. The Oriental Insurance Company Ltd.,
   Through its Branch Manager,
   "SAUBHAOY" 1st Floor, Badnera Road,
   Rajapeth, Amravati – 444 601. : RESPONDENTS

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Shri. P.R. Agrawal, Advocate for the appellants.
Shri K.B. Zinjarde, Advocate for the respondent no.1 (a) to 1 (c).
Shri S.K.Pardhy, Advocate for the respondent no.2.

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CORAM : ANIL S.KILOR, J.
Reserved on : 12th FEBRUARY, 2020.
Pronounced on : 17th SEPTEMBER, 2020.

JUDGMENT

The rejection of a claim petition preferred by the appellants/claimants, under Section 166 of the Motor Vehicle Act, on a death of wife of the appellant no.1 and mother of appellant nos.2 and 3, in an accident, by the Motor Accident Claims Tribunal, Achalpur, vide judgment and order dated 3rd February, 2007 in Motor Accident Claim Petition No.12 of 2005, has been questioned in the present appeal.

2. The facts giving rise to the present petition are as follows:

On 31st March, 2005, the deceased Baby was traveling in a jeep bearing no. MP 04 G 439 owned by the respondent no.1. The driver of the said vehicle was driving the vehicle in a high speed and in a negligent manner which resulted into a violent dash to a tree. The deceased Baby received severe injuries and succumbed to the same.

3. The husband of the deceased Baby and her two sons filed a claim petition under Section 166 of the Motor Vehicle Act and thereby claimed Rs.5,00,000/- towards compensation.

4. The owner of the jeep did not appear and file a written statement before the Tribunal, though he was served.

5. The respondent no.2 Insurance Company resisted the claim by filing a written statement, on the grounds that the driver of the offending vehicle was not holding effective and valid motor driving licence on date of accident and the offending jeep was insured for private use but it was used for commercial purpose in breach of condition of the Insurance policy.

6. The appellant no.1 examined himself and he was cross-examined by the Insurance Company.

7. The appellants filed certified copies of First Information Report, Spot Panchanama, Inquest Panchanama, copy of license of the driver and post mortem report, in

support of their claim.

8. The evidence of the appellant no.1 has not been seriously challenged by the Insurance company.

9. However, the claim petition has been rejected by the learned Tribunal on three grounds namely:

(a) the claimants have suppressed the actual age of the deceased Baby thus the claim is based on falsity.

(b) the husband of the deceased Baby, being an earning member, cannot claim compensation for death of his wife in the accident.

(c) the claimant nos. 2 and 3 being major sons of the deceased Baby, are not entitled to claim any compensation.

10. The said judgment and order dated 3rd February, 2007, is assailed in the present appeal.

11. Heard Shri Agrawal, learned counsel for the appellants, Shri K. B. Zinjarde, learned counsel for the legal representatives of respondent no.1 owner of the offending

vehicle and Shri S. K. Pardhy, learned counsel for the Insurance Company.

12. Shri Agrawal, learned counsel for the appellants submits that the claimants are from tribal area. In absence of any birth record of the deceased, approximate age had been mentioned as 38 years in the claim petition. But on the inquest panchanama which was produced on record by the claimants, the age of the deceased has been recorded as 45 years. Thus, he argues that had there been any intention of the claimants to suppress the correct age of the deceased, they would not have filed the copy of inquest panchnama. It is submitted that the learned Tribunal failed to consider the same while rejecting the claim petition of the appellants on the groud of falsity of claim.

13. He further submits that the rejection of claim on the ground that the husband and major sons are not entitled for any claim under the Motor Vehicle Act, is contrary to settled law position and therefore he submits that the impugned judgment and order dated 3rd February, 2007 suffers from non consideration of the facts and circumstances

of the case, so also the provisions of law.

14. On the other hand Shri Zinjarde, learned counsel for the legal heirs of the owner of the offending jeep submits that it is not the case of the Insurance Company that legal heirs of the original owner of the jeep, have inherited the property of original owner. By arguing so he submits that no orders directing the legal heirs to pay any compensation may be passed.

15. Shri Pardhy, learned counsel for the Insurance Company vehemently opposed the appeal by arguing that the claim is based on falsity as it has been rightly held by the learned Tribunal while rejecting the claim.

16. He further submits that offending vehicle was a private vehicle which was not permitted to use as commercial vehicle. It is submitted that from the record it is evident that the said vehicle was used for commercial purpose as the deceased Baby was traveling in the said jeep as passenger after paying fare. It is submitted that use of private vehicle as commercial vehicle is a breach of condition of policy and

therefore insurance company is not liable to pay the amount of compensation, if any granted by this Court.

17. Shri Pardhy, learned counsel for the Insurance Company lastly argues that the driver of the offending vehicle was not holding a valid licence and by arguing so he prays that this Court may maintain the judgment and order of the Tribunal and dismiss the present appeal.

18. To consider the rival contentions of the rival parties, I have gone through the record and proceedings and considered the relevant provisions of law and judgments relating to the issues involved in the present matter.

19. In the above backdrop I would examine the correctness and legality of the first ground for rejection of the claim by the Tribunal, that is, suppression of real age of the deceased Baby in the claim petition.

20. It is not in dispute that the claimants are resident of Tembursonda village, Tq. Chikhaldara which is a part of Melghat, a tribal area which is also considered as one of the

backward areas of the Vidarbha region.

21. To state a correct age of a person one must know the date of birth and for which it is necessary to get the birth documented by birth registration.

22. In India by law since 1969 birth registration is made compulsory as per provisions of the Registration of Births and Deaths Act. However till date the percentage of registration is low with 80 percent of the births. In the said factual backdrop of registration of births, those who born in remote areas like the deceased Baby or the appellant No.1, have lesser likelihood of registration of their birth and possessing a birth certificate.

23. Moreover in absence of schools in remote tribal areas till recent past, it was not possible to take education for many. Hence no school record in respect of date of birth is also available relating to those who have never attended the school. Therefore, it is difficult to find out the correct age of such people even for their relatives. It seems, therefore, that there is a practice of mentioning approximate age if any such

occasion to mention the age, arises.

24. In the light of above facts, I do not find any ill intention of the claimants in mentioning the age of the deceased as 38 years. If intention to suppress the correct age of the deceased was there, the claimants would not have filed copy of Inquest Panchanama on record wherein the age of deceased Baby, recorded as 45 years.

25. In the judgment of the Hon'ble the Supreme Court of India in the case of ***Sarla Verma (Smt) and others Vs. Delhi Transport Corporation and another, 2009(6) SCC 12,*** for the age 36 to 40 years multiplier of 15 is made applicable whereas for the age of 41 to 45 multiplier of 14 is made applicable.

26. If the age of deceased Baby is taken as 38 years multiplier of 15 would be applicable and if the age mentioned in the Inquest Panchanama i.e. 45 years is taken the multiplier of 14 would be applicable. Thus, there will be a difference of single multiplier.

27. In the circumstances, I do not find that the claimants have intentionally mentioned the age of the deceased as 38 years in the claim petition to gain some more benefits out of the death of Baby. Hence, the rejection of the claim petition by the Tribunal on the ground that the case of the claimant is based on falsity, is erroneous.

28. The claim for grant of compensation on the ground of household work of the deceased, was also not considered and rejected by the learned Tribunal.

29. Thus, to determine the legality and correctness of not considering the claim of the claimant based on the ground that the deceased was a housewife, therefore, they have lost personal care and attention given by the deceased, the following factors need to be considered.

30. When we talk about a 'family', the role of a woman as a 'housewife' (also known as 'homemaker') in family is the most challenging and important role which role though deserves much appreciation but least appreciated.

31. According to dictionary 'housewife' is a woman who does not have job outside the home and who spends her time in cleaning, cooking, looking after her family etc.

32. In fact emotionally she holds the family together. She is a pillar support for her husband, a guiding light for her child/children and harbor for the family's elderly. She works round-the-clock without a single day off, no matter whether she is working or not. However, the work she does go unacknowledged and is not considered as a 'job'. It is an impossible task to count the services she renders which are consisting hundreds of component that go into the functioning of a house hold itself, in monetary terms.

33. The Hon'ble the Supreme Court of India had an occasion to consider the importance of role of a housewife in the family, in the case of ***Arun Kumar Agrawal and another Vrs. National Insurance Company Limited and others*** reported in ***2010 (9) SCC 218*** , wherein the Hon'ble Apex Court has observed thus:

> 25. In Mehmet v. Perry (1977) 2 All ER 52, the pecuniary value of a wife's services were assessed and granted under the following heads:-
> (a) Loss to the family of the wife's housekeeping services.

(b) Loss suffered by the children of the personal attention of their mother, apart from housekeeping services rendered by her.
(c) Loss of the wife's personal care and attention, which the husband had suffered, in addition to the loss of her housekeeping services.

26. In India the Courts have recognized that the contribution made by the wife to the house is invaluable and cannot be computed in terms of money. The gratuitous services rendered by wife with true love and affection to the children and her husband and managing the household affairs cannot be equated with the services rendered by others. A wife/mother does not work by the clock. She is in the constant attendance of the family throughout the day and night unless she is employed and is required to attend the employer's work for particular hours. She takes care of all the requirements of husband and children including cooking of food, washing of clothes, etc. She teaches small children and provides invaluable guidance to them for their future life. A housekeeper or maidservant can do the household work, such as cooking food, washing clothes and utensils, keeping the house clean etc., but she can never be a substitute for a wife/mother who renders selfless service to her husband and children.

27. It is not possible to quantify any amount in lieu of the services rendered by the wife/mother to the family i.e. husband and children. However, for the purpose of award of compensation to the dependents, some pecuniary estimate has to be made of the services of housewife/mother. In that context, the term “services” is required to be given a broad meaning and must be construed by taking into account the loss of personal care and attention given by the deceased to her children as a mother and to her husband as a wife. They are entitled to adequate compensation in lieu of the loss of gratuitous services rendered by the deceased. The amount payable to the dependants cannot be diminished on the ground that some close relation like a grandmother may volunteer to render some of the services to the family which the deceased was giving earlier.

30. In A. Rajam v. M. Manikya Reddy 1989 ACJ 542 (Andhra Pradesh HC), M. Jagannadha Rao, J. (as he then was) advocated giving of a wider meaning to the word "services" in cases relating to award of compensation to the dependents of a deceased wife/mother. Some of the observations made in that judgment are extracted below:

> "The loss to the husband and children consequent upon the death of the housewife or mother has to be computed by estimating the loss of 'services' to the family, if there was reasonable prospect of such services being rendered freely in the future, but for the death. It must be remembered that any substitute to be so employed is not likely to be as economical as the housewife. Apart from the value of obtaining substituted services, the expense of giving accommodation or food to the substitute must also be computed. From this total must be deducted the expense the family would have otherwise been spending for the deceased housewife.
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> While estimating the "services" of the housewife, a narrow meaning should not be given to the meaning of the word "services" but it should be construed broadly and one has to take into account the loss of "personal care and attention" by the deceased to her children, as a mother and to her husband, as a wife. The award is not diminished merely because some close relation like a grandmother is prepared to render voluntary services."

61. Jayati Ghosh (Uncovering Women's Work) has referred to National Sample Surveys and according to her, the survey showed

> "57% of rural women and 19% of urban women were engaged in the free collection of fuel wood for household consumption. Activities related to food processing, such as husking and grinding grain, were engaged in by around 15% of women. Other unpaid activities such as maintaining kitchen gardens

> and looking after livestock and poultry also occupied a majority of women - 60% in rural areas and 24% in urban areas. These are all economic activities which in developed societies are typically recognized as such because they are increasingly delegated by women and performed through paid contracts."
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> 62. The alternative to imputing money values is to measure the time taken to produce these services and compare these with the time that is taken to produce goods and services which are commercially viable. One has to admit that in the long run, the services rendered by women in the household sustain a supply of labour to the economy and keep human societies going by weaving the social fabric and keeping it in good repair. If we take these services for granted and do not attach any value to this, this may escalate the unforeseen costs in terms of deterioration of both human capabilities and social fabric.
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> 63. Household work performed by women throughout India is more than US $ 612.8 billion per year (Evangelical Social Action Forum and Health Bridge, page 17). We often forget that the time spent by women in doing household work as homemakers is the time which they can devote to paid work or to their education. This lack of sensitiveness and recognition of their work mainly contributes to women's high rate of poverty and their consequential oppression in society, as well as various physical, social and psychological problems. The courts and tribunals should do well to factor these considerations in assessing compensation for housewives who are victims of road accident and quantifying the amount in the name of fixing “just compensation”.

34. The Hon’ble the Supreme Court of India in the case of ***New India Assurance Company Ltd., Vrs. Kamla and others*** reported in ***2001 ACJ 843***, has thus:

> "10. So far as the deceased housewives are concerned, in the absence of any data and as the housewives were not earning any income, attempt has been made to determine the compensation, on the basis of services rendered by them to the house. On the basis of the age group of the housewives, appropriate multiplier has been applied, but the estimation of the value of services rendered to the house by the housewives, which has been arrived at Rs.12,000/- per annum in cases of some and Rs.10,000/- for others, appears to us to be grossly low. It is true that the claimants, who ought to have given data for determination of compensation, did not assist in any manner by providing the data for estimating the value of services rendered by such housewives. But even in the absence of such data and taking into consideration, the multifarious services rendered by the housewives for managing the entire family, even on a modest estimation, should be Rs.3000/- per month and Rs.36,000/- per annum. This would apply to all those housewives between the age group of 34 to 59 and as such who were active in life. The compensation awarded, therefore should be recalculated, taking the value of services rendered per annum to be Rs.36,000/- and thereafter applying the multiplier, as has been applied already, and so far as the conventional amount is concerned, the same should be Rs.50,000/- instead of Rs.25,000/- given under the Report. So far as the elderly ladies are concerned, in the age group of 62 to 72, the value of services rendered has been taken at Rs.10,000/- per annum and multiplier applied is eight. Though, the multiplier applied is correct, but the values of services rendered at Rs.10,000/- per annum, cannot be held to be just and, we, therefore, enhance the same to Rs.20,000/- per annum. In their case, therefore, the total amount of compensation should be re-determined, taking the value of services rendered at Rs.20,000/- per annum and then after applying the multiplier, as already applied and thereafter adding Rs.50,000/- towards the conventional figure."

35. The above referred judgments of the Hon'ble the Supreme Court of India, make it abundantly clear that the loss

to the husband and children consequent upon the death of the housewife or mother has to be computed by estimating the loss of personal care and attention given by the deceased to her children as a mother and to her husband as a wife and further for loss of gratuitous and the multifarious services rendered by the housewives for managing the entire family. The Hon'ble the Supreme Court says that estimation, should be Rs.3000/- per month and Rs.36,000/- per annum in respect of those housewives between the age group of 34 to 59 and as such who were active in life.

36. In view of the law laid down by the Hon'ble the Supreme Court of India in the above referred judgments the denial by the Tribunal to consider the case of the claimant for compensation based on the ground that the deceased was the housewife and they have lost personal care and attention given by the deceased, is contrary to well settled law.

37. At the same time rejection of the claim of the claimants on the ground that the husband and the major sons are not entitled to claim compensation on the death of wife or mother, appears to be in ignorance of the well established

principals of law, on the part of the learned Tribunal.

38. Moving further, in this matter the deceased Baby, used to do labour work and her earning was Rs.100 per day. The Insurance Company has not raised serious challenge to the oral evidence of appellant No.1 led in that regard. Thus, in absence of serious challenge to the said fact, learned Tribunal ought to have accepted the case of the appellant that the deceased was earning Rs.100/- per day and her monthly earning was Rs.3000/- in addition to her work as homemaker / housewife.

39. However, the learned Tribunal without assigning any proper reason rejected the case of the claimants that, the deceased was earning 100 per day as a labourer. Thus, the said finding is contrary to the evidence available on record.

40. Hence, in my view, deceased Baby, being a woman and mother of two children, would have also contributed her physical labour for maintenance of household and also taking care of her children. Being a labourer and also maintaining her family, her daily income should be fixed at Rs. 200/- per day and Rs. 6000/- per month.

41. Taking income from labour work at Rs. 3000/- per month and Rs 3000/- per month for the household work, the monthly income of the deceased is fixed at Rs. 6000/- per month deducting 1/3rd for personal expenses, contribution of deceased towards the family is calculated at Rs. 4000/- per month and Rs. 48,000 per annum. Deceased Baby's age as per inquest panchnama was aged 45 years. As per the Second Schedule to the Motor Vehicles Act, 1988, for the age groups 40-45 years multiplier is "15". As per *Sarla Verma* v. *DTC*, for the age groups 41-45 years multiplier to be adopted is "14". Therefore adopting the multiplier of "14" loss of dependency is calculated at Rs. 6,72000/- (Rs 4000 × 12 × 14). Plus compensation on other heads.

42. Now moving to last contention of the Insurance company that the Insurance company is not liable to pay compensation on the ground that the private vehicle was used for commercial purpose in breach of conditions of Insurance policy moreover the driver was not holding a valid licence, is concern, in the judgment of ***S.Iyyapan Vs United India Insurance Company Ltd. And another,*** reported in ***2013 (6)***

Mh. L.J. 1 in paragraph No.18 has observed thus:

> *"18. Reading the provisions of* Sections 146 *and* 147 *of the Motor Vehicles Act, it is evidently clear that in certain circumstances the insurer's right is safeguarded but in any event the insurer has to pay compensation when a valid certificate of insurance is issued notwithstanding the fact that the insurer may proceed against the insured for recovery of the amount. Under* Section 149 *of the Motor Vehicles Act, the insurer can defend the action inter alia on the grounds, namely, (i) the vehicle was not driven by a named person, (ii) it was being driven by a person who was not having a duly granted licence, and (iii) person driving the vehicle was disqualified to hold and obtain a driving licence. Hence, in our considered opinion, the insurer cannot disown its liability on the ground that although the driver was holding a licence to drive a light motor vehicle but before driving light motor vehicle used as commercial vehicle, no endorsement to drive commercial vehicle was obtained in the driving licence. In any case, it is the statutory right of a third party to recover the amount of compensation so awarded from the insurer. It is for the insurer to proceed against the insured for recovery of the amount in the event there has been violation of any condition of the insurance policy."*

43. This Court, in the case of ***Dnyaneshwar @ Umesh Dhanraj Agale (dead) through Lrs Dhanraj Gangaram Agale***

and another Vrs. Raju S/o Ramchandra Sakhare and others reported in ***2020(1) Mah. Law Journal 377***, held that it is the vicarious liability of the owner of the vehicle to pay compensation even if due to rash and negligent driving of the driver, the accident had occurred. This Court in paragraph 8 has observed thus:-

> *"8. In all the decisions cited by the side of appellant, it is held that it is the statutory duty of insurance company to pay the amount of compensation to third party even there is breach of policy condition. The insurance company is at liberty to recover the same from the owner of offending vehicle. In the present case, it is not in dispute that the respondent no. 3 insured the offending vehicle. There is no dispute that deceased appellant was injured in the accident. Deceased appellant/ claimant was third party. Accident took place due to rash and negligent driving of offending vehicle. The said vehicle was insured by the respondent no. 3 - insurance company. Tribunal granted the claim of appellant but directed that it be recovered from the driver and owner of offending vehicle. It is pertinent to note that direction given to driver is nothing but illegal. It is well settled law that driver of vehicle only is not liable but it is vicarious liability of owner of vehicle to pay compensation. Therefore, direction given to driver along with owner is liable to be set aside. Moreover, there is no dispute that the offending vehicle was insured at the time of accident. In view of decision in the case of National Insurance Company Ltd. Vs. Swaran Singh (supra) and other reported*

decisions, it is clear that statutory liability is on insurance company as per Section 149 of the Motor Vehicle Act to pay the compensation first to the claimant and thereafter insurance company may recover the same from the owner of offending vehicle."

44. In view of the judgments referred above in the case of *Dnyaneshwar @ Umesh Dhanraj Agale (dead) through Lrs Dhanraj Gangaram Agale and another Vrs. Raju S/o Ramchandra Sakhare and others (supra),* the contention of the Insurance Company that because the vehicle involved in the accident was used for commercial purpose and the driver was not holding a valid licence, there is a breach of condition of policy and therefore the Insurance Company is not liable to pay the amount of compensation, is rejected.

45. In the present matter there is no dispute that the vehicle involved in the accident was insured with the respondent- Insurance Company. Moreover, the accident had occurred due to rash and negligent driving of the driver, therefore it is the vicarious liability of the owner of the vehicle to pay compensation. In the circumstances, I have no hesitation to hold that it is a statutory duty of the Insurance Company to pay the amount of compensation even in breach

of policy condition. The Insurance Company is at liberty to recover the same from the owner of the offending vehicle.

46. In the light of above observations, I am of the considered view that the claimants are entitled for the amount of compensation as per the chart given herein below.

A	Income from Labour Work	Rs.3,000/- per month	=Rs.3,000/-
B	Household work	Rs.3000/- per month	=Rs.3,000/-
C	Total (A+B)		=Rs.6,000/-
D	1/3rd amount deducted towards her personal expenses	Rs.6,000/- - Rs.2000/- (1/3rd amount of Rs.4,000/-)	=Rs.4000/-
E	Actual amount of 12 months (Rs.4000/- x 12)		=Rs. 48,000/-
F	Multiplier - "14"	Rs.48,000/- x 14	=Rs.6,72,000/-
G	Loss of love and affection	Rs.40,000/- x 3	=Rs.1,20,000/-
H	Loss of funeral expenses, and estate	(Rs.15,000/-+ Rs.15,000/-)	=Rs. 30,000/-
Total (F+G+H)			**=Rs.8,22,000/-**

47. In the circumstances, appellants are entitled to receive Rs. 8,22,000/- towards compensation with interest thereon @ 6% p.a. from the date of application till its realisation. The amount of compensation is including the amount received by the appellants towards no fault liability.

48. It is further directed that the Respondent-Insurance Company shall pay the amount of compensation granted

herein above in three months from the date of this order. It is made clear that Respondent-Insurance Company is at liberty to recover the amount from the legal heirs of the owner of the vehicle on the ground of breach of condition of insurance policy, if so advised.

49. The amount of compensation shall be paid to the appellants on payment of Court fee on the amount granted in excess of the amount claimed by the appellants.

50. The appeal is allowed in aforesaid terms. No order as to costs.

JUDGE

Sknair