Before Arun Monga, J.

SONA DEVI AND OTHERS— *Appellants*

versus

RAMESH KUMAR AND OTHERS— *Respondents*

FAO No. 2218 of 2012

September 1, 2021

Constitution of India, 1950—Motor Vehicles act, 1988—S. 128—MACT—Inadequate compensation – If the vehicle did not have a valid permit in violation to the terms and conditions of the insurance policy, the insurer can repudiate its ability to reimburse the assured/victim but still the victim or his heirs must initially be paid compensation by the insurance company with the right to recover the same from the owner/driver of the vehicle – order modified accordingly.

Held, that there is no challenge to the finding returned by the learned Tribunal that at the relevant time the offending truck No. HP-11-0696 did not have valid route permit for being plied in the area, where accident took place and that this was a violation of the terms and conditions of insurance policy. Settled law is that if the claim for compensation arises out of the use of the offending vehicle in breach of the terms and conditions of insurance policy, though the insurer is entitled to repudiate liability to reimburse the assured, yet the victim of the accident//his heirs have initially to be paid compensation by the insurance company, of course with right to recover the same from the owner/driver of such vehicle. In fact, as noticed above, relying upon *National Insurance Co. Ltd., vs Swaran Singh andm others 2004 (3) SCC 297*, the learned Bench of this Court then seized of the matter had observed vide interim order dated 07.03.2014 that the insurance company could not have been absolved and must have been held liable to pay the compensation first and then recover it from respondents No.1 and 2. I am in respectful agreement with this view taken vide order dated 07.03.2014 by the learned bench then seized of the matter. To my mind, the learned Tribunal erred in totally and absolutely absolving respondent No. 3/ insurance company of its initial obligation to pay compensation to the claimant/ appellants.

(Para 17)

Ashwani Arora, Advocate, *for the appellants*.

Ashwani Talwar, Advocate, for the respondent-Insurance Company.

ARUN MONGA, J. (ORAL)

(1) Aggrieved with the inadequate compensation and total exoneration of respondent No. 3 (insurer of the offending truck) vide award dated 08.10.2011 rendered by the Motor Accident Claims Tribunal, Ropar (for brevity, Tribunal), claimants are before this court by way of an appeal.

(2) Brief facts first. On 09.06.2010, deceased Jeet Ram was going from village Ghanauli to village Makauri Khurd, on his Hero Honda motor cycle with two pillion riders namely, his domestic help Raju and one Ved Parkash. When they were near Dashmesh Dhaba, a truck bearing No. HP-11-0696 driven rashly and negligently by respondent No. 1 Ramesh Kumar hit the motor cycle from behind. From the impact of the hit, all three motor cycle riders fell down and sustained injuries. Later, on 14.09.2010, Jeet Ram succumbed to the injuries sustained in accident. On these allegations, the widow, minor children of Jeet Ram and his parents filed the claim petition before the MACT. Respondent No. 1, 2 and respondent No. 3 were arrayed as driver, owner and insurer of the offending truck, respectively.

(3) Respondents No. 1-2 filed written statement denying that the said truck was involved in the accident.

(4) Respondent No. 3/insurer set up a similar plea. It also denied liability saying that respondent No. 1 was not holding a valid driving licence. Also pleaded that there was no valid route permit, RC and fitness certificate of the truck in question.

(5) Learned Tribunal framed following issues:

1. Whether Jeet Ram died in a road accident caused by respondent No. while driving truck No. HP-11-0696 in a rash and negligent manner ? OPP

2. Whether claimants are entitled to the compensation as prayed for ? If so, to what extent and from whom ? OPP

3. Whether the respondent No. was not holding a valid driving licence, route permit, RC and fitness certificate of the truck No. HP-11-0696 at the time of accident ? OPR

4. Whether the claimants are legal heirs of the deceased ?

OPR-3

5. Relief.

(6) On appraisal of record/evidence, the learned Tribunal held that Jeet Ram died due to the accident caused by rash and negligent driving of the truck by respondent No. 1. It decided issue no.1 accordingly. Under issue No. 2, it held that the claimants were entitled to compensation from respondents No. 1-2. It held that respondent No.3/insurer was not liable to pay any compensation. Under issue No. 3, it was held that respondent No. 1 was holding a valid driving licence and that the truck did not have any valid route permit for being plied in the area, where accident took place. Issue No. 4 was decided in favour of the claimants and holding that they were entitled to and respondents No.1-2 jointly and severally were liable to pay compensation of Rs. 11,62,000/- with interest @ 9% from the date of filing the claim petition. As against the insurer (respondent No. 3), the learned Tribunal dismissed the claim petition.

(7) Learned counsel for the appellants submits that deceased was 32 years of age at the time of his death. He was running a liquor Ahata (tavern) and was earning a sum of Rs.20,000/- per month. He left behind eight dependents/claimants. He further canvasses that the Tribunal erred firstly in assessing income as merely Rs. 8,000/- per month; secondly by not making any addition thereto for future prospects of the deceased and thirdly deducting 1/4th out of it for personal expenses of the deceased and thus awarded inadequate compensation and also wrongly absolved the insurer of the offending truck.

(8) Vide an interim order dated 07.03.2014 passed by the learned bench then seized of the matter, Insurance Company was directed to pay the amount of compensation assessed by the learned Tribunal giving it the right to recover the same from respondents No.1 and 2.

(9) Learned counsel for the appellants further argues that appellants are entitled to enhanced amount of compensation in view of the judgments rendered by Apex Court in case titled as ***National Insurance Company Limited*** *versus* ***Pranay Sethi***[1] and ***New India Assurance Company*** *versus* ***Somwati***[2].

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[1] 2017 (4) PLR 693, SC

[2] 2020 ACJ 2321 (SC)

(10) Per contra, learned counsel for the Insurance Company opposes the appeal, inter alia, on the ground that no fault can be found with the well reasoned findings recorded by learned Tribunal. The learned Tribunal while dealing with the issue of 'Liability' held the insurance company would not be liable to pay any sort of compensation, since respondent-truck owner had allowed his truck to be plied on the roads in Punjab in violation of the conditions of route permit issued to him. The learned Tribunal has rightly exonerated the Insurance company, though the learned bench of this Court vide order dated 07.03.2014 held it liable to pay the compensation first and then recover it from respondent nos. 1 and 2, despite the fact that respondent nos. 1 and 2 (driver and owner of the insured vehicle) has neither challenged the findings of the MACT nor the orders dated 07.03.2014 passed by the learned Single Bench.

(11) Heard learned counsel for the parties and perused the paper book.

(12) Ajay Tiwari, J. my learned brother, then in seizen of the instant appeal, vide an order dated 07.03.2014 had referred the matter to larger bench on the issue, *whether in a case where there are two pillion riders liability must be affected.* Before proceeding further, it would be apposite to reproduce the order/ judgment dated 07.03.2014 as below:-

> "This appeal has been filed for enhancement of compensation. Brief facts are that on 9.6.2010 at about 12.30 a.m. Jeet Ram (since deceased) was going on motor cycle bearing registration No. PB- 12-L-9816 along with his servant Raju. He was driving the motor cycle at a slow speed on the correct side of the road. They were going from Ghanauli to their village Makori Khurd. One Ved Parkash was also sitting behind Raju. When they reached near Dashmesh Dhaba, a truck bearing registration no. HP-11-0696 came from behind being driven by respondent No.1 in a rash and negligent manner and struck against the motor cycle of Jeet Ram from behind. As a result of the impact, all the three occupants of the motor cycle fell on the road and sustained injuries. Jeet Ram was shifted to Civil Hospital, Ropar from where he was referred to PGI, Chandigarh where he died on 14.6.2010. The Tribunal absolved the insurance company from paying any compensation on the ground that the offending vehicle was being driven in

violation of the route permit issued to the driver. So, the liability of respondents No. 1 and 2 was fixed for the payment of compensation. The deceased was admittedly running a Dhaba (liquor vend) and had employed even a servant named Raju who was also with him at the time of accident as a pillion rider. His monthly income was assessed at Rs. 8000/- and annual income Rs. 96,000/-. Deduction of 1/4th was made towards his personal expenses and the annual dependency was thus assessed at Rs. 72,000/-. He was 32 years of age at the time of death, so as per **Sarla *Verma v. DTC***, 2009(3) RCR(Civil), 77, multiplier of 16 was applied and the compensation worked out to be Rs. 11,52,000/-. Rs. 5000/ towards funeral expenses and Rs. 5000/- in respect of loss to estate were also awarded thereby totalling the compensation to Rs. 11,62,000/- with interest at the rate of 9% p.a. which was ordered to be paid by respondents No. 1 and 2 jointly and severally and the claim petition qua the insurance company was dismissed.

Two issues have been raised in this appeal. One is with regard to the complete exoneration of the insurance company and the second is with regard to the quantum. As regards the exoneration of the insurance company, learned counsel for the appellants has relied upon ***National Insurance Co. Ltd.*** *versus* ***Swaran Singh and others*** reported as 2004(3) SCC 297. Learned counsel for the insurance company is not in a position to deny the applicability of the said judgment. It is, therefore, stated that the insurance company could not have been absolved and must have been held liable to pay the compensation first and then recover it from respondents No.1 and 2.

As regards quantum, the issue is whether in a case where there are two pillion riders liability must be affected. I find that the present is a case where the deceased was driving his motor cycle with two pillion riders. Learned counsel for the insurance company has relied upon Angrejo Devi and others v. Jai Parkash and others reported as 2012(4) PLR 604 wherein it has been held that in such a case finding of contributory negligence would have to be returned.

Learned counsel for the appellants has relied upon a decision of this Court in Oriental Insurance Company v.

> Baljinder Singh, FAO No. 3760 of 2011 decided on 26.05.2011 apart from other judgments of single benches of this Court where a contrary view has been taken.
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> In my opinion the matter in issue is likely to arise in a large number of cases. Consequently it would be appropriate if this controversy is conclusively settled by a larger Bench.
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> In the circumstances appeal is admitted qua this issue and the Hon'ble Chief Justice is requested to constitute an appropriate bench to decide the same expeditiously."

(13) The aforesaid reference was answered by a Division Bench in terms of decision rendered by Supreme Court in ***Mohammed Siddique and another*** *versus* ***National Insurance Company Limited and others***[3] and the matter was sent back for decision on merits vide judgment dated 20.02.2020.

(14) In ***Mohammed Siddique'*s** *case (supra),* it has been held as under:

> "13. But the above reason, in our view, is flawed. The fact that the deceased was riding on a motor cycle along with the driver and another, may not, by itself, without anything more, make him guilty of contributory negligence. At the most it would make him guilty of being a party to the violation of the law. Section 128 of the Motor Vehicles Act, 1988, imposes a restriction on the driver of a two-wheeled motor cycle, not to carry more than one person on the motor cycle. Section 194C inserted by the Amendment Act 32 of 2019, prescribes a penalty for violation of safety measures for motor cycle drivers and pillion riders. Therefore, the fact that a person was a pillion rider on a motor cycle along with the driver and one more person on the pillion, may be a violation of the law. But such violation by itself, without anything more, cannot lead to a finding of contributory negligence, unless it is established that his very act of riding along with two others, contributed either to the accident or to the impact of the accident upon the victim. There must either be a causal connection between the violation and the accident or a causal connection between the violation and the impact of the accident upon the victim. It may so happen

[3] 2020 AIR (SC) 520

at times, that the accident could have been averted or the injuries sustained could have been of a lesser degree, if there had been no violation of the law by the victim. What could otherwise have resulted in a simple injury, might have resulted in a grievous injury or even death due to the violation of the law by the victim. It is in such cases, where, but for the violation of the law, either the accident could have been averted or the impact could have been minimized, that the principle of contributory negligence could be invoked. It is not the case of the insurer that the accident itself occurred as a result of three persons riding on a motor cycle. It is not even the case of the insurer that the accident would have been averted, if three persons were not riding on the motor cycle. The fact that the motor cycle was hit by the car from behind, is admitted. Interestingly, the finding recorded by the Tribunal that the deceased was wearing a helmet and that the deceased was knocked down after the car hit the motor cycle from behind, are all not assailed. Therefore, the finding of the High Court that 2 persons on the pillion of the motor cycle, could have added to the imbalance, is nothing but presumptuous and is not based either upon pleading or upon the evidence on record. Nothing was extracted from PW3 to the effect that 2 persons on the pillion added to the imbalance.

i. Therefore, in the absence of any evidence to show that the wrongful act on the part of the deceased victim contributed either to the accident or to the nature of the injuries sustained, the victim could not have been held guilty of contributory negligence. Hence the reduction of 10% towards contributory negligence, is clearly unjustified and the same has to be set aside."

(15) In present case, the respondents did not file any appeal or cross objections against the impugned award. The findings recorded by the learned Tribunal, to the effect that accident was caused by respondent No.1 while driving truck No. HP-11-0696 in a rash and negligent manner, have thus attained finality. Neither any plea was raised in the pleadings nor was there any evidence adduced to show that the accident occurred wholly or partly due to negligent driving of the motor cycle by Jeet Ram just because of having two pillion riders behind him.

(16) In the aforesaid premise, fortified with the law laid down by the Apex Court in ***Mohammed Siddique's*** *case (supra),* no fault can be found with the well founded and reasoned finding of the learned Tribunal under issue No. 1 to the effect that accident was caused by respondent No.1 while driving truck No. HP-11-0696 in a rash and negligent manner. It cannot be said that it was caused wholly or partly because of the negligent driving of the motor cycle by deceased Jeet Ram.

(17) There is no challenge to the finding returned by the learned Tribunal that at the relevant time the offending truck No. HP-11-0696 did not have valid route permit for being plied in the area, where accident took place and that this was a violation of the terms and conditions of insurance policy. Settled law is that if the claim for compensation arises out of the use of the offending vehicle in breach of the terms and conditions of insurance policy, though the insurer is entitled to repudiate liability to reimburse the assured, yet the victim of the accident//his heirs have initially to be paid compensation by the insurance company, of course with right to recover the same from the owner/driver of such vehicle. In fact, as noticed above, relying upon ***National Insurance Co. Ltd.,*** *versus* ***Swaran Singh and others***[4]**,** the learned Bench of this Court then seized of the matter had observed vide interim order dated 07.03.2014 that the insurance company could not have been absolved and must have been held liable to pay the compensation first and then recover it from respondents No.1 and 2. I am in respectful agreement with this view taken vide order dated x07.03.2014 by the learned bench then seized of the matter. To my mind, the learned Tribunal erred in totally and absolutely absolving respondent No. 3/ insurance company of its initial obligation to pay compensation to the claimant/ appellants.

(18) Now let us examine the quantum of compensation.

18.1 claimants are aggrieved *inter alia* by the assessment of income of the deceased at meagre Rs. 8,000/- per month, deduction of 1/4th instead of 1/5th of income for personal expenses of the deceased, award of inadequate compensation and total exoneration of respondent No. 3/insurer by the learned Tribunal.

18.2 As regards income of the deceased, learned Tribunal observed as under:

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[4] 2004 (3) SCC 297

> "....However, there is no documentary evidence as to his precise earnings and claimants would be prone to exaggerate the same so as to inflate the claim. The determination of his income has, therefore, to be largely a guess work but the approach of the Tribunal has to be judicious. Effort has to be made to reach a just figure.
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> 20. The deceased admittedly ran a dhaba (ahata of liquor vend). He had even employed a servant namely Raju to assist him in the business and also owned a motor cycle. Considering all these relevant circumstances it will be fair to assume his income around Rs. 8000/- per month "

18.3 To my mind, the learned Tribunal took a pragmatic and realistic view of the facts and circumstances and rightly assessed the monthly income of the deceased @ Rs. 8,000/-. He died at the age of 32 years. Tribunal rightly applied the multiplier of 16. However, I am of the opinion that the learned Tribunal erred in not making any addition thereto for the future prospects of the deceased.

18.4 The deceased left behind eight dependents, his widow, their five minor children and his parents**.** The learned Tribunal deducted 1/4th of the income for his personal expenses. As per ***Sarla Verma and others*** *versus* ***Delhi Transport Corporation and another***[5] where the number of family members exceed six, the deduction for personal expenses of the deceased should be 1/5th of his income. Deduction of 1/5th instead of 1/4th of income, therefore, ought to have been made for personal expenses of the deceased.

18.5 Tribunal awarded total amount of Rs. 5,000/- for funeral expenses and Rs. 5,000/- for loss of estate.

18.6 In ***Pranay Sethi's*** *case (supra),* a Constitution Bench of the Apex Court held as under:

> "61. In view of the aforesaid analysis, we proceed to record our conclusions:-
>
> (i) Xxxxxx xxxxxxx **x**xxxxxxx
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> (iii) While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition

[5] 2009(3) RCR (Civil) 77

should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.

(iv) In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.

(v) For determination of the multiplicand, the deduction for personal and living expenses, the tribunals and the courts shall be guided by paragraphs 30 to 32 of Sarla Verma which we have reproduced hereinbefore.

(vi) The selection of multiplier shall be as indicated in the Table in Sarla Verma read with paragraph 42 of that judgment.

(vii) The age of the deceased should be the basis for applying the multiplier.

(viii) Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years."

18.7 In ***New India Assurance Company*** *versus* ***Somwati*** **- Civil Appeal No. 3093 of 2020** decided on 07.09.2020, awarding of compensation for loss of consortium separately for the wife, each child, mother and father of the deceased was upheld by Apex Court. Relying upon Three-Judge Bench judgment in ***United India Insurance Company Ltd.*** *versus* ***Satinder Kaur alias Satvinder Kaur and others***[6] it was observed/held as under:

> **"** 39. The Three-Judge Bench in **United India Insurance Company Ltd. (Supra)** has categorically laid down that apart from spousal consortium, parental and filial

[6] (2020) SCC Online 410

consortium is payable. We feel ourselves bound by the above judgment of Three Judge Bench. We, thus, cannot accept the submission of the learned counsel for the appellant that the amount of consortium awarded to each of the claimants is not sustainable.*"*

18.8 Appeal in hand is continuation of the proceedings of the original claim petition and the claims, therefore, can be re-computed even in the instant appellate proceedings.

18.9 In view of the fact that the deceased left behind eight dependents and as per legal principles elucidated in ***Pranay Sethi and Somwati*** *(supra),* to sum up, I am of the opinion that 40% addition for future prospects of the deceased ought to have been made to the already assessed monthly income of Rs. 8,000/-. Deduction of 1/5th of the income ought to be made for personal expenses. Further, for loss of consortium each of the 8 claimants - widow, five children and parents of the deceased , would be entitled to compensation @ Rs. 40,000/- while the claimants jointly would be entitled to compensation of Rs. 15,000/- for loss of estate nd Rs. 15,000/- enhanced by 10% for the period since 31.10.2017 the date of judgment in ***Pranay Sethi*** *(supra).*

18.10 Thus re-computed, the amount of compensation works out as under:

Deceased	Sh. Jeet Ram
Date of Accident	09.06.2010
Monthly Income	Rs. 8,000/-
Age	32 years
Annual Income 8000 X 12	Rs.96,000/-
Increase for future prospects @ 40%	Rs.38,400/-
Total Annual Income	Rs.1,34,400/-
Dependents (widow, four minor daug**ht**ers, one minor son and aged parents)	8
Deduction 1/5th	Rs.26,880/-
Balance Income (Rs.134400-26880)	Rs.1,07,520/-
Multiplier	16

Dependency (Rs.1,07,520 x 16)	Rs.17,20,320/-
Loss of consortium (for 8 claimants)	Rs.3,52,000/-
Funeral expenses	Rs.16,500/-
Loss of estate	Rs.16,500/-
Total entitlement of the appellants	**Rs.21,05,320/-**
Amount awarded by the learned Tribunal	Rs.11,62,000/-
Enhanced amount to be paid	**Rs.9,43,320**/-

(19) Accordingly, the impugned award of the learned Tribunal is modified to the extent that the amount of total compensation payable shall be Rs.21,05,320/- (Rupees twenty one lakhs, five thousand, three hundred and twenty only) instead of Rs.11,62,000/-. Further, it is so held and directed that after adjustment of payment, if any already made, the insurance company shall initially pay to the claimant/appellants the amount of enhanced compensation with interest, of course with right of the insurance company to recover the same from the respondents No. 1-2.

(20) Disposed of in above terms.

Dr. Payel Mehta