IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.1344 OF 2003

The New India Assurance Co Ltd,
Divisional Office No.1, Adalat Road,
Aurangabad, Through it's Senior
Divisional Manager-Shrikant Baliram Aney,
age 50 years, Occ. Service,
R/o. Aurangabad. Appellant.
[orig resp no.3]

VERSUS

1. Nk-hyder Mohiuddin Deceased
through L.Rs.

2. Smt. Parvin Sultana W/o Nk Hyder,
age 42 years, Occ. Household,
R/o. Old Bungalow No.3, Near Post Office,
Cantonment, Aurangabad.

3. Ruheela Naaz D/o Nk. Hyder,
age 25 yrs, Occ. Advocate,
R/o Old Bungalow No.3, Near Post Office,
Cantonment, Aurangabad.

4. Amanul Hakue s/o Nk Hyder,
age 19 yrs, Occ. Student,
R/o Old Bungalow No.3, Near Post Office,
Cantonment, Aurangabad.

5. Rubeena Naaz d/o. Nk Hyder,
age 16 yrs, Occ. Student,
R/o Old Bungalow No.3, Near Post Office,
Cantonment, Aurangabad.

6. Ashok s/o Bhaurao Khomne,
age 35 yrs, Occ. Driver,
R/o Jigthan, Tq. Gangapur,
Dist. Aurangabad.

7. Pawan s/o Shivaji Adke,
age 30 yrs, Occ. Business,
R/o 37, Veerungala, Shahkarnagar,
Aurangabad.

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8. Mr. Abdul Rehman s/o Abdul Shakoor Appeal abated

9. Mr. Javed s/o Abdul Rehman,
age 38 yrs, Occ. Business,
R/o H.No.4-11-84, Plot no.21,
Afrin Manzil, Nehru Nagar,
Near Azia Khan Corporators House,
Katkat Gate, Aurangabad.

10. Mr. Saieed s/o Abdul Rehman,
age 32 years, Occ. Business,
R/o. H.No4-11-84, Plot No.21,
Afrin Manjil, Nehru Nagar,
Near Azia Khan Corporator's House,
Katkat Gate, Aurangabad. Respondents.

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Advocate for Appellant : Mr. M M Ambhore
Advocate for Respondents no.2-5: Mr. S.M. Vibhute
Mr. S.R. Sapkal Advocate for respondent no.6
Respondent nos.7,9 and 10 served. Respondent no.8-Abated.

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WITH
CROSS-OBJECTION NO.213 OF 2026
IN
FIRST APPEAL NO.1344 OF 2003

Nk-hyder Mohiuddin Deceased
through L.Rs.

1. Smt. Parvin Sultana W/o Nk Hyder,
age 42 years, Occ. Household,
R/o Old Bungalow No.3,
Near Post Office, Cantonment,
Aurangabad.

2. Ruheela Naaz D/o Nk. Hyder,
age 25 yrs, Occ. Legal Practitioner,
As above.

3. Amanul Hakue s/o Nk Hyder,
age 21 yrs, Occ. Student,
As above.

4. Rubeena Naaz d/o. Nk Hyder,
age 18 yrs, Occ. Student,
As above. Appellants.

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Versus

1. The New India Assurance Co Ltd,
Aurangabad, “Inderprakash”,
Adalat Road, Aurangabad.

2. Ashok s/o Bhaurao Khomne,
age 35 yrs, Occ. Driver,
R/o Jigthan, Tq. Gangapur,
Dist. Aurangabad.

3. Pawant s/o Shivaji Adke,
age 40 yrs, Occ. Business,
R/o 37, Veerungala, Shahkarnagar,
Aurangabad.

4. Mr. Abdul Rehman s/o Abdul Shakoor,
age 65 yrs, R/o H.No.4-11-84, Plot no.21,
Afrin Manzil, Nehru Nagar,
Near Azia Khan Corporators House,
Katkat Gate, Aurangabad.

5. Mr. Javed s/o Abdul Rehman,
age 38 yrs, As above.

6. Mr. Saieed s/o Abdul Rehman,
age 32 years, As above. Respondents.

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Advocate for Applicant : Mr. S.M. Vibhute
Advocate for Respondent no.1 : Mr. Ambhore M.M.
Mr. S.R. Sapkal, advocate for Respondent no.2

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CORAM : S. G. CHAPALGAONKAR, J.
Reserved on Dated : July 10, 2026
Pronounced on : July 24, 2026

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JUDGMENT :-

1. The appellant/insurer impugns the judgment and award dated 27.09.2002 passed by the Motor Accident Claims

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Tribunal, Aurangabad in M.A.C.P. No.498 of 1999. Similarly respondents/claimants also filed a cross-objection seeking enhancement of the compensation.

2. On 6.9.1999 deceased Sohel was traveling in Minidoor bearing registration No.MH-20-W-974, truck bearing registration No.MH-20/B-1559 collided against minidoor. The inmates of Minidoor suffered injuries. Sohel succumbed to the injuries. The respondents/claimants have instituted M.A.C.P. No.498 of 1999 before the Motor Accident Claims Tribunal, at Aurangabad raising claim for compensation of Rs.3,29,500/- against owner, driver and insurer of both the vehicles. Pertinently, both the vehicles were insured with the appellant. The appellant raised a plea that the truck driver was not holding valid and effective driving license at the time of accident and minidoor was carrying excessive passengers. As such, there was breach of conditions of policy.

3. The respondents/claimants relied upon evidence of the claimant no.2-Parveen and PW 2 Parvej, whereas appellant/insurer relied upon evidence of RW-1 Kisan Sagar, who stated that driving license was valid from 17.3.1993 to 17.9.1998 and thereafter, it was renewed from 5.10.1999 to 4.10.2002. As such, on the date of accident i.e. on 6.9.1999 truck driver had no valid and effective driving license.

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Although, Tribunal recorded finding regarding absence of valid and effective driving license with truck driver as on the date of accident, saddled liability to pay compensation jointly and severally against owner, driver and insurer of the truck in premise of finding of sole negligence on the part of truck driver in cause of accident. Eventually, passed an award for Rs.1,89,000/- alongwith interest @ 9% p.a. to be recovered from owner, driver and insurer of the truck.

4. Mr. Ambhore, learned advocate appearing for appellant/insurance company vehemently submits that in wake of finding of absence of driving license, Tribunal ought to have exonerated the appellant/insurer accepting defence of breach of conditions of the insurance policy.

5. Per contra, it is contention of respondents/claimants that, although, Tribunal was justified in passing award against respondents, committed patent illegality while assessing compensation and applying the multiplier based on age of claimant no.1, instead age of deceased. Further, nothing is added towards future prospects. Paltry-sum is awarded on account of non-pecuniary heads. Therefore, they seek enhancement of compensation as well as dismissal of the appeal filed by the insurer.

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6. Having considered submissions advanced by learned advocates appearing for respective parties, it can be observed that Tribunal recorded findings of sole negligence against truck driver and passed award against owner, driver and insurer of the truck. The appellant/insurer of truck had raised a specific defence before Tribunal that truck driver was not holding a valid and effective driving license. In deference to defence, appellant has recorded evidence of RW-1 Kisan Sagar, who categorically stated that license was issued in the name of respondent no.6 Ashok-truck driver on 17.3.1993 for transport vehicle. It was valid up to 17.9.1998. Thereafter, it was renewed from 5.10.1999 to 4.10.2002. He specifically stated that on 6.9.1999 there was no valid license in the name of Ashok. Accordingly, Tribunal in paragraph no.7 of the judgment concluded that on the date of accident Truck driver had no license. However, declined to accept defense of appellant/insurance company observing that it is a technical breach and technicalities cannot come in way in administration of justice. Tribunal further observed that merely non-renewal of driving license on the date of accident cannot be treated as absence of license to drive the truck.

7. This Court finds that observations made by Tribunal are inconsistent with the well settled legal position. In case of

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Ram Babu Tiwari Vs. United India Insurance Co. Ltd. & Ors reported in **(2008) 8 SCC 165,** Hon'ble Supreme Court observed thus:-

> *18. It is beyond any doubt or dispute that only in the event an application for renewal of licence is filed within a period 30 days from the date of expiry thereof, the same would be renewed automatically which means that even if an accident had taken place within the aforementioned period, the driver may be held to be possessing a valid licence. The proviso appended to Sub-section (1) of Section 15, however, clearly states that the driving licence shall be renewed with effect from the date of its renewal in the event the application for renewal of a licence is made more than 30 days after the date of its expiry. It is, therefore, evident that as, on renewal of the licence on such terms, the driver of the vehicle cannot be said to be holding a valid licence, the insurer would not be liable to indemnify the insured.*

8. Going by the scheme of Motor Vehicles Act, renewal of driving license, if applied within grace period of thirty days could be effective from the date of expiry of driving license. In that case, driving license can be treated as continuously, valid and effective irrespective of subsequent endorsement of renewal. However, if renewal of driving license is applied after grace period, the driving license would be effective from the date of fresh endorsement without continuity from the date of expiry. In present case, it has been specifically brought on record that driving license held by respondent no.6 expired on 17.9.1998 and it has been renewed after six months i.e. w.e.f 5.10.1999 till 4.10.2002. The accident took place on 6.9.1999. This indicates that grace period for renewal of driving license

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had expired on 16.10.1998. Renewal of driving license was applied almost after one year after expiry of grace period. Eventually, on the date of accident, no driving license was in existence. It has been obtained after one month of the accident. In this backdrop, this is a case of no-driving license as on the date of accident.

9. In light of aforesaid exposition of law by Hon'ble Supreme Court of India, there is no room to say that absence of driving license is a technical breach of insured. The truck owner/respondent no.7 did not step into witness box or explained his due diligence while handing over the vehicle to unlicensed driver. Hence, in light of observation of Hon'ble Supreme Court in para 18 in case of **Bhuwan Singh Vs M/s. Oriental Insurance Company Limited and Another** reported in **(2009) 5 SCC 136** observed that "adverse interference needs to be drawn against insured." In result this Court holds that findings of Tribunal on the point of breach of policy is fallacious and cannot be countenanced. Eventually, this Court holds that the appellant/insurer has proved defence of breach of terms and conditions of the policy in terms of section 149 (2) of the Motor Vehicles Act.

10. Although, this Court recorded positive finding on defence of appellant/insurer, this Court finds that insurer

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cannot completely avoid the liability to satisfy the award only because defence of driving license is accepted. Now, it is well settled that where insurer proves its defence of breach of policy against insured/owner of vehicle, it cannot avoid liability to satisfy the award as passed in favour of claimants. Needless to state here that, insurer shall be at liberty to recover the compensation paid to claimants from insured/owner of truck by filing execution of same Award as if dispute between the insured and insurer has been decided in this proceeding itself.

11. So far as cross-objection filed by respondents/claimants is concerned, this Court finds that deceased Sohel was Bachelor son of respondent nos.1 and 2. After death of respondent no.1, only respondent no.2 can be said to be the dependent of deceased. It is brought on record that respondent no.1 was in service as Army Officer. Therefore, claimant nos.3 to 5 can never be said to be dependent of deceased/sibling.

12. The Tribunal assessed income of Sohel @ Rs.2,000/- p.m. on the basis of evidence recorded on behalf of claimants. This Court finds no reason to disturb the said finding. However, looking to the age of deceased, multiplier of '18' was applicable. The Tribunal has wrongly applied multiplier based on the age of respondent no.2-mother. Now, it is well settled that multiplier has to be based on the age of victim. In present

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case, age of Sohel was 22 years. As such, maximum multiplier of '18' would be applicable.

13. Apart from that, there needs to be addition of 40% amount of proved income by way of future prospects. Since, respondent no.2-mother was the only dependent, her dependency can be taken as one half (½) on income of deceased. An amount of Rs.10,000/- can be awarded towards loss of love and affection, Rs.5,000/- towards loss of estate and Funeral expenses. In result, the compensation can be re-assessed in following manner.

Monthly Income of Deceased 2000 x 12 =	Rs. 24000/-
Addition of 40% towards future prospects. 24,000 + 9,600=	Rs. 33600/-
Deduction ½ towards loss of dependency.	Rs.16800/-
Multiplier of '18'	Rs. 3,02,400/-
Loss of Love and Affection.	Rs.10,000/-
Loss of Estate and Funeral Expenses.	Rs.5,000/-
Total	**Rs. 3,17,400/-**

(Rs. Three Lakh Seventeen Thousand Four Hundred only)

14. In light of aforesaid observations, following order is passed.

O R D E R

1. First appeal as well as Cross-objection are **partly allowed.**

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2. The appellant and respondent nos.6 and 7 are held jointly and severally liable to pay the compensation of Rs.3,17,400/- (Rs. Three Lakh Seventeen Thousand Four Hundred only) alongwith interest @ 6% p.a. on enhanced compensation amount.

3. The appellant/insurer shall deposit aforesaid compensation amount (after appropriating the amount already paid/released under award of the Tribunal) within a period of Ten weeks from the date of this award.

4. The appellant shall bear costs of this appeal and cross objection.

5. On deposit of compensation amount, it be released in favour of respondent no.2.

6. The appellant shall be entitled to recover the compensation amount paid/disbursed in favour of the claimants from respondent no.7 by way of execution of this Award.

7. Modified Award be drawn up accordingly.

8. Pending Civil application, if any, also stands disposed of.

(S. G. CHAPALGAONKAR)
Judge

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aaa/-F.