

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 716 OF 2023

- | | | |
|---|---|----------------|
| 1 | Rekha Gangaprasad Pandey
Aged about 28 years, Occ. Housewife | |
| 2 | Master Adarsh Gangaprasad Pandey
Aged about 10 years, Occ : Student | |
| 3 | Master Aditya Gangaprasad Pandey
Aged about 7 years, Occ : Student
Nos. 1 to 3 are residing at
Through natural guardian and mother
Smt. Rekha Gangaprasad Pandey | |
| 4 | Mr. Harinath Pandey
Aged about 72 years, Occ : Agriculture | |
| 5 | Smt. Nirmaladevi Harinath Pandey
Aged about 68 years, Occ : Housewife
Nos. 4 and 5 are residing at
C/o. Vijay Shankar Shukla,
303, 3 rd Floor, Panchsheel, 4/A, Raheja Township,
Malad(E), Mumbai – 400 097 | ... Appellants |

versus

- | | | |
|---|---|------------------------|
| 1 | Mr. Rafique Kadar Mogul
R/at. Laxmiprasad Compound,
Water side centre yard, Rohangaon, Village Old
Pune Road, Thane | Opposite
Party |
| 2 | Reliance General Insurance Co. Ltd.
Having registered office at Reliance Centre,
19, Walchand and Hirachand Marg,
Ballard Estate, Mumbai – 400 001 | ... Insurer |

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- Mr. Gauraj Shah a/w. Junaid Shaikh i/b. Mr. Santosh Upadhyay, Advocate for the Appellant.
- Mr. Pandit Kasar, Advocate for the Respondents.

CORAM : R. M. JOSHI, J.

RESERVED ON : 4th DECEMBER, 2025.

PRONOUNCED ON: 12th DECEMBER, 2025.

P.C. :

1. This present first appeal is filed under Section 173 of the Motor Vehicles Act, 1988, challenging the Judgment and Award dated 07.02.2019 passed by the Motor Accident Claims Tribunal, Thane, in MACP No. 306 of 2012, which dismissed the Appellants' claim for compensation following the death of Gangaprasad Harinath Pandey. The Tribunal dismissed the claim based on the finding that the Applicants/Appellants failed to prove the involvement of the alleged offending vehicle and the negligence of its driver, concluding instead that the deceased himself was negligent. The Appellants assailed the impugned judgment of the Tribunal as being contrary to the evidence on record and unjustified in law.

2. The facts leading to filing of the present appeal are narrated in brief as under:

3. The deceased Gangaprasad Harinath Pandey, aged about 30 years at the time of death, earning approximately Rs.12,000/- per month, and was the sole earning member supporting his wife, two minor children,

and aged parents. On 26.08.2010, at around 4:00 a.m., he was riding his motorcycle Bajaj Discover MH-03/AA-3061 over Vashi Bridge, proceeding towards Navi Mumbai. The Applicants state that the stretch of the bridge where the accident occurred was at the relevant time dark, slippery due to rainfall, and riddled with trenches and potholes owing to ongoing road repairs. In these conditions, a Container, alleged to be bearing registration MH-04/CP-5833 (alternatively appearing as MH-04/CT-5833 in some records), was found illegally, unauthorized and dangerously stationed in the middle of the carriageway. It is case of the Applicants that the said Container was stationary without tail lamps, hazard lights, reflectors, cones, or any warning indicators, in clear violation of the Motor Vehicles Act and Rules. Consequently, in the darkness and heavy rainfall, the deceased could not perceive the stationary Container in time and his motorcycle collided with it.

4. The impact caused the deceased to sustain severe head injuries and due to which he fell on the roadway and succumbed instantaneously. The deceased was transported to M.M.C. General Hospital, Vashi, where the Post-Mortem Report (No. 732/BVJ/2010) recorded the cause of death as “Haemorrhage and shock due to multiple injuries.” Multiple fractures and traumatic injuries were noted, consistent with collision against a heavy commercial vehicle. It is also asserted that the offending vehicle was

driven by the employee of Respondent No.1 and that it belonged to him. It was allegedly being driven and stationed in a dangerous and negligent manner, and had the driver exercised due care, the death could have been surely avoided. The Applicants had claimed a total compensation of Rs.20,52,000/-, which includes Rs.16,32,000/- for the loss of the deceased's future earnings that the family depended on, Rs.1,00,000/- for the emotional loss suffered by his minor children, Rs.2,00,000/- towards the loss of consortium and estate, and Rs.20,000/- to meet the funeral expenses. It is pleaded that the deceased would have had a normal life expectancy of 65 years, and his family has suffered not only emotional trauma but a catastrophic financial collapse.

5. Opponent No.2- Insurer resisted the petition by filing written statement at Exh. 16. The Respondents, specifically the insurer disputed the identity, ownership, and insurance of the vehicle. RTO records indicated MH-04/CT-5833, which is a Maruti Alto (light motor vehicle) under a different ownership. It is submitted that the petition suffers from non-joinder of necessary parties as the driver of offending vehicle is not made party. It is submitted that there is willful breach of terms and conditions and submission of policy as driver of the offending vehicle was not holding valid and effective license and therefore, insurer is not liable to pay the compensation. The Insurer also contended that the vehicle bearing

registration No. MH-04/CP-5833 was not insured with them and that the policy was there of MH-04/CT-5833, which is recorded in the RTO extract as a Maruti Alto (light motor vehicle) and therefore cannot possibly be the Container alleged to have caused the accident. Respondent No.1 denied ownership of the vehicle described by the claimants and disclaimed all liability. During course of arguments amongst other contentions it is argued that in any case none of the vehicle is insured with this insurer.

6. Perusal of the R & P of Petition before Tribunal, indicates that the claim of the claimants is about involvement of vehicle bearing Registration No. MH-04/CP-5833. The Tribunal however framed following issue.

“Whether the claimants prove that deceased Gangaprasad Harinath Pandey died in Vehicular accident on 26/8/2010 caused by vehicle no. MH-04/CT-5883 by rash and negligent act of driver ?”

7. At this stage, this Court cannot go into the issue with regard to the corrections made in the Claim Petition and cannot record findings as to when corrections came to be made. Suffice is to say that the issue raised by Tribunal is not in consonance with pleadings of claimants. Obviously, the framing of incorrect issue led to entirely misdirected trial.

8. The Tribunal considered the police papers, spot panchanama,

post-mortem report, and the deposition of PW-1 Vijay Shukla, but ultimately concluded that there is discrepancy in the vehicle's registration number which was fatal to the claim, and that the involvement of the alleged offending vehicle itself has not been established. The Tribunal concluded that the deceased himself was negligent, and dismissed the claim. Instead of remaining passive adjudication the Tribunal ought to have consider the issue involved in the Claim Petition of there being evidence to indicate involvement of container in the occurrence of accident and ought to have looked into the possibility of the wrong recording of the registration No. i.e. "CP or "CT". It is necessary to take note of the fact that the police papers cannot be treated as final word on the manner of accident or non involvement of vehicle, including Registration number shown therein. It is always open for parties to lead evidence to prove otherwise. In case of appropriate issue being framed, the parties could have led evidence accordingly but for want of proper issues the said opportunity it lost by them and which has led to miscarriage of justice.

9. The case therefore requires fresh adjudication by giving all parties a fair opportunity to plead as well as lead evidence on the issues such as identity of the vehicle, negligence, and insurance coverage. No prejudice will be caused to either side by remanding the matter back to Tribunal to decide the claim afresh.

10. As a result of above discussion the following order-

ORDER

- i. The Judgment and Award dated 07.02.2019 in M.A.C.P. No. 306 of 2012 is set aside.
- ii. The matter is remitted to the Motor Accident Claims Tribunal, Thane, for trial de novo.
- iii. Parties are permitted to amend pleadings with addition or deletion of parties.
- iv. It is open for the parties to produce additional evidence, including but not limited to RTO verification, insurance documents, police diary entries, container related documents and any other material relevant to the case.
- v. All defenses of respondents are kept specifically open.
- vi. Since the original proceeding is of year 2012, the Tribunal to decide the Claim afresh within a period of 9 months from 1st January, 2026.

(R. M. JOSHI, J.)