



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

1005 FIRST APPEAL NO. 4029 OF 2023
WITH
CIVIL APPLICATION NO. 4820 OF 2026

Divisional Manager United India Insurance Company Ltd
VERSUS
Nita Narendra Duthade and others

...
Advocate for Appellant : Mr. Atul B. Gatne
Advocate for Respondents : Mr. Surendra Suryawanshi h/f Mr.
Gaurav L. Deshpande

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CORAM : SANJAY A. DESHMUKH, J.
DATED : 17th JUNE, 2026

PER COURT :-

1. This appeal is preferred by the Insurance company against the judgment and award dated 12.04.2023, passed by the learned Chairman, Motor Accidents Claims Tribunal, Nanded, in Motor Accident Claims Petition No. 66 of 2019.

2. Brief facts of the case are as follows:-

a) The deceased Narendra was husband of respondent No.1, father of respondent No.2 as well as son of respondent No.3. Respondent No.4 is the driver/owner of the offending truck. On 31.12.2018 at about 3.30 p.m. late night, Narendra was riding the motor cycle bearing No. MH-22-AC-2993, proceeding to his house.

When he reached near Bhavatyanagar Malegon road point, a truck bearing No. MH-26-H-7553, gave a dash to his motor cycle. The driver of the said truck was driving the truck in rash and negligent manner. Narendra sustained grievous injury to his head. He died on the spot. The claim was made under different heads and the compensation of Rs.20,00,000/- was claimed.

b) The appellant Insurance Company strongly opposed the claim petition and contended that it was not liable to pay any compensation. It was submitted that the case was not of a vehicular accident. According to the appellant, deceased Narendra was under the influence of liquor and had fallen on his own, thereby sustaining the injuries. The accident, therefore, occurred due to his own negligence. It was further contended that, being under the influence of liquor, he was riding the motorcycle in a rash and negligent manner, and hence no damage was caused to the truck. The learned Tribunal, however, held that the claimants had proved that the accident occurred due to the rash and negligent driving of the driver of the truck. The Tribunal further held that the insurance policy was valid and that respondent No. 2 had failed to prove the defence of breach of the terms and conditions of the policy. Accordingly, the claim petition was allowed, and compensation of Rs.12,92,400/- was awarded.

3. Learned advocate for the appellant pointed out the pleadings, evidence, grounds of objections of appeal and the reasons and findings in the impugned judgment. Learned advocate for the appellant pointed out the C.A. report and the spot panchnama alongwith the postmortem report. He submitted that, in the postmortem report, the doctor had noted the presence of alcoholic contents in the stomach of the deceased, Narendra. He submitted that the C.A. report also indicates the presence of alcohol. The incident took place on 31.12.2018 at about 3:30 a.m. He further submitted that, if the incident had occurred due to the rash and negligent driving of the driver of the offending truck, some damage would certainly have been caused to the truck. These aspects were not considered by the learned Tribunal. He contended that the reasons assigned and the findings recorded by the learned Tribunal are neither legal nor correct. He further submitted that such a claim is not maintainable. He, therefore, prayed that the impugned judgment and award be set aside and that the claim petition filed by the claimants be dismissed.

4. Learned advocate for the respondents-claimants strongly opposed the appeal and submitted that the learned Tribunal, after considering the entire evidence on record, came to the conclusion, on

the preponderance of probabilities, that the driver of the truck was responsible for Liberation Sansthe occurrence of the accident and that the rash and negligent driving on his part was duly proved. The evidence of the claimants is not shaken in the cross examination. Even the driver of the offending truck faces the trial of rash and negligent driving, he can be made complaint that he has been falsely implicated in the said crime. Evidence of the claimants is not disputed. Admittedly, there is no eye witnesses to the incident. The motor cycle sustained damage which is not possible otherwise than the vehicular accident. The respondent No.1 driver/owner remained absent during the trial. The evidence is not recorded. He has been examined on behalf of the appellant Insurance company. The said evidence cannot be relied upon and the Tribunal has rightly relied upon the said evidence. He lastly prayed to dismiss the appeal.

5. On perusal of the impugned judgment alongwith the oral and documentary evidence adduced by both sides, the decisive evidence is required to be re-appreciated and discussed here. Admittedly, there is no eye witness to the incident of accident. It is the case of driver that he parked the truck at the side of the road. No any independent witness has stated that the accident took place in his presence. The spot panchanama shows that motor cycle of the deceased Narendra was lying in the middle of the road. The C.A.

report and the postmortem report show that the contents of alcohol in the stomach of deceased Narendra were noted.

6. There is no evidence to establish that the truck had sustained any damage if such a severe impact had been caused by the truck to the deceased Narendra. The present case is required to be decided on the principle of *res ipsa loquitur*. Needless to state, the expression means “the thing speaks for itself.” In the case in hand, if the spot panchanama and the C.A. report are considered together, it is difficult to accept the claimants’ case that the offending truck had dashed against the motorcycle of the deceased Narendra. Merely because the driver/owner did not lodge any complaint regarding his criminal prosecution, no adverse inference can be drawn to conclude that the vehicular accident occurred due to his fault. Further, there is no explanation on the part of the claimants regarding the presence of alcohol in the stomach contents of the deceased Narendra.

7. If all these aspects are considered together, as pointed out by the learned advocate for the appellant, the spot panchanama, the post-mortem report, and the C.A. Report (Exh. 55), which indicates the presence of 80 grams of alcohol, assume significance. Applying the principle of preponderance of probabilities to the evidence adduced by both sides, the claimants' version becomes difficult to

accept. The claimants have failed to establish rash and negligent driving on the part of the driver of the offending truck. Merely because the driver was prosecuted for rash and negligent driving, it cannot be held that he was responsible for the occurrence of the accident. Further, the very factum of the vehicular accident involving the offending truck has not been proved, even on the touchstone of the principle of preponderance of probabilities. Mere involvement of the truck in the vehicular accident is not sufficient to fasten liability for payment of compensation upon the appellant Insurance Company.

8. In view of the above, the reasons assigned and the findings recorded by the learned Tribunal in this regard are not correct. Therefore, interference with the impugned judgment and award is warranted. Consequently, the appeal deserves to be allowed and the impugned judgment and award deserve to be set aside. Hence, the following order:-

O R D E R

- I. The first appeal is allowed.
- II. The impugned judgment and award dated 12.04.2023 by the learned Chairman, Motor Accidents Claims Tribunal, Nanded in Motor Accident Claims Petition No. 66 of 2019 is set aside.

- III. The record and proceedings be sent back.
 - IV. The amount deposited while granting stay to the execution of the impugned judgment and award, be refunded back to the appellant after the appeal period is over. The 50% amount paid to the claimants on usual undertaking be refunded to the appellant alongwith accrued interest thereon, after the appeal period is over.
9. The civil application No.4820 of 2026 is also disposed of.

(SANJAY A. DESHMUKH, J.)

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