

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO. 1397 OF 2016

1. Mr. Yashwant Rajaram Patil

Age : 60 years, Occ. Nil

2. Ambubai Yashwant Patil

Age : 55 years, Occ: Nil

Both R/of : Malegaon, Dist. Nashik

...Appellants

Vs.

1. Mr. Omprakash Ramgopal Choudhary

R/o. Main Road, Rangwasa Rao,
Indore (M.P.)

2. Divisional Manager,

Oriental Insurance Co. Ltd.
Merchant Chambers, Shaimar Chowk,
In front of Nashik Gymkhana
Nashik.

3. Manisha Vikas Patil

Age : 30 years, Occ.: Nil,

4. Namesh Vikas Patil

Age : 5 years, Occ. Education

5. Rinku Vikas Patil

Age : 3 months, Occ : Nil,
Opp. No. 4 and 5 through their
mother Opp. No. 3,

All R/o: C/o. Gaibhu Tarachand Patil,
Pitreshwar Colony Near Primary School,
Shahada Road, Shirpur, Dist. Dhule.

...Respondents

Mr. T. J. Mendon	Advocate for the Appellants
Mr. Sachin Raje	for the Respondent No. 2

CORAM : S. M. MODAK, J.

DATE : 22nd September 2026

ORAL JUDGMENT :-

1. I have heard learned Advocate Mendon and learned Advocate Raje at great length.
2. The Tribunal has dismissed the claim petition vide judgment dated 17th May 2016 passed in M.A.C.P. No. 154/2009. It was the death claim and the petition was filed by the parents of the deceased Vikas Patil. The Respondent Nos.3,4 and 5 are the wife and children of the deceased Vikas. This petition was filed before Malegaon Court. All the 3 have also filed a petition before the Dhule Court and it is submitted that they have withdrawn it and joined the petition before the Malegaon Court. Respondent No.1 is the owner of the Maxi-Cab whereas Respondent No.2 is the Insurer.
3. The claimants have examined Yashwant who is father of the deceased. He is not an eye witness. One witness on the point of income of the deceased is also examined. The owner has not filed written-statement. Only the Insurer has filed it. There is some variance in the

registration number of the vehicle. That is why Tribunal has dismissed the claim petition. This is an appeal filed by the parents.

4. Both the learned counsel have taken me through the following documents:-

- (1) Evidence of the parent.
- (2) the arrest form of the accused Mohan Joshi dated 20th February 2009 whereas date of accident is 24th January 2009.
- (3) Final Report/Chargesheet by Indore Police Station wherein the vehicle number is mentioned as MP-09 FA 0292.
- (4) Copy of FIR.

Admittedly, there is no reference of any vehicle. It was lodged by the police against unknown person.

- (5) The spot panchnama, Postmortem report, property search and seizure.

5. Today, learned Advocate Mendon has tendered the following documents:

- (1) Copy of the Insurance Policy.
- (2) Certificate of Registration
- (3) In both the documents vehicle number is mentioned as registration No. MP-09 FA 0292.
- (4) Copy of Permit.

6. Both of them have relied upon various judgments.

7. According to Mr. Raje when there is variance in the registration number, it may not be possible for this Court to decide it and he prayed for remand whereas according to learned Advocate Mendon in fact there was a sufficient evidence available before the Tribunal and this Court being last fact finding Court can certainly appreciate this evidence which was not done by the Tribunal.

8. In addition to earlier judgments learned Advocate Mendon relied upon the following judgments:

- 1) Raj Kumar Das (deceased) through LRs v/s. National Insurance Co. Ltd.¹ .*
- 2) Sakharibai Hasanali Makani and others v/s. Girish Kumar Rupchand Gadia and others² .*
- 3) Reliance General Insurance Company v/s. Priyanka Das and others³ .*

9. With their assistance I have gone through the findings given by the Tribunal. They are as follows:

- A) The father of the deceased has not seen the accident when his son was driving a motorcycle on 24th February 2009 at about 2.00 a.m.. He was dashed by Maxi Cab No. MP-09-FA-0292 which came from wrong side.
- B) There is a FIR registered under relevant section of IPC.

1 2026 ACJ 1235

2 1997 ACJ 95

3 Civil Appeal No.12085 of 2026

Admittedly, vehicle number and name of the driver is not there but it can certainly be said that driver of the Maxi-Cab is negligent. For the said purpose there is no need to review that evidence. I am concluding that it is driver of the Bajaj tempo Maxi-Cab who was rash and negligent because he came from wrong side. There is also FIR registered against him. So when I am remanding the matter, the Tribunal need not revisit this finding.

- C) It is true that FIR is registered on the basis of statement given by Ramshankar Patnaik and Vishnuprasad, both constables. Earlier to FIR there was intimation given to the Police and when these two police stated that dash was given by vehicle, that is how the FIR came to be registered.
- D) The Tribunal observed these documents are silent as to which vehicle was involved in accident and who done it. Tribunal is right. However, Tribunal overlooked the charge-sheet submitted by the Police. Though Tribunal has referred about the Final Report at Exhibit 43 involving the Bajaj Tempo Maxi Cab MP-09-FA-0292, Tribunal has refused to consider this piece of evidence for the reason the vehicle was not attached in connection with the said accident. This reasoning is improper. In a vehicular accident there is no need to attach the vehicle.
- E) The Tribunal observed the statements recorded by the police are

not the part of record. It is not required because this is not a criminal trial. It is a summary enquiry.

F) The Tribunal has noted variance of the number of offending vehicle in the pleadings and other documents. **When I have perused the record, the registration number mentioned in the documents is as follows:**

(i) In the copy of the claim petition vehicle number mentioned is **MP-09-FA-0292** (the last digit 0 is changed to digit 2). Similar is the entry in Column No.I in the table of Para No.2.

(ii) When the Insurer filed written-statement, they have pleaded that they are filing written-statement on the basis of information given in the claim petition. Alternatively, they have pleaded that driver of the Maxi-Cab has driven the vehicle by following the rules and he was not negligent. Admittedly, they have not examined any witness. In Para No.6 of the written-statement the vehicle number is mentioned as **MP-09-FA-2092**. This is the number mentioned in the claim petition. They have further submitted that they are not having any policy in the name of said vehicle.

(iii) In further paragraph the Insurance Company has

mentioned that they are not possessing the policy for a vehicle bearing registration number **MP-09-FA-0292**. They have said this on the basis of registration certificate and receipt for insurance annexed to the claim petition. So the Insurance Company was fully aware about variance in registration number mentioned in the claim petition on one hand and registration number mentioned in the documents annexed to the petition. Admittedly, the Insurance Company has not said anything about the policy for a vehicle having registration number **MP-09-FA-0292**.

(iv) Today Mr. Mendon has produced the policy issued by the insurer in the name of vehicle having registration number **MP-09-F-0292**. This policy was also produced before the Tribunal and it is referred by the father of the deceased during his chief examination. It is at Exhibit-41.

G) The Tribunal has declined to examine the investigating officer as a witness for claimant. The Tribunal opined:

“Claimants had called the Investigating Officer, who carried the investigation of Motor Accident Offence, however, all the certified copies of police papers were already marked exhibited. Investigating officer was not the eye witness of the said accident, therefore,

his evidence also would not be helpful to show in which manner the accident took place and which vehicle was involved in the accident.”

H) The Tribunal further observed except the final report nothing was brought on record to show that offending vehicle was involved in accident and it drove the vehicle.

10. In fact the approach of the Tribunal is a faulty approach. It is for the reason the Tribunal on one hand has observed that certified copies of police papers were already marked and exhibited and refused to examine the investigating officer, he being not an eye witness, at the same time, the Tribunal has refused to give proper weightage to the certified copy of Final Report. It is true in a summary enquiry the police papers which are public documents can certainly be read in evidence. In fact the claimants were not at all in fault in taking further steps to prove their case. They have summoned the investigating officer with several attempts. It was the fault on the part of the Tribunal in not appreciating police papers which are certified copies. Hence, these findings cannot be said to be the proper findings.

11. Learned Advocate Mendon tried his level best to convince me to decide the appeal on the basis of evidence. It is true he relied upon number of judgments. However, when I have gone through those judgments what I find is variance noted down in those judgments was on a different aspect. The variance in those cases pertain to the manner

of the accident. That is to say in one record manner stated is in a particular way whereas in other police record the manner of accident is stated in a different way. In this case the issue is not about the manner of the accident. The issue is about which vehicle is involved. So the observations in those judgments are on the basis of different set of facts.

12. As said above the Tribunal has committed wrong in considering the certified copies of the Final Report and the Insurance policy properly. It is true father of the deceased is not an eye witness. In a motor accident it will not happen every time that the claimant has seen the accident. Ultimately they deposed on the basis of information collected and one of the source is police papers. Even though in the FIR the vehicle number is not there, in a subsequent investigation the vehicle number is disclosed and the driver is also disclosed. The Tribunal ought to have given proper weightage to these documents. Hence, I am inclined to remand the matter.

13. In view of that I am not making any comment about the evidence adduced by the claimant on the income aspect. It is for the Tribunal to appreciate that evidence by considering the recent judgments in case of *National Insurance Co. Ltd. v/s. Pranay Sethi and others*⁴. Hence, the following order is passed:

ORDER

(i) The Appeal is partly allowed.

4 (2017) 16 Supreme Court Cases 680

- (ii) The judgment dated 17th May 2016 passed by the Motor Accident Claims Tribunal, Malegaon, Dist. Nashik is set aside. The matter is remanded back to the MACT, Malegaon, Dist. Nashik.
- (iii) Both the parties are directed to appear before the said Court on 5th October 2026 at 11.00 a.m. without notice.
- (iv) If either of the party will not appear, the Tribunal is at liberty to decide it on the basis of available record.
- (v) It is made clear that no fresh evidence will be adduced and Tribunal to decide it on the basis of available evidence.
- (vi) The Tribunal to decide the matter as early as possible preferably within a period of two months from 5th October 2026 on the basis of observations made herein above.

14. First Appeal is disposed of in the aforesaid terms.

[S. M. MODAK, J.]