

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

FIRST APPEAL NO.2169 OF 2019

The Oriental Insurance Co. Ltd.,
Through its Branch Manager,
Ambar Plaza, Station Road,
Near S. T. Bus Stand, Ahmednagar APPELLANT
(Orig. Opponent No.2)

VERSUS

1. Sanjay Bhimraj Mhaske,
Age : 45 years, Occu.: Agril.,
2. Anusaya Sanjay Mhaske,
Age : 43 years, Occu.: Household,

Both R/o.: Mahoj Khurd, Tal. Pathardi,
District : Ahmednagar.

3. Appasaheb Pandurang Wandhekar,
Age : 48 years, Occu.: Agriculturist,
R/o.: Kutarwadi Vibhag, Mohaj Khurd,
Tal.: Pathardi, Dist. Ahmednagar ... RESPONDENTS
(Orig. Claimants &
Opponent No.1)

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Advocate for Appellant : Mr. U. S. Malte
Advocate for Respondent Nos.1 & 2 : Mr. Umakant U. Wagh
....

CORAM : SANDIPKUMAR C. MORE, J.

**RESERVED ON : 08/09/2022
PRONOUNCED ON : 04/10/2022**

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JUDGMENT :

1. The appellant - insurance company, who is original opponent No.2 in MACP No. 89 of 2015, has challenged the judgment and award dated 30/06/2018, passed by the learned M.A.C.T., Ahmednagar (hereinafter referred to as 'the learned Tribunal') in the aforesaid claim on various grounds, such as non-involvement of alleged offending vehicle in the accident, the income of deceased being considered at higher side and that the driver of the offending vehicle drove the same in breach of condition of the policy.

2. It is apparent from the record that on 04/12/2014 at about 7.00 p.m. deceased Bhausahab i.e. son of original claimants-respondent Nos.1 & 2 herein, was going towards Mohoj Khurd from Tisgaon on motorcycle in moderate speed by observing the traffic rules. However, near Shankaranandi petrol pump, in the vicinity of Tisgaon, one another motorcycle bearing No. MH-16-BG-6035 came from opposite direction in high speed and gave dash to the motorcycle of deceased Bhausahab. The deceased sustained head injury and resultantly died in hospital. The original claimants, who are respondent Nos.1 & 2 then filed claim petition for compensation of Rs.8,00,000/-. The learned Tribunal granted compensation of Rs.8,24,930/- to the respondent Nos.1 & 2 - claimants inclusive of award under Section 140 of the M. C. Act alongwith interest @8% p.a. from the date of application till realization of the entire amount by holding the appellant - insurance company and owner of the offending motorcycle, who is present respondent No.3 are jointly and severally liable.

3. The learned counsel for the appellant - insurance company submits that though the accident took place on 04/12/2014, but it was reported belatedly on 19/12/2014. He pointed out the filing of FIR belatedly itself shows that involvement of the alleged offending vehicle is an afterthought but the deceased had in fact slipped from his motorcycle without any dash and died due to his own negligence. He further submits that the motorcycle on which the deceased was riding, was not insured and perhaps for the said purpose the involvement of alleged offending vehicle is shown in the accident by collusion of the respondent Nos.1 & 2 -claimants with present respondent No.3 i.e. the owner. He pointed out that the deceased after the accident, was unconscious and therefore, could not have given any information to his father about involvement of the offending motorcycle in the accident. He further submits that the learned Tribunal despite there being any evidence as regards income of the deceased, considered the income at higher side and wrongly passed award for an excessive compensation.

4. On the contrary, the learned counsel for the original claimants i.e. respondent Nos. 1 & 2 strongly opposed all the submissions made on behalf of the appellant - insurance company and supported the impugned judgment. He pointed out that the delay in FIR cannot always be doubted since the deceased was admitted immediately in the hospital on account of severe injuries. He also submitted that the income of the deceased has been properly assessed by the learned Tribunal. So far as involvement of offending vehicle is concerned, the learned counsel for the

respondent Nos.1 & 2 -original claimants submitted that the owner of offending vehicle has admitted its involvement and therefore, there is no scope to hold that it was not involved in the accident. With these submissions, the learned counsel for the respondent Nos.1 & 2 - claimants requested for dismissal of the appeal.

5. On the other hand, the respondent No.3 i.e. owner of the offending vehicle though served, remained absent.

6. With the assistance of the learned counsel of the rival contesting parties, I have gone through entire record and proceeding of the original claim petition alongwith impugned judgment in light of their respective submissions.

7. The learned counsel for the respondent Nos.1 & 2 -original claimants, has also relied on following judgments :

- I) *(2021) 2 Supreme court Cases 166, in case of Kirti and another vs. Oriental Insurance Company Limited;*
- II) *(2011) 4 Supreme Court Cases 693, in case of Ravi vs. Badrinarayan and others;*
- III) *2019 SCC OnLine Bom 5382, in case of Reliance General Insurance Co. Ltd. vs. Vilas Laxman Bangar and others and*
- IV) *2016 SCC OnbLine Del 6391, in case of Kiran vs. National Insurance Co. Ltd. and others.*

8. On perusal of record, it is significant to note that the appellant - insurance company firstly disputed involvement of the offending motorcycle in the accident on the ground that FIR was

lodged belatedly, which may create doubt for such involvement. Admittedly, the accident has taken place on 04/12/2014 and the FIR has been lodged on 19/12/2014 after about 15 days. However, it is equally important to note that the deceased immediately taken to the hospital just after the accident and died after four days. The learned Tribunal has observed by referring the judgment of this court in case of ***Bhalchandra vs. Shardabai and others, reported in 2015 ACJ 2226***, that mere delay in lodging the FIR is not a ground to deny the involvement of the vehicle in the accident. Further, the same observation is coming from the the Hon'ble Apex Court in the case of ***Ravi vs. Badrinath*** (supra), wherein it is held as under :

"It is well settled that delay in lodging the FIR cannot be a ground to doubt the claimant's case. Knowing the Indian conditions as they are, we cannot expect a common man to first rush to the police station immediately after an accident. Human nature and family responsibilities occupy the mind of kith and kin to such an extent that they give more important to get the victim treated rather than to rush to the police station. Under such circumstances, they are not expected to act mechanically with promptitude in lodging the FIR with the police. Delay in lodging the FIR thus, cannot be the ground to deny justice to the victim".

9. Further, it is extremely important to note that the owner of the offending vehicle himself has admitted the involvement of his motorcycle in the accident. He has only disputed his liability on the ground that the deceased was in fact negligent while driving his own motorcycle. However, it is evident that the offence in respect of the accident, has been registered after due investigation

against the rider of offending motorcycle only. As such, there is no scope for holding that the involvement of offending vehicle was doubtful.

10. Further, the learned counsel for the appellant-insurance company pointed out that while informing the accident to police, the hospital authorities, where the deceased was admitted, had shown the cause of accident as "due to fall from motorcycle". However, this aspect is properly dealt by the learned Tribunal in para No.9 of the impugned judgment by observing that if the deceased had really fallen from the motorcycle, then there was no reason for the hospital authorities to register the case as Medico Legal case. Merely mentioning the cause as 'fallen from motorcycle' is not sufficient to take doubt as there was no involvement of another offending vehicle. At the cost of repetition, I would like to mention that the owner of the offending motorcycle has already admitted the involvement of the same in the accident. As such, on this count also no inference can be drawn about non-involvement of offending vehicle.

11. The learned counsel for the appellant - insurance company has also tried to argue that the notional income of the deceased was considered at higher side, but in fact it should have been taken to the tune of Rs.3,000/- per month specially in absence of any proof as regards the income of deceased. However, for the said purpose the learned counsel for the claimants relied on the judgment of Hon'ble Apex Court reported in ***Kirti vs. Oriental Insurance Company Limited*** (supra). In the said judgment, the Hon'ble Apex Court has discussed as to how the assessment of

monthly income is to be carried out. It is held that same can be carried out by considering the existing standard of living of deceased's family and attendant circumstances in absence of documentary evidence of income. In the said case, it has been observed that when the deceased was maintaining reasonable standard of living by using motorcycle for his family, the minimum wage of Rs.6,197/- as applicable to skilled worker at the relevant time in State of Haryana ought to be applied. Herein in this case also it has been contended by the claimants that though at the age of 21 years the deceased was studying in 11th standard, but he was also used to work as supervisor alongwith one Ram Chavan and Vijay Salve, an engineer and a contractor at Tisgaon. Thus, from the aforesaid observation of the Hon'ble Apex Court and the circumstances on record, the finding of the learned Tribunal assessing the income of the deceased to the tune of Rs.7,000/- per month cannot be faulted. On perusal of the impugned judgment further, it shows that the learned Tribunal has properly deducted the annual income by 50% since the deceased was bachelor.

12. Even otherwise also, if the monthly income of the deceased to the tune of Rs.5,000/- per month is presumed, then also considering the law laid down by the Hon'ble Apex Court in subsequent judgments, which are applicable to the pending cases also, one has to add future prospects to the extent of 40% to determine loss of dependency. By applying this method also there may not be any significant difference in the final compensation as awarded by the learned Tribunal in the instant case. As such, considering all these aspects, I come to the conclusion that the

learned Tribunal has assessed the compensation amount properly, which needs no interference.

13. In view of the same, the appeal fails and accordingly dismissed.

14. Pending civil application is accordingly disposed of.

(SANDIPKUMAR C. MORE, J.)

VS Maind/-