

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

FIRST APPEAL NO.392 OF 2005

National Insurance Company Ltd.,
having it's Head Office & Registered Office
at 3, Middleton Street, Kolkatta,
a Branch Office at Jalna, under the
Divisional office at Hazari Chambers,
Station Road, Aurangabad, through the
Divisional Manager, Aurangabad.

**...APPELLANT
(Orig. Respdt. No. 2)**

V E R S U S

1. Urmila Kakasaheb Doiphode,
Age; 43 years, Occ; Household,
R/o; Behind SBH Bank, Nagar Road,
Beed.
2. Kalpana d/o Kakasaheb Doiphode,
Age; 21 years, Occ; Student,
R/o; Behind SBH Bank, Nagar Road,
Beed.
3. Sachin s/o Kakasaheb Doiphode,
Age; 14 years, Occ; Minor,
U/G of his natural mother, Urmila
Doiphode, the Respondent No.1.

**(Appeal is dismissed as against
Respdt. No. 3 as per order dtd.
7.7.2009)**

**...RESPONDENTS
(Orig. Respdt. Nos.
1 to 3 are Original
Claimant Nos.
1 to 3)**

4. Laxmibai w/o Nanasaheb Doiphode,
Age; 75 years, Occ; Nil,
R/o; Patil Galli, Jamkhed, Tq.Ambad,
Dist. Jalna.
5. Pandurang s/o Tukaram Toul,
Age; Major; Occ; Business;
R/o; Burud Galli, Beed.

**...RESPONDENTS
(Orig. Respdt. No. 3)**

**...RESPONDENTS
(Orig. Respdt. No. 1)**

(Abated; since deceased)

.....
Advocate for the appellant: Mr. Rupesh C. Bora h/f Mr. P.P. Bafna
Advocate for the Respondent Nos. 1 & 3 : Mr. Swapnil.S.Dargad
.....

CORAM : SANDEEPKUMAR C. MORE, J.

RESERVED DATE : 04.10.2022
PRONOUNCEMENT DATE : 01.12.2022.

JUDGMENT :

1. The Appellant-Original Respondent No. 2 Insurance Company has challenged the judgment and award dated 31.03.2004 passed by the Chairman, Motor Accident Claims Tribunal, Beed, (hereinafter referred to as 'the learned Tribunal') in M.A.C.P. No. 39 of 2001, only on two counts, first whether the findings of the learned Tribunal in respect of the involvement of the offending motorcycle bearing No. MH-23/D-3264, in the accident is based on substantial evidence and the second whether the claim petition was tenable against the insurance company ,in absence of the legal representatives of the owner of offending vehicle i.e. Pandurang Tukaram Toul, the Original Respondent No. 1.

2. From the record it is evident that on 18.10.1998 one Kakasaheb Nanasaheb Doiphode was returning home, from Ambedkar statute, Mondha Road, Beed on his Scooter bearing No. MZY-3155 from

Mali-ves road. However, in front of Paras Lodge the present respondent No. 5 i.e. the owner of the offending motorcycle came from opposite direction and gave dash to the scooter of Kakasaheb. Due to said collision, Kakasaheb sustained severe injuries, including fracture of the skull and died on the spot. One Shantilal Budhadeo when found Kakasaheb lying on the road, took him to the District Hospital Beed, but the doctor declared Kakasaheb dead on arrival. Then accident was reported to the City Police Station and Crime No. 367 of 1998 was registered initially against unknown person, but after the investigation it was revealed that it was the present respondent No. 5 Pandurang who gave dash to the scooter of the deceased Kakasaheb. The charge-sheet was also filed against respondent No. 5 Pandurang. However, prior to the filing of this Claim Petition, Pandurang died and hence a criminal proceedings against him stood abated.

3. The learned counsel for the appellant Insurance Company strongly submitted that there was no eye witness to the incident and the claimants also failed to establish the involvement of the alleged offending motorcycle in the accident. Therefore, in absence of any cogent and satisfactory evidence, the finding of the learned Tribunal in respect of the involvement of the offending motorcycle is apparently erroneous. He pointed out that the claimants did not examine any witness, who had actually seen the accident. He claimed that the investigating officer must have shown the involvement of the offending motorcycle by joining hands with the present respondent No. 5. He

further submitted that the claimants also failed to bring the legal representatives of the said deceased owner of the offending motorcycle on record and therefore, in their absence the claim is not maintainable against the insurance company alone.

4. On the contrary, learned counsel for respondent Nos. 1 to 3 who are the original claimants strongly resisted the submissions made on behalf of the appellant insurance company. He submits that there are no doubtful circumstances on record and no defence of false involvement of the said offending motorcycle, is raised by the appellant insurance company in the written statement itself. He pointed out that there are no suggestions to the witnesses examined on behalf of the Claimants as regards the false involvement of the offending motorcycle. According to him, the Claimants have discharged their initial burden to show that the involvement of the offending motorcycle was very much there.

5. Both the learned counsel relied upon the citations.

6. The learned counsel for the appellant insurance company relied on the **judgment of this Court in Original Appeal No. 3532 of 2018 along with other matters**, wherein, it has been observed that

“merely proving the involvement of the vehicle is not sufficient but the negligence of the driver of such vehicle is also required to be proved.”

7. On the contrary, the learned counsel for the respondent/Claimants also relied on the following judgments.

1.Sunita and others Vs. Rajasthan State Road Transport Corporation and Others (2020) 13 Supreme Court Cases 486.

2. Kusum Lata and Others Vs. Satbir and Others reported in Civil Appeal No. 2269 of 2011 (Arising out of SLP (C) No. 24432 of 2010) dtd. 02.03.2011

3. Anita Sharma and others Vs. The New India Assurance Co. Ltd. And another 2021 AIR (SC) 302 and The United India Insurance Co. Ltd. Vs. Smt. Vajarabai narayan Sadaram and others 2022 (1) TAC 521

8. Heard the rival submissions and also perused the entire record and proceedings of the original claim petition.

9. Admittedly, the record shows that the informant when approached to the spot of accident, the deceased was lying down and there was no tress of other vehicle. Moreover, nobody is claiming that he had seen the accident. Moreover, the FIR appears to be lodged immediately on the second day, since the accident took place in the night at about 11.00 to 11.30 p.m. on 18.10.1998. Thus, the involvement of the alleged aforesaid offending motorcycle was transpired only after the investigation. Admittedly, the charge-sheet is filed against the present respondent No. 5 Pandurang, who also died prior to filing of this claim petition. As such, there is only the charge-

sheet on record to hold the involvement of said motorcycle in the accident. The informant Shantilal Budhadeo had no occasion to see the accident, he merely reported the same against unknown vehicle and the person.

10. The learned Tribunal has observed that since the investigating officer after recording the statements of witnesses found the involvement of the said motorcycle in the accident, it was to be presumed that respondent No. 5 Pandurang was involved in the accident along with his motorcycle. This Court in the judgment relied upon by the learned counsel for the appellant insurance company held that mere proof of involvement of the vehicle at the instance of the claimants is not sufficient, but they must prove the negligence of driver in the accident. In the instance case none of the claimants had seen the accident but they only rely on the copy of the charge-sheet, because nothing is mentioned in the FIR as well as in the spot panchanama. Admittedly, the charge-sheet has been filed against Pandurang under Section 304 and 279 of the Indian Penal Code, which involve his negligence. However, the ocular evidence about his negligence is not on record.

11. However, the learned counsel for the respondents/claimants also placed reliance on various judgments as mentioned above. In **Sunita and others** (supra) **Supreme Court Cases 486** wherein, it is held that

“ Non-examination of witness per se cannot be treated as fatal to claim set up before Tribunal --- Approach in examining the evidence in accident claim cases is not to find fault with non examination of some “best” eyewitness in the case, but to analyse the evidence already on record to ascertain whether that is sufficient to answer the matters in issue on the touchstone of preponderance of probability.”

Similarly in the second judgment in the case of Kusum and Ors. Vs. Sank..... the Hon’ble Apex Court has observed that in the case relating to motorcycle accident claims, the claimants are not required to prove the case as it is required to be done in the criminal case. The Court must keep this distinction in mind and the strict proof of an accident caused on particular date in particular manner not to be possible by the claimants. The claimants were merely to establish their case on touch stone of preponderance of probabilities. The standard of proof beyond reasonable doubt could not have been applied.

In **Kusum Lata and Others** (supra) It is held that,

“ In a case relating to motor accident, the claimants are not required to prove the case as it is require to be done in a criminal case. The Court must keep this distinction in mind - Strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants - The claimants were merely to establish their case on the touchstone of preponderance of probability - The standard of proof beyond reasonable doubt could not have been applied.”

In **Anita Sharma and others** (supra), it is held that

“22. Similarity that strict proof in respect of

rash and negligent driving while deciding the motor accident claims is not required from the side of Claimants "

12. In view of the aforesaid findings, it is clearly established that in the motor accident claims strict proof as regards negligence of the driver of the offending vehicle is not required but said aspect can be decided merely on the principle of preponderance of probabilities. In the instant case, though nobody had seen the accident, but the concerned investigating officer after getting the information of the accident carried out the investigation and ultimately filed the charge-sheet against respondent No. 5 Pandurang. It is also to be noted that the insurance company claiming that the alleged motorcycle was not involved in the accident, had also not examined any witness. Therefore, applying the ratio laid down by the Hon'ble Apex Court in view of its observations in the aforesaid cases, it can safely be inferred that the alleged offending motorcycle was involved in the accident and because of rash and negligent driving of respondent No. 5 Pandurang, an accident took place, which resulted into the death of Kakasaheb Doiphode.

13. The next objection raised by the learned counsel for the appellant Insurance Company is that the claimants did not bring on record the legal representatives of the deceased respondent No. 5 Pandurang i.e. the owner of the offending motorcycle and therefore, in absence of his legal representatives, the claim is not maintainable.

However, the learned Tribunal, by relying on Section 155 of the Motor Vehicles Act, 1988 has already observed that the Section 155 of the Motor Vehicles Act, 1988 provides that in the event of death of the insurer after happening of the accident in which his motorcycle was involved, the right of third party will not be barred against the estate of the deceased or the insurer and therefore held that the claim petition was maintainable against the insurance company. The learned counsel for the respondent/claimants for this purpose has relied upon the judgment of this Court in the case of **New India Assurance Company Limited Vs. Vishal Rameshwar Mote and Others** reported in **2019 DJLS (Bom.) 1068**, wherein it is held that

"the claim petition if stood disposed of as against respondent No. 1 as abated, the same is definitely maintainable only against the insurance company in absence of bringing the legal representatives of said respondent No. 1 on record."

14. Thus, In view of such observations there is no substance in the objection raised on behalf of the appellant insurance company that in absence of legal representatives of the owner of the offending vehicle, the insurer alone cannot be held responsible for the liability of paying compensation. As such, the appellant insurance company has failed on both these counts upon which they have challenged the impugned judgment and award.

15. Therefore, considering all these aspects as discussed

above, there is no substance in the appeal and the same is accordingly dismissed.

**(SANDEEPKUMAR C. MORE)
JUDGE**

mahajansb/