

This order is corrected as per speaking to the minutes order dated 08.11.2023

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
FIRST APPEAL NO.2485 OF 2022
WITH
CIVIL APPLICATION NO.13462 OF 2022**

National Insurance Company Ltd.
Through its Divisional Manager,
Hazari Chambers, Railway Station Road,
Kokanwadi Chowk, Aurangabad
Through its authorised Signatory -
Deputy Manager (Legal Hub),
Divisional Office-I at Aurangabad

..Appellant
(Orig. Respondent No.3)

Versus

1. Deepali Raju Mohite,
Age : 28 years, Occ.: Household,
2. Shubhra Raju Mohite,
Age: 07 years, Occ.: Nil,
3. Smt. Meena Baburao Mohite,
Age : 55 Yrs., Occ.:Nil,
4. Baburao Laxman Mohite,
Age : 62 years, Occu.:Nil,
5. Vijay Baburao Mohite,
Age : 28 years, Occu.: Education,
All R/o : Bambatnagar,
Beed Bypass Road, Aurangabad
6. Balramsingh Vithalsingh Rajput,
Age : 40 Years. Occu.: Teacher
7. Sitabai Vithalsingh Rajput,
Age : Major, Occu.: Owner,

Both r/o Borkhind, Post Shivade,
Taluka Sinner, District Nasik.

..Respondents
(Orig. Claimants)

..Respondent
(Orig. Respondent No.1)

..Respondent
(Orig. Respondent No.2)

...
Mr. V. R. Mundada, Advocate for the Appellant.
Mr. D. T. Kamble, Advocate for Respondent Nos.1 to 5.

...

CORAM : S. G. CHAPALGAONKAR, J.

RESERVED ON : 10th AUGUST, 2023.

PRONOUNCED ON: 06th NOVEMBER, 2023.

JUDGMENT:-

1. The appellant/original respondent no.3-Insurer impugns the judgment and award dated 11.04.2022 passed by the Motor Accident Claims Tribunal, Aurangabad in Motor Accident Claim Petition No.102/2017 by way of this appeal filed under Section 173 of the Motor Vehicle Act.

2. The respondent nos.1 to 5 instituted Motor Accident Claim Petition No.102/2017 before the Motor Accident Claims Tribunal, Aurangabad contending that on 09.12.2015 deceased Raju Mohite alongwith pillion riders were proceeding from Aurangabad towards Shirdi on motorcycle bearing registration no.MH-20-AM-3494. At about 19.10 hours while they were passing from vicinity of village Shindi Sirasgaon, a Tavera Jeep came from opposite direction which was driven in rash and negligent manner and thrashed the motorcycle. Resultantly, the riders on the motorcycle were thrown off the vehicle and suffered injuries. The driver of the motorcycle Raju Mohite and one of the pillion rider Sominath Belkar suffered fatal injuries, whereas Deepak @ Bhima Sopan Kanade suffered injuries. The incident was reported by the jeep driver to the police resulting into registration of Crime No.193/2015 against deceased Raju Mohite / Motorcycle rider. It is the contention of the claimants that, although the accident occurred due to the fault on the part of the Jeep driver, the police authorities on the basis of wrong information given by Jeep driver registered offence against deceased. Subsequently, the injured Deepak @ Bhima Sopan Kanade had visited Daulatabad Police Station to lodge FIR against respondent no.1, but his complaint was not accepted. He posted his complaint to the police station, however no cognizance was taken. It is

further contention of the claimants that deceased was aged about 32 years. He was running Saloon/Men's Parlour in Garkheda Parisar at Aurangabad and use to generate income of Rs.2,73,800/- per annum. The claimants were dependent on his income. As such, respondents/owner, driver and insurer of the Tavera Jeep bearing registration no.MH-42-A-0077 are liable to compensate the loss suffered by the claimants.

3. The claim was contested by respondent nos.1 and 2 i.e. owner and driver of the Jeep, thereby denying the negligence on the part of respondent no.1 i.e. Jeep driver. The respondent no.3-insurer denied material contentions in the claim petition and pleaded that since accident in question is result of self negligence of the deceased, they have no cause of action to raise the claim. The Tribunal framed issues and recorded evidence. The claimant no.1-Deepali filed her evidence affidavit at Exhibit-22 and also relied on the testimony of CW-2-Minakshi Ohalkar / Tax consultant to prove income of the deceased. In order to prove the accident and negligence on the part of respondent no.1-Jeep driver claimants relied upon evidence of pillion rider of motorcycle i.e. Deepak @ Bhima Sopan Kanade recorded in connected Motor Accident Claim Petition No.49/2017 filed by the legal heirs of the another deceased Sominath Belkar arising out of same accident. The certified copy of his evidence is placed at Exhibit-38. Pertinently, respondents have not recorded any evidence in support contention that the motorcycle rider was sole responsible for the accident. The Tribunal after taking survey of the submissions advanced by the parties and evidence tender into service, allowed the claim petition and directed respondent nos.1 to 3 to jointly and severally pay the compensation of Rs.47,52,440/- alongwith interest at the rate of 6% per annum from the date of filing of the claim petition. The respondent no.3/insurer has assailed said the judgment and award dated 11.04.2022 in this appeal.

4. Mr. Mundada, learned Advocate appearing for the appellant/Insurance Company would submit that the claimants have relied upon FIR at Exhibit-41 and spot panchanama at Exhibit-42 in support of their contentions regarding accident. Both the documents depict that motorcycle went on wrong side and dashed against the insured Jeep, which was driven from its correct side. Therefore, he urges that the Tribunal has erroneously drawn conclusion contrary to the material on record. He would further submit that the pillion rider of the motorcycle is not examined before the Tribunal. The certified copy of the evidence recorded in connected claim petition would not be admissible *per se* in this case. He would submit that the claimants have failed to bring on record any material to dislodge the contents of the FIR and spot panchanama. The conclusion drawn contrary to the documentary evidence on record is not sustainable. Mr. Mundada would also urge that the Tribunal has erroneously relied upon alleged Income Tax Returns of deceased at Exhibits-33 and 35, without proof in accordance with law. The computation of the compensation based on such evidence, resulted into excessive and exorbitant award.

5. Per contra, Mr. Kamble, learned Advocate appearing for respondent nos.1 to 5 would support the award passed by the Tribunal. He would submit that the standard of proof required in 'Third Party' claim is 'preponderance of probability'. The strict proof of the facts is not required. He would submit that the provisions relating to the compensation under Motor Vehicle Act are part of the social legislation. While interpreting the provisions beneficial object of legislation to secure the interest of the victim or his dependents has to be borne in mind. He would submit that, although the appellant has contested the claim on the point of negligence, failed to examine Jeep driver. Therefore, adverse inference needs to be drawn against the respondents.

In support of his contentions, reliance is placed on the judgment of the Supreme Court in the matter of ***Mangla Ram Vs. Oriental Insurance Company Limited and Others***¹, ***Smt. Anjali & Ors. Vs. Lokendra Rathod & Ors***², the judgment of this Court in the case of ***Smt. Anjali Singh Chaudhary @ Anjali Punit Chaudhary & Anr. Vs. Raju Sopan Bhogale & Ors. (First Appeal No.1794/2010)*** and ***National Insurance Company Ltd. Vs. Chamundeswari & Ors. (Civil Appeal No.6151/2021)***.

6. Having considered submission advanced, the issue that primarily arises for consideration in this case is, as to whether the claimants have proved sole negligence of on the part of the Jeep driver. It is trite that, the proof of negligence of the offending vehicle driver is *sine qua non* to succeed in the claim filed under Section 166 of the Motor Vehicle Act. The primary burden to prove aforesaid fact will have to be shouldered by the claimants. However, while appreciating the material on record it is to be borne in mind that the proceedings in claim seeking compensation under Motor Vehicle Act are governed by principles of “preponderance of probabilities’ for the purpose of appreciating the evidence.

7. In the present case the claimants have filed on record First Information Report at Exhibit-41 and spot panchanama at Exhibit-44. Pertinently, the contentions of the claimants are in conflict with the contents of the FIR and spot panchanama. Although, they relied on the said documents as a proof of accident, they are putting different version regarding manner of accident. Admittedly FIR has been lodged by Balramsingh Vithalsingh Rajput i.e. respondent no.1, who was driver on the Jeep at the time of accident. The contents of the FIR itself shows

1 (2018) 5 SCC 656.

2 2023 AIR (SC) 44.

that all three motorcyclists had suffered severe injuries and they were shifted to the hospital through Ambulance. In this backdrop, version of the accident as reported by respondent no.1 appears to have accepted as gospel truth. Accordingly, FIR has been registered against the rider of the motorcycle i.e. deceased-Raju Mohite. Even spot panchanama has been drawn as per information given by respondent no. 1. Perusal of the contents of the spot panchanama shows that the spot of accident is on Northern side of the road, which passes in East-West direction. The motorcycle was proceeding from Aurangabad towards Shirdi, whereas Jeep was proceeding from Sinner to Aurangabad. If the spot of accident as depicted in the panchanama is considered, it would impress that the Jeep was proceeding on its correct side, whereas motorcycle completely went on wrong side of the road. However, on minute reading of the panchanama it is difficult to believe that spot of the accident is rightly depicted. The position of the vehicle is not shown in the panchanama or map annexed thereto. Generally the spot where the blood spots are visible or the damaged parts of the vehicle are seen can be gathered as spot of accident. However, such signs are absent in the spot panchanama. Pertinently, the spot of the accident is shown by the Jeep driver and it has been adopted as gospel truth. In this background, the contents of the FIR and spot panchanama itself can not accepted as conclusive factors for the purpose of deciding issue of negligence. Pertinently, Jeep driver has filed written statement but failed to step into the witness box. Even insurer has not attempted to bring him before the Court. The conduct of the Jeep driver is sufficient to draw adverse inference against him. The best possible evidence that could have been brought on record has been concealed by the respondents before the Tribunal.

8. The claimants have relied upon the copy of evidence of the pillion rider recorded in connected claim petition. The said witness was cross-examined by the Insurance Company. Perusal of this evidence would depict that Tavera Jeep gave forcible dash to the motorcycle and dragged it to the wrong side. All the motorcycle riders were hospitalized. The injured Deepak @ Bhima Sopan Kanade made an attempt to lodge the report to police station, however no cognizance of his complaint was taken because of registration of the FIR on information given by the Jeep driver. If this statement is read as against the FIR and spot panchanama, the evidence in the form of statement before the Tribunal will have to be given more weightage. At this stage, reference can be given to the observations made by the Supreme Court of India in the matter of ***National Insurance Company Ltd. Vs. Chamundeswari & Ors.*** (supra) in paragraph no.8, which reads thus:

“It is to be noted that PW-1 herself travelled in the very car and PW-3, who has given statement before the police, was examined as eye-witness. In view of such evidence on record, there is no reason to give weightage to the contents of the First Information Report. If any evidence before the Tribunal runs contrary to the contents in the First Information Report, the evidence which is recorded before the Tribunal has to be given weightage over the contents of the First Information Report.”

9. Similarly, it is settled principle of law that in claims seeking compensation under Motor Vehicle Act, the principles of preponderance of probabilities are to be applied. In case of ***Mangla Ram Vs. Oriental Insurance Company Limited and Others*** (supra) the Supreme Court of India observed in paragraph no.32 of the judgment that spot of accident cannot be determined on the basis of the

contents of the spot panchanama or on the basis of the position of the vehicle depicted in the panchanama. It is pertinent to note here that, in case in hand the Jeep driver didn't stepped into witness box to clarify actual scenario at the time of accident. The Tribunal appears to have considered aforesaid aspects in its proper perspective and recorded findings that Jeep driver was responsible for the accident. I do not find any reason to interfere in the well reasoned finding and conclusion drawn by the Tribunal.

10. Now turning to the second contention raised on behalf of the appellant regarding the assessment of compensation. The Tribunal observed that the gross income of the deceased at the time of accident was Rs.2,73,800/- PA based on the evidence of CW-2-Minakshi, who placed on record the Income Tax Returns of the deceased. It can be observed that last Income Tax Returns filed by deceased on 07.04.2015 depicts aforesaid income for the year 2015-2016. Even the Income Tax Returns of previous two years submitted by deceased are placed on record showing gradual increase in his income, which is suggestive of growing business. The assessment of the compensation made by the Tribunal relying upon the aforesaid evidence cannot be faulted.

11. In that view of the matter, no ground for interference in the judgment and award passed by the Tribunal is made out. Resultantly, following order is passed.

ORDER

- A. The First Appeal is dismissed with cost.
- B. The amount deposited by the appellant / insurer be disbursed to the claimants in terms of Award passed by the Tribunal.

C. In view of dismissal of the First Appeal, pending Civil Application is disposed of.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/July-2023