

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

FIRST APPEAL NO. 1400 OF 2013

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The New India Assurance Co. Ltd.)
Nagar Parishad Building, Bhigwan Chowk,)
Baramati, Taluka Baramati, Dist. Pune.)
Through Mumbai Regional Office- I,)
New India Bhavan, 2nd Floor, 34/38,)
Bank Street, Fort, Mumbai – 400023)....Appellant
(Orig. Opp. no.2)

Versus

1. Pradeep Ramchandra Malve)
Age: 51 years, Occ: Labour,)
2. Surekha Pradeep Malve)
Age: 47 years, Occ: Household,)

Both residing at Motibag, Gunawadi,)
Taluka Baramti, District Pune.)

3. Jeetendra Anantrao Lalage,)
Age: 37 years, Occu: Owner,)
R/at. Vithainagar Housing Society,)
Baramati, Taluka Baramati, District Pune.)....Respondents

(Resp. 1 to 2 Org. Appellants
Resp. 3 org. Op.1)

Mr. Devendranath Joshi a/w Pradyumna Thakurdesai, Advocate for
the Appellant.

CORAM : SHIVKUMAR DIGE, J.

DATE : 16th APRIL, 2024.

Oral Judgment :

1. Heard learned counsel for the Appellant/Insurance Company. Though Respondents are served, none present for the Respondents. Hence, I am deciding this Appeal on merit.
2. This appeal preferred by the Appellant/Insurance Company against the judgment and order passed by the Motor Accident Claims Tribunal, Baramati (for short “the Tribunal”).
3. It is contention of learned counsel for the Appellant that the deceased had borrowed the vehicle from the owner of the motorcycle and accident occurred. The deceased had stepped in the shoes of owner. The accident occurred due to sole negligence of the deceased hence, the Claimants are not entitled for the compensation but this fact is not considered by the Tribunal and has passed the impugned order and requested to allow the Appeal.
4. I have heard learned counsel for the Appellant. Perused

the judgment and order passed by the Motor Accident Claims Tribunal, Baramati (for short “the Tribunal”).

5. It is claimants’ case that on 30th August, 2010 deceased Amol at the instance of Opponent No.1 employer of the deceased was going to Pandharpur in order to show design of the ornament by Suzuki motorcycle; at about 5:00 pm. when deceased reached within the limits of Greenspot Velapur, on Akluj-Velapur Road, he met with an accident and sustained injuries and he died while taking the treatment. To prove its case Claimant No.2 has examined himself. He has stated that deceased had gone to Pandharpur at the instance of his employer, the motorcycle belongs to employer. The Tribunal has observed that at the time of accident, motorcycle was insured with the Appellant/Insurance Company and application was filed under Section 163-A of the Motor Vehicle Act, 1988, so there is no question of issue of the negligence. On that ground the Tribunal has passed the impugned order. I do not find infirmity in it. In my view, the deceased cannot be considered as owner or borrower of the motorcycle as he had gone to Pandharpur at the instance of his employer and he was employee. Hence, I do not see merit in the contention of Appellant/Insurance Company that the deceased had

stepped into the shoes of owner.

6. In view of above, I pass following order.

ORDER

- i. Appeal is dismissed.
 - ii. The Claimants are permitted to withdraw the deposited amount along with accrued interest thereon.
 - iii. The statutory amount be transmitted to the Tribunal along with accrued interest thereon. The parties are at liberty to withdraw it, as per Rule.
7. All pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)