



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

933 FIRST APPEAL NO. 197 OF 2015

1. Sudha Kailash Chavhan,  
Age: 39 years, Occu: Household.
2. Pradeep Kailash Chavan,  
Age: 17 years, Occu: Education.
3. Deepak Kailash Chavan,  
Age: 14 years, Occu: Education,  
No.3 U/g of Appellant No.1.
4. Sakharam Thakaji Chavan,  
Age: 59 years, Occu: Agril.,  
R/o Rajani Wadi,  
Tq. Ghansavangi, Dist. Jalna.
5. Shantabai Sakharam Chavan,  
Age: 53 years, Occu: Household,  
As Above.

....Appellants  
(Orig. Claimants)

**VERSUS**

1. Shaik Salim Shaik Mubarak,  
Age: 26 years, Occu: Driver,  
R/o. Jalna.
2. Kisan Bhanudas Sawant,  
Age Major, Occ: Business,  
R/o Dawalwadi, Tq. Badnapur,  
Dist. Jalna.
3. Bajaj Allianz General Insurance Co. Ltd.,  
Through its Branch Manager,  
Adat Road, Aurangabad.

....Respondents

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**Appearance :**

Mr. K. B. Jadhav, Advocate for the Appellants.  
Mr. M. R. Deshmukh, Advocate for Respondent No.3.

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**CORAM : NEERAJ P. DHOTE, J.**

**DATE : 08.08.2025**

**ORAL ORDER :**

1. By consent of both the sides, heard finally.
2. This is an Appeal filed under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the M. V. Act') by the Appellants - Original Claimants, as their Claim Petition bearing No.239/2010 came to be dismissed vide the Judgment and Order dated 09/10/2014, passed by the Motor Accident Claims Tribunal, Jalna (hereinafter referred to as 'the learned Tribunal').
3. The facts in brief, giving rise to the present Appeal, are as follows :
  - (a) The Appellants filed the above-referred Claim Petition before the learned Tribunal contending that, Kailash Sakharam Chavan (hereinafter referred to as 'the Deceased') was the husband of Appellant No.1, the father of Appellant Nos.2 and 3 and the son of Appellant Nos.4 and 5. The Deceased met with a motor vehicular accident on 10/04/2010 between 11:00 p.m. to 11:30 p.m., while he was travelling on his motorcycle bearing No.MH-21-J-6414 on the Jalna - Ambad road. His motorcycle was hit by one unknown vehicle. Due to the injuries suffered in the accident, the Deceased succumbed to the injuries. One Advocate, namely, Chandrakant Gangadhar Jadhav lodged the report with the Taluka Jalna Police Station and Crime No.122/2010 came to be registered under the relevant Sections of the Indian Penal Code, 1860 (hereinafter referred to as 'I.P.C.') against the unknown person. During the course of investigation, the involvement of the Truck bearing No.MH-18-M-3516 was revealed and charge-sheet was filed by the Investigating Officer. According to the Appellants, since the accident occurred due to rash and negligent driving of the said

Truck, the Owner, Driver and the Insurance Company of the said Truck were jointly and severally liable to pay the compensation of Rs.15,00,000/-.

(b) The Claim Petition was contested by Respondent No.3 – Insurance Company. It denied the involvement of the said Truck in the accident. The Respondent No.3 – Insurance Company had also raised other defences.

(c) Both the sides led their respective evidence and brought on record the relevant papers. After hearing both the sides and appreciating the evidence available on record, the learned Tribunal dismissed the Claim Petition by holding that, the involvement of the said Truck was not proved.

4. It is submitted by the learned Advocate for the Appellants that, along with the list of documents, a copy of charge-sheet was submitted on record and the learned Tribunal failed to consider and appreciate the same and arrived at a wrong finding. He further submits that, the Appellants had examined the Investigating Officer, who had filed the charge-sheet against the Driver i.e. Respondent No.1. Though there was sufficient evidence on record to show the involvement of the said Truck, the learned Tribunal has misdirected itself in dismissing the Claim Petition. He urged that, the matter be remanded back to the learned Tribunal for fresh consideration.

5. The learned Advocate appearing for Respondent No.3 – Insurance Company submits that, the learned Tribunal has considered the entire evidence available on record and, thereafter, reached to the conclusive finding that, the involvement of the said Truck was not established. He submits that, the Insurance

Company has also led their evidence and brought on record that, the Respondent No.1 was involved in more than two (2) such cases, wherein, similar *modus operandi* was adopted and Crime was registered against the unknown vehicle and subsequently, after some days, the involvement of some or the other vehicle was shown. He submits that, the evidence on record do not inspire confidence and, therefore, the learned Tribunal was justified in dismissing the Claim Petition. In support of his contentions, he placed reliance on the Judgments of this Court in First Appeals under the M. V. Act, wherein, initially, the Crime was registered against unknown vehicle and subsequently, the involvement of the vehicle was shown and this Court had dismissed the Appeals.

6. Perused the record. The Appellant No.1, who is a widow of the Deceased, examined herself as Witness No.1 below Exhibit – 33. Admittedly, she is not the eyewitness to the accident. Therefore, her evidence is far from establishing the factum of involvement of the vehicle in the accident.

7. The other evidence led by the Appellants is that of the Investigating Officer, who is examined as Witness No.2 below Exhibit – 55. His evidence shows that, the Crime was registered against the unknown vehicle and after a period of three (3) months, Respondent No.1 was apprehended and at that point of time, he seized the aforesaid Truck in the said Crime. His evidence shows that, he was ignorant in the respect of the many aspects of the investigation. His evidence further shows that, the Deceased was working in the Police Department.

8. Admittedly, the Appellants did not examine any eyewitness to the accident. The contention of the learned Advocate for the Appellants that, the learned Tribunal did not consider the

charge-sheet, which was filed on record and reached to the conclusion that, the involvement of the vehicle was not proved by bringing on record the relevant evidence, cannot be accepted for the reason that, the impugned Judgment shows that, the learned Tribunal considered the evidence of Witness No.2 i.e. Investigating Officer and observed that, it was for the Appellants to bring on record the remaining documents to show the involvement of the said Truck.

9. There is evidence led by the Insurance Company, which was considered by the learned Tribunal. Perusal of the said evidence shows that, there was a strange coincidence that, very Respondent No.1 was the Accused in two (2) Crimes registered for the offence of rash and negligent driving, wherein the Crime was initially registered against an unknown vehicle and, subsequently, the involvement of vehicle in the said accident was shown. For more clarity, the relevant Paragraph Nos.21 and 22 from the Judgment of the learned Tribunal are reproduced as follows :

“21. The petitioners failed to prove the fact that the vehicle Tata LPT 1613 bearing registration no.MH.18.M.3516 was involved in the accident in which Kailash Chavan died. On the contrary, exh.89, the certified copy of FIR in STC no.409/14 is revealing that in that case present resp.no. 1 is the accused. That case is for offences punishable u/s 279, 304A, 338 IPC. In that case the vehicle involved was truck bearing no.MH.28.B.7432. In that case the accident was occurred on date 21.1.2014. Initially, the crime was registered against unknown person. Then, exh.90 the certified copy of charge sheet in STC no. 230/08 is revealing that the present resp.no.1 is the accused in that case. That case is for offences punishable u/s 279, 337,338 IPC. In that case the vehicle involved was motorbike bearing no.MH.21.F.6344. In that case the accident occurred on date 23.7.07. But, FIR was lodged on date 25.10.07. The FIR reveals that initially the victim had no knowledge about the number of vehicle and its driver. Considering all these aspects I am of the opinion that the resp.no.1 is either habituated to rash and negligent driving or he is misusing the licence granted to him or some persons are compelling him to get involved in the accident case though he was not involved. Such a conduct is serious one. This conduct is to be brought to the notice of licencing authority. As the petitioners failed to prove the involvement of truck bearing no.MH.18.M.3516, I answer the issue no.1 in negative.

22. When issue no.1 has been answered in negative, the issue nos.2 to 4 became redundant. The petitioners can take recourse to the Solatium Scheme, 1989 which provides for compensation in case of “Hit and Run Accident”. Alternatively, they can take recourse to the victim compensation scheme recently introduced by way of amendment in Cr.P.C. Accordingly, I pass the following order.

#### **ORDER**

The petition is dismissed.

In peculiar circumstances of the case, parties t bear their own costs.”

10. Admittedly, though it appears that, the F.I.R. was lodged by the eyewitness to the accident, he has not been examined by the Appellants before the learned Tribunal. Considering the aspects that, no eyewitness to the accident was examined, the Crime was registered against the unknown person and unknown vehicle, the Respondent No.1 was made an Accused after a period of three (3) months, on the same day, the said Truck was shown to be involved in the accident and failure of the Investigating Officer to depose in his evidence as to how the said Truck was involved in the accident, the learned Tribunal cannot be said to have recorded wrong findings. The finding arrived at by the learned Tribunal is based on the evidence available on record. Considering the evidence led by Respondent No.3 and evaluating the overall evidence available on record, no fault can be found with the conclusion arrived at by the learned Tribunal. It is nowhere the case of the Appellants that, some evidence was not adduced before the learned Tribunal due to the circumstances beyond their control and, therefore, request for remand cannot be accepted. In this view of the matter, I proceed to pass the following order :

#### **ORDER**

. The Appeal is dismissed.

**[NEERAJ P. DHOTE, J.]**