



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

FIRST APPEAL NO.1631 OF 2024

The New India Assurance Company Ltd.
Through it's Branch Manager,
Yeshodeep Building Shivaji Road
Parbhani, Tq. And District Pabrhani.
Through its Divisional Manager/
Authorized Signatory,
Mahesh Auto Compound,
Adalat Road, Aurangabad,
Dist. Aurangabad.

APPELLANT
(Original Respondent No.2)

VERSUS

- 1) Sangita W/o. Dattarao Karhale,
Age : 49 Years, Occu : Household,
R/ at . Digras Karhale, Tq. and District Hingoli.
- 2) Gajanan S/o. Dattarao Karhale,
Age : 30 Years, Occu : Education,
R/ at. Digras Karhale, Tq. and District Hingoli.
- 3) Shailesh S/o. Dattarao Karhe,
Age : 27 Years, Occu : Education,
R/at. Digras Karhale, Tq. and District Hingoli.
- 4) Shardha D/o. Dattarao Karhale,
Age : 23 Years, Occu : Education,
R/at. Digras Karhale, Tq. and District Hingoli.
- 5) Triveni W/o. Gangaram Karhale,
Age : 65 Years, Occu : Household,
R/o. Digras Karhale, Tq. and District Hingoli.
- 6) Prasad S/o. Prakash Karhale,
Age : 45 Years, Occu : Business,
R/o. Asola Tarfe Lakh,
Taluka Aundha (Na).
District Hingoli.

RESPONDENTS

(Respdt Nos.01 to 05 are Org. Claimant
Resp. No.6 is Org. Resp. No.1)

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Advocate for Applicant : Mr. A. G. Choudhari
Advocate for Respondents : Mr. S.V. Suryawanshi

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WITH
CIVIL APPLICATION NO. 7984 OF 2024 IN FA NO.1631 OF 2024

Sangita W/o. Dattarao Karhale and others
Versus

The New India Assurance Company Ltd.
Through it's Branch Manager,

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CORAM : S. G. CHAPALGAONKAR, J.
Reserved on : January 22, 2025
Pronounced on : February 21, 2025.

JUDGMENT :-

1. The appellant/insurance company impugns the judgment and award dated 6.5.2023 passed by the Motor Accident Claims Tribunal, Hingoli in MACP no.80 of 2017.

2. The Respondents/claimants instituted M.A.C.P No.80 of 2017 raising claim for compensation of Rs.55.00 Lakh under section 166 of the Motor Vehicles Act towards accidental death of Dattarao Karhale, who died in the accident dated 10.3.2027. The claimants are coming with a case that, while deceased was proceeding on his motorcycle in the vicinity of village Santuk Pimpri, offending cruiser jeep bearing

registration No.MH-38/4387 gave forceful dash to his motorcycle. Initially, deceased was admitted to the Civil Hospital, at Hingoli. Then he was referred to Global Hospital, at Nanded. Thereafter, he took treatment at Dhakane Hospital, Aurangabad. Lastly, succumbed to the injuries at Government Hospital, Aurangabad. Thereafter, FIR was lodged on 3.4.2017 against driver of the offending jeep. According to the claimants, deceased was employed in private service with Shiva Parvati Poultry Feed Pvt. Ltd., Limbala Makta, Hingoli and earning Rs.6,500/- p.m. In pursuance to claim notice, respondent no.1 owner of the vehicle caused his appearance and denied adverse allegations. Lastly, contended that his vehicle was insured with respondent no.2, if any liability arises, it shall be borne by the insurer.

3. Insurer refuted claim alleging false implication of the insured vehicle, particularly, for the reason that FIR has been lodged after 23 days of the accident.

4. The claimants in their endeavor to prove the accident involving cruiser jeep, relied upon the evidence of CW 1-Shailesh Dattarao Karhale Exh.-15, CW-2- Santosh Kailash Giri Exhibit 23 and CW-3 Balasaheb Ramkishan Bongane

Exh.24 as well as police papers i.e. FIR exh.33, panchnama exh.34. Respondent/insurer relied upon certain admissions in the cross-examination of eye witness, so also certified copies of oral evidence recorded in SCC No.457 of 2018 pertaining to subject accident that was registered against driver of the offending vehicle.

5. Mr. Choudhary, learned advocate appearing for the appellant/insurance company vehemently submit that, this is a case of false implication. The incident occurred on 10.3.2017 at about 7 p.m. Deceased was initially admitted to Civil Hospital, at Hingoli. Thereafter, he was taken to Global Hospital, Nanded for better treatment. Further, he was treated at Dunakhe Hospital, Aurangabad and Government Medical College and Hospital, Aurangabad. However, there is no entry as regards to accident particularly involving the insured vehicle. None of the alleged witness gave statement to police as regards to accident and offending vehicle. There is no justification for lodging FIR after 23 days. By inviting attention of this Court to the cross-examination of alleged eye witness, he would submit that there are serious contradictions in the narration of incident. Hence, in all probabilities those are got

up witness. Mr. Choudhary would invite attention of this Court to the statement of eye witness recorded in criminal prosecution against the driver, wherein the witnesses could not disclose involvement of the insured vehicle.

6. Per contra, Mr. Suryawanshi, learned advocate appearing for the claimants supports the judgment and award passed by the Tribunal. According to him, mere delay in lodging the FIR would not be a good ground to reject the claim. The informant and other family members of deceased were busy in providing medical treatment to the victim, who was shifted to higher centers for better treatment and after performing last rites, FIR has been lodged. He submits that two eye witnesses of the accident have been examined before the Tribunal. Their evidence is sufficient to hold involvement of the insured vehicle.

7. Having considered the submissions advanced, core issue that requires consideration in this appeal is as to whether the claimants have proved involvement of cruiser jeep bearing registration No.MH-38/4387 in subject accident.

8. First objection raised on behalf of the appellant/insurer that there is inordinate delay in lodging the FIR. Question is whether there is plausible explanation for such delay. It is not disputed that immediately after accident, deceased was admitted to Civil Hospital at Hingoli and looking to serious condition, he was taken to Global Hospital, Nanded. Thereafter, he was again taken to Dunakhe Hospital, at Aurangabad and lastly succumbed to the injuries at Government Medical College and Hospital, Aurangabad. His last rites are performed on 26.3.2017 and after 8 days of the last rites, FIR has been lodged. It is obvious that, in case of accident of family member, priority would be to provide medical treatment. *Normally, when patient is admitted to Civil Hospital, it is for them to inform Police Authorities regrading the accident. Family members cannot be blamed for such delay. Thereafter, further medical assistance was provided at distant places i.e. at Nanded and Aurangabad.* In this background, delay in lodging the FIR itself cannot be considered as good ground to discard entire case of the claimants.

9. Mr. Choudhary, submits that evidence of eye witness is absolutely unreliable. They are got up witnesses. Perusal of evidence of CW 2 Santosh shows that he runs sugarcane juice shop nearby the place of accident and claims himself to be an eye witness. However, during his cross-examination he admitted that he cannot read and write. There is no provision of electric light at the spot of accident. He did not disclose offending vehicle number to any one till police approached him. He cannot tell as to whether it was head on collision between two vehicles as he was at the distance. All these admissions coupled with fact that he turned hostile before the criminal court makes his statement unreliable.

10. Second witness of the claimant is Balasaheb Bongane CW-3. He states that he was proceeding on his motorcycle and witnessed the offending jeep dashed against motor cycle of the deceased Dattarao. He states that, he noted jeep number and informed claimant no.3-Shailesh regarding the incident. In cross-examination, he admitted that he is relative of the claimants. He states that he noted number of offending vehicle after getting a pen from the owner of sugar cane juice shop. He states that he did not felt necessary to

accompany deceased to the Hospital or he never informed police chowki or doctor regarding the vehicle number or incident. He never visited the police or gave his statement to the police. The Certified copy of his statement recorded in S.C.C. No.457 of 2018 is also placed on record of the Tribunal at Exhibit 15, wherein he states that he came to know about vehicle number from the mob gathered at the spot of accident. If the aforesaid evidence is taken into account, it is difficult to believe that accident occurred in presence of CW-3. Pertinently, CW-1 admits in his cross-examination that vehicle owner bears surname Karhale as claimants and he is resident of the village which is at a distance of 30 kilometers from village of the claimants. He admits that he had received information as to owner of the vehicle, but never disclosed it to any one prior to filing of the complaint.

11. Pertinently, CW-3 Balasaheb is relative of the claimants. He claims himself to be the eye witness, but never felt it necessary to inform about the accident to police. CW-2 Santosh in his deposition states that CW-3 Balasaheb informed claimant Shailesh as to the accident, while they were travelling to hospital with deceased, but CW-3 Balasaheb state that he

did not accompany deceased in auto-rickshaw when he was taken to the hospital. He says that, he is not aware about the persons who accompanied the deceased in the auto-rickshaw while shifting him to the hospital.

12. The referral card of District Hospital, Hingoli is placed at Exhibit-42. It simply records the history as road traffic accident and head injury. If that was so, one does not know how police authorities were not aware about the incident.

13. Perusal of the spot panchnama exhibit 34 shows that it has been recorded on 5.4.2017 and there were no traces of the accident. The A.D. Report forwarded by Begampura police station, Aurangabad do not disclose any information that would support claimants so as to prove involvement of injured vehicle in the accident.

14. It is true that delay in lodging FIR itself is not a ground to dismiss claim petition and even claimants need not prove factum of accident beyond doubt. The Courts are also under obligation to see that delay in lodging the FIR shall not defeat genuine claims. The evidence has to be assessed on

preponderance of probability. In the present case, on evolution of entire evidence lead by the claimants, delay in lodging FIR becomes relevant, particularly, when evidence of so-called eye witness has been shattered during cross-examination. The attending circumstances surfaced on record goes to show that case regarding involvement of the insured vehicle has been developed after death of the deceased with the aid of witness Balasaheb, who is relative of claimants. The second witness Santosh Giri clearly appears to be the got up witness.

15. It is true that owner of the vehicle has indirectly admitted the accident. However, fact remains that he did not report the accident to anyone although he is under statutory obligation to do so. He hails from the nearby village and bears the same surname as the claimants. Hence, possibility of false implication of the vehicle owned by relatives or persons from nearby village cannot be ruled out with intention to covert orphan accident in a motor vehicular accident, which is frequent practice observed in the recent past.

16. Although, Court would not insist upon the claimants to bring conclusive evidence as to involvement of the

vehicle, primary duty of the claimants to establish their case on the basis of preponderance of probability cannot be discharged. The gamut of the aforesaid discussion leads this Court to hold that the Tribunal has erroneously accepted case of the claimants on superficial material without judiciously appreciating the evidence on record.

17. In that view of the matter, the Award passed by the Tribunal is liable to be quashed and set aside by allowing the appeal. Resultantly, following order is passed.

O R D E R

- i. First Appeal is **allowed**.
- ii. The impugned judgment and award dated 6.5.2023 passed by the Motor Accident Claims Tribunal, Hingoli in MACP No.80 of 2017 is hereby quashed and set aside.
- iii. Pending civil application, if any, also stands **disposed of**.
- iv. Amount, if any, deposited be refunded to the Appellant.

(S. G. CHAPALGAONKAR)
Judge.

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