



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

**FIRST APPEAL NO. 999 OF 2024
WITH
CIVIL APPLICATION NO.3383 OF 2024
IN FA/999/2024**

Legal Manager,
Bajaj Allianz General Insurance Co. Ltd.
Shri Ganesh Plaza, 2nd floor, Near Hotel Sandip,
Near Mahamarg Bus Stand, Nashik.
Through its Authorized Signatory / Branch Manager,
Plot No. D-5/1, ABC East, 3rd Floor,
Besides Prozone Mall, Chikhalthana MIDC,
Aurangabad, Tq. & Dist: Aurangabad,
Pin Code : 431 210. ... **Appellant.**

VERSUS

1. Mayur Prakash Chindarkar,
Age : 36 Years, Occu. Service,
R/o. Central Prison, Thane, L-262,
Ashtavinayak Nagar, MHADA Society,
Dhule- Solapur area, Solapur, At Solapur,
Tq. & Dist. Solapur – 413 006.
2. Suresh Motilal Choudhary,
Age : 50 Years, Occu. Driver & Owner,
R/o. Songir, Tq. & Dist. Dhule. ... **Respondents.**

WITH

**FIRST APPEAL NO. 1008 OF 2024
WITH CIVIL APPLICATION NO.3404 OF 2024 IN
FA/1008/2024 WITH
WITH CIVIL APPLICATION NO. 8984 OF 2024 IN
FA/1008/2024**

Legal Manager,
Bajaj Allianz General Insurance Co. Ltd.
Shri Ganesh Plaza, 2nd Floor, Near Hotel Sandip,
Near Mahamarg Bus Stand, Nashik.
Through its Authorized Signatory / Branch Manager,
Plot No. D-5/1, ABC East, 3rd Floor,
Besides Prozone Mall, Chikhalthana MIDC,
Aurangabad, Tq. & Dist: Aurangabad,
Pin Code: 431 210. ... **Appellant.**

VERSUS

1. Dilip Narayan Kagne,
Age : 63 Years, Occu. Service,
2. Hirabai Dilip Kagne,
Age : 55 Years, Occu. Household,

Both R/o. Plot No. 35, Rashmiji Nagar,
Chudane Road, Dondaicha,
Tal. Shindkheda, Dist. Dhule.
3. Suresh Motilal Choudhary,
Age : 50 Years, Occu. Driver & Owner,
R/o. Songir, Tq. & Dist. Dhule. ... **Respondents.**

...
Advocate for Appellants in both FA : Mr. Deshmukh Mohit R.
Advocate for Respondents in both FA : Mr. Amol S. Sawant h/f
Mr. A. D. Pawar.

...

CORAM : SHAILESH P. BRAHME, J.

RESERVED ON : 16.07.2025
PRONOUNCED ON : 31.07.2025.

JUDGMENT :-

1. Heard both the sides finally.
2. The insurance company has preferred these two appeals challenging distinct judgments and awards passed by Motor Accident Claims Tribunal, Dhule on 05.12.2023. M.A.C.P. No.409 of 2013 was filed by parents of the deceased Rohit who met with an accident and succumbed to the injuries. The Tribunal awarded compensation of Rs.32,39,402/- with interest. M.A.C.P. No.441 of 2014 was filed by injured Mayur

who was pillion rider. The Tribunal awarded compensation Rs. 25,000/-.

3. Both the claim petitions are arising out of the self same accident. The joint and several liabilities was imposed on the appellant/insurance company. Offence was registered and the police papers were placed on record before the Tribunal. Hence, I propose to decide both the appeals by common judgment and order. I propose to refer to the parties in First Appeal No.1008 of 2024 involving a death claim.

4. Deceased Rohit and injured Mayur were serving as Police Guard in Central Prison, Kalva, Thane. They were riding on a motorcycle bearing MH.19-AS-7213. Their two friends who were following them in a separate vehicle were also working in the same department as police guards. These four persons had been to Nandra to attend wedding ceremony of their friend Swapnil. After attending marriage ceremony on 16.04.2013 at Akhatwade, Taluka Chopada, these four persons were returning to Nandra. The motorcycle of the deceased was given dash from behind by goods vehicle. The deceased Rohit and injured Mayur fell in the canal and sustained serious injuries. After occurrence of the accident, their two companions arrived at the spot who were following them and

learnt about the accident. The injured were shifted to the hospital. The goods vehicle which gave dash fled from the spot.

5. First Information Report was registered on 19.04.2013 at the instance of Walmik Babu Patil, who was one of the companions. In pursuance of that Crime No.89 of 2013 was registered with Dharangaon Police Station against offending unknown vehicle. It is stated in the First Information Report and the statements recorded by the police that due to rash and negligent driving of respondent No.3, accident occurred, in which, Rohit lost his life and Mayur sustained serious injuries. Thereafter, during the course of investigation, the goods vehicle was traced who was found to be owned and driven by respondent No.3. It was insured with the appellant. A statement of the injured Mayur was recorded on 21.04.2013 disclosing that offending vehicle was MH.18-AA-2679.

6. The papers of the investigation are placed on record and exhibited as FIR Exh.23, spot panchnama Exh.24, insurance policy cover note Exh.29, inquest panchnama Exh.30, post mortem report Exh.31, statement of the witness Mayur Exh.32, salary certificate of deceased Exh.49 which are relevant. In death claim, four witnesses were examined including father of

the deceased, injured Mayur, Investigating Officer PSI Mr. Kale and Mr. Gonde from the department. Whereas in the injury claim, three witnesses were examined including injured Mayur (PW.1), PSI Mr. Kale (PW.2), Medical Practitioner Dr. Rajkumar Indrasen Suryawanshi (PW.3).

7. The defence of the appellant was that the offending vehicle was planted. Considering delay caused in First Information Report and the police papers, it is stated to be collusive claim. Identification of the offending vehicle is seriously disputed. Both the claim petitions filed under Section 166 of the Motor Vehicles Act (hereinafter referred to as "Act" for sake of brevity and convenience) are stated to be not maintainable because it was a matter of hit and run. Appellant/insurance company is stated to have no liability to pay the compensation.

8. After considering the pleadings and the material on record, it is held by the Tribunal that respondent No.2/driver of the goods vehicle was liable for rash and negligent driving which gave dash to the motorcycle resulting into death of Rohit and injuries to Mayur. The overt act of respondent No.3 is held to be proved from the police papers and specially the evidence of injured Mayur who was pillion rider. The income of the

deceased and injured is held to be proved by oral evidence as well as salary slips. The medical papers of the injured disclosed the nature of injuries and the disabilities. Ultimately, Tribunal awarded compensation of Rs.32,39,402/- in death claim and awarded compensation of Rs.25,000/- in injury claim.

9. Learned counsel Mr. Mohit Deshmukh appearing for the appellant/insurance company would submit that the claim petition is not maintainable under Section 166 of the Act. It was a case of hit and run and recourse to Sections 161 and 163 should have been taken. It is further submitted that the claim is collusive and fraudulent because the First Information Report pertains to unidentified offending vehicle. There is suspicion regarding involvement of vehicle which is insured with the appellant. There is every reason to infer that its a planted vehicle. He would further submit that the evidence of Mayur is not reliable. It is impossible that when he was pillion rider and his motorcycle was dragged in the canal, he could have seen number of the offending vehicles. It is further submitted that the theory of the claimants regarding the vehicle and the manner in which the accident occurred is suspicious. The entire case of the claimants is unreliable and Tribunal committed patent illegality in granting compensation.

He would further submit that the respondents/claimants miserably failed to bring on record the convincing evidence regarding the involvement of vehicle and the manner in which accident took place. It is submitted that the nature of the injuries on Mayur is incomplete with theory of accident.

10. Per contra, learned counsel Mr. Amol Sawant appearing for the respondents/claimants supports impugned judgments and orders. He would submit that one of the claimants Mayur is a injured person and he has given probable account of the accident. It is further submitted that the respondents/claimants discharged the burden and when onus shifted upon the insurance company, no evidence was produced. It is further contended that the minor discrepancies which are tried to be brought on record by the appellant regarding the size of the vehicle, the manner in which the accident occurred are immaterial and inconsequential. It is submitted that depositions of P.W.1 and P.W.2 corroborate the claim and rightly accepted by the Tribunal. It is further submitted that the theory of the insurance company that the vehicle was planted is misplaced because there is oral evidence, police papers and on preponderance of probabilities, the accident and the liabilities have been established.

11. It is further submitted that the delay in lodging FIR has also been properly explained. The minor defects in the investigation would not vitiate the entitlement of the appellant. It is further pointed out that appellant did not make any complaint regarding any fraud or planting of the offending vehicle. Neither any summons was issued to the driver/owner of the offending vehicle to lead oral evidence in the Court. Lastly, it is submitted that in case of death claim, father of the deceased also died and mother is only claimant. Her condition is very precarious.

12. I have considered rival submissions of the parties. In both the claim petitions, appellant did not lead any oral evidence. The appellant did not prefer any complaint to the police when it entertained suspicion about the fraud or collusion between the claimants and respondent No.3/owner of the vehicle. The theory of planting of the vehicle is tried to be made out from the police papers and the depositions of the witnesses examined by the claimants.

13. The accident took place on 16.04.2013. First Information Report was registered on 19.04.2013 at the instance of Walmik who is also one of the companions with the deceased and the injured/claimant. Deceased Rohit succumbed to the injuries

immediately after the accident and Mayur was badly injured and he was shifted to the hospital. He was continuously under medication. He was required to taken to Ganpati Hospital at Jalgaon and thereafter shifted at Wacche Hospital, Solapur. In given facts and circumstances filing of First Information Report on 19.04.2013 cannot be said to be unnatural. The claimants were under trauma and they as well as their companions were not expected to lodge First Information Report. The objection of the learned counsel for delay in lodging FIR holds no merit.

14. Learned counsel for respondents rightly cited judgment of ***Ravi Vs. Badrinarayan and others ; (2011) 4 Supreme Court Cases 693*** of which the following paragraphs are guiding :

“17. It is well settled that delay in lodging the FIR cannot be a ground to doubt the claimant's case. Knowing the Indian conditions as they are, we cannot expect a common man to first rush to the Police Station immediately after an accident. Human nature and family responsibilities occupy the mind of kith and kin to such an extent that they give more importance to get the victim treated rather than to rush to the Police Station. Under such circumstances, they are not expected to act mechanically with promptitude in lodging the FIR with the Police. Delay in lodging the FIR thus, cannot be the ground to deny justice to the victim.

18. In cases of delay, the courts are required to examine the evidence with a closer scrutiny and in doing so the contents of the FIR should also be scrutinized more carefully. If the court finds that there is no indication of

fabrication or it has not been concocted or engineered to implicate innocent persons then, even if there is a delay in lodging the FIR, the claim case cannot be dismissed merely on that ground. The purpose of lodging the FIR in such type of cases is primarily to intimate the police to initiate investigation of criminal offences.

19. *Lodging of FIR certainly proves factum of accident so that the victim is able to lodge a case for compensation but delay in doing so cannot be the main ground for rejecting the claim petition. In other words, although lodging of FIR is vital in deciding motor accident claim cases, delay in lodging the same should not be treated as fatal for such proceedings, if claimant has been able to demonstrate satisfactory and cogent reasons for it. There could be variety of reasons in genuine cases for delayed lodgment of FIR. Unless kith and kin of the victim are able to regain a certain level of tranquility of mind and are composed to lodge it, even if, there is delay, the same deserves to be condoned. In such circumstances, the authenticity of the FIR assumes much more significance than delay in lodging thereof supported by cogent reasons.”*

15. Respondents have rightly placed reliance on the judgment of ***National Insurance Company Ltd., Khamgaon Vs. Sharda Raju Waghmare and others ; 2017 (2) Mh.L.J. 917***. In that case, two motorcycles collided and the deceased succumbed to the injuries. FIR was lodged after six days. In that context, following observations are made :

“12. *This F.I.R. also discloses that the informant was not an eye witness to the accident. The claimant's witness, CW 1 Sharda, widow of the deceased was not an eye witness*

either. It is natural also as the deceased was admittedly riding the motorcycle all alone. The information of the informant or the claimants witness in such cases would be dependent upon what they are told about the accident by the person who had seen the accident or the Police who registered offences on the basis of the information received about commission of offences and proceeded further in the matter. Such witnesses of the claimants are not expected to have personal information of the accident. Therefore, the burden to prove the occurrence of the accident and the probable cause behind it lying upon the shoulders of the claimants would be of limited nature and it would come to an end the moment the claimants succeed in establishing the facts on the basis of the Police record and other attending circumstances, that a particular vehicle is the offending one and its rider or driver was rash and negligent in using that vehicle. After these facts are established in this way, the burden would shift upon the party which denies the claim.”

16. It is stated in the First Information Report that a goods vehicle is the offending vehicle and the number was not known to the informant. In the statement of Mayur recorded on 21.04.2013, it is stated to be small vehicle bearing registration No.MH-18/AA-2679 which gave dash from behind and which was being driven rashly and negligently by respondent No.3 who happened to be the driver as well as owner. The spot panchnama at Exh.24 also shows that a goods vehicle of unknown number was involved in the accident. Thereafter, my attention is adverted to affidavit in lieu of examination-in-chief

of P.W.2 Mayur who stated that a small goods vehicle gave dash from behind and deceased and himself fell in canal which is 20 feet away from the spot of the incident. I have gone through cross-examination of the said witness.

17. I find that there is a post mortem report, injury certificate of deceased Mayur. Undisputedly, Mayur was hospitalized and under medication at different places. The police papers and the oral evidence brought on record are sufficient to disclose that accident took place on 16.04.2013 and Rohit succumbed to the injuries whereas Mayur sustained serious injuries. I find that on the preponderance of probabilities, the claimants have made out case that their motorcycle was given dash from behind which was the cause for the accident. The claimants have discharged their initial burden and onus shifted on the insurance company. The appellant/insurance company did not lead any oral evidence.

18. Learned counsel for the appellant tried to show the discrepancies from the First Information Report, spot panchnama and statement of Mayur recorded on 21.04.2013. The description of the vehicle varies in these documents. The insurance cover note at Exh.29 shows that the vehicle was make of Tata Motors (*Chhota Hatti*). I am of the considered

view that the nature of the vehicle whether it was a goods vehicle or small goods vehicle would make very little difference. There is absolutely no evidence to corroborate the plea of appellant. The witnesses who deposed before Court did not shatter in the cross-examination. Though initially the registration number and the owner of the offending vehicle was not disclosed that would not make claim of the respondents unreliable.

19. There is every reason to infer that Mayur was hospitalized and he was not in a position to make any statement and the claimants in the death claim might have been under terrible trauma due to the sudden death of their son. Hence, belated disclosure of the offending vehicle is not detrimental to the claim. On the contrary, cogent circumstances are brought on record for not mentioning details of the offending vehicle.

20. It has been brought on record that P.W.2 Mayur was a pillion rider and when dash was given, motorcycle was thrown in the canal which is of 20 feet deep. He is stated to have seen the registration number of the offending vehicle at the time of falling in the ditch. Learned counsel Mr. Mohit Deshmukh has forcefully tried to convince this Court that it

was not possible for anybody who was dashed to have seen the number when the level of the canal is much lower than the level of the road. I find that the submission is attractive but in absence of any evidence being led by the appellant/insurance company, it cannot be said that testimony of Mayur is unreliable. The claims are decided on the preponderance of probabilities and the principles of the criminal jurisdiction that proof beyond reasonable doubt cannot be made applicable. I am not prepared to accept the submissions of learned counsel for the appellant.

21. Reliance is placed on the judgment of ***Anita Sharma and others Vs. New India Assurance Company ; (2021) 1 Supreme Court Cases 71***. The parameters for assessing evidence and the standard of proof are laid down by the Apex Court in following words :

“21. Equally, we are concerned over the failure of the High Court to be cognizant of the fact that strict principles of evidence and standards of proof like in a criminal trial are inapplicable in MACT claim cases. The standard of proof in such like matters is one of preponderance of probabilities, rather than beyond reasonable doubt. One needs to be mindful that the approach and role of courts while examining evidence in accident claim cases ought not to be to find fault with non-examination of some best eyewitnesses, as may happen in a criminal trial; but, instead should be only to analyse the material placed on record by

the parties to ascertain whether the claimant's version is more likely than not true."

22. I am, therefore, fortified in holding that applying the same parameters in the case at hand it has to be held that rash and negligent driving and involvement of the vehicle are proved.

23. Learned counsel Mr. Mohit Deshmukh has also pointed out that the seizure panchnama has not been produced. There are defects in the investigation and ultimately the prosecution ended in the acquittal. The defect in the investigation and acquittal in the criminal case would not be the circumstances to outlaw the theory of the appellant. Appellant/insurance company has not discharged the onus. The discharge summary pointed out by counsel for appellant would not take the case any further. I find no fault in the findings recorded by the Tribunal.

24. Mr. Mohit Deshmukh, learned counsel for the appellant relied on the judgment in case of ***Anil and others Vs. New India Assurance Company ; (2018) 2 Supreme Court Cases 482*** to buttress that conduct of not registering offence promptly after the accident is relevant. In that case, the offence was registered after one month. The person who died was the brother of the owner of the tractor. The proper medical record

was also not made available. Hence, the award of compensation was found to be perverse by the High Court. The judgment of the High Court was confirmed by the Supreme Court. Facts are distinguishable from the case at hand. PW.2 Mayur is the eye witness in the present case. This judgment would not enure to the benefit of the appellant.

25. Further reliance is placed in the matter of ***Kalpana Rajendra Kothari and others Vs. Santosh Arvind Jangam and another ; (2020) 2 Mah.L.J. 561***. In that case also, there was belated registration of First Information Report and the burden was held to be on the claimant to prove the accident including involvement of the vehicle. In that case also, informant was the eye witness, but he did not step into witness box. The facts of the case at hand are different. Eye witness has been examined and the police papers corroborate claimants case in discharging the burden. This judgment will not help the appellant.

26. Further reliance is placed on the judgment of the ***United India Insurance Company Ltd. Vs. Dattarao Madhavrao Dehmukh and others***. In peculiar facts and circumstances of this case it was held that eye witness was not reliable and it was held that there was no cogent evidence to suggest

involvement of the offending vehicle. Again the facts are distinguishable and the judgment will not help the appellant.

27. Learned counsel for the appellant has also tried to advert my attention to the nature of injuries and the manner in which the accident occurred. I find that these submissions are not sufficient to hold that it was a collusive claim and the vehicle was planted. There is sufficient evidence to support the accident and rash and negligent driving by respondent No.3. It is rightly submitted by Mr. Amol Sawant, for respondents that the insurance company could have adduced the evidence of driver/owner of the offending vehicle or could have complained in respect of any fraud or planting of the offending vehicle.

28. It is further submitted that the independent witnesses were available but not examined by the claimants. It cannot be lost sight of that the claimants were not from the same vicinity. After occurrence of the accident, people gathered but even during investigation, no eye witnesses were found. The injured Mayur was the person who can be treated to be eye witness because he was pillion rider on the motorcycle which was dashed by the offending vehicle. The material brought on record is sufficient to make out a case for the appellant on

preponderance of probabilities. Therefore, this submission also cannot be accepted.

29. Respondent placed reliance on judgment of ***Geeta Dubey and others Vs. United India Insurance Co. Ltd and others ; AIR 2025 Supreme Court 386*** to demonstrate as to what would be the standard of proof. In that case, a car was given dash by a truck and the deceased was travelling in the car. FIR did not mention particular of the vehicle or time of the accident. It was stated to be unknown truck that had hit the car. In the above context, following observations are relevant :

“20. Firstly, it is well settled that in claim cases, in case the accident is disputed or the involvement of the vehicle concerned is put in issue, the claimant is only expected to prove the same on a preponderance of probability and not beyond reasonable doubt. [See Sajeena Ikhbal and Others, V Mini Babu George and Others, (2024) SCC OnLine SC 2883]. We also deem it appropriate to extract the following paragraphs from the judgment of this Court in Bimla Devi & Ors. V. Himachal Road Transport Corporation & Ors., (2009) 13 SCC 530. Repelling similar contentions raised challenging the accident and the involvement of the vehicle in question, this Court held as follows :

"14. Some discrepancies in the evidence of the claimant's witnesses might have occurred but the core question before the Tribunal and consequently before the High Court was as to whether the bus in question was involved in the accident or not. For the purpose of determining the said issue, the Court was required to

apply the principle underlying the burden of proof in terms of the provisions of Section 106 of the Evidence Act, 1872 as to whether a dead body wrapped in a blanket had been found at the spot at such an early hour, which was required to be proved by Respondents 2 and 3.

15. In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that 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. For the said purpose, the High Court should have taken into consideration the respective stories set forth by both the parties.

16. The judgment of the High Court to a great extent is based on conjectures and surmises. While holding that the police might have implicated the respondents, no reason has been assigned in support thereof. No material brought on record has been referred to for the said purpose.”

30. In the above matters, Apex Court found that the offending vehicle was found to be involved in the accident. For arriving at those conclusions various factors enumerated in paragraph No.21 were considered. Out of them, last two factors which are as follows would help this Court.

“21. Secondly, applying the test of preponderance of probability, we find that the claimants have established their case that it was the truck bearing registration no. MP-

19-HA-1197 which was involved in the accident with car bearing no. MP-19-CB-5879 wherein the deceased was travelling. We say so for the following reasons:-

a.

b.

c.

d.

e.

f.

h. The insurance company examined Op.W-1 Raj Kumar Kachhwah who admitted that till the date of his deposition, no information or complaint was given to the senior police officers stating that an attempt is being made by the claimants and the owner and driver of the vehicle to wrongly include the vehicle bearing No. MP-19-HA-1197 in the case. The witness also admitted that no steps to cancel the investigation of the police has been taken and no enquiry has been done into the veracity of the claim.

i. The MACT, on appreciation of the overall conspectus, particularly impressed by the fact that the insurance company did not lodge any complaint of collusion and about the involvement of the truck in an illegal manner concluded that it was truck bearing registration no. MP-19-HA-1197 which hit the car bearing no. MP-19-CB-5879 from behind.”

31. In the case at hand also, appellant/insurance company though came with the defence of planting of offending vehicle, did not make any endeavour to register offence.

32. The learned counsel for the appellant did not seriously dispute the material on record regarding quantum arrived at

by the Tribunal. I find that there is no reason to cause any interference in the impugned judgments and orders. I, therefore, pass following order :

ORDER

- (i) First Appeals are dismissed.
- (ii) There shall be no order as to costs.
- (iii) The amount deposited in this Court with accrued interest shall be disbursed to respondents/claimants.
- (iv) Pending civil applications are disposed of accordingly.

(SHAILESH P. BRAHME, J.)

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vmk/-