



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

FIRST APPEAL NO.2581 OF 2023

Pradeep S/o Narayan Shelke,
Age: 41 years, Occu: Agri.,
Through next friend Father
Shri. Narayan S/o Punja Shelke,
Age: 67 years, Occu: Nil,
Both R/o Nandur Shingote,
Tq. Sinnar Dist. Nashik,
at present R/o. Ganesh Nagar,
Sangamner, Tq. Sangamner
Dist. Ahmednagar

**....APPELLANT
(Ori. Claimant)**

VERSUS

1. Abasaheb S/o Hanumant Ware,
Age: 42 years, Occu. Transport,
(Driver & Owner), R/o. Near
Gammat Jammatt Gardern, Pawabaki,
Sangamner, Tq. Sangamner,
Dist. Ahmednagar

2. The Manager,
The New Indian Assurance Company Ltd.,
Swantrya Chowk, Sangamner,
Tq. Sangamner, Dist. Ahmednagar

....RESPONDENTS

....
Mr. K. N. Shermale, Advocate for the Appellant
Mr. P. P. Mandlik, Advocate for Respondent No.2
....

CORAM : SANJAY A. DESHMUKH, J.

DATE : 18.11.2025

JUDGMENT :-

1. This appeal is preferred by the appellant against the judgment and award dated 03.12.2019 passed by the learned Motor Accident Claims Tribunal, Sangamner, in Motor Accident Claim Petition No.143 of 2014.

2. The appellant claimed compensation on account of 80% permanent disability sustained by him in a motor vehicular accident. The claimant's case is that on 13.07.2014 at about 07:30 p.m., while he was proceeding for a meeting at Ganesh Nagar through the Akole bypass link road to Nashik-Pune Road, one Tata ACE vehicle bearing registration No. MH-17-AG-5574, driven in a rash and negligence manner, came from backside and gave dash to him. As a result of which, he sustained injuries to his head and other parts of his body. He was admitted to the hospital, where he was treated and operated, for which he incurred medical expenses of Rs.9,61,736/-. The report of the accident was lodged four days after the incident. The claimant filed a petition for compensation under Section 166 of the Motor Vehicles Act. The claim of the appellant was dismissed by the learned Motor Accident Claim Tribunal, Sangamner, District Ahilyanagar.

3. Learned advocate Mr. K. N. Shermale for the claimant pointed out the pleadings and evidence placed before the learned Tribunal. He submitted that the reasons and findings recorded by the learned Tribunal are neither legal nor correct. He submitted that once the learned Tribunal had permitted the next friend to adduce the evidence, the evidence of the claimant's father would not have been disbelieved. The Tribunal failed to appreciate that F.I.R., spot panchanama, and the judgment of the Trial Court acquitting the driver of the offending vehicle in its proper perspective. As regards to the delay caused in lodging the report, he relied upon the judgments of the Hon'ble Supreme Court

in case of ***Janabai W/o Dinakrrao Ghorpade and Others Vs. M/s. I.C.I.C.I. Lambord Insurance Company Ltd.***, dated 10.08.2022, wherein delay of 20 days caused in lodging the report was held not doubtful. He further relied upon in case of ***ICICI Lombard General Insurance Co. Ltd. Vs. Rajani Sahoo & Ors.***, dated 02.01.2025, in which paragraph 9 reads as under:

“9. *Thus, there can be no dispute with respect to the position that the question regarding negligence which is essential for passing an award in a motor vehicle accident claim should be considered based on the evidence available before the Tribunal.....*”

He also placed reliance in case of ***Geeta Dubey & Ors. Vs. United India Insurance Co. Ltd. & Ors.***, dated 18.12.2024, in which paragraph 17 reads as under:

“17. It is well settled by several pronouncements of this Court that an appeal under Section 173 of the Motor Vehicles Act, is essentially in the nature of the first appeal like Section 96 of the Civil Procedure Code. It has been held by this Court that the High Court is under a legal obligation to decide all issues both on facts and law after appreciating the entire evidence.....”

Learned advocate for the claimant lastly submitted that the adverse inference drawn by the learned Tribunal on the reason that the claimant did not enter into the witness box to depose in support of his case is illegal and unsustainable in the eyes of law. He lastly prayed to allow the appeal and claim petition.

4. Learned advocate Mr. P. P. Mandlik for the respondent-Insurance Company strongly opposed the appeal and denied the material contentions raised by the appellant. It is the defence of the Insurance Company that no such accident took place and that the offending vehicle was not involved in the alleged accident. It is further submitted that there was a breach of policy conditions as the driver of the offending vehicle was not possessing a valid driving licence at the time of accident. He further submitted that though the claimant alleges 80% disability and inability to depose, he had in fact deposed before the Criminal Court in SCC No.879 of 2014, in which the driver of the offending vehicle was acquitted. He pointed out that at that time the claimant had no difficulty in deposing before the learned MACT, Tribunal, which is also observed by it in the paragraph No.7 of the impugned judgment. Therefore, the learned Tribunal has rightly drawn an adverse inference against the claimant that he had made a false claim and deliberately avoided to depose before the Tribunal. He lastly prayed to dismiss the appeal.

5. The learned Member Motor Accident Claims Tribunal, Shrirampur District Ahilyanagar after framing six issues, held that the claimant failed to prove allegedly accident occurred with that particular vehicle. It also held that the Insurance Company is not liable to pay compensation.

6. Perused the R & P and impugned judgment. The following point emerged for consideration:

(i) Does claimant prove that alleged accident took place with the vehicle i.e., No.MH-17-AG-5574 ?

7. On perusal of the oral evidence of the claimant's father and the claimant's own deposition before the Criminal Court in Summary Criminal Case No.879 of 2014, it is crystal clear that the claimant was able to attend the Tribunal for deposing. However, the claimant has not established that his health was subsequently deteriorated to such an extent that he was unable to depose in the present proceedings by examining treating doctor. Even assuming that he was unable to attend the Court for giving evidence, no application was forwarded for appointment of a Court Commissioner to record his evidence.

8. There was a delay of four days in lodging the F.I.R., and considering the fact that the claimant is an advocate and his father was a Police official who deposed on his behalf, the claimant's case becomes unbelievable. Even on the preponderance of entire evidence of the claimant the occurrence of vehicular accident becomes unbelievable and unacceptable.

9. Upon re-appreciation of the entire evidence, this Court is of the view that an adverse inference can be drawn against the claimant as he did not adduce the evidence as per Section 114 illustrations (g) of the Indian Evidence Act, 1872, now Section 119 illustrations (g) of the Bharatiya Saksha Adhiniyam, 2023. Thus, the evidence of the claimant's father is not acceptable.

10. The claimant failed to prove that he sustained alleged permanent disability in the said vehicular accident. The reasons and findings of the learned Tribunal are found legal and correct and no interference is warranted in it. No interference is warranted in the impugned judgment and award. Hence, point No.1 is answered in the negative. The appeal is dismissed.

11. Pending Civil Applications, if any, stand disposed of.

[SANJAY A. DESHMUKH, J.]

HRJadhav