



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 22 OF 2025

ICICI Lombard General Insurance Co. Ltd.,
through it's Authorized Signatory,
2nd Floor, Adventure Tower,
Opp. Oberai Hotel,
Savedi Road, Ahmednagar
Dist. Ahmednagar.

ICICI Lombard General Insurance Company Ltd.,
Through its Authorized Signatory/Senior Manager,
01st Floor, Plot No. 233 and 234,
Shree Swami Samarth Shrushti,
above Karnatak Bank, Samarth Nagar,
Near Varad Ganesh Mandir, Aurangabad.

.. APPELLANT
(Org. Respondent No.1)

VERSUS

1. Savita w/o. Shrikisan Ghadge,
Age 39 years, Occ. Household,
2. Nikita d/o. Shikisan Ghadge,
Age 19 years, Occ. Education, Minor,
3. Pawan S/o. Shrikisan Ghadge,
Age 17 years, Occ. Education, Minor,

(Being minor u/g. Of his mother
i.e. respondent No.1)
4. Sow. Alusha W/o. Uttam Ghadge,
Age 64 years, Occ. Household,
5. Uttam S/o. Limbaji Ghadge,
Age 62 years, Occ. Nil,
All R/o. Satephal, Tq. Kaij, Dist. Beed.
6. Azeem Majeed Shaikh,
Age 42 years, Occ. Owner,
R/o. Miyanbhai Colony, Ambejogai

Tq. Ambejogai, Dist. Beed.

7. Maqsued Sayyad Munshi Sayyed,
Age 45 years, Occ. Driver,
R/o. Patoda, Tq. Ambajogai, Dist. Beed.

.. RESPONDENTS

Mr. M.R. Deshmukh, Advocate for appellant
Mr. S.S. Dargad, Advocate for respondent Nos. 1 to 5.

CORAM : S.G. CHAPALGAONKAR, J.

**RESERVED ON : 24TH MARCH, 2025.
PRONOUNCED ON : 9th APRIL, 2025.**

JUDGMENT :-

1. The appellant/respondent No.1 impugns judgment and award dated 14.7.2023 passed by Motor Accidents Claim Tribunal, Beed in M.A.C.P No. 291 of 2019 by which the claim for compensation of Rs. 27,09,142/- has been allowed directing the owners and insurer to pay said amount to respondent Nos. 1 to 5 (original claimants).

(For sake of convenience, parties are referred by their original status in the claim petition.)

2. Respondent Nos. 1 to 5 instituted M.A.C.P No. 291 of 2019 under Section 166 of the Motor Vehicles Act for grant of compensation towards accidental death of late Shrikisan Uttam Ghadge. It is contention of claimants that on 19.05.2019, late Shrikisan was driving a Tipper bearing Registration No. MH-48/T-6264 from Ambejogai towards Kallam. Another tipper, bearing Registration No. MH44/7676 came from opposite direction in high and excessive speed, gave forcible dash to the Tipper of Shrikisan, due to which, he suffered fatal injuries and breathed his last on 2.6.2019. According to claimants, they were dependent on income of late Shrikishan, who was earning Rs. 14,000/- p.m. being employed as

driver on the Tipper. Apart from that, he was holding agricultural land and adding income to the family.

3. The claim was contested by owner, driver and insurer of tipper bearing Registration No. MH-44/7676 on the ground that late Shrikisan himself was author of accident. Immediately after incident, the offence was registered against him and finally he has been charge sheeted for the offence of rash and negligent driving. The claim as to loss of dependency income of deceased was also denied. The claimants, in order to prove negligence on the part of respondent No.3, examined 3 eye witnesses of the incident, apart from CW-5 Pandurang, employee of deceased Shrikisan.

4. The Tribunal, after evaluation of rival contentions and evidence concluded that respondent No.3 was solely responsible for the accident. Eventually, assessed compensation to the tune of Rs. 27,09,142/-.

5. Mr. M.R. Deshmukh, learned advocate for the appellant-Insurance company vehemently submits that the thrust of claimants to bring home the accident and involvement of vehicle is on the FIR/ Spot Panchanama and other police papers, which are admitted in evidence by consent of parties. The contents of documents are required to be read as a whole in the light of exposition of law by Supreme Court of India in the matter of ***Oriental Insurance Company vs. Pramlal Shukla reported in 2007 AIR SCW 3591.***

6. He would further submit that all the three so-called eye witnesses are unreliable and got up witnesses. Their presence on the spot of the accident is liable to be discarded. According to Mr. Deshmukh, this is a case of self negligence on the part of deceased. The

claim petition ought to have been dismissed in absence of proof of negligence mandated to maintain the claim under Section 166 of M.V. Act. In support of his contentions, he relies upon judgment of this court in the matter of *Surinder Kumar Arora and another Vs. Manoj Bisla and others reported in (2012) 4 SCC 552*.

7. Per contra, Mr. S.S. Dargad, learned advocate for respondent Nos. 1 to 5 supports the judgment and award contending that claimants have proved negligence of respondent No.3 on the basis of evidence of 3 eye witnesses examined before the Tribunal. Registration of offence against deceased would be of no consequence in the facts of the present case.

8. I have considered the submissions advanced by learned advocates for respective parties. Perused the record and proceeding. Admittedly, there is hardly any dispute as regards to the accident involving two vehicles in the accident. Late Shrikishan was driving the Tipper bearing registration No. MH-48/T-6264 and proceeding from Ambejogai towards Kallamb. Another tipper bearing registration No. MH-44/7676 was proceeding from Kallam towards Ambejogai and it was driven by respondent No.3. There was head on collision between the vehicles. On complaint given by respondent No.3 offence was registered against late Srikishan. Spot panchanama was drawn by police. The certified copy of FIR and spot panchanama are placed at Exh.22 and 23, respectively, on record of the Tribunal. There can not be dispute that in motor accident claims, the Tribunal is required to adopt summary procedure. Pre-ponderance of probability is the rule of appreciation of evidence. The investigation papers can be admitted in evidence without formal proof thereof and contents thereof can be read in evidence. To that extent, reliance of Mr. Deshmukh on proposition of law espoused in the case of *Oriental Insurance Company Limited vs. Premalata Shukla*

and others (supra) and in the case of Surinder Kumar Arora and another Vs. Manoj Bisla and others (supra), deserves to be accepted. Therefore, this court will presume that FIR and panchanama have been duly admitted in evidence and contents thereof can be appreciated without formal proof thereof.

9. Perusal of FIR shows that on the basis of information given by respondent No.3 same has been registered on 21.5.2019, wherein, he alleged that while he was driving Tipper bearing registration No. MH-44/7676 from Kallam towards Ambejogai, he saw tipper bearing registration No. MH-48/T-6264 coming from opposite direction. He applied breaks and took his vehicle to side of road but head on collision occurred between vehicles. He sustained injuries and thereafter he was taken to the hospital. The contents of FIR merely suggest that there was head on collision between two vehicles. Although he alleges rash and negligent driving against deceased and supplement his innocence by stating that he took his vehicle by the side of road, spot panchanama depicts spot of accident at the center line of the road. Pertinently, respondent No.3 did not step into witness box, nor appellant/insurer made any attempt to issue witness summons to him and explain manner of accident. The respondents have not examined the Investigation Officer to justify registration of offence against deceased. Even final report of investigation is not brought on record. It is, therefore, evident that on basis of police papers, inference of sole negligence on the part of deceased cannot be drawn.

10. Per contra, claimants have recorded evidence of three eye witnesses of incident. It is true that during cross examination, those witnesses admit that their statement was not recorded during police investigation nor there is any material to show that they were eye witnesses. Nothing is brought on record to show as to how claimants

have got knowledge about all these three eye witnesses. Unfortunately, there is no searching in cross examination on aforesaid aspects of the matter.

11. The Tribunal relied upon evidence of the eye witnesses and recorded a finding as regards sole negligence against respondent No.3. Even otherwise, if evidence of all the three eye witnesses is ignored, from contents of FIR and spot panchanama inference about negligence of respondent No.3 can be drawn. Respondent no.3 was only witness who could have thrown light on the actual manner of accident. He failed to enter in the witness box. Even appellant/insurer failed to bring him before the Tribunal as their witness. The best possible evidence has been suppressed/withheld by respondents. Therefore, adverse inference needs to be drawn to hold that accident occurred due to sole negligence on the part of respondent No.3.

12. It is trite that mere head on collision of the vehicles does not raise presumption of contributory negligence. In present case, although accident appears to be result of head on collision, and even it is on the center line, the circumstances leading to the accident ought to have been brought on record by respondents since deceased is not available to explain the manner of accident. Therefore, on the basis of mere registration of offence, no conclusion can be drawn to hold negligence or contributory negligence on the part of deceased.

13. Reference can be given to observations of Supreme Court in case of ***Rajwati alias Rajju & others vs. United India Insurance Company Ltd. Reported in (2023) AIR (SC) Civil 622***, which read thus :-

*“19. It is well settled that **Motor Vehicles Act, 1988** is a beneficial piece of legislation and as such, while dealing with compensation cases, once the actual occurrence of the accident has*

been established, the Tribunal's role would be to award just and fair compensation. As held by this Court in [Sunita](#) (Supra) and [Kusum Lata](#) (Supra), strict rules of evidence as applicable in a criminal trial, are not applicable in motor accident compensation cases, i.e., to say, "the standard of proof to be borne in mind must be of preponderance of probability and not the strict standard of proof beyond all reasonable doubt which is followed in criminal cases".

14. The Tribunal has taken a possible view of the matter. As such, this court do not find any reason to cause interference in the finding of fact recorded by Tribunal. In the result, first appeal stands dismissed.

[S.G. CHAPALGAONKAR, J]

grt/-