



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1321 OF 2021
WITH
CIVIL APPLICATION NO.7104 OF 2019
WITH
CIVIL APPLICATION NO.5348 OF 2021

New India Insurance Company Ltd. }
Through It's Branch Manager, }
Branch Office, Sathe Chowk, }
Jalna Raod, Beed, }
Tq. & Dist. Beed. }

Through its Divisional Manager/ }
Authorized Signatory, }
Mahesh Auto Compound, }
Adalat Road, Aurangabad, }
Dist. Aurangabad. }

... Appellant

(Original Respondent No.3)

Versus

1. Sunanda W/o. Subhash Gaikwad, }
Age : 27 years, Occu. : Household, }
2. Anisha D/o. Subhash Gaikwad, }
Age : 11 years, Occu. : Education, }
3. Atish S/o. Subhash Gaikwad, }
Age : 8 years, Occu. : Education, }
4. Akansha D/o. Subhash Gaikwad, }
Age : 6 years, Occu. : Education, }
- (Respondent Nos.2 to 4 being Minor }
U/g of their mother i.e. respondent No.1) }
5. Suryabhan S/o. Kanakappa Gaikwad, }
Age : 59 years, Occu. : Agriculture, }
6. Laxmibai W/o. Suryabhan Gaikwad }
Age : 52 years, Occu. : Household, }

All R/o. Imampur Road, Barshi Naka, }
Beed, Dist. Beed. }

7. Shaikh Sattar S/o. Shaikh Sadaroddin, }
Age : Major, Occu. : Owner, }
R/o. Kazi Nagar, Balepeer, }
Nagar Road, Beed, }
Tq. & Dist. Beed. }

8. Shaikh Taher S/o. Shaikh Munna, }
Age : Major, Occu. : Driver, }
R/o. Mohammadiya Colony, Beed, } (.... Deleted)
Tq. & Dist. Beed. }

... Respondents.

(Resp.Nos.1 to 6 - Orig. claimants
Respo. Nos. 7 & 8 - Orig. Resp. Nos.1 & 2)

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Mr. S. R. Bobade, Advocate for Appellant.

Mr. Santosh S. Jadhavar, Advocate for Respondent Nos.1 to 6 in
appeal and for Applicants in CA/5348/2021.

Mr. A. B. Hawale, Advocate for Respondent No.7 (**Absent**).

Respondent No.8 deleted.

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CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 11 JUNE 2025

PRONOUNCED ON : 23 JUNE 2025

JUDGMENT :

1. Appellant - Insurance Company has hereby, assailed the impugned judgment and order dated 02.01.2019 passed by learned Motor Accident Claims Tribunal, Beed in M.A.C.P. No. 21 of 2018 by invoking provisions under section 173 of the Motor Vehicles Act, 1988.

FACTS GIVING RISE TO THE CLAIM FOR TRIAL ARE AS UNDER

2. Deceased, husband of claimant no.1, father of claimant nos.2 to 4 and son of claimant Nos. 5 and 6, was proceeding on his motorcycle from Beed towards Parali i.e. on his correct side of the road. Around 6:30 to 7:00 p.m, when he reached Mainda Phata, a Toyota Qualis Jeep bearing No. MH-26-K-0777 coming from opposite direction i.e. from Parali towards Beed, was being driven in rash and negligent manner and gave dash to the motorcycle of deceased, causing fatal injuries and ultimately resulting into death. Hence, on report being lodged, initially crime was registered bearing Crime No. 283 of 2017 against respondents for offence punishable under sections 304A, 279 and 338 of Indian Penal Code. On completion of investigation, charge sheet was filed, heirs of deceased Subhash set up motorcycle accident claim bearing M.A.C.P. No. 21 of 2018 claiming compensation to the tune of Rs.44,50,000/-.

3. Learned Motor Accident Claims Tribunal issued notice on respondents, who were impleaded including present appellant Insurance Company as respondent no.3 to answer the claim. Evidence was permitted to be adduced, which was analyzed and after hearing each of the side, learned Tribunal partly allowed the

claim directing respondent nos.1 to 3 to jointly and severally pay the awarded compensation.

Aggrieved by the same, Insurance Company respondent No.3 has come up in appeal.

4. Learned counsel for Insurance Company would point out the factual background of the case, giving rise to accident claim bearing M.A.C.P. No. 21 of 2018. Occurrence of motor vehicle accident and death of Subhash a motorcycle rider, is not disputed. However, in appeal Insurance Company has taken exception to the impugned judgment and order of Tribunal on following grounds :-

Firstly, there was contributory negligence also on the part of deceased. *Secondly*, no convincing evidence that the offending vehicle Toyota Qualis jeep which was insured with respondent no.3 to be involved or responsible for the accident or mishap as report was lodged about dash being given by unknown vehicle. *Thirdly*, claimants being already beneficiaries under Workmen Compensation Act, learned Tribunal ought not to have awarded compensation at all in the second claim. Lastly, learned counsel would submit that, learned Tribunal when having held that there was contributory negligence, ought to have fixed 50% liability on deceased also while computing the compensation

entitled by the claimants. For all above reasons, impugned judgment is sought to be assailed and set aside.

5. Per contra, learned counsel for claimants would support the findings and conclusion drawn by learned Motor Accident Claims Tribunal by submitting that all factors and essential requirements are scrupulously dealt and decided by the learned trial court. Arguments advanced by each of the side are correctly appreciated and judgment being evenly balanced, it is his submission that, the same may not be disturbed or interfered with.

6. Heard each of the side. Perused the record made available before the Tribunal and re-appreciated and reanalyzed the evidence. Before the Tribunal following issues came to be settled and drawn :-

“(1) Do the claimants prove that on 04.11.2017 while deceased Subhash Suryabhan Gaikwad was proceeding to his village Sonna Khota from Beed on motorcycle No. MH-23-AQ-7313 by Beed – Parali Road, at about 6:30 to 7.00 p.m. a vehicle accident took place at Mainda Phata in the vicinity of village Mainda due to rash and negligent driving of driver of Toyota Qualis Jeep no. MH-26-K-0777 wherein he died of injuries sustained in the accident.

(2) Do respondent no.1 and 2 prove that the accident took place due to wrong of the deceased ?

(3) Does respondent no.3 proves that the accident took place due to

contributory negligence of the deceased?

(4) *Does respondent No.3 further proves that the driver of Toyota Qualis Jeep No. MH-26/K-0777 was not holding valid and effective driving licence at the time of accident, therefore, the insured has breached the terms and condition of insurance policy ?*

(5) *Does respondent No.3 further proves that the petition is bad for non-rejoinder of necessary party i.e. owner and insurer of Motorcycle No. MH-23/AQ-7313?*

(6) *Whether the claimants are entitled for compensation ? If yes, what should be the quantum and from whom?*

(7) *What order and award ?”*

7. In support of claim petition, though wife of deceased Subhash PW1 namely Sunanda gave her evidence at Exh.17, admittedly she is not an eye witness to the alleged accident. Therefore, on the aspect of accident, rash and negligent driving, her evidence is of no avail. Report of occurrence seems to be at the instance of Laxman Gaikwad on 05.11.2017, but apparently from his statement it is clear that, he has received telephonic information about deceased Subhash meeting with an accident and he consequently reaching there i.e. after the accident. He merely undertook the exercise of shifting his cousin to hospital. Thus, even his evidence is formal in nature on above aspect.

8. Claimants have adduced evidence of C.W.2 a Contractor / builder, his evidence is on the point of employment and earnings of deceased. Main witness on behalf of claimant is Dnyaneshwar Rambhau Mitkar (C.W.3) and his evidence is at Exh.39 and its substance is that on 04.11.2017, he had been to Wadwani for his personal work and while returning back on motorcycle over Parali to Beed road, around 6:30 to 7:00 p.m., he claimed to have seen a motorcycle proceeding ahead with him in the vicinity of field of Rajabhau Ghumare and also claims to have seen Qualis vehicle coming from opposite direction in excessive high speed, its driver losing control and going to the wrong side and giving dash to the motorcycle. He stated on affidavit about Qualis vehicle being halted at some distance and further according to him, in the headlight of his motorcycle when he saw the rider of the motorcycle, he realized injured to be his cousin. He also stated on affidavit that, he questioned the Driver and he gave his name as Shaikh Taher Shaikh Mannan and he has also seen vehicle number of the Qualis Jeep as MH-26-K-0777.

9. Above witness is subjected to cross. In initial cross, there is questioning on the point of relationship with deceased and he is asked on which directions he was proceeding, whether there was traffic on the road, whether at the time of accident it was dark

or not. Suggestion given that deceased himself went and dashed on the jeep denied by this witness. Then he is questioned whether he made telephonic call to police and he answered that he did not, but made phone call to father-in-law of Subhash. Rest all suggestions are denied.

10. The tenor of above cross examination clearly shows that, presence of this witness is not seriously challenged. The answers given by this witness does not render his evidence doubtful or about he being not present at the scene of occurrence. No doubt, he was not diligent in himself reporting the occurrence to police, in spite of being eye witness, but that itself would not be a ground to raise suspicion over his belated statement or affidavit. Answers given by him in very cross, probabalise his presence at the spot and as such there is no reason to doubt whether he is an eye witness or not. Therefore, the arguments raised before this court on this count, has no merit.

11. Much emphasize is laid by the learned counsel for appellant on the aspect of initial report to police about accident to be by unknown vehicle. Statement of Laxman Gaikwad informant is apparently about accident by unknown vehicle. However, evidence of witness Dnyaneshwar Mitkar for above discussed

reasons, cannot be overlooked. On affidavit he has stated that on the next day of accident i.e. on 05.11.2017 after the last rituals he claims to have passed information about the offending vehicle to father-in-law of deceased namely Suryabhan Gaikwad and others. Therefore, on the strength of available material, there is no reason to doubt that offending vehicle Qualis Jeep bearing No.MH-26-K-0777 was involved in the accident.

12. On careful study of spot panchanama Exh.19, the directions in which both vehicles were proceeding and factual situation can be visualized. Learned Tribunal has already held that claimants failed to prove that driver of the offending vehicle Qualis was wholly and solely responsible. Reasons to record such findings are reflected in paragraph nos. 12 and 13. On analyzing the above observations and comparing its contents of the spot panchanama, no contrary view than the one taken by Tribunal would emerge. It is not unreasonable to expect a driver of four wheeler vehicle to be more alert and diligent towards the traffic on the road. However, even deceased seems to be some extent responsible for not carefully riding the motorcycle. There is damage to both vehicles and as such there is reason to hold that even motorcycle rider is partly responsible. In such situation and in absence of any material to show that Qualis vehicle left its correct side and came

completely the wrong side and gave dash, it is unsafe to fix entire responsibly on four wheeler vehicle. Therefore, there is reason to hold that, there is contributory negligence on the part of deceased also but not to the extent to which driver of Qualis vehicle is responsible. This Court has noticed that learned Tribunal has fixed 70% and 30% responsibility respectively. There is nothing unusual in ascribing such percentage of negligence. Learned counsel for appellant would strenuously submits that, Tribunal ought to have held 50% of liability on deceased also. However, there is no material to hold that both, driver of the Qualis vehicle and deceased to be equally responsible. In view of peculiar facts and circumstances of the cases, no fault can be found on the part of the Tribunal for holding Qualis vehicle responsible to the extent of 70% and remaining negligence to deceased.

13. Another ground pressed into service by learned counsel for appellant is that claimants are already beneficiaries of compensation under Workmen's Compensation Act and as such according to him, claimants are precluded from securing dual benefits. The Hon'ble Apex Court in the case of ***Ramchandra v. Regional Manager United India Insurance Co. Ltd.***, reported in ***AIR 2013 SC 2561***, while deciding Civil Application No.8725 of 2012, the Hon'ble Apex Court held that, the claimants are entitled for the

amount of compensation even if they are previously beneficiaries of some amount under Workmen's Compensation Act. For ready reference the observations, which are relevant and reflected in paragraph no.20 of the judgment is reproduced as under :

“20. The claimant / Appellant is surely entitled to the amount of compensation over and above the Workmen's Compensation Act in view of the ratio of the decisions referred to hereinbefore. The rider no doubt is that the statutory liability cannot be more than what is required under the statute under Section 95 of the Motor Vehicles Act which cannot bind the parties or prohibit them from contracting or creating unlimited or higher liability to cover wider risk and the insured is bound by the terms of the contract specified in the policy in regard to unlimited or higher liability as the case may be. Thus, it is although correct that limited statutory liability cannot be extended to make it unlimited or higher, it is also manifestly clear that insofar as the entitlement of the claimant/deceased cleaner of the vehicle is concerned, the same cannot be restricted to the compensation under the Workmen's Compensation Act and is entitled to compensation even under the Motor Vehicles Act which will depend upon the terms and conditions of the policy of insurance.”

Having above point being settled by the Hon'ble Apex Court and here except admission in cross, there is no other distinct material regarding how much amount claimants have received under so called scheme of Workmen's Compensation, it would be unjust to disentitle them from receiving any compensation under Motor Vehicles Act.

14. Perused the judgment impugned herein. Issues are framed as are arising on the basis of contentions raised by the parties. Available evidence is appreciated in the manner required under law. No fault can be found in appreciation of the same. Hence, there being no infirmity or patent perversity, this court does not find reasons to interfere. Hence, the following order is passed :-

ORDER

(i) The appeal stands dismissed.

(ii) In view of dismissal of the appeal itself, Civil Application No. 5348 of 2021 filed by the original claimants for withdrawal of amount is allowed in terms of prayer clause "B".

(ii) Civil Application No.7104 of 2019 also stands disposed off.

(ABHAY S. WAGHWASE, J.)