



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

FIRST APPEAL NO. 1452 OF 2024

**THE NEW INDIA ASSURANCE COMPANY LTD THROUGH ITS
DIVISIONAL MANAGER**

VERSUS

LAXMIBAI BHANUDAS KAKDE AND OTHERS

...

Mr. Mohit R. Deshmukh, Advocate for Appellant.

Mr. Pramod C. Mayure, Advocate for Respondent Nos.1 and 5.

...

WITH

CIVIL APPLICATION NO. 6254 OF 2024

IN FA/1452/2024

WITH

CIVIL APPLICATION NO. 13727 OF 2024

IN FA/1452/2024

WITH

CIVIL APPLICATION NO. 13725 OF 2024

IN FA/1452/2024

CORAM : S. G. CHAPALGAONKAR, J.

DATED : 11th MARCH, 2025.

P.C.:-

1. The appellant/insurer aggrieved by judgment and award dated 06.12.2023 passed by Motor Accident Claims Tribunal, Aurangabad in M.A.C.P. No.628/2021 filed this Appeal under Section 173 of the Motor Vehicles Act.

2. On 28.02.2021 late Bhanudas Narayan Kakde was dashed by vehicle while he was walking from Wangi Phata to Bharadi. Initially, MLC was registered. Thereafter, spot panchanama was drawn. On 02.03.2021, claimant no.1-Laxmibai lodged FIR contending that white color jeep bearing Registration No.MH-20-3063 gave dash to deceased. Eventually, C.R. No.27/2021 was registered against its driver with Police Station Sillod (Rural).

During the course of investigation, vehicle was seized having Registration No.MH-17-AJ-3063.

3. The claimants/dependents of deceased lodged M.A.C.P. No.628/2021 before Motor Accident Claims Tribunal, Aurangabad claiming compensation under Section 166 of the Motor Vehicles Act.

4. The Tribunal after evaluation of evidence, allowed claim petition directing respondent nos.1 to 3 to jointly and severally pay compensation of Rs.16,70,000/- to claimants alongwith interest @ 6% per annum.

5. The appellant/insurer filed this Appeal firstly on the ground of non-involvement of insured vehicle and secondly, on quantum of compensation.

6. Mr. Deshmukh, learned Advocate appearing for the appellants submits that documents on record would depict that accident occurred due to involvement of unknown vehicle. He would invite attention of this Court to MLC, spot panchanama and inquest panchanama, which notes that unknown vehicle had dashed to deceased. He would submit that after three days of accident, FIR has been lodged, wherein incomplete description of vehicle was given suggesting that white color jeep bearing Registration No.MH-20-3063 was an offending vehicle. Conversely, in the month of May-2021 insured vehicle bearing Registration No. MH-17-AJ-3063 has been introduced as offending vehicle. He would, therefore, urge that claimants have failed to establish their case regarding accident involving insured vehicle. He would further urge that Tribunal has erroneously considered notional

income of deceased @ Rs.9000/- per month giving reference to Notification of minimum wages. According to Mr. Deshmukh, it cannot be applied in facts and circumstances of present case. According to him, assessment of compensation is exponential, hence, award needs to be modified.

7. Per contra, Mr. Mayure, learned Advocate appearing for the respondents/claimants supports award. He would submit that initially unknown vehicle flee away after giving dash to deceased. The police machinery during course of investigation found vehicle involved in the accident. The Investigating Officer examined as witness before Tribunal, who has given detail depicting involvement of insured vehicle.

8. Having considered submissions advanced, first issue raised before this Court is as to involvement of insured vehicle. It is true that claimants have initial burden to bring on record particular vehicle was involved in accident. However, such burden can be discharged through police investigation papers and then onus would shift upon respondents. The claimants in their endeavour to bring on record involvement of insured vehicle relied upon copy of charge-sheet and evidence of Investigating Officer. It is true that in FIR claimant no.1 has stated that white color jeep bearing Registration No.MH-20-3063 was involved and later on, during course of investigation vehicle bearing Registration No. MH-17-AJ-3063 has been revealed as offending vehicle. The Investigating Officer has clarified this minor discrepancy.

9. The registration particulars placed on record depict that vehicle bearing Registration No.MH-20-3063 is a two wheeler and not four wheeler. The particulars are placed on record at Exhibit-

34. The concerned RTO has forwarded information to the Court as to vehicle bearing Registration No.MH-20-3063. It is a two-wheeler make/model Bajaj M-80. It is, therefore, evident that the FIR was lodged based on preliminary information received from witnesses, which suggests that vehicle was a white-colored jeep with a registration number from Maharashtra passing, ending with 3063 digit.

10. The investigation papers are, therefore, sufficient to bring home involvement of insured jeep bearing Registration No.MH-17-AJ-3063. The respondents failed to bring on record converse evidence to dislodge contents of police investigation. The cross-examination of Investigating Officer does not give any advantage to respondents to canvass their defence. The Supreme Court of India in case of *Bimla Devi Vs. Himachal Road Transport Corporation and Others*¹ has laid down that in motor accident claims, claimants are required to prove case on the basis of preponderance of probability. The evidence beyond doubt is not required. Even, police papers itself can be relied upon to accept case as to accident involving particular vehicle or as to the negligence of driver of insured vehicle. In present case, claimants have brought sufficient material in consonance with their pleadings in claim petition and established their case on touchstone of preponderance of probability.

11. Mr. Deshmukh would further submit that Tribunal has erroneously assessed compensation taking notional income @ Rs.9000/- per month, it cannot be countenanced. The Tribunal while dealing with aforesaid issue, relied upon exposition of law by Supreme Court of India in case of *Manusha Sreekumar & Ors.*

¹ 2009 (13) SCC 530.

Vs. The United India Insurance Co. Ltd.², wherein minimum wages notified by Government is approved as basis to determine notional income of deceased. Taking into such analogy and evidence suggesting that deceased was semi-skilled worker as mason, the Tribunal is justified in assessing compensation by taking notional income @ Rs.9000/- per month. In result, no fault can be found in impugned award of Tribunal. There is no merit in Appeal and same stands dismissed.

12. The amount deposited by appellant/insurer be disbursed to claimants as per award passed by Tribunal.

13. In view of dismissal of First Appeal, pending Civil Applications stand disposed of accordingly.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/March-2025