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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 495 OF 2019
WITH
CIVIL APPLICATION NO. 8951 OF 2018
(for stay)
IN FIRST APPEAL NO. 495 OF 2019

The New India Assurance Company Ltd.,
D.O. No.1 Adalat Road, Aurangabad,
Through its Authorized Signatory,
Ahyut S/o. Purushottam Kulkarni,
Age: 56 years, Occu.: Service,
R/o. Aurangabad.

... Appellant
(Orig. Resp. No.3)

Versus

1. Suwarna W/o Amol Sole,
Age: 28 years, Occu.: Household,
R/o. Pokhari, Tq. Ashti, Dist. Beed
2. Shrawani D/o. Amol Sole,
Age: 7 years, Occu.: Education,
Minor U/G her mother present
respondent no.1,
R/o. Pokhari, Tq. Ashti, Dist. Beed.
3. Janabai W/o. Mohan Sole,
Age: 56 years, Occu.: Household,
R/o. Pokhari, Tq. Ashti, Dist. Beed.
4. Mohan S/o. Narayan Sole,
Age: 60 years, Occu.: Nil,
R/o. Pokhari, Tq. Ashti, Dist. Beed.

... Respondents
(orig. Claimants)

(Respondent No.4 deleted as per Court's order
dated 19.07.2024)

5. Hanumant S/o Chandrabhan Bhasat,
Age: 50 years, Occu.: Business,
Owner of the offending vehicle,
R/o. Jamkhed, Karmala Road, Rajnagar,
HSH, Opp. Bukule Complex,
Tq. Jamkhed, Dist. Ahmednagar.

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6. Jamil Noor Mohammad Pathan,
 Age: 45 years, Occu.: Driver
 R/o: Jamkhed, Karmala Road,
 Rajnagar, HSH, Opp. Bukule Complex,
 Tq. Jamkhed, Dist. Ahmednagar. ... Respondents
 (Ori. Respdt. nos. 1 and 2)

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Mr. M. M. Ambhore, Advocate for the Appellant.
 Mr. S. B. Choudhari, Advocate for Respondent Nos. 1 to 3.
 Mr. R. G. Hange, Advocate for Respondent Nos. 5 and 6.

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**WITH
 FIRST APPEAL NO. 1892 OF 2018
 WITH
 CIVIL APPLICATION NO. 11786 OF 2018
 (for withdrawal of amount)
 IN FIRST APPEAL NO. 495 OF 2019**

1. Suwarna w/o Amol Sole,
 Age : 28 years, Occu. Household,
 R/o Pokhari, Taluka Ashti,
 District Beed.
2. Shrawani d/o Amol Sole,
 Age : 07 years, Occu. Education.
 [Applicant No.2 is minor u/g of
 Applicant No.1 her real mother]
3. Janabai w/o Mohan Sole,
 Age : 55 years, Occu. Household,
 R/o Pokhari, Taluka Ashti,
 District Beed.
4. Mohan s/o Narayan Sole
 Age : 60, Occu. Nil,
 R/o Pokhari, Tal. Ashti,
 Dist Beed.
 [Appellant No.4 deleted as per
 Court's order dated 28.02.2025] ... Petitioners

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Versus

1. Hanumant s/o Chandrabhan Bhasat,
Age : Major, Occu : Business,
R/o Pathrud, Taluka Bhoom,
District Osmanabad.
2. Jamil s/o Noormohammad Pathan,
Age : Major, Occu : Driver,
R/o Jamkhed – Karmala Road,
Rajnagar, H.S.H., Opp. Bukule Complex,
Taluka Jamkhed, District Ahmednagar.
3. The Branch Manager,
The New India Assurance Company Ltd.
Sathe Chowk, Jalna Road, Beed,
District Beed.

... Respondents

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Advocate for the Applicants : Mr. S. B. Choudhari
 Advocate for Respondent Nos. 1 and 2 : Mr. R. G. Hange
 Advocate for Respondent No.3 : Mr. M. M. Ambhore

.....

**WITH
 FIRST APPEAL NO.2075 OF 2018
 WITH
 CIVIL APPLICATION NO. 8964 OF 2018 (for stay)
 IN FIRST APPEAL NO.2075 OF 2018**

The New India Assurance Company Ltd.,
 D.O. No.1 Adalat Road, Aurangabad,
 Through its Authorized Signatory,
 Ahut S/o. Purushottam Kulkarni,
 Age: 56 years, Occu.: Service,
 R/o. Aurangabad.

... Appellant
 (Orig. Resp. No.3)

Versus

1. Supria W/o. Sharad Sole,
Age: 30 years, Occu.: Household,
R/o. Pokhari, Tq. Ashti, Dist. Beed

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2. Samrudhi D/o Sharad Sole,
Age: 7 years, Occu.: Education,
Minor U/G her mother present
respondent no.1,
R/o. Pokhari, Tq. Ashti, Dist. Beed.
3. Mandabai W/o. Santram Sole,
Age: 56 years, Occu.: Household,
R/o. Pokhari, Tq. Ashti, Dist. Beed.
4. Santram S/o. Bhaurao Sole,
Age: 60 years, Occu.: Agril.
R/o. Pokhari, Tq. Ashti, Dist. Beed. ... Respondents
(Orig. Claimants)
5. Hanumant S/o Chandrabhan Bhasat,
Age: 50 years, Occu.: Business,
Owner of the offending vehicle,
R/o. Jamkhed, Karmala Road, Rajnagar,
HSH, Opp. Bukule Complex,
Tq. Jamkhed, Dist. Ahmednagar.
6. Jamil Noor Mohammad Pathan,
Age: 45 years, Occu.: Driver
R/o: Jamkhed, Karmala Road,
Rajnagar, HSH, Opp. Bukule Complex,
Tq. Jamkhed, Dist. Ahmednagar ... Respondents
(Orig Respdt. 1 & 2)

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Mr. M. M. Ambhore, Advocate for the Appellant.
Mr. S. S. Dargad, Advocate for Respondent Nos. 1 to 4.
Mr. R. G. Hange, Advocate for Respondent Nos. 5 and 6.

.....

**CROSS OBJECTION NO. 90 OF 2024
IN FIRST APPEAL NO.2075 OF 2018
WITH
CIVIL APPLICATION NO. 13717 OF 2018
(for withdrawal of amount)
IN FIRST APPEAL NO.2075 OF 2018**

1. Supriya w/o Sharad Sole,
Age : 35 years, Occu. Household,

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2. Samrudhi s/o Sharad Sole,
Age : 12 years, Occu. Education,

(Applicant No.2 being minor,
U/guardianship of Applicant no.1)

3. Mandabai w/o Santram Sole,
Age : 61 years, Occu. Household,

4. Santram s/o Bhaurao Sole,
Age : 65 years, Occu. Agriculture,

All R/o. Pokhari, Tq. Ashti, Dist. Beed.

... Applicants
(Orig. Claimants)

Versus

1. New India Assurance Co. Ltd.
Through Authorized Signatory,
Adalat Road, Aurangabad,
Tq. & Dist. Aurangabad.
2. Hanumant s/o Chandrabhan Bhasat,
Age : 55 years, Occu. Business,
R/o. Jamkhed, Karmala Road, Rajnagar,
HSH, Opp. Bukule Complex, Tq. Jamkhed,
Dist. Ahmednagar.
3. Jamil Noor Mohammad Pathan,
Age : 50 years, Occu. Driver,
R/o. Jamkhed, Karmala Road,
Rajnagar, HSH, Opp. Bukule Complex,
Tq. Jamkhed, Dist. Ahmednagar.

... Respondents
(R.No.1 Appellant,
R.Nos.2 & 3 orig. Respdts)

.....

Advocate for the Petitioners/Applicants : Mr. S. S. Dargad

Advocate for Respondent No.1 : Mr. M. M. Ambhore

Advocate for Respondent Nos. 2 and 3 : Mr. R. G. Hange

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CORAM : ABHAY S. WAGHWASE, J.
RESERVED ON : 21 JULY, 2025
PRONOUNCED ON : 04 OCTOBER, 2025

JUDGMENT :-

1. Both appeals i.e. First Appeal No.495 of 2019 and First Appeal No.2075 of 2018 at the instance of the Insurance Company are arising out of the same accident, but on account of distinct claim petitions bearing M.A.C.P No.168 of 2013 and M.A.C.P 159 of 2013, decided by orders dated 22.02.2018 and 06.04.2018 respectively.

The wives of deceased Amol and Sharad have also preferred First Appeal No. 1892 of 2018 and Cross Objection No. 90 of 2024 being aggrieved by the quantum of compensation.

FACTS GIVING RISE TO THE ABOVE APPEALS ARE AS UNDER:

2. On 08.02.2023, both deceased, Amol and Sharad, were traveling on a motorcycle bearing registration No. MH-23/L-8142. It is the case of original claimants that, when their motorcycle reached the vicinity of Pandhari Shivar, one Mahindra Jeep bearing registration No. MH-25/B-7263, coming from the opposite direction, at an excessively high speed and being driven in a rash and negligent

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manner, gave dash to the motorcycle. As a result of which both, Amol and Sharad, sustained multiple and fatal injuries and subsequently succumbed to the same. An offence was registered against the driver of the jeep. Two separate claim petitions were filed by the legal heirs of the deceased (present cross objectors).

3. The Tribunal issued notices to the respondents, i.e. the owner and driver of the jeep, as well as their insurer. Though all the respondents caused their appearance, only the Insurance Company seriously contested the claim petitions. After hearing the respective parties, the Tribunal was pleased to partly allow each of the claims by its judgments and awards dated 22.02.2018 and 06.04.2018, respectively.

Aggrieved by the same, Insurance Company/original respondent No.3 in both claim petitions, is hereby assailing the judgment and awards in each of the claim petitions by filing the instant appeals. The legal heirs of deceased Amol and Sharad have also preferred cross appeals being aggrieved by the quantum of compensation.

4. Heard both the sides at length. Perused the impugned judgments and awards in respective claim petitions.

5. The grounds raised by learned counsel for the Insurance Company are; *firstly*, the claimants had not cogently proved that the accident was caused only due to the rash and negligent driving of the driver of jeep bearing registration No. MH-25/B-7263. *Secondly*, FIR being against unknown vehicle, subsequently by collusion with respondents (owner and driver of offending jeep), crime has been registered and vehicle insured by appellant/Insurance Company is tried to be involved. *Thirdly*, there was inordinate delay in reporting the registration number of the offending vehicle. *Fourthly*, the important/material witness from whom complainant allegedly got information about involvement of jeep was not examined; and *lastly*, the driver of the jeep was not holding a valid and effective driving licence at the time of the accident, and therefore, there was a breach of the conditions of the insurance policy.

6. The sum and substance of the argument put forth before this Court on behalf of the appellant/Insurance Company is that, one Sominath Gangadhar Sole is shown to be the informant. However, learned counsel pointed out that the complaint filed at his instance is based on hearsay information, allegedly received from one Mahesh, who was also said to have been injured in the accident, but the said

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Mahesh has not been examined for reasons best known to the claimants. According to the learned counsel, there is no iota of evidence except complaint regarding involvement of pick-up jeep insured by the appellant.

7. Learned counsel further pointed out that, apart from the claimant, evidence of Angad Laxman Shinde, Babu Maruti Hambarde, and Krushna Dadasaheb Wandhare is also adduced. However, it is a mystery as to how they were witnesses to the alleged occurrence which allegedly took place in the night. He pointed out that, consequently they are got up witnesses made to step up into the witness box after a huge gap of almost four years. Therefore, it is doubtful that they were able to note the registration number of the vehicle allegedly involved in the accident, more particularly as the incident occurred during night time, and reported the same after four years. He further emphasized that none of the witnesses have deposed to have seen the actual occurrence resulting in deaths, so as to hold the pick-up jeep solely responsible for the dash.

8. Learned counsel pointed out that, there is a huge possibility that a false and fabricated claim has been set up by the claimants in collusion with the witnesses, who belong to adjacent village and it

seems to be an attempt to extract compensation even when not entitled. He submitted that, the Insurance Company is custodian of public funds and liable to pay only valid claim. According to him, in the instant case, such frivolous claim ought not to have been entertained by the Tribunal, and therefore, learned counsel takes serious exception to the judgment and award passed in both claim petitions. He seeks reliance on the following rulings.

(i) ***Oriental Insurance Company Ltd. Vs. Meena Variyal & Others***, (2007) 5 SCC 428.

(ii) ***Anil & others Vs. New India Assurance Company Ltd.***, (2018) 2 SCC 482.

(iii) ***National Insurance Copan Ltd. V. Nandabai w/o Prakash @ Pralhad dhumal & Others***, [First Appeal No.1565 of 2012.

(iv) ***Mr. Pukh Raj Bumb V. Mr. Jagannath Atchut Naik and others***, [First Appeal No.32 of 2013]; and

(v) ***Vitthal Sopan Suryawanshi, V. Daji Rajkumar Shinde***, [First Appeal No.2061 of 2023]

9. In answer to above, learned counsel for the respective claimants supported the impugned judgment by pointing out that the informant was also travelling in close proximity to both deceased. Learned

counsel submitted that the complainant had seen both the deceased and the injured proceeding ahead of him. That, at a short distance from the deceased, one Mahesh, who was also injured, had provided information about the alleged accident. Though Mahesh was not examined, no specific efforts were also made by the Insurance Company to engage a private investigator to verify the veracity of the alleged accident. It is pointed out that a prompt FIR was lodged. That, the investigating agency conducted a thorough investigation and a charge-sheet was filed against the driver of the offending jeep and he is also charge-sheeted. Therefore, in view of the availability of the charge-sheet and the thorough investigation conducted, it is not open for Insurance Company to allege false implication of the offending jeep. Allegation of collusion is also refuted by submitting that there is nothing on record to suggest that the complainant and the witnesses, who are residents of distinct villages, are acquainted with each other. For said reasons, it is prayed that such ground be discarded.

10. Lastly, it is submitted that, considering the sufficiency and quality of the evidence, the learned Tribunal has correctly appreciated the evidence adduced by the claimants as well as the settled legal position on reliability of FIR, spot panchanama and chargesheet and rightly held that the driver of the offending vehicle was rash and

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negligent, as well as entitlement of compensation being cogently proved and the same has been awarded. But grievance is raised that unfortunately, the compensation awarded is inadequate, and accordingly, separate first appeal and cross-objection for enhancement of compensation have been filed by the heirs of deceased Amol and deceased Sharad, respectively.

SUM AND SUBSTANCE OF THE EVIDENCE ADDUCED BY CLAIMANTS BEFORE THE TRIBUNAL IN M.A.C.P NO.168 OF 2013 IS AS UNDER:

11. Wife of the deceased Amol, namely Suvarna Sole, in her affidavit evidence at Exhibit-46, gave details of her own status, as well as information regarding her son and in-laws. She stated that on 08.02.2013, her husband Amol, along with Sharad, was proceeding on a motorcycle bearing registration No. MH-23-L-8142 from Ashti to Jamkhed. At around 08.40 p.m., their motorcycle was given a dash by Mahindra Jeep bearing No. MH-25/B-7263 in which her husband and Sharad both suffered grievous injuries and died on the spot. That, initially, crime bearing No.34/2013 was registered against an unknown vehicle. However, on investigation, crime has been registered against driver of Mahindra Jeep bearing No. MH-25/B-7263. She stated the age of her deceased husband as 28 years and

described him as healthy and hearty. He was working as a Manager at Primeone Workforce Pvt. Ltd., earning a salary of Rs.17,000/- per month, and also engaged in agricultural activities, earning approximately Rs.1,00,000/- per annum. Because of the accidental death of her husband, she, her son, and her in-laws, who were dependent on him, have lost their source of income and thereby she set up a claim of Rs.31,44,000/- under various heads and she sought the same from owner, driver of the jeep as well as its insurer i.e. original respondents No.1 to 3.

She was cross-examined by learned counsel for the Insurance Company, wherein she admitted that, she has not seen the accident. However, she denied all suggestions regarding the age, service, salary, agricultural holdings, income, and dependency to be false. She also categorically denied any suggestion that the offending vehicle (jeep) or its driver was not responsible for the accident.

12. Crime was registered at Police Station Ashti, bearing No. 34 of 2013, at the instance of one Sominath Gangadhar Sole on 09.02.2013, i.e., immediately on the next morning, wherein, Sominath reported that he, along with Angad, were proceeding on motorcycle towards their village, and at that time, Amol and Sharad, who were also on

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their motorcycle, met them and all four of them were proceeding towards Pokhari. Around 08.30 p.m., he and his pillion rider namely Angad took a brief halt for taking tea, whereas Amol and Sharad proceeded ahead. Around 08.40 p.m., Amol and Sharad were found lying in injured condition on the road. He has reported that one Mahesh Sole of their village was also lying there in injured condition and from him it was learnt that dash was given by one pickup jeep to Amol and Sharad and even dash was given to him and pickup driver fled away towards Ashti without waiting. It is further reported that information was passed to the villagers and injured were taken to the hospital. On such report, Ashti Police registered the above crime.

13. Sominath was examined by the claimants in MACP 168/2013, and his evidence is recorded at Exhibit-58. He reiterated that on 08.02.2013, he and Angad Laxman Shinde had gone to Ashti for personal work. While returning, they saw Amol and Sharad on a motorcycle. He reiterated the contents of the report, stating that he and Angad had halted to have tea, while Amol and Sharad went ahead. Around 8:40 p.m., Amol and Sharad were found lying unconscious and injured on the road. One Mahesh Sole, a resident of their village, was also found lying in injured condition at some distance from the spot and he passed information about dash given by

pickup to the motorcycle of Amol and Sharad as well as to him and pickup jeep proceeded towards Ashti direction.

The above witness was also cross-examined wherein he has stated that, the accident had occurred four years back. He further stated that Amol was his cousin. He was also questioned about the geographical direction of the spot of accident. He answered that, Mahesh was also his distant cousin. He answered that, when he met Mahesh, he did not give number of pickup vehicle as he was not knowing, and it was rather stated by Mahesh that dash was given by unknown vehicle. Rest of suggestions are denied by him.

14. Witness No. 2 Satish Gaikwad seems to be the spot pancha. He was examined by the claimants at Exhibit-55. It has come in his evidence that on 09.02.2013, he was called by Ashti Police and spot was shown to him and in his presence, panchanama was drawn. He identified the contents of panchanama Exhibit-50.

In cross, he has denied almost all suggestions except stating that he had accompanied Sarpanch to whom police had called and in his presence panchanama was drawn. He has also stated about motorcycle bearing No. MH-23-L-8142 to be lying there. Rest all suggestions are denied.

15. Witness No. 4 Hemant Kudale in his evidence at Exhibit-65 testified that he was working in Primeone Workforce Pvt. Ltd. since 2013. That, Amol was serving in the said company. The company paid salary to deceased Amol and the salary slips placed on record are true and correct.

He is also cross-examined, wherein the above aspect appearing in his chief has not been dislodged. Certificate of employment contract and salary slips are also identified by this witness to be true and correct.

16. Claimants have also produced certified copies of evidence of witnesses in another claim petition, i.e. MACP No. 159/2013, namely Witness No. 5 Angad Laxman Shinde (Exhibit-76), Witness No. 6 Balu Hambarde at Exhibit-77, and Witness No. 7 Krushna Wandhare at Exhibit-78 (r/o Pokhari and Pandhri respectively).

17. Balu Hamdarde, who was examined by the claimants in MACP No. 159/2013, testified that on 08.02.2013, he, Suresh, Balu, Krsuha and Manohar were sitting in front of his house. Around 08.30 to 8.45 p.m. they went to the spot and they saw pickup jeep bearing No. MH-25-B-7263 coming from Jamkhed side and giving dash to motorcycle.

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He has deposed that, at that time, Angad Shinde came and told them the names of Amol and Sharad and they to be from his village.

Above witness is cross-examined, where he admitted that there was darkness on the spot. He denied that Amol and Sharad were drunk and they were driving the vehicle in zigzag manner. He denied that there was no negligence or rashness or the fault of the pickup driver.

In cross on behalf of Insurance Company, he answered that he was residing opposite side to the road and there were 4 to 5 houses, where 15-20 people were residing in the locality. He has answered that 7 to 8 person gathered at the spot. He specifically answered that, at the time of accident, he was sitting near the road. He admitted that, he does not keep a note of the vehicles passing on the road. He admitted that he himself did not lodge the report. He answered that, on the next day, police made an inquiry and occurrence was reported. Rest all suggestions are denied.

18. Similar is the evidence of Krushna (examined as witness in MACP 159/2013) wherein he has stated that on 08.02.2013, around 08.30 p.m., accident occurred and therefore, he himself, Balu Hambarde, Manohar and Shashikant were sitting and chatting and at

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that time, Mahindra Jeep MH-25/B-7263 came at high speed and gave dash to the motorcycle and also gave dash to another person. The said pickup jeep fled away. At that time, Angad had reached there and he had provided names of injured persons.

In cross at the hands of Insurance Company, the above testimony has not been shaken.

19. Apart from the oral account, claimants have placed on record documentary evidence comprising of driving licence of deceased Amol, SCC certificate and graduation certificate, *bona fide* certificate, contract agreement between employer and deceased (Exhibit-43), salary certificate and 7/12 extract of agricultural land.

20. Precisely pointing to the above evidence of Sominath, learned counsel for the Insurance Company has raised the issue about the involvement of the offending vehicle jeep. However, here, there is prompt lodgment of complaint by Sominath, upon which thorough investigation has been carried out and thereafter charge-sheet has been filed against the driver of offending vehicle jeep. True it is that Mahesh has not been examined, but the charge-sheet is accepted in the trial Court and moreover, Insurance Company, as submitted by

learned counsel for claimants, has not been diligent in engaging its own investigator and further has also failed examine Investigating Officer, who was a crucial witness so as to demonstrate their stand of false implication of vehicle. Merely because the witnesses, namely, Balu and Krushna deposed before the Court at the time of trial, which actually commenced after four years, it cannot be directly inferred that they are got-up witnesses. It is pertinent to note that, the Insurance Company has not adduced any evidence of engaging a private investigator, and there is no precedent or judgment laying down the ratio that a claim based on an FIR against an unknown vehicle or hit and run case is not maintainable. On the contrary, law has been settled by the Hon'ble Apex Court in the case of ***Kuncham Lavanya and others v. Bajaj Allianz*** 2025 DGLS (SC) 513 wherein, in para 17 it has been observed as under :

“17. The very fact that the case was registered against an unknown vehicle initially would indicate that the offending vehicle was not identified. However, since and FIR is not expected to be encyclopaedic and is only for the purpose of putting into motion criminal law such that thorough and full-fledged investigation by the police ensues, it is the duty of the investigating agency to find out the identity of the culprit which in the present case would be the offending car and driver and take action in

accordance with law. Thus, the mere fact that initially the FIR records the vehicle as unknown would not be fatal for the prosecution/claimants to later come up with the specific identity of the vehicle/driver, with the obvious caveat that the connection of the accident with the said vehicle has to be based on cogent and reliable evidence.”

Insurance Company is expected to demonstrate that the vehicle allegedly insured by it was not at all involved. No evidence either oral or documentary has been adduced in this regard.

On the contrary, evidence of complainant Sominath and other witnesses, namely, Baban, Angad, Balu and Krushna has remained intact and nothing adverse is brought in the cross of even complainant Sominath so as to doubt that false and frivolous complaint has been lodged by colluding with the owner or driver of the offending vehicle. Even the nature of suggestions like deceased were whether drunk, goes to show that there is no serious challenge to such evidence. Above named witnesses are villagers and therefore, they may not have been diligent in giving their statements on their own. Only when police approached them, they seem to have given their statements.

21. Though plea of statutory breach of non-availability of driving licence is also raised by the learned counsel for Insurance Company, however, the Insurance Company has failed to prove the same.

22. Learned counsel for Insurance Company has submitted that compensation awarded by the Tribunal is exorbitant. However, the evidence on record before the Tribunal, i.e. both oral and documentary evidence, clearly shows that deceased Amol was employed as a Manager and was earning a monthly salary of Rs. 17,000/-. Witness No. 4 Hemant Kudale, Assistant Branch Manager of the employer, has been examined at Exhibit 65. Salary certificates of deceased are at Exhibits 66 to 71.

23. Resultantly, with such quality of evidence on record, no fault can be found in the findings of the Tribunal regarding salary income as well as agricultural income. Findings recorded by the Tribunal appear to be based on judicial precedent. No perversity or illegality is brought to the notice of this Court so as to interfere in the same.

SUM AND SUBSTANCE OF THE EVIDENCE ADDUCED BY CLAIMANTS BEFORE THE TRIBUNAL IN M.A.C.P NO. 159 OF 2013 IS AS UNDER:

24. Father of deceased Sharad, namely Santram Sole in his affidavit evidence at Exhibit-33 has given his own status, details of his wife, grand-daughter and daughter-in-law. He stated that on 08.02.2013, his son Sharad along with Amol was proceeding on motorcycle bearing No. MH-23-L-8142 from Ashti to Jamkhed to their village Pokhari. At around 08.40 p.m., their motorcycle was given dash by Mahindra Jeep bearing No. MH-25-B-7263 in which his son Sharad, and Amol both suffered grievous injuries and died on the spot. That, initially crime bearing No.34/2013 was registered against unknown vehicle. However, on investigation, crime has been registered against driver of Mahindra Jeep bearing No. MH-25-B-7263. He gave age of his deceased son as 32 years and to be healthy and hearty and to be working as a Manager in Kisan Kranti Cotton Industries and earning salary of Rs.27,500/- per month and also conducted milk business and earned Rs.6,000/- per month. Because of the accidental death, he, along with his wife, daughter-in-law, and grand daughter, who were dependent on him, lost their source of income and thereby set up a claim of Rs. 75,00,000/- under various heads, which he sought to

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recover from the owner, driver of the jeep, and its insurer, i.e. original respondents No. 1 to 3.

He is cross-examined by learned counsel for Insurance Company, wherein he has admitted that he has not seen the accident, but he has denied all suggestions about service and dependency. He also completely denied falls implication of offending vehicle jeep or driver of the vehicle to be not responsible for the accident.

25. The details of crime registered at the instance of Sominath are already discussed in the foregoing paragraphs.

26. Witness No. 2 Sunil Bhogade in his evidence at Exhibit-54 testified that he knows claimant Santram. He further deposed that he sold a jersey cow to deceased Sharad on 05.09.2011 for Rs.23,250/-. The receipt of the same was also issued, which is at Exhibit-55.

In his cross, receipt regarding selling of jersey cow is also identified by this witness to be true and correct.

27. Witness No.3 Eknath Bhogade, in his evidence, has deposed that he is Chairman of Milk Dairy and his wife is Secretary. He stated that, he looks after the day-to-day affairs of the dairy. He further deposed that, deceased Sharad was regularly supplying milk to his dairy from

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09.06.2011 till 08.02.2013 and he also issued the payment slips for the same.

In his cross, consolidated payment slips at Exhibit-57 are also identified by him to be true and correct.

28. Claimants have also adduced evidence of Witness No. 4 Baban at Exhibit-62, Witness No. 5 Angand at Exhibit-67, Witness No.6 Balu at Exhibit-69, and Witness No.7 Krushna Wandhare at Exhibit-70.

29. PW-4 Baban in his evidence at Exhibit-62 testified that he was working as a Manager in Kisan Kranti Cotton Industries, Ashti since 2008. That, Sharad was serving as Manager in the said company. The company paid salary of Rs.27,500/- to deceased Sharad and he also identified the salary certificate placed on record to be true and correct.

He is also cross-examined, however the above aspect appearing in his chief has not been dislodged. Salary certificate and salary register are also identified by this witness to be true and correct.

30. Evidence of PW-6 Balu Hamdarde and PW-7 Krushna Wandhare has already been discussed in the foregoing paragraphs. Therefore, it need not be reiterated here.

31. Claimants of this claim have relied on the judgment of the Tribunal in Claim Petition no. 168 of 2013 decided on 22.02.2018. On analyzing the evidence of above witnesses it is emerging that Witness Santram happens to be the father of deceased Sharad. Substance of his evidence is already dealt above. He too has also deposed about dash being given to the motorcycle of which Amol was rider and his son Sharad was pillion rider. He has also given the vehicle number of the jeep and further deposed about report of the occurrence being lodged by Sominath. While under cross, he has admitted that though, on complaint of Sominath crime was registered against unknown vehicle, according to him, investigation revealed that offending vehicle Mahindra jeep was involved in the said accident.

PW5 Angad whose evidence is discussed in above claim, also goes to show that along with Sominath, he too was a witness. That, he was in the very company of complainant Sominath who lodged report. Again, PW6 Balu Hambarde also deposed about hearing sound around 8.30 to 8.45 p.m. and when he rushed to the spot with others, they saw jeep bearing no. MH 25-B-7263 to have given dash. He further stated that, Angad told that deceased were of his village. The manner of cross of this witness clearly shows that only length, breadth of road

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and geographical directions of the spot are questioned. His statement is also recorded by police.

Similarly PW7 Krishna also deposed on above lines and even in his cross, except admitting that pick up van sped away in western direction and not informing at toll naka, there is no other suggestion. He admitted that his statement was not recorded by the police.

32. On complete re-appreciation of the above available evidence, here also, informant is Sominath. At the time of accident, he was accompanied by Angad. Their evidence about seeing both, deceased Amol and Sharad travelling in their direction itself, and going ahead of them, has remained intact. Here also, though rest of the witnesses have deposed after a lapse of years after the occurrence, it has come on record that police have recorded their statements and after thorough investigation, charge sheet has been filed against offending jeep. As stated above, steps to examine Investigating Officer to question involvement are also not taken by the present appellant-respondent Insurance Company. In the light of such available evidence, and evidence of Sominath and Angad to be suggesting that they were both in proximity of time and place to the deceased, there is no valid reason to discard their evidence.

CROSS OBJECTION NO. 90 OF 2024 & FIRST APPEAL NO. 1892 OF 2018

33. Instant cross objections/appeals are by wives of deceased Sharad and Amol, who were proceeding on motorcycle and had allegedly met road traffic accident and had succumbed to the injuries therein. Supriya (wife of deceased Sharad) had set up accident claim petition bearing MACP No. 159 of 2013 for herself as well as for other heirs of Sharad i.e. compensation to the tune of Rs.75,00,000/-. Similar objection has been raised by Supriya (wife of deceased Amol).

Claims bearing MACP Nos. 159 of 2013 and 168 of 2013 were decided by judgment and orders dated 06.04.2018 and 22.02.2018 respectively. The learned Tribunal considered contributory negligence on the part of Amol and held 60% negligence on the part of offending vehicle jeep and directed compensation to be paid by its owner respondent no.1, driver respondent no.2 and its insurer respondent no.3, and also held 40% contributory negligence on the part of Amol i.e. rider of the motorcycle.

34. In First Appeal No. 1892 of 2018, it is tried to be submitted that, there was no evidence whatsoever to also hold contributory negligence on the part of rider Amol and therefore it was not open for learned Tribunal to apply principles of composite negligence while fixing responsibility and considering entitlement of compensation.

Whereas learned counsel for cross objector in Cross Objection No. 90 of 2024 pointed out that here, undisputedly, Amol was rider whereas deceased Sharad was a pillion rider. Under such circumstances, it is put forth that Sharad was not responsible for the accident in any manner. If at all there is negligence, it is on the part of rider Amol. Resultantly, it is submitted that, learned tribunal ought not to have deducted 40% from the entitled compensation under the head of contributory negligence. He seeks reliance on the judgment of the Hon'ble Apex Court in the case of *Khenyei v. New India Assurance Co. Ltd. & Ors.* AIR 2015 SC 2261.

35. In view of above points raised, impugned judgments are required to be visited. While answering point nos. 1 and 2, learned tribunal has held that, there was contributory negligence also on the part of deceased Amol and Sharad, and after reflecting on the chargesheet papers, more particularly spot panchanama, it is held that, rider of the motorcycle was also contributory party in negligence and fixed 40% liability accordingly.

36. Observations of learned tribunal in regard to above two points are dealt by way of issue nos. 1 and 2 together. As regards to discussion on these two issues, there are observations in para 24 of the

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judgment in MACP No. 168 of 2013. Learned tribunal seems to have meticulously examined the available evidence, more particularly report lodged by Sominath, as well as spot panchanama filed along with the charge sheet, and has noted that, motorcycle was lying towards the southern side of the road going from Jamkhed to Ashti which runs east-west. It is also noted that there are brake marks of four-wheeler from east side to west side to the extent of 10 to 15 feet. Width of the road is taken into account as 21 feet, marking of white strip over middle portion of the road is also noted and after taking such spot details and also on the strength of hand sketch map, finding has been recorded that accident took place on southern side of Jamkhed-Ashti road which runs east-west. Considering the directions in which both vehicles i.e. motorcycle as well as offending jeep were proceeding, it is held that deceased Amol, who was rider of motorcycle and he left his correct side and had gone to some extent towards the middle strip, which was not his correct part of road and hence learned Tribunal has rightly considered contributory negligence on the part of Amol also. Except raising ground in cross appeal, no distinct material in support of above contention has been placed on record by the original claimants. There being no perversity in fixing contributory negligence of Amol also, such finding need not be disturbed.

However, as regards to objection raised by heirs of deceased Sharad is concerned, there is a valid point. Admittedly, Sharad was mere pillion rider. Therefore it would be unjust and improper to also fix responsibility of pillion rider when Amol was rider and was solely responsible by contributing to the mishap. For such reasons, learned tribunal ought not to have deducted 40% towards contributory negligence from the compensation entitled by heirs of deceased Sharad. Therefore, order of the Tribunal is required to be interfered to that extent.

37. Second objection is regarding less quantum. However, considering the nature of evidence adduced by witness Hemant in MACP/168/2013, father of deceased Sharad as well as witnesses Sunil, Eknath and Baban in MACP/159/2013, it cannot be said that there is inappropriate calculation or computation of annual income.

However, there seems to be error on the part of learned Tribunal in not awarding loss of consortium to each of the claimants. The observations regarding consortium are reflected in para 35 of MACP No. 168 of 2013 and para 31 of MACP No. 159 of 2013. In MACP No. 168 of 2013, learned Tribunal has awarded consortium only to claimant no.1 i.e. wife of deceased Amol, whereas, in MACP No. 159 of 2013, learned Tribunal has awarded lump-sum amount of

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Rs.70,000/- towards consortium, love and affection, loss of estate and funeral expenses. So also, in MACP No. 168 of 2013, the learned Tribunal erred in deducting 40% towards contributory negligence after addition of non pecuniary losses. In fact, 40% deduction towards contributory negligence ought to have been made first and then the compensation under non pecuniary heads ought to have been considered.

Here, claimants in MACP No. 168 of 2013 are also asserting future prospects for its non-consideration by learned Tribunal. Learned Tribunal has made observations for dis-entitlement of future prospects in para 33. View taken seems to be that, there is no strong positive evidence on record suggesting definite prospects of increase in the income of deceased in future. On such count, future prospects are refused. In the considered opinion of this Court, it has come on record by way of evidence that deceased was working as manager and was earning salary. It is also not in dispute that said services were on contractual basis. However, it has not come on record that under no circumstances the contractual service would be extended in future. Even witness who has appeared on behalf of employer on the point of salary has not been questioned by insurance company that, the above services were only for a fixed period and not beyond it. Therefore,

there is no reason to infer that there would not be future prospects to the deceased. In view of ratio laid down by the Hon'ble Supreme Court in *National Insurance Company Limited v. Pranay Sethi and Ors.* AIR 2017 SC 5157, claimants in MACP No. 168 of 2013 are entitled for addition of 40% of established income towards future prospects. Hence, interference to that extent in the order of Tribunal is called for.

38. In view of the ratio laid down in *National Insurance Company Limited v. Pranay Sethi and others* 2017 (16) SCC 680 and *Magma General Insurance Co. Ltd v. Nanu Ram and others* (2018) 18 SCC 130, claimants in MACP No. 168 of 2013 are entitled for consortium of Rs.40,000/- each, i.e. Rs.1,60,000/- plus 20% (Rs.32,000/-) which comes to **Rs.1,92,000/-** towards consortium.

Similarly, claimants in MACP No. 159 of 2013 are also entitled for consortium of Rs.40,000/- each, i.e. Rs.1,60,000/- plus 20% (Rs.32,000/-) which comes to **Rs.1,92,000/-** towards consortium. Claimants are also entitled for compensation Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses, in stead of lump amount of Rs.70,000/-. Further, on perusal of paragraph no. 28 of the judgment in the said claim petition, the tribunal seems to have deducted 40% (Rs.1,34,400/-) towards personal expenses instead of deducting 1/4th amount of yearly income which comes to Rs.84,000/- .

39. In view of the above discussion, in the considered opinion of this Court, the claimants in MACP No. 168 of 2013 are entitled for following compensation :

Sr. No.	Heads	Amount (Rs.)
1	Monthly Income (as computed by the Tribunal)	Rs.11,929/-
2	After addition of 40% future prospects (11929 + 4771)	Rs.16,700/-
3	Annual Income from salary (16700 X 12)	Rs.2,00,400/-
4	After addition of annual managerial loss i.e. Rs.5,000/- (as computed by the Tribunal)	Rs.2,05,400/-
2	After 1/4 th deduction towards personal expenses (205400 – 51350)	Rs.1,54,050/-
3	Multiplier of 17 (154050 X 17)	Rs.26,18,850/-
4	After deduction of 40% towards contributory negligence i.e. Rs.10,47,540/- (26,18,850 – 10,47,540)	Rs.15,71,310/-
5	Non-pecuniary Loses :- Loss of consortium = Rs.1,92,000/- Loss of Estate = Rs.15,000/- (as awarded by Tribunal) Funeral Expenses = Rs.15,000/- (as awarded by Tribunal)	Rs.2,22,000/-
6	Total compensation to be paid (i.e. 11,33,332 + 2,22,000/-)	Rs.17,93,310/-
7	Compensation awarded by the Tribunal	Rs.11,75,330/-
8	Total Enhanced Compensation (17,93,310 – 11,75,330)	Rs.6,17,980/-

40. Similarly, the claimants in MACP No. 159 of 2013 are entitled for following compensation :

Sr.	Heads	Amount (Rs.)
1	Annual Income (as computed by the Tribunal)	Rs.3,36,000/-
2	After 1/4 th deduction towards personal expenses (3,36,000 – 84,000)	Rs.2,52,000/-
3	Multiplier of 16 (2,52,000 X 16)	Rs.40,32,000/-
4	Non-pecuniary Loses :- Loss of consortium = Rs.1,92,000/- Loss of Estate = Rs.15,000/- (as awarded by Tribunal) Funeral Expenses = Rs.15,000/- (as awarded by Tribunal)	Rs.2,22,000/-
5	Total compensation to be paid (i.e. 24,19,200 + 2,22,000/-)	Rs.42,54,000/-
7	Compensation awarded by the Tribunal	Rs.20,09,000/-
8	Total Enhanced Compensation (26,41,200 – 20,09,000)	Rs.22,45,000/-

41. In the result, following order is passed :

ORDER

- I. **First Appeal No. 495 of 2019** and **First Appeal No. 2075 of 2018** filed by the Insurance Company are hereby dismissed.
- II. In view of dismissal of First Appeal No. 495 of 2019 and First Appeal No. 2075 of 2018, the **Civil Application No.8951 of 2018** and **Civil Application No. 8964 of 2018** also stand disposed off.

First Appeal No. 1892 of 2018

- III. First Appeal No. 1892 of 2018 filed by the claimants in MACP No. 168 of 2013 is partly allowed with proportionate costs.
- IV. The impugned judgment and award dated 22.02.2018 passed by Adhoc District Judge-1 and Member of M.A.C.T., Beed in M.A.C.P No. 168 of 2013 is modified.
- V. Respondent Nos. 1 to 3 in First Appeal No. 1892 of 2018 to pay enhanced compensation of Rs.6,17,980/- to the claimants within 12 weeks from today along with interest @ 6% per annum from the date of registration of claim petition till its realization.
- VI. Modified award be prepared accordingly.
- VII. Claimants to pay court fees on additional compensation as per Rules.
- VIII. On deposit of amount by the Insurance Company, appellants/claimants are permitted to withdraw the same.

Cross Objection No. 90 of 2024

- IX. Cross Objection No. 90 of 2024 filed by the claimants in MACP No. 159 of 2013 is partly allowed with proportionate costs.

- X. The impugned judgment and award dated 06.04.2018 passed by Member of M.A.C.T., Beed in M.A.C.P. No. 159 of 2013 is modified.
- XI. Respondent Nos. 1 to 3 in Cross Objection No. 90 of 2024 to pay enhanced compensation of Rs.22,45,000/- to the claimants within 12 weeks from today along with interest @ 6% per annum from the date of registration of claim petition till its realization.
- XIII. Modified award be prepared accordingly.
- XIII. Claimants to pay court fees on additional compensation as per Rules.
- XIV. On deposit of amount by the Insurance Company, appellants/claimants are permitted to withdraw the same.

Civil Application No. 11786 of 2018
and
Civil Application No. 13717 of 2018

- XV. Both the Civil Applications are allowed. The applicants-claimants in both the Applications are permitted to withdraw the entire amount deposited in this Court along with interest accrued thereon, on furnishing usual undertaking to the satisfaction of the Registrar (Judicial) of this Court.

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42. Learned counsel Mr. Ambhore for the Insurance Company had also prayed for stay to the effect and implementation of this order, if at all the Court is inclined to enhance the compensation, so as to enable the Insurance Company to approach the Hon'ble Supreme Court. However, as 12 weeks time has already been granted for payment of enhanced compensation along with interest, stay to the effect and implementation of this order for six weeks is unwarranted. Hence, the prayer for stay stands refused.

[ABHAY S. WAGHWASE, J.]

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