2025:BHC-AUG:5768

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

FIRST APPEAL NO.3093 OF 2024

The New India Assurance Co Ltd Through Branch Manager,
Branch Office, at Aurangabad.
Versus
Shano wd/o Shaikh Hamid and others.
…
Mr. Mohit R. Deshmukh advocate for appellant
Mr. D.S. Kulkarni h/f Mr. Shaikh Kayyum Najir, Advocate for respondents.
…
WITH
CIVIL APPLICATION NO. 12275 OF 2024 IN FA/3093/2024

Shano Shaikh Hamid And Others
VERSUS
The New India Assurance Co Ltd Through Branch Manager And Ors.
...
Advocate for Applicants : Mr. D.S. Kulkarni h/f Mr. Shaikh Kayyum Najir
Advocate for Respondent 1 : Mr. M. R. Deshmukh
…

CORAM	:	**S. G. CHAPALGAONKAR, J.**
Reserved on	:	**January 31, 2025**
Pronounced on	:	**February 26, 2025.**

FINAL ORDER :-

1. Present appeal takes exception to the judgment and award dated 14.03.2024 passed by the Motor Accident Claims Tribunal, at Aurangabad in M.A.C.P. No.699 of 2021.

2. The Respondents/original claimants instituted claim under section 166 of the Motor Vehicles Act, 1988

seeking compensation towards accidental death of Shaikh Hameed Shaikh Ameen in motor-vehicular accident dated 12.6.2021 that took place near Modha Wadi corner on Bharadi to Sillod Road. According to claimants, insured Jeep (Trax cruiser) bearing registration No.MH-20/DV-7286 came from Sillod side and gave forceful dash to victim and others who were standing on road. Resultantly, victim suffered grievous injuries resulting into death. The incident was reported by police. Eventually, crime No.82 of 2021 was registered. On due investigation, charge-sheet came to be filed against the jeep driver.

3. Respondents nos.1 and 2 filed their written statement, indirectly, they admitted factum of accident, but denied attributions of negligence against the driver.

4. Respondent No.3-Insurance Company filed written statement raising defence of false involvement of insured vehicle apart from other defences. The claimants relied on own evidence and police papers, whereas respondent-insurance company examined surveyor Mr. Hariprasad Jaju, Manager Mr. Anil Shinde, so also relied upon report of survey containing photographs of vehicle snapped at the time of

survey. Learned Tribunal, after considering rival submissions allowed claim petition, thereby accepting case of claimants as to the accident involving the insured vehicle. Consequently, passed award holding respondents jointly and severally liable to pay assessed compensation.

5. Mr. Mohit Deshmukh, learned advocate appearing for the Appellant-Insurance Company vehemently submits that narration of accident as discernible from police papers creates serious doubt. He submits that, on next day incident was reported to the police station by one Laxman Kalyankar stating that unknown Cruiser Jeep gave forceful dash to the claimant and others. Registration number of the vehicle is not mentioned in FIR, however, while describing offending vehicle, it is highlighted that rear side mirror of offending jeep was bearing design of roses. After 17 days of the accident i.e. on 30.7.2021 supplementary statement of informant is recorded to show that insured vehicle is the offending vehicle. As such, belatedly registration number of insured vehicle is brought on record.

6. Mr. Deshmukh would submit that after 22 days of the accident, own damage claim of the insured vehicle had

been reported to the Insurance Company. In pursuance to the intimation, surveyor was appointed, who snapped photographs of vehicle. Those photographs are placed on record alongwith evidence of surveyor. Description of the vehicle as given in FIR mismatch with the insured vehicle. In that view of the matter, own damage claim was repudiated giving reason of delay in intimation and vehicle mismatch. Mr. Deshmukh would further submit that conduct of respondent nos.1 and 2 i.e. owner and driver of the vehicle is doubtful. They belatedly surrendered vehicle to the police station admitting its involvement in the accident. Thereafter, lodged own damage claim with the Insurance Company. The decision of repudiation of claim was not challenged till final hearing of claim petition before the Tribunal. However, when this point was pressed during argument, a consumer complaint is filed assailing repudiation. Mr. Deshmukh would submit that, Tribunal ignored aforesaid aspects of the matter and erroneously concluded that insured vehicle was involved in the accident.

7. Per contra, Mr.D.S. Kulkarni h/f Mr.Shaikh Kayyum Nazir, learned advocate appearing for the

respondents-claimants supports judgment and award passed by the Tribunal. He submits that FIR clearly states that a Cruiser Jeep was an offending vehicle. In pursuance to such description, vehicle has been traced. Driver of the vehicle has been charge-sheeted. It is not the typical case of delay in lodging FIR and implant of insured vehicle. As many as six persons had suffered injuries in the accident and three of them lost life. Owner and driver of offending vehicle admitted facutm of the accident. Offending vehicle had suffered damage due to impact of accident. Evidence tendered by the Insurance Company also depicts damage to vehicle. Evidence on record is sufficient to hold that vehicle insured with appellant was the offending vehicle. Mr. Kulkarni further submits that, claimants are required to prove factum of accident on preponderance of probability. Strict proof as to the accident or involvement of the vehicle is not germane to the summary proceeding under Motor Vehicles Act.

8. In support of his contentions, he relies upon judgment of the Supreme Court in case of **Geeta Dubey and others Vs. United India Insurance Company Ltd., and others reported in 2025 (1) TAC 8 (SC).**

9. Having considered the submissions advanced and after going through the record, it can be observed that there is no dispute as to accident occurred on 12.6.2021 wherein the victim suffered fatal injuries. One of injured victim lodged FIR dated 13.6.2021, copy of which is admitted in evidence and marked at Exhibit-28. Perusal of FIR shows that, although, registration number of the offending jeep is not mentioned, plausible description of the vehicle is given. It states that offending vehicle was Cruiser Jeep and there was rose design on its rear mirror. Lateron, vehicle seized during course of the investigation. Finally, charge-sheet has been filed against its driver. Respondent nos.1 and 2 filed written statement before Tribunal admitting involvement of vehicle in the accident. Own damage claim was reported to the Insurance Company. In pursuance to such report surveyor snapped photographs. Damage to the vehicle can be observed form those photographs.

10. In this background, insurer put forth defence of false implication of the insured vehicle relying upon alleged discrepancy as to identification of vehicle observed from FIR and surveyor report. Evidence of the surveyor is recorded

before Tribunal. He placed his report before the Tribunal alongwtih photographs, in which, Rosie design is not seen on rear mirror as stated in the FIR. The appellant is trying to make out case of false implication only on the aforesaid evidence.

11. In this background, it is apposite to refer to the observations of the Supreme Court of India in case of **Bimla Devi and others Vs. Himachal Road Transport Corporation and others reported in** (2009) 13 SCC 530, which state that the claimant is expected to prove involvement of the vehicle concerned on preponderance of probability and not beyond reasonable doubt. Similar view has been expressed in case of **See Sajeena Ikhbal and others Vs. Mini Babu George and others reported in** (2024) SCC online SC 2883.

12. In that view of the matter, once claimants discharged initial onus on the basis of police investigation papers, it is for the Insurance Company to prove it's defense of collusion between driver/owner of the Truck and claimants. Witness of the Insurance company i.e. PW-2 candidly admitted that his company has not taken any steps against alleged false implication of vehicle. They have not made complaint before

Higher police authority seeking further investigation or raised objection as to conclusions drawn by the Investigating Officer. The thrust of their defence is alleged discrepancy in vehicle description, as to rose design on rear mirror. Pertinently, immediately on next day of the accident, offending vehicle is described as a Cruiser Jeep and insured vehicle is also a Cruiser Jeep. It is, therefore, evident that although insurer has put up a defence of false implication of the vehicle, in absence of positive steps to unearth suspected collusion, defence cannot be accepted.

13. Mr. Deshmukh, learned advocate appearing for the appellant endeavors to pin-point some more discrepancies in the police investigation and also harp upon conduct of the owner/driver, however, that itself would not be sufficient to establish the defence of false implication. This Court cannot rely upon bundle of surmises to defeat the claim for compensation. It is now well settled that proceedings under Motor Vehicles Act is summary. Once the claimants discharged onus to bring on record accident involving the insured vehicle on the basis of police investigation papers in form of charge-

sheet, onus shift upon the respondents to establish its defence contrary to the case of the claimants.

14. In the result, there is no substance in the appeal. First Appeal stands **dismissed**. Pending civil application, if any, also stands **disposed of**. The amount deposited by the Insurance Company be disbursed to the claimants after 90 days.

(S. G. CHAPALGAONKAR)
Judge.

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