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

FIRST APPEAL NO.4034 OF 2023

The Manager,
HDFC ERGO General Insurance Co. Ltd.,
S.No.95/3, Opp. to Axis Bank,
Savedi Road, Ahmednagar

Through: It's Authorized Signatory
2nd Floor, Malpani's Oberoi Tower,
Opposite Government Milk dairy
Ramanand Colony, Jalna Road
Aurangabad – 431 001.

.....APPELLANT
(Orig. Resp.No.2)

VERSUS

01. Swati Ashok Nimbalkar
Age : 32 Years, Occupation : Household,

02. Atharv Ashok Nimbalkar
Age : 12 Years, Occu. Education

03. Shahaji Chimanrao Nimbalkar
Age : 72 Years, Occu. Nil
Respondent No.2 being minor through
natural guardian i.e. Mother respondent No.1
All R/o: Bahirobawadi, Karjat,
Taluka Karjat, District Ahmednagar

04. Shekhar Anant Dande,
Age: 45 years, Occu:
R/o: Rashin, Taluka Karjat,
District Ahmednagar-414402

...RESPONDENTS
(Respondent Nos.1 to 3 - Orig. Claimants
(Respondent No.4 – Orig. Opponent No.1)

**CIVIL APPLICATION NO. 842 OF 2024
IN FA/4034/2023**

WITH
CIVIL APPLICATION NO. 13205 OF 2023
IN FA/4034/2023

Mr. M. R. Deshmukh, Advocate for Appellant
Mr. A. A. Nimbalkar, Advocate for Respondent Nos.1 to 3

WITH
FIRST APPEAL NO.4414 OF 2023

Shekhar Anant Dande,
Age: 38 years, Occu: Agri
R/o. Rashin, Tq. Karjat,
Dist-Ahmednagar.

.....APPELLANT
(Orig. opponent No.1 i.e.
owner of offending vehicle)

VERSUS

1. Swati Ashok Nimbalkar,
Age : 32, Occu: Household,

2. Atharv Ashok Nimbalkar,
Age : 12, Occu: Education

3. Shahaaji Chimanrao Nimbalkar,
Age : 73, Occu: Nil,
Resp. No.1 to 4 R/o, Bahirobawadi,
Karjat, Tq. Karjat,
Dist-Ahmednagar.

4. The Manager,
HDFC ERGO General Insurance
Co. Ltd.,
S. No.95/3, Opp. To Axis Bank
Savedi Road, Ahmednagar

.....RESPONDENTS
(Resp. No.1 to 3 are Orig.
claimant & Resp. No.4 is
Insurance Company)

WITH
CIVIL APPLICATION NO. 14401 OF 2023
IN FA/4414/2023

Mr. V. V. Tarde, Advocate for Appellant
Mr. A. A. Nimbalkar, Advocate for Respondent Nos.1 to 3
Mr. M. R. Deshmukh, Advocate for Respondent No.4

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CORAM : ROHIT W. JOSHI, J.
DATED : 28TH MARCH, 2025

ORAL JUDGMENT :-

FIRST APPEAL NO.4034 OF 2023
FIRST APPEAL NO.4414 OF 2023

. First Appeal No.4034 of 2023 is filed by respondent No.2 in Motor Accident Claim Petition No.179 of 2021 decided by the learned Member, Motor Accident Claims Tribunal, Ahmednagar vide judgment and award dated 12.06.2023.

2. First Appeal No.4414 of 2023 is preferred by opponent No.1 in the said Claim Petition, who is owner of the offending vehicle.

3. One Ashok Nimbalkar died in a road accident, which had occurred at about 07:00 pm on 18.02.2021 on Karjat Mirajgaon Road near Akshay Hotel in front of agricultural

land of Manohar Nimbalkar within the jurisdiction of Karjat Police Station. Respondent Nos.1 to 3 are widow, son and father of deceased Ashok, who are original claim petitioners. It is the case of respondent Nos.1 to 3 that on 18.02.2021 at about 07:00 pm while Ashok was returning from his agricultural land, he was hit by the offending motorcycle bearing registration No.MH-16-CU-6081 from the back side. It is stated that deceased Ashok was walking besides the road at the time of his accident. The motorcycle was being driven by one Suraj Kulathe, who is also died in the accident. The spot of the accident is near Akshay Hotel, which is owned by one Laxman Nimbalkar, who is cousin of the deceased. It is stated that deceased Ashok was 34 years old at the time of his sad demise and he was working as a Commission Agent. It is stated that, he was an income tax payee. Since the dispute does not pertain to the quantum of the amount, further details in this regard may not be relevant.

4. Upon being served with the summons in the matter, the owner/appellant in First Appeal No.4414 of 2023 and Insurance Company/appellant in First Appeal No.4034 of 2023 appeared in the matter and filed their written

statements. The owner did not dispute involvement of his vehicle in the accident, however, he contended that the accident had occurred due to negligence of the deceased. As against this, the Insurance Company disputed involvement of the vehicle in the accident. The case of the Insurance Company is that initially, in the First Information Report, the number of offending vehicle was mentioned as MH-16-CK-4936, which is owned by Vishal Kulthe, real brother of deceased Suraj Kulthe, who was driving the offending vehicle. It is stated that insurance of this motorcycle bearing No.4936 had lapsed in the year 2019. The claimants and his relatives realized that they will not be able to recover the amount of compensation since the vehicle was not duly insured on the date of accident and therefore, on the next date, Vishal Kulthe, who has lodged First Information Report had appeared before the police authority for the purpose of recording his supplementary statement, in which he mentioned the number of offending vehicle as MH-16-CU-6081. It is stated that the number of this vehicle is mentioned deliberately because it was duly insured as on the date of accident. The case of Insurance Company, in a nutshell, is that a false suit was registered to show a vehicle that was not involved in the accident as being involved only in order to recover compensation from Insurance Company.

5. Based on the rival pleadings, the learned Tribunal framed issues in the matter. The parties have led their evidence. The claimants have examined respondent No.1/widow of the deceased and Laxman Nimbalkar, the person who has lodged the First Information Report and the supplementary statement. As against this, the owner has entered into the witness box where he does not dispute involvement of his vehicle. However, he reiterates that the accident had occurred due to negligence of the deceased. The Insurance Company has also examined two witnesses. Both these witnesses are from the Office of Regional Transport Officer (R.T.O.). The deposition of one Aparna Santosh Dhadge is recorded at Exhibit-57. She was working as a clerk-cum-typist in the office of Deputy Regional Transport Officer. She has produced particulars of the vehicle bearing registration No.MH-16-CK-4936 on record, according to which, the said vehicle was insured only up to 11.07.2019 and thereafter, the insurance was not renewed. The deposition of

this witness is recorded in order to point out that the vehicle No.4936, whose number was initially mentioned in the First Information Report was not insured on the date of accident and other witness Tushar Ingle was examined by the Insurance Company to establish that the driver of the offending vehicle was not holding driving license on the date of accident. His deposition is at Exhibit 57.

6. Heard Mr. M. R. Deshmukh, learned Advocate for the appellant in First Appeal No.4034 of 2023, Mr. V. V. Parde, learned Advocate for the appellant in First Appeal No.4414 of 2023 and Mr. A. A. Nimbalkar, learned Advocate appearing for the respondents in both the appeals who are the claimants before the learned Tribunal.

7. I have perused the pleadings, depositions and exhibited documents, more particularly, the First Information Report dated 18.02.2021 at Exhibit 26, supplementary statement dated 19.02.2021 at Exhibit 27 and spot panchnama prepared on 19.02.2021 at Exhibit 28. Having heard the rival submissions as aforesaid, following points arise for my consideration.

i. Is it proved that motorcycle bearing registration No. MH-16-CU-6081 was involved in the road accident?

ii. Has the accident occurred due to negligence of the driver of motorcycle/deceased Suraj Kulathe or due to negligence of the deceased Ashok Nimbalkar?

iii. Whether the learned Tribunal was correct in ordering the Insurance Company to pay the amount of compensation and to recover the same from owner of the vehicle?

As to point No.1:

8. It is apparent that the accident had occurred near Akshay Hotel, which is owned by Laxman Nimbalkar. This Laxman Nimbalkar had taken the deceased to the hospital after the accident. He has lodged the First Information Report. In his First Information Report, he has mentioned the number of the offending vehicle as MH-16-CK-4936, which is owned by Vishal Kulathe, brother of the deceased Driver Suraj Kulathe. This First Information Report is lodged on 18.02.2021 at around 09:30 pm i.e. within a period of around two and half hours from the time of accident. However, on the next date, this Laxman Nimbalkar has given a

supplementary statement to the police authority stating that the correct number of the offending vehicle is MH-16-CU-6081.

9. Respondent No.1/widow of the deceased has also entered into the witness box, however, admittedly she is not witness to the accident and therefore her evidence is not relevant for deciding the controversy involved in the appeal.

10. As regards the evidence of the owner, the same is also not relevant because he was admittedly not present at the time of accident. The evidence of two witnesses from Regional Transport Officer's Office, whose depositions are recorded by the Insurance Company is relevant only to demonstrate that the driver of the offending vehicle was not holding a valid license on the date of accident and further that the vehicle bearing registration No. MH-16-CK-4936 which was initially named in the First Information Report was not having a valid insurance covered as on the date of accident.

11. Learned Advocate Mr. M. R. Deshmukh, appearing for the Insurance Company has vehemently argued that immediately after the accident, Laxman Nimbalkar had rushed

to the spot of accident. He states that the driver of the offending vehicle/Suraj Kulathe had also suffered serious injuries and the offending vehicle was lying on the spot of accident when Laxman Nimbalkar had reached there. He states that it is obvious that he must have seen the registration number of the offending vehicle. Mr. Deshmukh, learned Advocate further argued that having seen the registration number of the offending vehicle, he mentioned the same in the First Information Report lodged by him with the police station. The contention of Mr. Deshmukh is that having realized that the offending vehicle which was involved in the accident i.e. vehicle bearing registration No.4936 was not insured, deliberately on the next date, number of another motorcycle, which was duly insured is mentioned in the supplementary statement. Mr. Deshmukh argued that this Laxman Nimbalkar is cousin of the deceased Ashok Nimbalkar and therefore, he has given number of another motorcycle, which was duly insured only in the view to ensure that compensation can be recovered from the Insurance Company. Mr. Deshmukh has pointed out that the statement in the First Information Report, where the informant Laxman Nimbalkar states that he got knowledge about the number of vehicle by making inquiries on the spot of accident. As against this, in his supplementary statement dated 19.02.2021 at Exhibit 27, he has stated that he had stated incorrect number of the offending vehicle due to haste and the correct number of the vehicle was MH-16-CU-6081. Mr. Deshmukh draws my attention to the examination-in-chief of Laxman Nimbalkar at Exhibit 35, where he states that while while deceased Ashok Nimbalkar and Suraj Kulthe were being taken to the hospital in the ambulance, he found registration certificate (R.C. Book) of motorcycle bearing registration No.MH-16-CK-4936 in the wallet of Suraj Kulathe and therefore, he mentioned the said number in the First Information Report. Mr. Nimbalkar contends that these inconsistencies in the statements of Laxman Nimbalkar, coupled with the fact that he is cousin of deceased Ashok Nimbalkar are enough to establish that vehicle No.6081 was not involved in the accident. As against this, Mr. Aniruddha Nimbalkar, learned Advocate for the claimants points out that the offending vehicle bearing registration No.6081 was found on the spot of the accident during the spot panchnama, which was conducted on

19.02.2021. He points out that the vehicle bearing registration No.6081 was also damaged indicating its involvement in the accident. He further contends that the accident had occurred on 18.02.2021 at around 07:00 pm and a person in the family had died. The supplementary statement is recorded on the next day at 11:00 am. The spot panchnama is conducted on the following date on 09:00 am to 10:00 am. Mr. Nimbalkar points out that when a family member of a person has died, it is impossible to create a false story and also to create evidence supporting the same within a short period of around 18 to 20 hours. He contends that existence of the vehicle in a damaged condition on the spot of accident is sufficient to hold that the vehicle was involved in the accident.

12. Mr. V. V. Parde reiterates his submission that although his vehicle was involved in the accident, the accident has occurred due to negligence on the part of deceased Ashok Nimbalkar.

13. At the outset, it needs to be mentioned that the present appeal is filed under Section 173 of the Motor Vehicles Act.

The controversy between the parties is of civil nature. The matter is required to be adjudicated on principles of preponderance of probability. It is clear from the evidence on record that two contrary versions have come on record with respect to the registration number of the offending vehicle, however, one cannot loose sight of the fact that the correction in the number is done immediately on the next day within a period of around 14 hours from the date and time on which First Information Report is lodged. It also needs to be noted that admittedly, vehicle bearing registration number MH-16-CU-6081 is found at the spot of accident and also in a damaged condition. There is nothing to infer that the spot panchnama prepared by police authority on the next date is also manipulated. Rather, such is not even the case of the appellant/Insurance Company. It will be pertinent to mention here that although, registration number of the offending vehicle is not correctly mentioned in the First Information Report, the make and model of the offending vehicle is correctly mentioned. In my opinion, all above facts and circumtances viewed together are sufficient to hold that the vehicle owned by appellant in First Appeal No.4414 of 2023, which was insured with the appellant/Insurance Company was involved in the accident. I have also perused findings recorded by the learned Tribunal in this regard with the able assistance of the learned Advocates. The findings appear to be just and proper and based on evidence on record which I have discussed above.

14. Learned Advocate for the respondent/original claimants has placed reliance on a recent judgment of the Hon'ble Supreme Court in the matter of ***Geeta Dubey Vs. United India Insurance Company limited (SLP Civil 8551 of 2024)*** decided on 18.12.2024, wherein the Hon'ble Supreme Court has held that in case where there is a dispute with respect to involvement of offending vehicle concerned, the claimant is only expected to prove the case on preponderance of possibilities and not beyond a reasonable doubt. The ratio of the said judgment is clearly applicable to the facts of the present case.

15. In that view of the matter, the contention raised by the learned Advocate for the Insurance Company regarding non involvement of the vehicle in the accident is rejected.

As to point No.2:

16. A contention is raised by owner of the vehicle, who is appellant in First Appeal No.4414 of 2023 that the accident did not occur on account of negligence on the part of Suraj Kulathe, who was riding the offending motorcycle, but due to negligence of deceased Ashok Nimbalkar. There is no eye witness to the accident. There is nothing to infer that Ashok Nimbalkar has died due to negligence on his own part. Nothing can be inferred in this regard even on perusal of the spot panchnama. In that view of the matter, the contention by the learned Advocate for the owner is rejected.

As to point No.3:

17. The learned Tribunal has held that the person driving the offending motorcycle was not holding valid license. This, according to the learned Tribunal, it is not a fundamental breach. In that view of the matter, the learned Tribunal has directed the Insurance Company to make good the loss and thereafter recover the same from the owner of the vehicle. Perusal of the evidence of R.T.O. witness at Exhibit 57 will indicate that deceased Suraj Kulathe, who was plying the motorcycle, did not hold a valid driving license. However, this

by itself cannot be a fundamental breach of contract of Insurance. Nonetheless, breach of policy condition is duly proved. In that view of the matter, no fault can be found with the learned Tribunal in applying the principle of pay and recover.

18. In the light of findings recorded above, I am inclined to dismiss both the appeals i.e. First Appeal No.4034 of 2023 and First Appeal No.4414 of 2023. Hence, the following order:

ORDER

a. First Appeal No.4034 of 2023 and First Appeal No.4414 of 2023 are **dismissed** with no orders as to costs.

19. Pending Civil Applications, if any, stand disposed of.

CIVIL APPLICATION NO.842 OF 2024

. In view of disposal of both the appeals on merit, the applicants are permitted to withdraw the amount alongwith accrued interest.

(ROHIT W. JOSHI, J.)

Rushikesh/2025