



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 5065 OF 2017
WITH CIVIL APPLICATION NO. 15925/2016

New India Assurance Company Ltd.,
Through Branch Manager,
Branch Office at Shivaji Chowk, Jalna Road,
Beed, Taluka & District Beed

Through its Divisional Manager/Authorized
Signatory, Adalat Road, Aurangabad

...Appellant
(Org. Respondent No.2)

Versus

- 1) Manisha w/o Sampat Bhange,
Age: 24 years, Occu: Household,
- 2) Shivam S/o. Sampat Bhange,
Age: 5 years, Occu. Nil,
- 3) Jayesh S/o Sampat Bhange,
Age: 3 years, Occu. Nil,

No. 2 & 3 are Minors, U/g of their mother,
Respondent No. 1 Manisha

- 4) Ganpat S/o Babasaheb Bhange,
Age: 49 years, Occu: Nil,
- 5) Kamal W/o. Ganpat Bhange,
Age: 57 years, Occu. Household,

All R/o Jamgaon,
Taluka Ashti, District Beed.

- 6) Hanumant S/o. Balu Dhonde,
Age: Major, Occu. Owner-Driver,
R/o. Murshadpur, Taluka Ashti,
District Beed.

...Respondents
(Rspdt Nos. 1 to 5 – Org. Claimants
Rspdt No. 6 – Org. Rspdt Nos.1)

- Mr. S. S. Rathi, Advocate for the Appellant
- Mr. S. B. Choudhari, Advocate for the Respondent Nos. 1 to 5

CORAM : ABHAY S. WAGHWASE, J
 RESERVED ON : DECEMBER 03, 2025
 PRONOUNCED ON : DECEMBER 04, 2025

JUDGMENT :

1. In this appeal, at the instance of insurance company, there is challenge to the judgment and order dated 07.06.2016 passed by learned MACT, Beed in MACP No. 93/2014 filed by heirs of deceased Sampat under Section 166 of the Motor Vehicles Act.

2. MACP No. 93/2014 was filed before Tribunal, Beed by heirs of Sampat Bhangre on the premise that on 06.12.2013 around 08.00 pm while deceased was traveling with pillion rider Shafiq Gani Khan Pathan on motorcycle bearing no. MH-23-AG-2451 near Pavansut Mangal Karyalaya on Beed-Nagar Road dash was given to the motorcycle by truck bearing no. MH-18-M-8327 coming from rear side. Due to the dash, deceased suffered head injury and while undergoing treatment, he succumbed to the same. Having lost source of income, his heirs-claimants sought compensation from respondent no. 1 owner/driver and respondent no. 2 insurance company jointly and severally.

After appreciating the oral and documentary evidence, learned Tribunal allowed the claim petition and granted compensation to the tune of Rs. 33,10,000/- to be paid jointly and severally with 6% rate of interest by

respondent nos. 1 and 2.

Above award is taken exception to by filing instant appeal.

3. Learned counsel for insurance company would point out that claim itself is false. That, there was no involvement of truck as alleged. According to him, rather deceased had given dash to a cow and had suffered injury. That, there was no accident on account of dash by truck. He pointed out that even in medico legal certificate (MLC) while injured was taken to the hospital, it was informed in the hospital that, motorcycle gave dash to the cattle, which came on the road. That, initially accidental death is registered on 13.12.2013. He pointed out that, subsequently on 18.12.2013 alleged pillion driver Shafique lodged report with police contending that there was dash by truck. Said Shafique had not stepped into witness box. That, insurance company in Tribunal had taken specific plea regarding non involvement of truck and there to be no evidence of any mishap between motorcycle and truck, but same has not been considered and appreciated.

4. Learned counsel pointed out that even in the spot panchnama, there is reference of cow but still claimants case has been accepted and directly finding is recorded regarding involvement of truck, which according to him, is contrary to the evidence on record. He pointed out that, there is no evidence to show that either informant Shafique suffered any injury or it is shown that there was any damage to the vehicle and even spot

panchnama does not refer to any signs of vehicle meeting dash from rear side and it further going and giving dash to the cow.

5. He further pointed out that even Tribunal in spite of claimant setting up a case that deceased earned Rs.8,000/- per month by rendering work of driver, has held monthly income of deceased Rs.15,000/-. On this count, he took this Court to the observations of Tribunal in paragraph 21 and thereby finds fault on the part of Tribunal to that extent.

For above reasons, he urges to allow the appeal.

6. In answer to above, learned counsel for respondents claimants would support findings and conclusion reached by Tribunal. According to him, though there is delay in lodging first information report, according to him, only after thorough investigation, charge-sheet has been filed against owner/driver of the truck against whom FIR was lodged. Thus, according to him, impugned judgment and award is perfectly legal, needs no interference. To support his submissions, he relied on judgments of Hon'ble Apex Court in cases of *Geeta Dubey and Others vs. United India Insurance Co. Ltd. and Ors*, AIROnline 2024 SC 867 & *Ranjeet and Another vs. Abdul Kayam Neb and Another*, 2025 LJSoft (SC) 598.

7. In the light of above submissions, evidence is put to scrutiny. Papers show that one Shafique Gani Khan Pathan lodged report with police

on 18.12.2013 contending that on 06.12.2013 he and Sampat were proceeding on motorcycle MH-23-AG-2451 and around 08.15 pm, their motorcycle given dash by a truck from rear side and their motorcycle further went and gave dash to the cow and they both fell. Sampat who was rider suffered head injury and he claims that he saw number of the truck as MH-18-M-8327 and the driver of the truck fled. On above report, Shivajinagar police station seems to have registered crime bearing no. 39/2013 for offence under sections 279 and 304A of the Indian Penal Code.

8. Charge-sheet carries spot panchnama, which is marked as exhibit 28 and same seems to be drawn on 13.12.2013. As pointed out, in the said panchnama, there is reference about witness Jawkar Deepak Sagar informing that on 06.12.2013, while he and his friend Atul Thorat were proceeding on Beed-Nagar Road, near Pavansut Mangal Karyalaya suddenly motorcycle rider and a pillion rider gave dash to cattle and fell down. The motorcyclist suffered head injury and fell unconscious and other person got injured and they were taken to Civil Hospital but Sampat, being serious, was shifted to Lifeline Hospital but he expired while undergoing treatment.

Therefore, as pointed out by learned counsel for appellant, in the spot panchnama there is eye witness account of Jawkar Deepak Sagar who had narrated about seeing motorcycle giving dash to cow and incumbents of the motorcycle falling. He does not speak about any dash by

any truck.

9. Apparently, as pointed out, regarding occurrence dated 06.12.2013 so called pillion rider Shafique has reported police about dash being given by truck on 18.12.2013. As pointed out, he has not stepped into witness box and there is only evidence of PW1, who is wife of deceased Sampat. If at all dash was given by truck and if at all Shafique claims to have noted the number of truck, he ought to have lodged prompt report to that extent. He is not shown to be admitted anywhere nor he shown to be incapacitated for any reason to lodge report belatedly. Even, as pointed out, when injured was taken to the hospital, in MLC information is passed about motorcycle was giving dash to cattle and there is no reference of involvement of any truck. Therefore, the above material creates doubt about involvement of truck.

10. Learned Tribunal has straight away accepted the charge-sheet and has recorded the finding in paragraph 11 holding that evidence of witness is not challenged in cross-examination. Exhibit 27 has been straight away accepted coupled with inquest and post mortem report to hold that deceased Sampat met with vehicular accident. While recoding affirmative findings on the point of rash and negligence, there is discussion in paragraph 12 and learned Tribunal by referring to the judgment of *The New India Assurance Co. vs. Keshar Manikrao Mete and others*, 2010 (2) B.C.J.

417, observed that investigating machinery has seized the vehicle truck involved in the accident and accused no. 1 has been charge-sheeted and accused no. 1 had applied for return of property vide application exhibit 34 and the said has been allowed and therefore, such evidence shows involvement of offending vehicle.

In considered opinion of this Court, such findings are contrary to the very contents of spot panchnama and MLC papers. Obviously, when vehicle is seized by police, its owner is bound to apply for its return and merely because of it, no conclusion can be drawn regarding involvement or rashness or negligence. Merely because charge-sheet has been filed, inference cannot be drawn that truck was really involved, more particularly, when the contents of charge-sheet like spot panchnama reflect another reason of dash, on a belated FIR, it is unsafe to hold involvement of truck and further directly award compensation.

11. In the considered opinion of this Court, the approach of learned Tribunal is erroneous. No doubt, in cases of such nature, there is no rule of strict evidence and preponderance of probabilities are sufficient to record findings, however, here, there is documentary evidence showing dash being given by motorcycle to a cattle and thereafter incumbents on the motorcycle falling down. Spot panchnama speaks to that extent. There is no distinct evidence that motorcycle suffered dash from rear side and, therefore, on

mere belated FIR by so called pillion rider, who refrained from stepping in the witness box, above findings about involvement of truck, cannot be allowed to be sustained.

12. Though learned counsel for respondents claimants relied on above rulings of Hon'ble Apex Court, the facts in those cases are distinct and cannot be equated with the facts of case in hand. In the first judgment of Geeta Dubey (supra), Hon'ble Apex Court has held that claimant is only expected to prove on preponderance of probabilities and not beyond reasonable doubt. There is no dispute about such settled legal position, however, here, case is also not proved on preponderance of probabilities rather facts narrated in the case are shrouded by mischief for various reasons spelt out in the aforesaid paragraphs. Further in that case, regarding occurrence dated 18.06.2018 FIR was registered within a short time i.e. on 21.06.2018. Here it is not so. Here, there is FIR but after almost a week. In the second judgment of Ranjeet (supra), Hon'ble Apex Court has held that non-examination of eye witness is not fatal, however, here informant had not suffered any serious injury and was not shown to be admitted anywhere and, therefore, he was in a position to lodge prompt report regarding being hit by truck. However, surprisingly he did not promptly lodged report in spite being pillion rider and eye witness and further did not stepped in the witness box for the reasons best known to him. For above reasons, the

rulings relied by learned counsel for respondents does not come to his rescue.

13. For above reasons, this Court finds it a fit case for interference on the ground that there is improper and incorrect appreciation of evidence on record by learned Tribunal. Hence, appellant succeeds. Accordingly, I proceed to pass following order:

ORDER

- (i) First Appeal is allowed.
- (ii) Impugned judgment and award dated 07.06.2016 passed by learned MACT, Beed in MACP No. 93/2014 is quashed and set aside.
- (iii) Pending civil application(s), if any, stands disposed of.

(ABHAY S. WAGHWASE, J.)

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