



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 4436 OF 2023
WITH
CIVIL APPLICATION NO. 6289 OF 2024
WITH
CIVIL APPLICATION NO. 14474 OF 2023

The Oriental Insurance Co. Ltd.
Through Branch Manager,
Near ST Stand, Osmanabad,
Insurer of Motor Cycle MH-25-AE-0506
Through its Authorized signatory,
Dhammanand Sheshrao Sonone,
Age: 35 Yrs. Occu: Service,
Administrative Officer, T. P. Hub,
The Oriental Insurance Co. Ltd. Aurangabad.

...APPELLANT
Orig. Res. No.2.

VERSUS

1] Sambhaji S/o. Shivaji Holkar
Age: 35 years, Occu: Pvt. Service,
R/o. Benmbli, Tq. & Dist. Osmanabad,
Disabled hence through next friend
Father Shivaji Sudam Holkar,
Age: 55 years, Occu; Agri.
R/o. As above.

...Orig. Claimant

2] Kailas S/o. Namdeo Kakade
Age: 45 years, Occu: Business,
R/o. Yashvant Nagar, Osmanabad,
Tq. & Dist. Osmanabad.

...RESPONDENTS
Orig. Claimant & Resp. No.1.

...

Mr. Dhananjay P. Deshpande, Advocate for the Appellant.

Mr. Prasanna S. Chavan, Advocate for Respondents.

CORAM : KISHORE C. SANT, J.
RESERVED ON : 04th OCTOBER 2025.
PRONOUNCED ON : 14th NOVEMBER 2025.

ORDER :-

1. Heard Mr. Deshpande, the learned Advocate for the Appellant-Insurance Company, and Mr. Chavan, the learned Advocate for Respondents-Claimants.
2. This Appeal by the Insurance Company, original Respondent No.2, challenging Judgment and Award dated 19th August 2023, passed by the learned Member, Motor Accident Claims Tribunal, Osmanabad in MACP No.164 of 2016. Respondent No.1 is the original claimant. Respondent No.2 is the original Respondent No.1.
3. By way of impugned Judgment and Award, the learned Member allowed the claim petition, directing original Respondent Nos.1 and 2 to

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jointly and severally to pay the compensation of Rs.16,37,000/- within 30 days, including no fault liability amount.

4. Civil Application No.6289/2024 is filed seeking withdrawal of the amount deposited by the appellant in the office of this Court towards condition for grant of stay. Civil Application No.14474 of 2023 is filed seeking stay to the impugned judgment and award. As the record and proceeding is received, by consent of the parties, the appeal is taken for final disposal at the stage of admission.

5. The facts, in short, are that the respondent No.1 suffered an accident on 22nd October 2015. He was the pillion rider on the motorcycle of Respondent No.2. He suffered 46% permanent disability. He, therefore, filed a claim petition in the trial Court. An FIR came to be lodged on 3rd December 2015 by father of the claimant. Owner of the motorcycle accepted that the accident took place; however, he denied that the motorcycle was being driven in a rash and negligent manner.

6. It is the case of the appellant-Insurance Company that the claim petition was filed in collusion. There is no direct evidence about the accident. The driver of the motorcycle is also not examined. It is further stated that while recording the history, it was recorded that the motorcycle skidded off the road. Thus, there was no accident. It is further contended that the claimant himself had borrowed the motorcycle from respondent No.1 and he himself stepped into the shoes of owner of the motorcycle. He cannot therefore claim to be a third party. Consequently, he is not entitled to receive any amount towards compensation. The learned Member of the Claim Tribunal, however, wrongly recorded that the claimant was entitled to receive compensation as a third party and allowed the petition.

7. The learned Advocate Mr. Deshpande, appearing for the Appellant, vehemently argued that the claimant himself stepped into shoes of the owner, and thus, was not entitled to receive compensation. The FIR was lodged by the father of the claimant and not by the rider of the motorcycle. The father has thus lodged the FIR on hearsay evidence. He

himself has not seen the incident. No witness has been examined to establish the accident. There is an admission by the vehicle owner showing that it was a collusive petition. There is admission by the father of the claimant that the vehicle was borrowed by the claimant. The document showing involvement is not proved by the claimant. Thus, the involvement of the vehicle itself is in doubt. He relied upon the circular dated 16th November 2009 issued by the Insurance Regulatory and Development Authority, which states that the owner of the vehicle is not covered in such policy. From the policy at Exh. 38, he points out that the policy though was package policy, the owner of vehicle is not covered. In support of his submissions, he relied upon the following Judgments:

(i) United India Insurance Co. Ltd. Vs. Smt. Suvarna Dadasaheb Pawar and Ors. passed by this Court in First Appeal No. 3017 of 2013 decided on 06th May 2024.

(ii) Oriental Insurance Company Ltd. Vs. Rajni Devi and Ors.¹

(iii) Ramkhiladi and Anr. Vs. United India Assurance Company and Anr.²

1 (2008) 5 SCC 736

2 (2020) 2 SCC 550

8. Learned Advocate Mr. Chavan, appearing for Respondents, vehemently opposed the appeal. He submits that the claimant was a pillion rider, and therefore, clearly was a third party. There is nothing to show that he borrowed the vehicle from the owner. A stray admission by the father of the claimant in deposition by itself is not sufficient to conclude that the claimant stepped into the shoes of the owner of the vehicle. Delay in filling the FIR is because of the fact that the claimant himself was admitted in the hospital and that fact is not denied. When the claimant was in the hospital, a letter was sent to the Sadar Bazar Police Station. On that basis, the offence ought to have been registered. However, it is the fault of the police that no offence was initially registered. Therefore, the offence was registered against the rider of the vehicle and charge-sheet is also filed. There is no denial of the fact that the rider of the motorcycle was not the owner. So far as policy is concerned, he submits that the policy was package policy covering the owner as well. The claim was filed under Section 166 of the Motor Vehicle Act. He submits that the judgments relied upon by the appellant

are not applicable to the facts of the present case. He relied upon the following judgments.

- (i) *National Insurance Company Ltd. Vs. Balakrishnan and Anr.*³;
- (ii) *Bimla Devi and Ors. Vs. Himachal Road Transport Corpn. And Ors.*⁴;
- (iii) *Sunita Ashok Balsaraf Vs. Divisional Manager, New India Assurance Co. Ltd.*⁵;
- (iv) *Satling Gangadhar Bagal Vs. Abarao Dnyanoba Sanap and Ors.*⁶;
- (v) *Sheela Ashok Shende Vs. The Branch Manager, the National Insurance Co. Td. And Anr.*⁷
- (vi) *Dhiraj and Ors. Vs. Smt. Usha and Ors.*⁸
- (vii) *New India Assurance Company Vs. Himmatrao and Ors.*⁹
- (viii) *Satling Gangadhar Bagal Vs. Abarao Dnyanoba Sanap and Ors.*¹⁰

9. In this appeal, question needs to be decided is whether the claimant can be said to a person stepping into shoes of the owner, and

3 AIR 2013 SC 473

4 AIR 2009 SC 2819

5 AIR Online 2019 Bom 3553

6 AIR Bom R. 82

7 2020(6)Mh.L.J. 264

8 AIR Bom R. 467

9 2015 (6) ALL MR 647

10 2022(3) Mh.L.J. 632

thus, not entitled to receive compensation. On other aspects, there is no much dispute i.e. disability, income etc. In the present case, the insurance policy is on record at Exh.38. The policy is titled as “Two wheelers package policy - Zone B”. In the clause of liability, it shows that the premium of Rs.6,000/- was charged in respect of any one claim or series of claims arising out of one event. There is no premium charged under the head P.A. cover under Section (III) for registered owner cum driver (CSI). Thus, from the policy, it is clear that no premium was paid to cover the registered owner-cum-driver. The question, therefore, would be as to whether in the present case, the claimant can be said to be an owner, as argued by the Mr. Deshpande. To show that the claimant himself had borrowed the vehicle, he relies upon the evidence of father of the claimant namely, Shivaji Holkar. This witness in his deposition stated that the claimant had been to see his brother-in-law with his friend Kailas Gore i.e. driver. The driver was driving the motorcycle at excessive speed, and lost control of the vehicle, and in that, the accident took place. He also stated details about the hospitalization expenses, the

medical condition of the claimant, and income etc. In the cross-examination, he accepted that the claimant had taken the motorcycle to go to see his brother-in-law. The said motorcycle was being driven by the Kailas Gore. Kailas Gore informed him about the accident. He accepted that he did not inform about the incident till 28th November 2015 to anyone.

10. From the examination-in-chief itself, it is seen that it is the claimant who had gone to see his brother-in-law with Kailas Gore. In the cross-examination, it does appear that the motorcycle was taken by the claimant himself from Kailas Kakde. In his statement, he stated that on the date of accident, the claimant had been to his house at Bembli and then went to his in-laws' place on the motorcycle with his friend Shashikant Gore. This would also show that the motorcycle was with the claimant. On this basis, this Court has to consider the legal position.

11. In the case of *Ramkhiladi and Anr.* (supra), the Hon'ble Apex Court considered the provisions of Section 163-A and Section 147 of the

Motor Vehicles Act, 1988. It was held that the claim petition under Section 163-A is not maintainable by borrower/permissive user of vehicle against the owner and/or insurer of the said vehicle. It is held that such borrower/permissive user steps into shoes of owner, and thus the owner cannot be claimed any compensation. The claimant cannot be said to the third party. In paragraph 5.5 of the said judgment passed by the Hon'ble Apex Court considered the judgment in the case of ***Ningamma Vs. United India Insurance Co. Ltd.***¹¹ and ***New India Assurance Co. Ltd. Vs. Sadanand Mukhi***¹². Paragraph No.5.5 reads as under:

“5.5. That in Ningamma V. United India Insurance Co. Ltd. (supra) and New India Assurance Co. Ltd. V. Sadanand Kukhi (supra), this Court has held that the owner of the vehicle or his legal representatives or the borrower of the vehicle cannot raise a claim for an accident in which there was no negligence on the part of the insured vehicle. It is submitted that in the aforesaid decisions, this Court has held that the borrower of the vehicle steps into the shoes of the owner and, therefore, the borrower of the vehicle or his legal representatives are not entitled to compensation from the insurer under the Act. It is submitted that the deceased in the present case has stepped into the shoes of the the owner and therefore not entitled to any third party compensation from the insured vehicle.”

11 (2009) 13 SCC 710

12 (2009) 2 SCC 417

12. In the case of ***Ningamma*** (supra), the deceased was driving a motorcycle borrowed by him from the real owner and met with an accident by dashing against a bullock cart. In that case, it was held that the claim petition under Section 163 of the Motor Vehicle Act cannot be maintained.

13. In the case of ***Oriental Insurance Company Ltd.*** (supra), the Hon'ble Apex Court held that it is a well settled principle of law that where third party is involved, the liability of the insurance company would be unlimited. In cases involving the death of the owners or another passenger of the vehicle, the contract of insurance is governed by and depend upon the terms of the contract.

14. In the case of ***United India Insurance Co. Ltd. Vs. Suvarna*** (supra), this Court considering the judgment of ***Ramkhiladi*** (Supra), held that the deceased was rider of the motorcycle borrowed by him from his brother, and thus, he stepped into the shoes of his brother while riding motorcycle. This Court also considered Section 147 of the Motor Vehicle

Act. In the said case, the appeal of the insurance company was allowed and the order of granting compensation was set aside.

15. The Circular issued by the I.R.D.A. shows that the liability of insurance companies in respect of occupants of private car and pillion riders in two-wheelers under standard motor package policies (comprehensive policy). The said circular is purely liability-related instructions, this Court need not go into that aspect.

16. So far as judgments relied upon by the learned Advocate for the respondent are concerned, those are considered below. In the case of ***National Insurance Company Vs. Balkrishnan*** (supra), it was held that the occupant in the car and pillion rider of scooter/motorcycle are covered under comprehensive policy. In the said case, the claim was by the managing director of the company travelling in the company's car. In the said case also the court held that to determine the question, it is necessary to go through the terms of contract.

17. In the case of ***Satling Gangadhar Bagal*** (supra), this Court held that stray admission against the record carries no weight. In the said case, the injury claim was dismissed by the Tribunal on the basis of admission given by the witness. The said admission was found to be against the record, and in that view, the Court took a view that the stray admission cannot be considered.

18. In the case of ***Sheela Ashok Shende*** (supra), in the said case also, there was stray admission relied upon by the Court. The Court considered the case of ***Balkrishan*** (supra), and held that the claim cannot be rejected on stray admission of illiterate claimant.

19. In the case of ***Dhiraj and Ors.*** (supra), this Court held that the comprehensive policy covers the liability of pillion riders as well as occupants in a four-wheeler. There is no dispute about the said proposition. However, in the present case, the question is whether the claimant stepped into the shoes of owner and was thus entitled not entitled to receive compensation.

20. Taking an overall view, it is clear that the vehicle was borrowed by the claimant himself. The principle that stray admissions cannot be relied upon is in the background that in that case the admission was against the record. The contents of the FIR are seen by keeping in mind the admission, this Court finds that it cannot be said that the admission in the present case is merely a stray admission. The claimant himself had borrowed the vehicle from Kailas Kakde. The fact that the FIR was lodged after many days i.e. almost one and half months after the accident also fortifies the submission of Mr. Deshpande. It is also seen that Kailas Gore could have been examined, as is the only person who has witnessed the accident as he himself involved in the same. Though it was possible to examine him, he was not examined. The father of the claimant, who is examined, is not eye-witness and whatever he stated was based on hearsay evidence about the incident. Thus, though it was possible to bring best possible evidence on record, it is not brought on record. As already observed that other issues such as injuries, income etc. need not be gone into, as there is no serious dispute on those

aspects.

21. This Court thus finds that there is substance in the appeal. The appeal therefore needs to be allowed. Hence, the following order:

ORDER

- (i) First Appeal stands allowed.
- (ii) The impugned Judgment and Award dated 19th August 2023, passed by the learned Member, Motor Accident Claims Tribunal, Osmanabad, in MACP No.164 of 2016, is quashed and set aside.
- (iii) In view of disposal of the First Appeal, pending Civil Applications, if any, stand disposed off.

[KISHORE C. SANT, J.]

22. At this outset, learned Advocate for the appellant informs that the amount is deposited in this Court in view of order passed on an application for stay.

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23. Needless to say that, the appellant shall withdraw the amount after six weeks from today.

[KISHORE C. SANT, J.]