

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.704 OF 2018**

The Oriental Insurance Co. Ltd.
Having Divisional Office at Near Wateshwar
Mandeer, Kolhapur, Thr. Kolhapur Regional
Officer-2, SBI Building, Annexe, 3rd Floor, Bank
Street, Fort, Kolhapur-400 023.Appellant
Versus

1 Chaya Balaso Borade
Age-45 Years, Occ: Nil

2 Deepak Balaso Borade
Age-26 Years, Occ: Nil

3 Vijay Balaso Borade
Age-24 years, Occ: Nil

All 1 to 3 R/at Chaware, Taluka-Hatkangale,
District-Kolhapur.

4 Dayanand D. Patil
Age-Major, Occ: Business,

(FA stand abated
against R.No.4 vide
order dated 7/03/24)

R/at Budhihal, Taluka-Chikodi, District-Belgaum Respondents

Mr.Sandeep S. Jinsiwale, Advocate for the Appellant.
Mr.Akshay A. Kulkarni, for Respondent Nos.1 to 3.

CORAM : SHIVKUMAR DIGE, J.

DATE : 16th JULY, 2025.

Judgment. :

1. This appeal is preferred by the appellant-Insurance Company against the judgment and order passed by the Motor Accident Claims Tribunal, Kolhapur (for short "the Tribunal").

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2. It is contention of learned counsel for the appellant-Insurance Company that the offending vehicle was not involved in the accident and after two months, offence was registered against the offending vehicle, that too, on the basis of anonymous letter but the Tribunal has not considered this fact and has passed the impugned judgment and order, which is erroneous. Hence, requested to allow the appeal.

3. It is contention of learned counsel for respondent Nos.1 to 3/claimants that the Investigating Officer was examined to prove the involvement of the offending vehicle. He has stated that the offending vehicle was involved in the accident. The appellant-Insurance Company has not examined the driver of the offending vehicle to prove its defense. The Tribunal has passed well reasoned order, no interference is required in it and requested to dismiss the appeal.

4. I have heard both learned counsel, perused the judgment and order passed by the Tribunal.

5. It is claimants' case that on 30th September 2009, the deceased – Balaso Borade was proceeding from Ghunki to Tandulwadi on his motorcycle. When he reached near Raskar Mala at village – Ghunki on Kolhapur Pune Highway, one truck bearing No.KA-23/7712 came in high speed from backside of the motorcycle of the deceased and dashed the motorcycle of the deceased. Due to dash, the deceased was dragged up to few distance and was crushed under the truck and died on

the spot. Accordingly, Wadgaon Police Station registered crime against the truck driver.

6. To prove the involvement of the offending vehicle in the accident, the claimants have examined Satyappa Naik, Investigating Officer of the crime at Exhibit-64. He has stated that C.R.No.92 of 2009 registered with Wagaon Police Station was investigated by him. He further stated that on 30th September 2009, the accident between unknown truck and motorcycle occurred and during investigation, number of the unknown truck was revealed as KA-23/7712. He has further stated that he received anonymous letter informing the number of truck involved in the accident and, on that basis, he collected information from the RTO and called the owner of the truck in police station and seized the truck. The driver of the truck also came to the police station and told that after the accident, he ran away from the spot. The Investigating Officer got inspected both the vehicles from RTO. During RTO inspection, it was revealed that there was dash between the said motorcycle and the truck. In his cross-examination, he admitted that initially a crime was registered against unknown vehicle and he had recorded the statement of 9 to 10 witnesses but none of them told him the number or description of vehicle which dashed the motorcycle of the deceased. He admitted that after two months of the incident, he received an anonymous letter informing the truck number and, on that basis, he registered offence against the driver of the truck.

7. It is contention of learned counsel for the appellant-Insurance Company that the offending vehicle was falsely implicated in this case.

8. In my view, to prove the involvement of the offending vehicle, the claimants have examined the Investigating Officer of the said crime but the appellant has not examined the driver or the owner of the truck as defense witnesses to prove that the truck was not involved in the accident. It is settled principle of law that if any plea is taken by any party, it has to be proved by cogent evidence. The appellant had not produced any evidence before the Tribunal regarding non-involvement of the vehicle in the accident. There is no reason to disbelieve the evidence of Investigating Officer. Moreover, he had examined the offending truck and motorcycle from RTO. The damage was seen on both vehicles. On that basis, he lodged a case against the driver of the offending vehicle. Hence, I do not find merit in contention of false involvement of the offending vehicle and I pass following order :

ORDER

1. The appeal is dismissed. No order as to cost.
2. The claimants are permitted to withdraw the deposited amount along with accrued interest thereon.
3. The statutory amount be transmitted to the Tribunal along with accrued interest thereon. The parties are at liberty to withdraw it as per Rule.

4. Record and proceedings be sent to the Tribunal.
9. Pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)