

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO. 702 OF 2017

Shivprasad S/o Sidram Kanshetti]
Aged: 7 (Minor), Occupation – Nil,]
Through Minor Guardian]
Sidram Basvant Kanshetti]
Plot No.35, Occupation – Service,]
Resident of Kavathemahankal,]
Taluka – Kavathemahankal,]
District: Sangli]

.... **Appellant
(Original
Petitioner)**

Versus

1. Balasaheb A. Ghorpade]
Age: 47, Occ: Stone crush]
and Truck Transport]
Business, R/o. Budhgaon,]
2. The New India Assurance Co. Ltd.]
Branch – Sangli.]

.... **Respondents**

Ms. Rohinee Yadav i/b Mr. Vijay Killedar, Advocate for the Appellant.
Mr. Sandeep Jinsiwale, Advocate for Respondent No. 2 – Insurance
Company.

**CORAM : SHIVKUMAR DIGE, J.
DATE : 10th OCTOBER, 2025.**

ORAL JUDGMENT. :

1. This appeal is preferred by the Appellant against the

judgment and order passed by the Motor Accident Claims Tribunal, Sangli (for short, “the Tribunal”).

2. It is contention of learned counsel for the Appellant that the accident occurred due to sole negligence of the driver of offending vehicle. The offence was registered against the driver of dumper, but the Tribunal has considered 30% contributory negligence of the Appellant, which is erroneous. Hence, requested to allow the appeal.

3. It is contention of learned counsel for the Respondent No.2 – Insurance Company that the accident occurred due to sole negligence of the Appellant.

Learned counsel further submitted that father of the Appellant gave his medical history while admitting the Appellant in hospital stating that while riding on bicycle, the Appellant’s feet got entangled in wheel, due to which bicycle was toppled and a dumper collided with the bicycle. So there was negligence of the father of the Appellant in the said accident. The Tribunal has passed a well-reasoned order, no interference is required in it, and requested to dismiss the appeal.

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

5. It is Claimant's case that at the time of accident, the Appellant/Claimant was 5 years old. On 25th February 2008, he along with his father were going on bicycle, they were passing by Miraj to Jat road. The father – Sidram was riding bicycle, whereas the Appellant was sitting on front bar of the bicycle. They were proceeding on left side of the road in a slow speed. At that time, the dumper bearing registration No. MH-09-L-0227 suddenly came from behind in high and excessive speed and dashed the bicycle from backside, due to dash, the Appellant came under front wheel of the dumper and sustained multiple grievous injuries to his whole body. The offence was registered against the driver of dumper.

6. To prove the negligence of the driver of dumper, the Appellant has examined his father Sidram Kanshetti as witness. He has stated that accident occurred due to sole negligence of the driver of dumper. The driver of dumper did not step into witness box.

7. While dealing with the issue of negligence, the learned Tribunal has observed that the father of the Appellant carrying bicycle double seat. He has contributed in the accident as he was riding bicycle double seat. On that ground, the learned Tribunal has considered 30% contributory negligence of the Appellant. I am unable

to understand the observations of the Tribunal as at the time of accident, the Appellant was 5 years old, and he was going with his father on bicycle.

8. It is Appellant's specific case that his bicycle was dashed by the offending dumper from behind. The offence was registered against the driver of dumper. Moreover, he has been convicted for the said offence. He did not step into witness box to prove the negligence of the father of the Appellant, but the learned Tribunal has erroneously fixed 30% contributory negligence on the Appellant's father, which is perverse. Hence, I set aside this finding and hold that the accident occurred due to sole negligence of the driver of offending dumper, and I pass following order:

ORDER

- i. The appeal is allowed.
- ii. The Appellant is entitled for Rs.1,50,000/- @ 7.5% interest per annum from the date of filing claim petition, till realization of the amount, which is deducted as 30% contributory negligence of the Appellant.
- iii. The Respondent No.2 – Insurance Company shall

deposit the above amount along with accrued interest thereon within six weeks, after receipts of this order.

- iv. The Appellant – Claimant is permitted to withdraw the deposited amount along with accrued interest.
 - v. Record and Proceedings be sent back to the Tribunal.
9. All pending applications, if any, also stand disposed off.

(SHIVKUMAR DIGE, J.)