

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

FIRST APPEAL NO.208 OF 2007

1. Gajanan Rajaram Hulvane }

Age-31 years, Occ : Driving, }

R/o. Varnali, Vishrambag, Sangli, }

District-Sangli. }

2. Rajesh Narattomdas Shah }

Age-Major, Occ: Rickshaw owner, }

R/o. Plot No.12, Near Ratanshi Nagar, }

Sangli, District-Sangli. }

...Appellants

**NILAM
SANTOSH
KAMBLE**

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Versus

1. Anil Nirmal Khade }

(Amendment carried out by order dated
8/2/12) }

(Since deceased through his Lrs.) }

1a. Smt. Rekha Anil Khade }

Age-31 years, Occ: Housewife }

1b. Shri.Nilesh Anil Khade }

Age-21 years, Occ: Education }

1c. Shri.Shailesh Anil Khade }

Age-19 years, Occ: Education }

1d. Master Mahesh Anil Khade }

Age-17 years, Occ: Education }

R. Nos.1a to 1d R/at Indira Nagar }

Zopadpatti, Civil Hospital Road, Near }

Garkhed Chowk, Sangli, }

R.No.1d minor thr. His Guardian R. No.1a }

2. **United India Insurance Co.** }
 (Samrat Mansion) }
 Mahavir Nagar, In front of Gujrathi School, }
 Sangli (Deleted vide Exh.36) }
3. **Shrikant Hanmant Bijargi** }
 Age-Major, Occ: Scooter owner and driver }
 R/o. Dhangar Galli, Sangli, District-Sangli. } **...Respondents**

Mr.Abhishek T. Ingale i/b Mr.Umesh Mankapure, for the Appellants.

Mr.Atharva R.B. a/w Mr.Yash Naik i/b Mr.Vaibhav Gaikwad, for Respondent Nos.1A to 1D.

CORAM : SHIVKUMAR DIGE, J.

DATE : 09th JULY 2025

ORAL JUDGMENT :-

1. The issue involved in this Appeal is accident occurred due to sole negligence of the deceased.

2. It is contention of learned counsel for the Appellant that, initially it was pleading of the Respondents-Claimants before the Tribunal that the deceased gave dash to the offending vehicle from front side. But later on, amendment was done and it is mentioned that, the scooter of deceased was dashed by the offending vehicle from backside. While deciding the issue of negligence, the Tribunal, on the basis of amendment and

considering evidence of witnesses held that accident occurred due to negligence of driver of offending vehicle. The learned counsel further submitted that, the Tribunal should have considered that, though the amendment was carried out, it was mentioned that, dash was given from backside whereas earlier it was mentioned from front side. Hence, requested to allow the Appeal.

3. It is contention of learned counsel for the Respondents-Claimants that, the deceased was going on scooter and he was dashed by the driver of offending vehicle from backside. The accident occurred due to sole negligence of the driver of the offending vehicle. The incident was witnessed by the eye witnesses. The FIR was lodged against driver of the offending vehicle. He was charge-sheeted. The Tribunal has passed well reasoned order. Hence, requested to dismiss the Appeal.

4. I have heard both learned counsel. Perused judgment and order passed by the Motor Accident Claims Tribunal ('The Tribunal' for short), Sangli.

5. It is Claimant's case that, on 12th February 2002, the

deceased along with Opponent No.4 was returning back to Sangli from Bhagovati on a scooter bearing registration No.MH-10B/5825. The Claimant Anil Khade was pillion rider and Opponent No.4 Shrikant Bijjargi was driving the said scooter. When their scooter was near to Chipri Phata, on Jaysingpur-Kolhapur Road, at that time, Opponent No.1 who was driving the offending vehicle gave dash to the scooter from backside and caused injury to the Claimant and Opponent No.4 and thus without stopping on the spot, Opponent No.1 ran away from the spot.

6. To prove the negligence of the driver of the offending rickshaw, the Claimant has examined himself. He has stated that, the accident took place due to sole negligence of the driver of the rickshaw i.e. Respondent No.1 who gave dash to the scooter on which the Claimant was pillion rider from backside. Nothing elicited in the cross-examination of this witness. The driver of the offending rickshaw Gajanan Hulavane examined himself to prove his defence. He has stated that, he was proceeding from Ichalkaranji from Sangli at about 5.00 p.m. near Mangave Petrol

Pump and near to Chipri Phata, he saw one accident and he reached the said spot of incident at about 5.45 p.m. As per his evidence, as the traffic was jam, his vehicle was to the backside and therefore, after getting down from his vehicle, he went on the spot and saw two persons lying in the injured condition as they were fallen down from the scooter. He has further stated that, after getting clear line on the road, he along with his vehicle proceeded from the said spot to Sangli. Thereafter, he came to know that his vehicle was involved in the accident.

7. While dealing with the issue of the negligence, the Tribunal has observed that, the Opponent No.1 i.e. driver of the rickshaw has not examined any other witness in corroboration with his case. Considering the oral as well as documentary evidence on record, particularly the police papers wherein there is some oversight to wrong reference that the goods carried rickshaw came from opposite side and gave dash to the scooter, the Tribunal further observed that, considering the other averments in the said Police papers, and considering the oral evidence, it proves that offending rickshaw gave dash from the

backside, is more probable, than the Police papers. On that ground, the Tribunal has considered accident occurred due to negligence of the rickshaw driver. I do not find infirmity in it.

8. In my view, after the accident, police registered FIR against the driver of the offending rickshaw. After making inquiry charge-sheet was filed against the Appellant No.1-rickshaw driver for the said offence. The defence taken by the Appellant is highly improbable as after making inquiry, the Police had registered offence against him. Hence, I do not find merit in the contention that, the accident was not occurred due to negligence of the offending Appellant No.1-rickshaw driver. The Amendment was not challenged by the Appellant No.1, when it was carried out now the Appellant's cannot question it. The Appeal is devoid of merit and I pass following order.

ORDER

- (i) The Appeal is dismissed.
- (ii) The Claimants are permitted to withdraw the deposited amount alongwith interest.
- (iii) The statutory amount alongwith interest be

transferred to the Tribunal. Parties are at liberty to withdraw it, as per Rules.

(iv) Record and Proceedings be sent back to the Tribunal.

(v) All pending Civil and Interim Applications are disposed of.

(SHIVKUMAR DIGE, J.)