

5. Bhimrao Laxman Kakade
Age: 70 yrs, Occu: Nil,
R/o. Pangri, Tal: Barshi, District-Solapur Respondents No.1
to 5 (Orig.
Applicant no.1-5)
6. Suryabhan Janardan Tope
Age: Major, Occu: Agril,
R/o Bavchi, Tal: Paranda, Dist Osmanabad,
(Owner of Tractor no. MH 25/H 2111) Respondents No.6
(Orig. Opponent no. 1)
- 7 Lahu Shivaji Garad
Age: Major, Occu: Agril, R/o. Khed,
Dist: Osmanabad Previous owner of
Tractor No. MH25/H 2111 Respondents No.7
(Orig. Opponent no. 2)
8. Madhukar Vitthal Patil
Age: Major, Occu: Agril,
R/o. Pangri, Tal: Barshi, District - Solapur Respondents No.8
(Owner of Trolley no. MH 13/T 0743) (Orig. Opponent no. 3)
9. The New India Assurance Company Ltd.
Through its Divisional Manager, Behind
Hutatma Smarak Mandir, Solapur Respondents No.9
(Insurer of trolley no. MH 13/T 0743) (Orig. Opponent no. 5)
- 10 Satish Limbraj Garad
Age: Major, Occu: Agril,
R/o. Khed, Dist: Osmanabad
Previous owner of
trolley no MH 13/B 3112 Respondents No. 10
(Orig. Opponent no.6)

**AND
FIRST APPEAL NO. 1704 OF 2025**

THE New India Assurance Co. Ltd
41 B, 4th Floor, Maker tower-E,
Near World Trade Center, Cuffe Parade,
Mumbai-400 005

...Appellant

VERSUS

1. Latabai Baburao Kakde
Age 42 years, Occ.: Household
Residing at Pangri, Tal. Barshi,
Dist. Solapur
2. Shital Baburao Kakde
Age: 21 years, occupation: Education
as above
3. Santosh Baburao Kakde
Age: 19 years, occupation: Education
as above
4. Kusum Bhimrao Kakde
Age: 65 years, occupation: household
as above
5. BHIMRAO LAXMAN KAKDE
Age 70 years, Occupation: Nil
as above)
6. SURYABHAN JANARDAN TOPE
Age: Major, Occupation: Agriculture
Bavchi, Tal. Paranda, Dist.: Osmanabad
(Owner of Tractor)
7. LAHU SHIVAJI GARAD
Age: Major, Occupation: Agriculture
Add: Khed, Dist: Osmanabad
(Previous owner of the truck
8. ORIENTAL INSURANCE COMPANY LTD.,
Through its Divisional Manager,
Chate Galli, Solapur.
(Insurer of Tractor No.MH25/H2111).
9. MADHUKAR VITTHAL PATIL,
Age: Major, Occupation: Agriculture
R/o. Pangri, Tal. Barshi,
Dist: Solapur
(Owner of trolley No. MH13/T 0743)

10. SATISH LIMBRAJ GARAD,
Age: Major, Occupation: Agriculture
R/o: Khed, Dist: Osmanabad,
(Owner of trolley No. MH25/B 3112)

11. ORIENTAL INSURANCE COMPANY LTD.,
Through its Divisional Manager,
Chate Galli, Solapur.

...Respondents

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Mr. Sanjay Krishnan, Advocate for the appellant in First Appeal(St)
No. 4775 of 2017.

Mr. Atharve R.B. a/w Ms. Poonam Mittal, Advocate for the Appellant
in First Appeal No. 1704 of 2025.

Mr. R.S. Alange a/w Mr. V.S. Kupwade, Advocate for the Respondents
in both Appeals.

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CORAM : SHIVKUMAR DIGE, J.

DATE : 23rd DECEMBER, 2025

P.C.

ORAL JUDGMENT :

1. Both these appeals are preferred against the Judgment and order passed by the learned Member, Motor Accident Claims Tribunal, Solapur (for short "the Tribunal"), Hence, I am deciding it by this Common Judgment.

2. It is contention of learned counsel for the Appellant-Oriental Insurance Co. Ltd. that accident occurred due to contributory negligence of the deceased as he gave dash to the trolley, road was

narrow, but the Tribunal has not considered this fact. Learned counsel further submitted that the Tribunal has considered monthly income of the deceased on higher side. The driver of offending tractor was not holding effective and valid driving license. But these facts are not considered by the Tribunal and requested to allow the appeal.

3. It is contention of learned counsel for the Appellant- New India Assurance Co. Ltd. that two trolleys were attached to the offending tractor. The accident occurred due to last trolley and the trolley insured with their Insurance Company was earlier to the said trolley. The said trolley is not involved in the accident, but the Tribunal has passed the order to pay compensation jointly and severally. The Tribunal should have exonerated their Insurance Company from paying compensation and requested to allow the appeal.

4. It is contention of the learned counsel for Respondents-claimants that the Tribunal has passed well reasoned order. No interference is required in it. The accident occurred due to sole negligence of driver of offending vehicle. Hence, requested to dismiss the appeals.

5. I have heard all the learned counsels, perused the impugned Judgment and order passed by the Tribunal. It is claimants case that

on 30th March, 2010, the deceased Baburao along with his wife was going to Yermala, District Osmanabad for taking darshan of Goddess Yedshwari on his motorcycle. He was driving the motorcycle in moderate speed and by following the traffic rules. When he reached at the spot of accident at about 9:30 p.m., the offending tractor attached with two trolleys came from opposite direction in vary high speed and in rash and negligent manner and gave dash to the motorcycle of the deceased by coming on the wrong side of the road. Due to said dash, the deceased sustained injuries and died on the spot. His wife, pillion rider had also sustained grievous injuries. The offence was registered against the driver of tractor. To prove the negligence of tractor's driver, the claimants have relied on police papers. To prove the negligence of the deceased, the Insurance Company have examined driver of offending tractor, DW-1 Shaukat Shaikh at Exhibit-52. He has stated that on the day of accident, he was driving the tractor with two trolleys, as trolleys were empty, hence those two trolleys were swinging. At the spot of accident, the motorcycle rider came from opposite direction and gave dash to trolley which was swinging. After the accident, he ran away from the accident spot. In cross examination, he admitted about accident. While dealing with the issue of negligence, the Tribunal has observed

that in cross examination of DW-1, he has admitted that the road on which, accident occurred was narrow. He never complained against the police persons for involving him or registering the offence against him for the said accident. As per the Spot Panchanama, the accident occurred on the northern edge of the road, which was correct side for the motorcycle. It means the tractor had gone on wrong side of the road. On that ground the Tribunal has held that the accident occurred due to negligence of driver of tractor. I do not find infirmity in it.

6. In my view, the driver of tractor himself admits that the trolleys were swinging as those were empty. He admits about the road was narrow. It shows that due to sole negligence of the tractor driver, accident occurred.

7. To prove that driver of the offending tractor was not holding effective and valid driving license. The Appellant Oriental Insurance Company examined its administrative officer DW-2 Sou. Pradnya Desai at Exhibit-66. She has stated that driver of the tractor must possess effective and valid driving license and the driver of the offending tractor was not holding valid and effective driving license. While dealing with the issue of driving license, the Tribunal has observed that DW-2, Sou. Pradnya Desai in her cross examination has admitted that she had perused driving license of Shaukat Shaikh and

there is endorsement that he can drive the tractor. She admitted that the tractor comes under LMV (NT) category. The Tribunal has observed that as per motor vehicle Rules, the vehicle having weight less than 7,500 Kg. comes under LMV (NT) category. The combined weight of the tractor and two empty trolleys will be less than 7,500 Kg. It means Shaukat Shaikh was holding license to drive the tractor and details thereof are at Exhibit-60. The license was issued to him on 16.11.2002 and its expiry date was 15.11.2020. Therefore on the date of accident, it was valid. I do not find infirmity in it. In my view, there was endorsement on the driving license of the driver of the offending tractor that he can drive tractor. It shows he was holding effective and valid driving license.

8. It is contention of learned counsel for the Oriental Insurance Company that the Tribunal has considered monthly income of the deceased on higher side. It is claimants case that the deceased was working in company and getting salary of Rs.45,000/- per month. To prove it, the claimants have examined PW-2, Dhananjay Udhgaonkar. He has stated that the deceased was working in their company and he was getting salary of Rs.45,000/- per month. The salary slips are produced on record. The income tax returns are produced on record. It is at Exhibit-48 collectively. The salary slips are produced on record

which are at Exhibit 47/1. Considering the evidence on record, after deducting advance and professional tax, the Tribunal has considered monthly income of the deceased at Rs.26,700/- per month. I do not find any infirmity in it. In my view the Tribunal has considered proper monthly income of the deceased.

9. It is contention of learned counsel for the Appellant – New India Assurance Co. Ltd. that the accident has not occurred due to trolley insured with their company. In my view, it has not specifically come on record by which trolley, the accident had occurred. At the time of accident, the trolley insured with the New India Assurance Co. Ltd. was attached the tractor and said trolley was attached adjacent to the tractor head. Moreover, the Tribunal has passed the order to pay compensation jointly and severally. So, no question of exonerating the New India Assurance Co. Ltd. arises. The Appeals are devoid of merits, and I pass following order:

ORDER

- i. Both Appeals are dismissed.
- ii. The claimants are permitted to withdraw the deposited amount along with accrued interest thereon;
- iii. Statutory amount in both appeals along with interest be transmitted to the Tribunal. The parties are at liberty to withdraw the cash as per rule;

- iv.** Record and Proceedings be sent back to the Tribunal.
- 10. Both the Appeals are disposed off in the aforesaid terms.
- 11. All pending applications, if any also stand disposed off.

(SHIVKUMAR DIGE, J.)