

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

FIRST APPEAL NO. 617 OF 2025

- | | |
|---|---|
| 1. Laxman Narayan Mane |] |
| Age: - 55 years, Occu: Agriculturist |] |
| r/at- Thoseghar |] |
| Taluka & District Satara |] |
| 2. Janabai Laxman Mane |] |
| Age- 50 years, occu: Household |] |
| r/at Thoseghar, Taluka & District: Satara |] |
| 3. Shevantabai Narayan Mane |] |
| Age: 78 years, Occu: Nil, |] |
| r/at Thoseghar, Taluka & District: Satara |] |

.... **Appellants**
Original
Claimants

Versus

- | | |
|--|---|
| 1. Shankar Maruti Jankar |] |
| (Owner of the offending Tempo) |] |
| age – adult, Occu: Business, |] |
| r/at- Banghar, Taluka & District: Satara |] |
| 2. Vitthal Ramchandra Mane |] |
| (Driver of the offending Tempo) |] |
| age – adult, Occ: Driver |] |
| r/at – Pangare, Taluka & District: Satara. |] |
| 3. Divisional Manager, Royal Sundaram |] |
| Alliance Insurance Co. Ltd. Vishranthi |] |
| Melaram Towers, No.2/319, Rajiv, |] |
| Gandhi, Salai (OMR), Karapakkam, |] |
| Chennai, Tamilnadu. |] |

.... **Respondents**
Original
Opponents

Mr. Nikhil Wadikar a/w Mr. Yogesh Morbale i/b Adv. Nandu Pawar, Advocate for the Appellant - Claimants.

Mr. Nikhil Mehta, Advocate for Respondent No.3 – Insurance Company.

CORAM : SHIVKUMAR DIGE, J.

DATE : 26th NOVEMBER, 2025.

ORAL JUDGMENT. :

1. This appeal is preferred by the Appellants – Claimants against the judgment and order passed by the Motor Accident Claims Tribunal, Satara (for short, “the Tribunal”).

2. It is contention of learned counsel for the Appellants – Claimants that the Tribunal has considered 50% contributory negligence of deceased child who was only thirteen years old. The offence was registered against the driver of offending tempo, but he has not stepped into witness box, this fact is not considered by the Tribunal and has passed judgment and order, which is erroneous. Hence, requested to allow the appeal.

3. It is contention of learned counsel for Respondent No.3 – Insurance Company that the deceased, while attempting to get into the tempo fell down, got injured and died. The accident occurred due to contributory negligence driver of the offending tempo. Learned counsel further submitted that the driver of the tempo has examined himself to

prove his defence. He also asserted that the said tempo was not involved in the accident. 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 impugned judgment and order passed by the Tribunal.

5. It is Claimants' case that on 18th April 2015, at about 3:00 p.m., on Thoseghar – Chalkewadi Road, the deceased Narayan Mane, aged thirteen years old, was standing near his house on extreme south side of the road. At that time, the offending tempo came to wrong side and gave severe dash to the deceased. Due to said dash, the deceased sustained grievous injuries and died while taking treatment. The offence was registered against the driver of offending tempo.

6. To prove the negligence, the Claimants have examined Claimant No.1 – Laxman Mane at Exhibit – 23. He has stated that accident occurred due to negligence of driver of the offending tempo. However, in cross-examination, he has admitted that he was not present at the time of incident.

7. While dealing with the issue of negligence, the Tribunal has observed that the accident report was lodged by one Suresh Maruti Chavan. In the accident report, he has stated that the boy had fallen from the offending tempo and sustained injuries.

8. The F.I.R. at Exhibit 24 was filed by a Dattatray Kadam, Police Constable. The Tribunal has further observed that from the F.I.R., it appears that while drawing the panchanama of the offending tempo, the blood was found on the backside portion of the offending tempo. Therefore, it is clear that the deceased boy had tried to get in the running tempo and while getting inside the said tempo, he fell down and sustained injuries. On that ground, the Tribunal has considered 50% contributory negligence of the deceased and 50% contributory negligence of the driver of offending tempo.

9. I am unable to understand, the observations of the Tribunal, as admittedly an offence was registered against the driver of offending tempo. The tempo driver, Vitthal Pawar, has examined himself at Exhibit -37 in support of his defence. He has stated that on 18th April, 2015, he had gone in village Thoseghar to bring the fertilizer from the house of Smt. Bhagubai Bedekar. At that time, one person told him that one boy is lying on road in injured condition and needed to be taken to the hospital. Therefore, on humanitarian grounds, he took the boy in his tempo to the Primary Health Centre, where the doctor advised that the boy be shifted to another hospital at Satara.

While, he was carrying the boy to the hospital at Satara, the boy died on the way. He then brought the deceased boy back to

Thoseghar, to his home. At that time, people gathered there, and damaged his tempo, and assaulted him with kicks and fist blows.

10. In cross-examination, he has admitted that at the time of accident, his tempo was in village Thoseghar and he was driving the tempo. The accident spot was near the house of the deceased. From the record, it appears that there are three versions of the accident. As per accident report, the deceased boy fell from the tempo. According to the evidence of driver of tempo, the deceased was already lying in injured condition on road. As per Claimants' case, the deceased was dashed by the driver of offending tempo.

11. The inquest panchanama shows that the deceased was died due to injuries, and post mortem confirms that the deceased died due to head injuries, it shows that the death of the deceased is caused due to accidental injuries. The evidence of the driver of the offending tempo is not reliable, as he admitted in the cross-examination that at the time of accident, he was driving the tempo and his tempo was there in the village Thoseghar, and accident occurred near the house of the deceased, but these facts are not considered by the Tribunal. Hence, I hold that the accident occurred due to sole negligence of the driver of offending Tempo.

12. In view of above, I pass following order:

ORDER

- i. The appeal is allowed.
 - ii. The Respondent No.3 – Insurance Company shall deposit 50% compensation amount along with accrued interest as directed by the Tribunal within six weeks before the Tribunal, after receipt of this order.
 - iii. The Appellants – Claimants are permitted to withdraw the deposited amount along with accrued interest thereon.
 - iv. Record and Proceedings be sent back to the Tribunal.
13. All pending applications, if any, also stand disposed off.

(SHIVKUMAR DIGE, J.)