IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 1470 OF 2024

ICICI Lombard General Insurance Co. Ltd.
Thr. Its Authorized Representative
Subhaschand Chauhan
Office at Hall G-2, Omkar Plaza, Bagal
Chowk, Near ICICI Bank, Kolhapur-416008 ….Appellant

Versus

1. Vishal Balaso Yadav
Age: 21 years, Occu: At present Nil
R/o: A/p Herle, Tal. Hatkanangale,
District: Kolhapur

2. Tushar Balaso Yadav
Age: 25 years Occu: At present Nil
R/o Menon Colony, Yadavwadi,
Tal. Hatkanangale, Dist: Kolhapur
(Owner of Tempo No. MH 09 FL 2034) ….Respondents

WITH
FIRST APPEAL NO. 1656 OF 2025

Vishal Balaso Yadav
Age: 21 years, Occu: At present Nil
R/o: A/p Herle, Tal. Hatkanangale,
District: Kolhapur ….Appellant

Versus

1. ICICI Lombard General Insurance Co. Ltd.
Thr. Its Authorized Representative
Subhaschand Chauhan
Office at Hall G-2, Omkar Plaza, Bagal
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R/o Menon Colony, Yadavwadi,
Tal. Hatkanangale, Dist: Kolhapur
(Owner of Tempo No. MH 09 FL 2034) ....Respondents

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Mr. Bhushan Walimbe a/w Mr. Vaibhav V. Arage for appellant in FA 1656/2025 and for respondent in FA 1470/2024

Mr. P. D. Alawekar for the appellant in FA 1470/2024

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CORAM : SHIVKUMAR DIGE, J.

DATE : 11th DECEMBER 2025

ORAL JUDGMENT:

FIRST APPEAL NO. 1470 OF 2024:

1. This appeal is preferred by the appellant insurance company against the Judgment and Order passed by learned Motor Accident Claims Tribunal, Kolhapur (for short 'the Tribunal).

2. It is contention of learned counsel for the appellant that at the time of accident, the respondent-claimant was driving the offending vehicle and his real brother was sitting beside him. But after the accident, brother of the claimant has been shown as the driver of the offending vehicle and on that basis, compensation is awarded. The appellants have examined their officer to prove case. He had prepared the accident reconstruction report to prove the case of the appellant. But evidence produced on record is not considered by the Tribunal. Hence, requested to allow the appeal.

3. It is contention of learned counsel for respondents that at the time of accident, the claimant was not driving offending vehicle. He was working as cleaner. Brother of the claimant was driving the vehicle. The appellant-insurance company has not examined investigating officer to prove the said fact. F.I.R. is lodged against the brother of the claimant. He was also injured 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 counsels, perused impugned Judgment and Order passed by the Tribunal. It is claimant's case that he was working as cleaner on offending tempo on 13th January 2021 at about 11.30 p.m. The accident took place due to rash and negligent driving of opponent no. 1. It is contention of learned counsel for the appellant that claimant was driving the vehicle at the time of accident and not opponent no. 1. To prove the said fact, the appellants have examined Mr. Pravin Mane Patil, Legal Manager of the appellant insurance company. He has stated that the claimant was gratuitous driver of the insured vehicle and he himself was negligent in causing accident. Hence, claim is not maintainable. In cross-examination, he admitted that he personally did not investigate the case of the claimant. He further admitted that insurance company has

received criminal investigation report and entire investigation is not yet completed. He admits that the said report is in the custody of the insurance company. He admits that investigation was carried out by chartered house agency. He further admits that as per insurance policy, driver and cleaner both are insured. Appellant-insurance company examined D.W. 2 Dr. Shalini Savarkar. She has prepared forensic report in respect of the accident in the present matter. The said report is at Exhibit 63. In cross-examination, she has admitted that her company is private concerned. She has not personally seen the injured person. She has also not seen the damaged vehicle. She admits that she has prepared report only on the basis of documents provided by the insurance company. She has not visited the spot of the accident.

5. Considering the evidence of D.W. 1 and D.W. 2, it appears that the insurance policy covered the driver and cleaner. As per the claimant's case, he was working as cleaner on the offending vehicle. It was case of the appellant insurance company that at the time of accident, the claimant was driving the vehicle. The appellant insurance company should have examined the investigating officer but they did not do that. Considering this fact, the appellant failed to prove that the claimant was driving the offending vehicle at the time

of accident. The appeal is devoid of merit and I pass following order:

O R D E R

I. The appeal is dismissed.

II. The respondents claimants are permitted to withdraw the deposited amount alongwith accrued interest.

III. The statutory amount be transferred to the Tribunal along with accrued interest thereon. The parties are at liberty to withdraw it as per Rule.

IV. The appeal is disposed off accordingly.

6. The appeal filed by the claimants for enhancement will be heard on the next date.

7. First Appeal No. 1656 of 2025 be listed on 14th January 2026.

(SHIVKUMAR DIGE, J.)

IRESH MASHAL Digitally signed by IRESH MASHAL Date: 2025.12.23 14:47:04 +0530