

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 56 OF 2024**

ICICI Lombard General Insurance Co.Ltd.
Having its office Sarda Ankul,
M.G.Road, Nashik
versus

Appellant
(Ori.Opp.
Party No.2)

- 1 Sugandha Arun Choudhari
Age 41 Years, Occu. Household
- 2 Sonali Arun Choudhari
Age 23 Years, Occu. Education
- 3 Sunil Arun Choudhari
Age 21 Years, Occu. Education
- 4 Rani Arun Choudhari
Age 20 Years, Occu. Education
- 5 Narayan Gangaram Choudhari
Age 65 Years, Occu. Nil
- 6 Salubai Narayan Choudhari
Age 50 Years, Occu. Education,

All R/o. At Post Saraste Post Amlon,
Tal. Trimbakeshwari
Dist. Nashik.

- 7 Arun Tukaram Borse,
Age Major Occu. Vehicle Owner,
R/o. Post Torangaon, Tal. Trimbakeshwar,
Dist – Nashik

(Present Respondent Nos.1 to 6 being original
Applicants and Respondent No.7 being original
opposite party No.1)

.... Respondents

Mr. Rajesh Kanojia along with Ms. S. Mitra i/b. Res Juris, Advocates for
the Appellant.

Mr. Rajan S. Pawar, Advocate for Respondent Nos.1 to 4 and 6.

CORAM : SHIVKUMAR DIGE, J.

DATE : 22nd JULY, 2025.

Oral Judgment:

1. The issue involved in this appeal is non involvement of the offending vehicle in the accident.
2. It is contention of learned counsel for the appellant-Insurance Company that the offending vehicle was not involved in the accident but the Tribunal has not considered this fact and has passed the impugned judgment and order which is erroneous. Hence, requested to allow the appeal.
3. It is contention of learned counsel for respondent Nos.1 to 4 and 6/claimants that after the accident the FIR was lodged against the driver of the offending vehicle. There are eye-witnesses to the said accident. The eye-witness has stated about involvement of the offending vehicle in the accident. The Tribunal has passed well reasoned judgment and order, no interference is required in it. Hence, it requested to dismiss the appeal.
4. I have heard both learned counsel, perused the judgment and order passed by the Motor Accident Claims Tribunal, Nashik.
5. It is claimants' case that on 30th August 2013 at 7.30 to 8.00 pm, the deceased was proceeding on the motor-cycle bearing registration No.MH-15/DH-3110 as a pillion rider. When the said motor-cycle was proceeding on the road, near Harsul Bus Stand, the rider of the motor-cycle drove the motor-cycle in rash and negligent manner due to

which the motor-cycle slipped and the deceased fell on ground and sustained grievous injuries and succumbed to injuries while undergoing medical treatment. An offence was registered against the rider of the motor-cycle. To prove the negligence of the rider of the motor-cycle, the claimants have examined eye-witnesses viz. Rahul Shardul PW-3 and Vishnu Borse-PW-2. Vishnu Borse PW-2 has stated that he has witnessed the accident as he was present in one shop. He and Rahul Shardul PW-3 lifted the deceased and admitted him in the hospital. In cross-examination, he has stated that he has not informed the police about the accident. He has admitted that the information about the place of treatment and his death occurred during the course of treatment was provided to the brother of his deceased. All information was provided by him to the police. Rahul Shardul PW-3 has stated the same facts as stated by Vishnu Borse, PW-2.

6. The Tribunal has considered evidence of these two witnesses and on that basis, the Tribunal has fixed the liability on the rider of the motor-cycle. In my view, Vishnu Borse, PW-2 and Rahul Shardul, PW-3 are the eye witnesses to the accident. They have seen the accident. As per the view of Hon'ble Apex Court in **National Insurance Company Limited vs. Chamundeswari & ors.(2021) 18 SCC 596** more weightage should be given to the evidence of eye-witness than the police papers.

7. In view of above, I pass the following order :

ORDER

1. The appeal is dismissed. No order as to cost.
 2. The claimants are permitted to withdraw the deposited amount along with accrued interest thereon.
 3. The statutory amount be transmitted to the Tribunal along with accrued interest thereon. The parties are at liberty to withdraw it as per Rule.
 4. Record and proceedings be sent to the Tribunal.
8. Pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)