

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 1648 of 2024

National Insurance Company Limited)
(Insurer of Chevrolet Tavera
No.MH-12/CY-8191, Policy
No.270607311710001888 period of
policy-15.3.2018 to 14.3.2019. The
Divisional Manager, National Insurance
Company Ltd., Add. Kavita Commercial
Complex, Near Canada Corner, Nashik,
Tal. & Dist, Nashik through Mumbai
Regional Office, Third Party claims
Department, 1st floor, National Insurance
Building, Churchgate, Mumbai – 400 020. Appellant

Versus

- 1 Sonali Shankar Hire,
Age 38 years, Occupation – Housewife.
- 2 Durgesh Shankar Hire,
Age 19 years, Occupation-Education.
- 3 Shraddha Shankar Hire,
Age 18 years, Occupation – Education.
- 4 Dharma Punjaram Hire,
Age 68 years, Occupation – Nil.
- 5 Sindhubai Dharma Hire,
Age 65 years, Occupation – housewife.
All R/o. House No.98, Sambhaji Wada,
Shriram Nagar, Lane No.1, Malegaon,
Tal. Malegaon, Dist. Nashik.
- 6 Ravindra Dinkar Chavan,
Age – 50 years, Occu.Driver and Owner
of vehicle, R/o.7/1, Indraprastha
Housing Society, Near Durga Provision,
Central Bank Colony, Pimprala,
Jalgaon, Tal.Jalgaon,
Dist.Jalgaon-425001.

.... Respondents

**with
FIRST APPEAL NO. 1650 of 2024**

National Insurance Company Limited)
(Insurer of Chevrolet Tavera
No.MH-12/CY-8191, Policy
No.270607311710001888 period of
policy-15.3.2018 to 14.3.2019. The
Divisional Manager, National Insurance
Company Ltd., Add. Kavita Commercial
Complex, Near Canada Corner, Nashik,
Tal. & Dist, Nashik through Mumbai
Regional Office, Third Party claims
Department, 1st floor, National Insurance
Building, Churchgate, Mumbai – 400 020. Appellant

Versus

- 1 Sunandabai Suresh Bagul
Age 60 years, Occ.-Household work.
- 2 Manisha Shantaram Ahire,
Age 41 years, Occ.-Household work.
- 3 Savitra Suresh Bagul,
Age 37 years, Occ.-Household work,
All R/o. Deviche Mandir,
Sangamneshwar, Malegaon,
Tal. Malegaon, Dist. Nashik.
- 4 Ravindra Dinkar Chavan,
Age – 51 years Occ. Driver and Owner of
vehicle, R/O.7/1, Indraprastha Housing
Society, Near Durga Provision Central
Bank Colony, Pimprala, Jalgaon,
Tal. Jalgaon, Dist. Jalgaon-425001. Respondents

Ms. Sneha S. Dwivedi, Advocate for the Appellant-Insurance Company in both matters.

Ms. Anilkumar Patil along with Mr. Sachin Bhavan, Miss Zeel Jain and Mr. Digvijay A. Patil, Advocates for the Respondent Nos.1 to 5/original claimants in FA/1648/2024 and for Respondent Nos.1 to 3/original claimants in FA/1650/2024.

Mr. Pratik Sabrad along with Mr. Sarvesh Deshpande and Mr. Pratik Ingle, Advocate for Respondent No.6 in FA/1648/2024 and for Respondent No.4 in FA/1650/2024.

CORAM : SHIVKUMAR DIGE, J.

DATE : 13th JANUARY, 2025.

Judgment:

1. Both the appeals are preferred against the judgment and order out of the same accident and on the same issues, hence, I am deciding both the appeals by this common judgment.

2. The issues involved in these appeals are that, at the time of accident, the deceased was not wearing helmet and there was breach of term and conditions of the insurance policy. The deceased-Vishwanath Suresh Bagul in First Appeal No.1650 of 2024 was riding the motorcycle and deceased -Shankar Dharma Hire in First Appeal No.1648 of 2024 was the pillion rider on the said motorcycle.

3. It is contention of learned counsel for the appellant-Insurance company that the offending vehicle was carrying passengers. The insurance policy was not in respect of carriage of passengers, so there was breach of terms and conditions of the insurance policy. Learned counsel further submitted that the deceased- Vishwanath Suresh Bagul was riding the motorcycle without wearing the helmet and he hit the offending vehicle, so there was contributory negligence of the deceased in the accident but these facts are not considered by the Tribunal. Hence, requested to allow the appeal.

4. It is contention of learned counsel for the respondents/claimants that the driver of the offending vehicle was driving the vehicle in high and excessive speed. The said vehicle went on the other side of the divider and gave dash to the motorcycle of the deceased. The accident occurred due to sole negligence of the driver of the offending vehicle. Learned counsel further submitted that it is not proved before the Tribunal that deceased was not wearing helmet, hence, requested to dismiss the appeal.

5. I have heard both learned counsel, perused the judgment passed by the Motor Accident Claims Tribunal, Nashik (for short "the Tribunal").

6. Learned counsel for the appellant-Insurance Company has raised the issue of breach of terms and conditions of the Insurance Policy as the driver of the offending vehicle was carrying passengers in the offending jeep and the deceased was not wearing helmet at the time of the accident but to prove these facts, no evidence is produced on record. It appears from record that the driver of the offending vehicle went on other side of the road and gave dash to the motorcycle of the deceased, so the accident was caused due to sole negligence of the driver of the offending vehicle. Considering these facts, I do not find merit in the appeal.

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

ORDER

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

(SHIVKUMAR DIGE, J.)