

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1848 OF 2024

1	Janardhan Sitaram Surve Aged about 62 years	
2	Pragati Janardhan Surve Aged about 57 years Both are R/o of At & Post Kurdus, Tal. Alibaug, Dist. Raigad	... Appellants
	versus	
1	Sunil Ramesh Ukrulkar R/o. House NO. 53, Ram Ali, Bazarpeth Poynad	
2	TATA AIG General Insurance Co. Ltd. 6 th Floor, Trade World Tower A, Kamla Park, Senapati Bapat Marg, Lower Patel, Mumbai – 400 013	... Respondents

.....

- Mr. T. J. Mendon, Advocate for Appellants.
- Mr. Rajesh Kanojiya i/b. Res Juris, Advocate for Respondents

CORAM : R. M. JOSHI, J.

DATE : 9th DECEMBER, 2025.**ORAL JUDGMENT :**

1. Learned counsel for the appellant filed compilation. The same is taken on record. Copy is supplied to the other side. By consent of both the sides, heard finally at the stage of admission.
2. This appeal is preferred by the original claimants against the Judgment and Award dated 12.07.2024 passed in M.A.C.P. No. 70 of 2017

whereby the claim Petition filed by them stood rejected.

3. As per the case of the claimants before the Tribunal the deceased Aniket Surve aged about 23 years was traveling in Alto car bearing No. MH-06/AZ-4543 on Alibag Pen road. At about 2:00 p.m. when they reached to the spot of accident, an unknown vehicle which was being driven in rash and negligent manner and at excessive speed, dashed into the Alto car as a result of which, the deceased sustained injuries and succumbed to the same. The claimants have also stated about the employment and income of the deceased and dependency of the claimants thereon. In respect of the said accident, First Information Report (for short "FIR") came to be lodged being Crime No. 88 of 2016. It is claimed by the claimants that the accident in question occurred due to the rash and negligent driving of Alto car by its driver. The said vehicle is owned by the opponent No.1 and insured with the opponent No.2.

4. Opponent No.1– owner filed written statement denying the involvement of the Alto car in the accident. It is also claimed that the accident occurred due to the negligence of the driver of unknown vehicle and that there is no fault on the part of the driver of Alto car in the occurrence of the accident. Rest of the contentions of the claimants were also denied.

5. The insurer filed written statement at Exhibit-14 denying the

averments of the claimants in the claim petition. The objection is raised with regard to the maintainability of the petition for non joinder of the insurer and owner of the unknown vehicle. The insurer denied the liability of the payment of compensation. Before the Tribunal claimant No.1 examined at Exhibit-19. Police papers were relied upon in order to prove the factum of the accident. No evidence was led by the owner as well as insurer before the Tribunal. The Tribunal dismissed the Claim Petition by following Judgment of the Hon'ble Supreme Court in the case of *Khenyei Vs. New India Assurance Co. Ltd. & Ors.*¹. It is held that the evidence on record does not indicate any negligence on the part of the driver of Alto car and therefore the claim is not maintainable against the owner and insurer of the said vehicle.

6. Learned counsel for the appellant submits that the Tribunal has committed error in not considering the case of the claimant about the occurrence of the accident due to the negligence of the driver of Alto car. It is his submission that though FIR has been lodged against unknown vehicle, it is open for the Tribunal to consider the evidence on record and to render findings with regard to the negligence on the part of the driver of the Alto car in causing the said accident. He drew attention of the Court to Section 165 of the M.V.Act which according to him requires the claimant to only show the involvement of the vehicle in question in the occurrence of

¹ LAWS (SC)2015 526

the accident. It is his submission that it is not necessary for the claimant to show any negligence of the driver of the said vehicle in order to claim the compensation. To support his submissions, he placed reliance on the Judgment of the Hon'ble Supreme Court in the case of ***Shivaji Dayanu Patil and Anr. Vs. Vatschala Uttam More***². Attention of the Court is drawn to the observation of the Hon'ble Supreme Court in paragraph Nos. 27, 30 and 37 of the said Judgment.

7. He drew attention to the Judgment of this Court in Civil Appeal No. 3744 of 2005 in case of ***New India Assurance Company Ltd. Vs. Yedu Sambhaji More and Ors.*** Reference is made to paragraph Nos. 6 to 13 of the said Judgment which according to him indicate that the observation made by the Hon'ble Supreme Court in the case of no fault liability would apply even in respect of the claim under Section 166 of the M.V.Act. He further placed reliance on the Judgment of the learned Single Judge of this Court in the case of ***United India Insurance Co. Ltd. Vs. Laxman Hirman Shewale & Anr.***³ to argue that even in case of a stationary vehicle, accident occurs while unloading of the material, it is held to be accident arisen out of use of the motor vehicle. Similarly, the reference is also made in the case of ***Rita Devi and Ors. Vs. New India Assurance Co. Ltd. & Anr.***⁴ To

2 1991 ACJ 777

3 2022 ACJ 2045

4 2000 ACJ 801

argue that even in case of a murder of a driver, compensation was granted under the M.V. Act.

8. Learned counsel for the insurer supported impugned Judgment and Award by pointing out the evidence on record which according to him indicates that there is absolutely no negligence which can be attributed against driver of the Alto car. It is his submission that since the Application is under Section 166 of the M.V.Act, unless it is shown that the driver of the offending vehicle is negligent in occurrence of the accident, no compensation can be paid to the claimants.

9. At the outset, it needs to be recorded that the scheme of payment of compensation provided under Section 166 of the M.V.Act is based on the principles of torts. In other words, Act applies tort principles i.e. compensation for wrong to the extent of accident involving motor vehicles. Thus, in order to enable a person to claim compensation, it must be proved that there is negligence (wrong) on the part of the driver of the offending vehicle in occurrence of the accident and therefore the owner and insurer of the vehicle would vicariously become liable for payment of compensation. Of course, in case where more than one vehicles are involved in the accident and if there is evidence to indicate that both vehicles have contributed to the occurrence of the accident, it is the option of the claimant to claim compensation from both joint tortfeasors or any

one of them. This position of law has been settled in view of the Judgment of the Hon'ble Supreme Court in the case of *Khenyei (supra)*.

10. Learned counsel for the claimants has sought to place reliance on Section 165 of the Act which make provision for adjudicating upon the claim for compensation in respect accidents involving the death of or bodily injury to persons arising out of the use of motor vehicles or damages to any property of a third party so arising or both. This provision only explains and limits the jurisdiction of the Tribunal under the Act. It is clear from bare reading of Section 165 that the Tribunal will get a power to adjudicate upon the claim for compensation only in respect of accident involving and arising out of use of motor vehicle. Meaning thereby in case of accident not involving the motor vehicle, the Tribunal has no jurisdiction to adjudicate upon such claim for compensation. This however, cannot be construed that for the purpose of claiming compensation the claimant is required only to establish the involvement of the vehicle in the accident and not the negligence i.e. wrongful act of opponents.

11. This interpretation becomes inevitable from the scheme of the M.V.Act itself. Needless to say that the provision with regard to the claim of the compensation is on the basis of tortious liability of the opponents. Erstwhile provisions of Sections 140 and 163A of M.V.Act clearly indicate that a special provisions were made therein where the claimant is not

required to prove the negligence on the part of the driver of the offending vehicle and more involvement of motor vehicle in accident is sufficient. It is obviously for this reason, the maximum claim of the compensation is limited as provided therein.

12. It would be fruitful to take note of the Judgment of the Hon'ble Supreme Court in the case of *Khenyei (supra)*. In the said judgment, it is held that it is open for the claimant to seek compensation from each wrong doer jointly and severally or against all or any of them. This however precedes with the condition that it should be case of a composite negligence. Once the composite negligence is proved, it can be left to the discretion of the claimant to claim the compensation from any one of the joint tortfeasors. This, however, does not absolve the claimant from proving that the opponent is the tortfeasor. Thus to be entitled to claim compensation it must be proved that there is negligence on the part of the driver of the offending vehicle in the occurrence of the accident.

13. Here in this case, though the claimant filed claim under Section 166 of the Act against the owner and insurer of Alto car with averment that there is negligence on the part of the driver of the Alto car in occurrence of the accident, the evidence on record however does not indicate so. The claimant No.1 is not witness to the accident and therefore he has no personal knowledge about the same. In cross examination, however he

accepts that offence came to be registered against the unknown vehicle. He further admits that his real brother Ravindra Surve as well as cousin brother Sunil Surve reported the accident to the police by stating that the unknown vehicle dashed to the Alto car. It is stated that Vaibhav Surve (cousin brother) was with deceased in the car and the car was driven by Vaibhav. Witness admits that he has not informed to the police that the accident occurred due to the mistake /negligence on the part of the Vaibhav. It is also admitted that there is no complaint to the police about wrongly lodging FIR against the driver of unknown vehicle. This evidence coupled with the chargesheet indicates that there is no reason to accept the case of the claimant that there was negligence on the part of the Alto car in causing of the said accident. Admittedly, no other evidence is led by claimants. From police papers do not indicate negligence even to the slightest extent against driver of car.

14. It is only in the case of composite negligence it is open for the claimant to make claim against anyone of them. However, where there is negligence on the part of the single vehicle in causing of the accident, it is imperative on the part of the claimant to seek claim of the compensation from the said vehicle. Since this is not the case of composite negligence and as there is no iota of evidence in order to hold the negligence of the driver of the Alto car even to the slightest extent, this Court finds no

substance in the contention of the learned counsel for the claimants that the claim against the offending vehicle is maintainable and claimants are not entitled to seek compensation. The Tribunal has correctly taken into consideration the evidence on record and by following Judgment of the Hon'ble Supreme Court, has rejected the claim, this Court therefore finds no perversity in the said findings. Hence appeal stands rejected.

15. All pending applications, if any, also disposed of.

(R. M. JOSHI, J.)