



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**NAGPUR BENCH, NAGPUR**

**FIRST APPEAL NO. 882 OF 2023**

Shriram Gen. Insurance Co. Ltd.  
Through the Branch Manager,  
E-8, EPIP, RICO, Sitapura, Jaipur  
(Rajasthan)- 302022,  
Shriram General Insurance Company Ltd.  
Through its Branch Manager,  
R/o. 215034/T-5, Shradha House, 3<sup>rd</sup> Floor,  
345, Kingsway, Nagpur.

... **APPELLANT**

**// VERSUS //**

1. Smt. Sangita Keshav Chavhan,  
Aged about 41 years, Occ. Household
2. Ku. Monika Keshav Chavhan,  
Aged about 21 years, Occ. Education  
(Major)
3. Shankar Keshav Chavhan,  
Aged about 18 years, Occ. Education  
(Major)
4. Shambhu Keshav Chavhan,  
Aged about 18 years, Occ. Education  
(Major)

All R/o. In front of Navodaya Vidhyalaya  
Kata Road, Ganesh Nagar, Washim,  
Dist. Washim.

5. Mohd. Yusuf Sk. Abdul,  
Age adult, Occ. Owner & Driver of  
Vehicle Truck bearing Registration  
No. MH-31-M-6788  
R/o. At Post Nanak, Saipura,  
Near Nagina Masjid, Washim,  
Tq. & Dist. Washim.

... **RESPONDENTS**

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Shri H. N. Verma, Advocate for appellant.  
Shri Rajnish Vyas, Advocate for respondent nos. 1 to 4.  
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**CORAM :- M. W. CHANDWANI, J.**

**RESERVED ON :- 24.02.2025**

**PRONOUNCED ON :- 05.05.2025**

**JUDGMENT :-**

Heard.

2. **Admit.**

3. The appeal challenges the award dated 27.07.2022 passed by the Motor Accident Claims Tribunal, Washim (for short, “the Tribunal”) in MACP No. 19/2016, whereby respondent nos. 1 to 4, the dependents of deceased- Keshav Vishram Chavhan, were granted compensation towards loss of dependency on account of the death of Keshav Vishram Chavhan.

4. The brief facts necessary for adjudication of the case are as under:-

Deceased- Keshav Vishram Chavhan was serving as a Police Constable. On 19.11.2013, at about 21:25 hours, he was proceeding toward Washim Jail due to some official work on his

motor-cycle bearing registration no. MH-37-C-5756 with pillion rider Datta Bhalerao. When they reached at Malegaon road in front of the Jail, the offending truck bearing registration no. MH-31-M-6788 came from the opposite direction in a very high speed in a rash and negligent manner and gave a forceful dash to the motor-cycle of deceased- Keshav Chavhan. Keshav Chavhan sustained multiple injuries on his head in the accident resulting into his death on the spot whereas, the pillion rider also suffered injuries but died after a week while undergoing treatment at the hospital. A Claim Petition was filed by respondent nos. 1 to 4 under Section 166 of the Motor Vehicle Act, 1988 which came to be allowed and respondent no. 5, the owner and the driver of the offending vehicle as well as the present appellant with whom the offending vehicle was insured were directed to pay jointly and severally, an amount of Rs.46,17,536/- as compensation to respondent nos. 1 to 4. Feeling aggrieved with the award, the present appeal came to be filed.

5. Mr. Verma, learned counsel appearing on behalf of the appellant- Insurance Company vehemently submitted that initially, the offence came to be registered against the driver of an unknown vehicle. Though, respondent no. 5 was the owner and driver of the truck bearing registration no. MH31-M-6788 but he was acquitted by the Criminal Court as his involvement in the alleged accident was

doubtful. According to the learned counsel for the appellant, since there is no eye-witness to the accident who has been examined to show the involvement of the offending vehicle coupled with the findings of the learned Magistrate in criminal trial against respondent no. 5, the truck bearing registration no. MH-31-M-6788 which was insured with the appellant was not involved in the accident.

6. Mr. Verma, learned counsel further submitted that for maintaining the claim petition for grant of compensation, the claimants have to prove that the accident occurred solely as a result of negligence of the driver of the truck bearing registration no. MH-31-M-6788 but no eye-witness has been examined in that regard. According to him, the claimants failed to prove negligence on the part of the driver of the truck insured with the appellant which has not being considered by the Tribunal and therefore, the findings of the Tribunal with regard to negligence of respondent no. 5 are required to be set aside.

7. The anchor sheet argument of the learned counsel for the appellant is that deceased- Keshav Chavhan was not wearing a helmet at the time of the accident and therefore, he was also negligent and shall be attributed at least for the grievous injuries which he received in the accident. Therefore, the Tribunal ought to have made him liable

for at least 30% of the contributory negligence in the accident. To buttress his submission he seeks to rely upon the decision in the case of *New Indian Assurance Co. Ltd. Vs. Julius T. J. Freitas*<sup>1</sup>, wherein this Court, after finding that the deceased was not wearing a helmet at the time of the accident, held the deceased liable for contributory negligence in the accident to the extent of 30%.

8. Conversely, Mr. Vyas, learned counsel appearing on behalf of respondent nos. 1 to 4 supported the impugned award of the Tribunal by contending that respondent no. 5 was charge-sheeted for the offences punishable under Sections 279, 337, 338, 304-A, 427 of the Indian Penal Code as well as Section 184 of the Motor Vehicle Act which itself goes to suggest that respondent no. 5 was at fault. According to him, the panchnama reveals that the place of the accident is at the side of the road and therefore, it shows that deceased- Keshav Chavhan was not in the middle of the road. Under the scheme of compensation, motor accident claims are to be decided on preponderance of probabilities. Just because the driver got acquitted in a criminal trial, it cannot be presumed that the offending vehicle was not involved in the accident and respondent no. 5 was not at fault. In accident claims, strict evidence is not required. The evidence and the form of deposition corroborat material brought on record by the

1 AIR Online 219 Bom 1641

Police during investigation and can be considered as adequate evidence. He further submitted that deceased- Keshav Chavhan was wearing a helmet at the time of the accident and therefore, there is no question of contributory negligence. To buttress his submission, he seeks to rely upon the decision in the case of *Rammurti Wd/o. Ramprakash Mishra Vs. Rudresh B. Tiwari* <sup>2</sup> wherein, it has been held that the evidence in the form of deposition corroborated by material brought on record by the Police during investigation may be considered as adequate evidence and the witnesses deposing in an accident case need not necessarily be eye-witnesses.

9. Reliance is also placed upon the decision of this Court in the case of *Pukh Raj Bumb Vs. Jagannath Atchut Naik*<sup>3</sup>, in which the decision in the case of *Bimla Devi Vs. Himachal Road Transport Corporation*<sup>4</sup> decided by the Supreme Court has been relied upon and it has been held that strict proof of accident caused by a particular bus in any particular manner may not be possible to be given by the claimants. The claimants have to establish their case on the touchstone of preponderance of probabilities.

10. Having heard the respective learned counsels and having gone through the impugned award and the record and proceedings of

2 2015 (6) Mh.L.J. 305

3 2013 (5) ABR 368

4 (2009) 13 SCC 530

the case, it is transpires that deceased- Keshav Chavhan was working as a Police Constable and he died on the spot in a vehicular accident which at the side of the road. Though initially the First Information Report was lodged against the driver of an unknown vehicle however, investigation conducted by the Police revealed that the dash was given by the offending truck owned and driven by respondent no. 5. Just because respondent no. 5 got acquitted in the criminal case and there are observations made by the learned Magistrate that the prosecution failed to prove involvement of the vehicle, it does not preclude the Tribunal from examining the claim on the touchstone of preponderance of probabilities and from considering the investigation papers to conclude involvement of the vehicle as well as the negligence on the part of the driver. No strict proof is required that the accident was caused by a particular vehicle in a particular manner because it may not be possible for the claimants to give such minute details considering that there were no eye-witnesses to the accident.

11. Perusal of the panchnama reveals that the motor-cycle of deceased- Keshav Chavhan was lying at the side of the road which itself is evident of the fact that deceased- Keshav Chavhan was not driving the vehicle in the middle of the road. There is the version of the claimant *albeit* she is not an eye-witness supported by the Police papers showing the fault of respondent no. 5 and on the other hand

the appellant did not make any attempt to examine respondent no. 5, who was driving the vehicle at the time of the accident. He would have been the best person to depose how the accident occurred. That care has not been taken by the appellant and therefore, the findings recorded by the Tribunal cannot be faulted with regard to involvement of the vehicle and negligence of respondent no. 5.

12.           Sofar as the submission of not wearing a helmet is concerned, I have gone through the cross-examination of the claimant done by the learned counsel for the appellant wherein, the claimant has deposed that deceased- Keshav Chavhan was wearing helmet at the time of the accident. Rather, she makes a positive statement that the helmet belonging to deceased- Keshav Chavhan was later handed over to her by the Police which is evident of the fact that deceased- Keshav Chavhan was wearing a helmet at the time of accident. Therefore, I do not see force in the argument of the learned counsel for the appellant.

13.           Hence, the appeal fails on both the counts; is devoid of merits and consequently, it is dismissed.

(M. W. CHANDWANI, J.)