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

FIRST APPEAL NO.1220/2010

The Oriental Insurance Company. **Appellant**
Through Its Division Office at Amravati (Ori. Respondent No. 2)
Badnera Road, Amravati,
Tah-Dist-Amravati
Represented by Manager,
Oriental Insurance Company, T.P. Hub, Nagpur

//VERSUS//

1.Shri Patiram S/o Badlu Barve (Original Petitioner no.1 and 2)
Aged 40 Yrs., Occupation -Labour

2.Smt. Shanta W/o. Patiram Barve
Aged-38 Yrs., Occu-Housewife
Both R/o. At Chouramal,
Post- Morgal,
Tq- Chikhaldara, Dist. Amravati.

3. Shri Mukund Mahadevrao Bonde (Original Respdt. no.1.
Aged - Major, Occ- Not known
R/o. At Panalin road, Anjangaon Surji
Tq- Anjangaon Surji,
Dist-Amravati. **Respondents**

....

Ms. Mrunal Naik, Advocate for appellant.
Mr. P.R.Agrawal, Advocate for respondent nos.1 and 2.
Mr. N.B.Bargat, Advocate for respondent no.3.

....

CORAM : PRAVIN S. PATIL, J.
DATED : 11.12.2025.

JUDGMENT

1. In present appeal, the appellant-Insurance Company has challenged the judgment and order dated 2.2.2010 passed by the Motor Accident Claims Tribunal, Achalpur in Claim Petition No.64/2006 on the ground that the deceased Santosh Barve was negligent and

responsible for the accident and, therefore, the claim petition filed by his legal heirs was itself not maintainable, consequently, the judgment and order passed by the Tribunal awarding him compensation of Rs.3,88,000/- is *per se* illegal and same deserves to be quashed and set aside.

2. To appreciate the grievance of the appellant, the relevant facts in brief are as under:

On 19.5.2006, deceased Santosh Barve was travelling as a labourer on a tractor with a trolley from Janona to Wadali. When this tractor reached to Wadali, the deceased fell down from the tractor on the road and he sustained injuries. He was immediately hospitalized but, was declared dead. On the basis of this incident, an offence was registered vide Crime No.76/2006 to the Police Station, Anjangaon Surji.

3. The respondent-claimants, being the legal heirs of the deceased, filed a claim petition under Section 166 of the Motor Vehicles Act for grant of compensation on the basis of a notional income of Rs.3,000/- per month and asserting entitlement for compensation of Rs.5,00,000/-.

4. In the claim petition, the owner of the tractor and trolley as well as the appellant-Insurance Company were impleaded as necessary parties. Before the Claim Tribunal, the Insurance Company appeared

and by relying upon the police case papers, raised objection that deceased was negligent while travelling in tractor-trolley as he was standing on the joint of tractor and trolley and thereby due to his negligence the accident occurred and, therefore, legal heirs of the deceased are not entitled for compensation.

5. In view of the aforesaid oral submission made by the appellant in the matter, I have gone through the written statement filed by the appellant before the Claims Tribunal. The written statement shows that the appellant-Insurance Company raised preliminary objections stating that the deceased himself contributed his negligence act for inviting alleged mishap and, therefore, the driver of the tractor was not responsible for alleged accident. The other submission was that there was breach of policy conditions and, therefore, the appellant-Company is not liable to indemnify the owner of the vehicle for the alleged claim. In remaining part of the written statement, there was denial to the claim made by the claimants in their claim petition.

6. In the light of these pleadings before the Claims Tribunal on behalf of the claimants, the father of deceased entered into the witness box and reiterated the statement, which he has made in his original application. This witness was cross-examined and specific question was put to him that whether the deceased at the time of accident was standing on the joint of tractor and trolley or not. The said witness

specifically denied this suggestion put by the appellant-Insurance Company to him.

7. It is pertinent to note that though suggestion was specifically denied by respondent no.1 about negligence of deceased, the Insurance Company did not enter into the witness box nor examine any witness in the matter. So also, the owner of the vehicle did not enter into the witness box nor driver of the tractor. Hence, there is only evidence available on record is of the parent of the deceased.

8. In the backdrop of the aforesaid factual position, the learned Tribunal has decided the claim and recorded a finding that the deceased sustained accidental injuries, which resulted in his death. In order to reach this conclusion, the Tribunal relied upon the police case papers, which were filed before Claims Tribunal and on the basis of the monthly income of Rs.3000/- per month, held that the legal heirs of deceased are entitled for compensation of Rs. 3,88,500/- along with interest.

9. The appellant-Insurance Company assailed the judgment of the Claims Tribunal on three grounds. The first ground is that the deceased was himself responsible for the accident, which is established from the police case papers. Therefore, Claim petition on behalf of legal heirs was not itself tenable. The second ground is that when the police case papers were available on record which itself shows

negligence of the deceased, there was no need for the Insurance Company to enter into witness box to establish their defence. The third ground which they have raised is that the Tribunal has committed error by calculating the compensation amount by considering analogy of Section 163A of the Motor Vehicles Act.

10. Before adverting to the issues raised by appellant in the present appeal, it will be expedient to refer the judgment of Coordinate Bench in case of ***Mrs. Amalina Antonio Costa @ Avelina Menezes Vs. Mrs. Jaymala Milind Daddiker & Ors., reported in 2023 (1) ALL MR 672***, wherein this Court observed in paragraphs 6 & 7 as under:

> *"6. In all cases above, the Hon'ble Supreme Court had held that the approach of the Courts/Tribunals when dealing with such matters has to be sensitive enough to appreciate the turn of events on the spot or the hardship that the claimants usually face in tracing witnesses and collecting information for an accident when they were themselves not present at the accident spot. Further, the Courts/Tribunals must be mindful that strict principles of evidence and standard of proof, like in a criminal trial, are inapplicable in MACT claim cases. The standard of proof in such matters is one of the preponderance of probabilities rather than proof beyond a reasonable doubt. The Courts/Tribunals have to be mindful that the approach and role of Courts/Tribunals while examining evidence in accident claim cases ought not to be to find fault with the non-examination of some best eyewitnesses, as may happen in a criminal trial; but instead should be only to analyze the material placed on record*

by the parties to ascertain whether the claimant's version is more likely than not true.

7. The Courts/Tribunals, in matters of this nature, are required to take a holistic view bearing in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The Courts/Tribunals should also draw appropriate inferences from the failure of respondents to properly cross-examining the witnesses of the claimants or confront them with their version despite the adequate opportunity. The legal effect of the failure to cross-examine crucial witnesses on crucial issues must be considered by the Courts/Tribunals."

11. In respect of first submission of the appellant that the deceased was responsible for the accident, the main reliance of the appellant is on the police case papers. In this regard, the respondent stated that claim petition is required to be decided on the principles of preponderance of probabilities and normally police case papers in claim petition are only relied upon to the extent of reference of accident by motor vehicle. The police case papers can be relied upon, if they were corroborated by an independent evidence or at least the same were proved by concrete evidence on record. In absence of such corroborative evidence, the police case papers cannot be considered as a substantive piece of evidence to place reliance in the matter. In support of this submission reliance is placed on judgment of the Hon'ble Supreme Court of India in the case of ***Jiju Kuruvilla and others***

Vs Kumjumma Mohan and others, reported in 2013 (9) SCC 166, wherein this Court observed in paragraphs 19 and 20.5 and

> *"19. The High Court based on Ext. B-2 "scene mahazar"' and Ext. A-5 post-mortem report held that there was also negligence on the part of the deceased as well.*
>
> *20.5. The mere position of the vehicles after accident, as shown in a scene mahazar, cannot give a substantial proof as to the rash and negligent driving on the part of one or the other. When two vehicles coming from opposite directions collide, the position of the vehicles and its direction, etc. depends on a number of factors like the speed of vehicles, intensity of collision, reason for collision, place at which one vehicle hit the other, etc. From the scene of the accident, one may suggest or presume the manner in which the accident was caused, but in the absence of any direct or corroborative evidence, no conclusion can be drawn as to whether there was negligence on the part of the driver. In absence of such direct or corroborative evidence, the Court cannot give any specific finding about negligence on the part of any individual".*

In support of his submission, the learned counsel has also placed reliance on judgment of the Hon'ble Supreme Court of India in the case of ***Murli and another Vs State of Rajasthan reported in 2009 (9) SCC 417,*** wherein this court observed in para 34 as under:

> *"34. The contents of the panchnama are not the substantive evidence. The law is settled on that issue. What is substantive evidence is what has been stated by the panchas or the person concerned in the witness box."*

12. It is further pertinent to note that, in the present matter the deceased was employed as labourer by the owner of tractor and whose instructions, the driver was carrying that labourers from one place to another. If on the instructions of the owner, the driver was taking labourers from one place to another, it was necessary for the owner to establish on record by an independent evidence that while carrying labourers, the deceased though instructed was standing on the joint of tractor and trolley and, therefore, under those circumstances accident took place and deceased caused death or at least any person who were travelling with deceased in trolley. If this evidence would have been come on record, then the submission of Insurance Company could have been considered in the matter but this is not the facts of the present case.

13. According to me, if the owner failed to enter into the witness box, then Insurance Company, who had contested the claim petition before the Claim Tribunal and relied upon the police case papers which shows that there were 15-20 labourers were carrying in a trolley, the Insurance Company should have called any of the persons before the Claims Tribunal and prove this fact. But, on the part of Insurance Company no steps were also taken before the Tribunal to justify their defence. Therefore, in my opinion, reliance placed only on the police case papers without any corroborative evidence are not helpful to appellant- company. It was necessary for the Insurance

Company to discharge their burden before the Claims Tribunal, by adducing evidence on record.

14. It is well settled position of law that if the Insurance Company is coming with a case that there was negligence on the part of the deceased or there is violation of insurance policy, then the Insurance Company has to prove the said fact beyond doubt before the Tribunal. In this regard, it will be relevant to refer the judgment of the Hon'ble Supreme Court of India in the case of ***Lakhmi Chand Vs. Reliance General Insurance, reported in (2016) 3 SCC 100***, wherein para 16 of the judgment, the Hon'ble Supreme Court observed as under:

> *"It becomes very clear from a perusal of the abovementioned case law of this Court that the insurance company, in order to avoid liability must not only establish the defence claimed in the proceeding concerned, but also establish breach on the part of the owner/insured of the vehicle for which the burden of proof would rest with the insurance company."*

15. It is also pertinent to note that the Hon'ble Supreme Court of India and this Court in catena of the judgments have consistently held that when the Insurance Company seeks exoneration from liability on the ground that the deceased or the victim was responsible for the accident and negligence was on his part then, on record there must be an attempt on the part of the Insurance Company to ascertain from concrete evidence that they have taken steps to prove his negligence

before the Tribunal. In absence of such evidence on record, no inference can be drawn only on the basis of police case papers, which were prepared by the police machinery while recording the crime in the matter, and subject to scrutiny at the time of trial of the criminal case.

16. In respect of the finding of the Tribunal that while calculating the compensation amount, the Court has committed error by applying the analogy of Section 163A of the Motor Vehicles Act, is also not acceptable to this Court. The judicial notice can be taken from the fact that till date, the issue of notional income of the deceased is not clarified by the Legislature though the Hon'ble Supreme Court of India time to time directed the Central Government to amend the relevant provisions of law. Therefore, while determining the notional income, each case is required to be decided on various factors such as inflation, devaluation of rupee, living standard etc. Therefore, the learned Claims Tribunal while determining the amount of compensation adopted the analogy which was given under Section 163-A of the Motor Vehicles Act cannot be faulted in the matter. Only because the learned Tribunal has accepted the analogy under Section 163-A of the Motor Vehicles Act to determine compensation does not mean the whole judgment as illegal.

17. It is pointed out that the appellant-Insurance Company has already deposited the amount to the Registry of this Court. As such, the

Registry is directed to release the amount deposited by Insurance Company in favour of present appellant along with interest accrued thereupon by transferring the same to the Motor Accident Claims Tribunal, Achalpur. The appellant-Oriental Insurance Company are permitted to withdraw the amount subject to satisfaction of the Tribunal.

18. Hence, in view of the aforesaid reasons, I do not find any merit in the present appeal. Hence, the First Appeal stands dismissed.

(**PRAVIN S. PATIL, J.**)

Mukund Ambulkar