



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

**FIRST APPEAL NO.703 OF 2010**

- 1) Savitabai wd/o Satish Meshram,  
Aged about 33 years,  
Occupation-Household.
- 2) Rajesh s/o Satish Meshram,  
Aged about 29 years,  
Occu : Pvt. Work.
- 3) Rahul s/o Satish Meshram,  
Aged about 29 years,  
Occu : Pvt. Work.
- 4) Sujata d/o Satish Meshram,  
Aged about 27 years,  
Occu : Household.

All R/o. Plot No.215, Mahendra  
Nagar, Nagpur. ..

Appellants

..Versus..

- 1) Arun s/o Maheshwarprasad Shriwastav,  
Aged about Major, Occupation-Owner,  
R/o. Q. No.1/14, Vidharbha Housing  
Board, Nagpur.
- 2) The Branch Manager,  
The Oriental Insurance Co. Ltd.  
10, Ramdaspath, Wardha Road,  
Nagpur. ..

Respondents

Shri Kunal Mirache, Advocate for Appellants.  
None for Respondent No.1 though served.  
Shri C.A. Anthony, Advocate for Respondent No.2.

.....

**CORAM : PRAVIN S. PATIL, J.**  
**DATED : 17.12.2025.**

### **JUDGMENT**

1. The original claimants in a motor accident case preferred the present appeal against the judgment and order passed by the Motor Accident Claims Tribunal, Nagpur in Claim Petition No.802/1999 decided on 5.6.2006, whereby the learned Tribunal has dismissed the claim petition filed by the present appellants.

2. According to the appellants, on 19.5.1999, deceased Satish Meshram was proceeding with his Luna bearing No.MH-31-AD-4408 from Rani Durgawati Chowk to Kamptee Road, Nagpur. At that time, the offending vehicle i.e. Tata Sumo bearing registration No.MH-31/Z-2970 coming from opposite direction in a high speed has lost his control and gave dash to the Luna of the deceased, resulting to which, deceased Satish was died on the spot in the said accident.

3. One Harbansh Singh lodged the police complaint of this motor accident to the Police Station, Panchpawali and accordingly crime was registered, against the driver of the Tata Sumo vide Crime no.223/1999. It is further stated that the said vehicle was owned by the respondent no.1 and insured with the respondent no.2-insurance company.

4. In view of this motor accident, the appellants in the capacity of legal heirs has filed the claim petition claiming thereby the compensation of Rs.4,00,000/- for the death of Satish Meshram caused in the motor accident.

5. Before the Motor Accident Claims Tribunal, the appellants entered into the witness box and pointed out that due to motor accident the death was caused and thereby they are entitled for the compensation. On behalf of respondents no one examined before Claim Tribunal to prove their defence in the matter.

6. In the background of above said factual position, the learned Tribunal has decided the claim petition. The learned Tribunal, while deciding the claim petition, has relied upon the

police case papers and particularly on the spot panchanama. On the basis of the said documents, the conclusion has been drawn by the Tribunal that accident had taken place western side of the road. Hence, it was concluded that Luna driver was negligent in driving the vehicle and was caused accident. It is further recorded that the vehicle of the deceased was on the left side of the road on the western portion which according to him shows that Luna was proceeding from North-South and gone to the extreme western side i.e. to the wrong side and thereby accident took place in the matter.

7. As such, from the perusal of the judgment of the Claim Tribunal, it is clear that only on the basis of spot panchanama, the learned Tribunal has drawn the conclusion that the deceased was negligent and, therefore, the present respondents were exonerated to pay any compensation in the matter and dismissed the claim petition.

8. In the present appeal, both the parties have relied upon the following judgments:

***(1) Mangla Ram .vs. Oriental Insurance Company Limited and others, reported in (2018) 5 SCC 656;***

- (2) *Prabhavathi and others .vs. The Managing Director, Bangalore Metropolitan, Transport Corporation, reported in MANU/SC/0295/2025,*
- (3) *National Insurance Company Limited .vs. Deepali Raju Mohite and others, reported in 2023 (6) ALL MR 665.*
- (4) *Jiju Kuruvila Vs Kunjujamma Mohan, reported in (2013) 9 SCC 166,*
- (5) *The New India Assurance Company Ltd. Vs. Sau Shantabai, reported in 2024 ACJ 2422.*

Respondent No.2 has relied upon the following judgment :

- (6) *Narayan Kalangutkar and another .vs. New India Assurance Company Limited and others, reported in 2012 (4) T.A.C. 674 (Bombay).*
- (7) *New India Assurance Vs Anjanabai, reported in 2005 (4) ALL MR 348,*
- (8) *Bakshish Singh Vs Balwinder, reported in 2012 SCC Online P&H 8405,*
- (9) *Deddappa Vs Branch Manager, National Insurance Company Limited, reported in AIR 2008 SC 767.*

9. The perusal of the above said judgment, particularly in the case of ***Mangla Ram*** (supra), the Hon'ble Supreme Court of India has held that while dealing with a claim petition in terms of Section 166 of the Motor Vehicles Act, 1988, a Tribunal *stricto sensu* is not bound by the pleadings of the parties; its function being to determine the amount of fair compensation in the event an accident has taken place by reason of negligence of that driver of a motor vehicle. The Tribunal has to take a holistic view of the matter. A strict proof of an accident caused by a particular vehicle in a particular manner may not be possible. The claimants are merely required to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt cannot be applied. The approach of the Tribunal should be holistic analysis of the entire pleadings and evidence by applying the principles of preponderance of probability. It will be relevant to refer the relevant Para 31 and 32 of the judgment of Hon'ble Supreme Court, wherein it is observed as under :

*31. Be that as it may, the next question is whether the Tribunal was justified in concluding that the appellant was also negligent and had contributed equally, which finding rests only on*

*the site map (Ext. 2) indicating the spot where the motorcycle was lying after the accident?*

*32. We find substance in the criticism of the appellant that the spot where the motor vehicle was found lying after the accident cannot be the basis to assume that it was driven in or around that spot at the relevant time. It can be safely inferred that after the accident of this nature in which the appellant suffered severe injuries necessitating amputation of his right leg above the knee level, the motorcycle would be pushed forward after the collision and being hit by a high speeding jeep. Neither the Tribunal nor the High Court has found that the spot noted in the site map, one foot wrong side on the middle of the road was the spot where the accident actually occurred. However, the finding is that as per the site map, the motorcycle was found lying at that spot. That cannot be the basis to assume that the appellant was driving the motorcycle on the wrong side of the road at the relevant time. Further, the respondents did not produce any contra evidence to indicate that the motorcycle was being driven on the wrong side of the road at the time when the offending vehicle dashed it. In this view of the matter, the finding of the Tribunal that the appellant contributed to the occurrence of the accident by driving the motorcycle on the wrong side of the road, is manifestly wrong and cannot be sustained. The High Court has not expressed any opinion on this issue, having already answered the issue about the non-involvement of the offending vehicle in favour of Respondents 2 & 3."*

10. In the judgment of ***Prabhavathi and others*** (supra), the Hon'ble Supreme Court has held in Para 13 of the judgment

relying upon the judgment of *Sunita .vs. Rajasthan SRTC and Rajwati alias Rajjo and others .vs. United India Insurance Company Limited*, are as under :

13. *It is the settled law that under the Motor Vehicle Act, 1988 it is established that in compensation cases, the strict Rules of evidence used in criminal trials do not apply. Instead, the standard of proof is based on the preponderance of probability. This Court in Sunita v. Rajasthan SRTC MANU/SC/0204/2019: (2020) 13 SCC 468 observed that:*

22. *It is thus well settled that in motor accident claim cases, once the foundational fact, namely, the actual occurrence of the accident, has been established, then the Tribunal's role would be to calculate the quantum of just compensation if the accident had taken place by reason of negligence of the driver of a motor vehicle and, while doing so, the Tribunal would not be strictly bound by the pleadings of the parties. Notably, while deciding cases arising out of motor vehicle accidents, the standard of proof to be borne in mind must be of preponderance of probability and not the strict standard of proof beyond all reasonable doubt which is followed in criminal cases.*

*The exposition came to be reiterated in Rajwati alias Rajjo and Ors. v. United India Insurance Co. Ltd. and Ors. MANU/SC/1595/2022 2022 : INSC: 1267, wherein it was observed that:*

20. *It is well settled that Motor Vehicles Act, 1988 is a beneficial piece of legislation and as such, while dealing with compensation cases, once the actual occurrence of the accident has been established, the Tribunal's role would be to award just and fair compensation. As held by this Court in Sunita (Supra) and Kusum Lata (Supra), strict*

*Rules of evidence as applicable in a criminal trial, are not applicable in motor accident compensation cases, i.e. to say, "the standard of proof to be borne in mind must be of preponderance of probability and not the strict standard of proof beyond all reasonable doubt which is followed in criminal cases.*

11. In the case of ***National Insurance Company Limited and others .vs. Deepali Raju Mohite and others*** (supra), some what identical factual position was recorded. In this judgment also, the Coordinate Bench of this court relying upon the law laid down in the case of ***Mangla Ram .vs. Oriental Insurance Company Limited and others*** (supra), has observed in Para 9 as under :

*9. Similarly, it is settled principle of law that in claims seeking compensation under Motor Vehicle Act, the principles of preponderance of probabilities are to be applied. In case of Mangla Ram v. Oriental Insurance Company Limited and Others (supra) the Supreme Court of India observed in paragraph no.32 of the judgment that spot of accident cannot be determined on the basis of the contents of the spot panchanama or on the basis of the position of the vehicle depicted in the panchanama. It is pertinent to note here that, in case in hand the Jeep driver didn't stepped into witness box to clarify actual scenario at the time of accident. The Tribunal appears to have considered aforesaid aspects in its proper perspective and recorded findings that Jeep driver was responsible for the accident. I do not find any*

*reason to interfere in the well reasoned finding and conclusion drawn by the Tribunal.”*

12. Per contra, learned counsel for respondent has relied upon the judgment of Coordinate Bench of this Court in case of **Narayan Kalangutkar** (supra, wherein this Court held in para 25 as under

*“25. Indisputably, the claim petition was filed under Section 166 of the Motor Vehicles Act. Therefore, it was necessary for the claimants to prove rashness and negligence on the part of the drivers of the two vehicles or either of them in order to succeed in a claim for compensation. Unfortunately, the claimants have not led evidence required under the law to prove rashness and negligence on the part of the drivers of two vehicles resulting in dismissal of claim petition. For the reasons best known to the claimants, they have chosen not to file the application under Section 163-A of the Act. But in terms of the settled law as laid down by the Apex Court in the case of **Minu Mehta** (supra), the claimants cannot be awarded any compensation on account of death of their son Jayesh resulting from a vehicular accident.”*

13. In the light of above said legal position, I have perused the entire record in the matter as well as the police case papers which are relied by the learned Tribunal. The perusal of the spot panchanama shows that the accident took place at 10.30 pm on 19.5.1999. On next day, one Harbansh Singh Singara

Singh Multani i.e. on 20.5.1999 lodged complaint about his accident to the Police Station and on his statement, police case papers were prepared in the matter. The complainant was running hotel to nearby place stated that at 10.30 pm, accident occurred between the two vehicles. He has only narrated that one Luna was heading from Kampthi Road to Rani Durgavati Nagar, at that time, Sumo which was coming from Durgavati Square, the accident took place in front of shop namely, Patiyala Tyres. Deceased was died on spot. He nowhere states that he was the eyewitness of accident. This complainant nowhere stated where his hotel is located on that road. Hence, it is very difficult to rely upon this person who has only lodged the complaint and help the police in the matter. In this regard, it will be relevant to refer the judgment of Hon'ble Supreme Court of India in the case of *Jiju Kuruvila and others .vs. Kunjujamma Mohan and others (supra)*, wherein Hon'ble Supreme Court of India has observed in Para 19 and 20.5 as under :

*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 .”*

14. According to the Hon'ble Supreme Court of India, 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 of vehicle. In the light of this legal position, it was expected from the respondents owner or the insurance company to examine the driver of the Tata Sumo to brought on record the correct and factual position. If the driver could have been examined before the Tribunal, everything would have been clear in the matter.

15. However, in the present case, it is pointed out that offence has been registered against the driver of the vehicle in

the said motor accident and he was absconded immediately after the accident. Therefore, in my opinion, the spot panchanama cannot be held to be substantial document to hold that deceased was responsible for the accident in the matter. Hence, in my view, the learned Tribunal has committed an error by dismissing the Claim Petition.

16. The another issue which was raised by the respondent-insurance company in the matter is that the owner of the vehicle had issued the cheque dated 6.3.1999 for Rs.9417/- drawn in favour of the insurance company. However, after depositing the cheque in their bankers, the said cheque was dishonoured and returned back to the company stating the reason of fund insufficient. Accordingly, the insurance company cancelled the insurance policy vide letter dated 31.3.1999 and same was informed to the respondent no.1 owner. Hence, on this count also, Respondent-Insurance Company is not responsible to pay the compensation to the claimants. It is entire responsibility of owner of vehicle. Respondent has relied upon the judgment of Hon'ble Supreme Court in case of *Deddappa* (supra).

17. In this regard, it is well settled position of law that Insurance Company must prove this fact by adducing specific evidence by pointing out every details, if owner of the vehicle did not clarify this aspect before Tribunal. It is necessary for insurance company to establish on record that intimation of cancellation of policy was given to owner, same was duly received by him. So also, same was communicated to Regional Transport Officer to take necessary note of the same. In absence of this specific evidence, claimant who was not suppose to know this fact, can't be expected to deny the compensation in the matter. Therefore, Tribunal has rightly held that the respondent-insurance company failed to prove the documents by entering into the witness box, therefore, did not consider the submission which was orally raised by the respondent-insurance company before the Tribunal.

18. In this regard, the learned counsel for the appellants has relied upon the judgment of coordinate bench in the case of ***The New India Assurance Company Limited .vs. Sow. Shantabai and others.*** This court has held that if the policy is cancelled

owing to dishonour of cheque, it is necessary that the communication in that regard should be proved by the insurance company, so that their defence can be accepted. In this regard, the specific finding is recorded in Para 6 of the judgment of the Coordinate Bench, is as under :

*6. In the present case, no witness is examined on behalf of the insurer. No documentary evidence is tendered into service. Mr. Ambhore, learned Advocate appearing for the appellant endeavours to contend that the copy of communication made to the transport authority is filed along with appeal memo. However, such document is not tendered along with application seeking permission to lead additional evidence. Further, the copy of the dishonoured cheque or copy of communication made to the owner of the vehicle or the copies of the acknowledgement regarding service of such communication to the insured are not brought on record. The Supreme Court in case of Deddappa v. Branch Manager, National Insurance Co. Ltd., AIR 2008 SC 767 observed that if the policy is cancelled owing to dishonour of cheque and the communication in this regard is made to the insured before accident, the policy would stand abrogated and insurer would be entitled to avoid liability. However, in absence of service of communication to insured regarding cancellation of the policy prior to the accident, the defence of the Insurer cannot be accepted. No fault can be found in the order passed by the Tribunal.”*

19. The counsel for the respondent no.2 has heavily relied upon the judgment of Hon'ble Supreme Court of India in the case of *Deddappa and others .vs. The Branch Manager, National Insurance Company, reported in AIR 2008 SC 767* to substantiate his submission that the insurance company in such circumstances cannot be held responsible. However, the perusal of the judgment of Coordinate Bench demonstrates the fact that this judgment of Hon'ble Supreme Court was also considered and after considering the entire controversy held that in absence of service of communication to insurer regarding cancellation of policy, the insurance company cannot be absolved from his responsibility.

20. In the present matter, as stated earlier, neither the respondent no.1 nor respondent no.2 entered into the witness box nor proved the communication which was issued by the insurance company to the owner of the vehicle. Only xerox copy of the communication dated 31.5.1999 was placed on record. Even no acknowledgment of the same was placed on record. Hence, in my view, the learned Tribunal is justified while recording the fact in Para 26 of the judgment that due to

non-production of proving of this document, the submission of the respondent no.2 cannot be accepted in the matter. In that view of the matter, I am of the opinion that the submission of the respondent no.2 in this respect is not acceptable.

21. In respect of compensation, the learned Tribunal has reached to the conclusion that the claimants are entitled for the compensation of Rs.4,00,000/-. However, it is the submission of the appellants that in view of the law laid down by the Hon'ble Supreme Court of India in the case of *National Insurance Company Limited .vs. Pranay Sethi and others, reported in (2017) 16 SCC 680*, has held that the claimants are entitled for the compensation under the conventional heads also. Hence, according to the appellants, they are entitled for the compensation as under :

|                                        |                                     |
|----------------------------------------|-------------------------------------|
| Rs.6,000/-                             | Salary Per Month                    |
| Rs.6,000 x 12 = 72,000/-               | Salary Per Annum                    |
| Rs.72,000 + Rs.10,800 = Rs.82,800/-    | 15% Future Prospects for fix salary |
| Rs. 82,800 – Rs. 20,700 = Rs. 62,100/- | ¼ th deduction                      |
| Rs.62,100 x 11 = Rs.6,83,100/-         | Multiplier                          |
| Rs.6,83,100/-                          | Loss of dependency                  |
| Rs.40,000/-                            | Consortium to each (Rs.10,000 x 4)  |
| Rs.10,000/-                            | Funeral and Ambulance Expenses      |
| Rs.10,000/-                            | Loss of Estate                      |
| <b>Rs.7,43,100/--</b>                  | <b>Total Compensation</b>           |

According to me, the claimants are entitled for the compensation of **Rs.7,43,100/-**.

22. While making above calculation, I have noticed the fact that accident occurred on 19.5.1999. The amount of compensation under conventional head in the peculiar facts of the present case is required to be considered at the time of accident, hence, I am of the opinion that under conventional head, the appellants are entitled for the compensation of Rs.10,000/- towards consortium, funeral and loss of estate and accordingly I have made the above calculation. Hence, in my opinion, the compensation of **Rs.7,43,100/-** is the just and fair compensation in the matter.

23. In the circumstances, for the reasons stated above, I proceed to pass the following order :

O R D E R

(1) First Appeal is allowed.

(2) The impugned judgment and order passed by the Motor Accident Claims Tribunal, Nagpur in Motor Accident Claim Petition No.802/1999 dated 5.6.2006 is hereby quashed and set aside.

(3) It is held that the appellants are entitled for the compensation of **Rs.7,43,100/-** along with 7.5 % interest per annum from the date of filing of the claim petition before the Motor Accident Claims Tribunal, Nagpur, till realization of the amount.

(4) The respondents are directed to deposit the compensation amount with the Registry of this court within a period of four months.

(5) The claimants are entitled for withdrawal of the said amount after the deposit of the amount subject to satisfaction of the Registrar (Judicial).

**(Pravin S. Patil, J.)**