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

FIRST APPEAL NO. 580 OF 2019

Reliance General Insurance Company Ltd., through its Branch Manager, Shop No.13 to 15, 4th Floor, 25 Area Township, Empress Township Square, Empress City, Bezoni Mehata Marg, Gandhisagar, Nagpur	**.. Appellant** (Original Respondent No.3)

Versus

1) Ramesh S/o Sadashiv Momdekar age : 55 years, Occ : Nil	(Original Petitioner No.1)
2) Jayashree W/o Ramesh Momdekar age : 50 years, Occ : Household	(Original Petitioner No.2)
Both R/o.Kanalgaon, Post-Pimpalgaon, Tahsil–Lakhandur, District–Bhandara	**.. Respondents**
3) Suresh S/o Laxman Enchillwar, age : 41 years, Occ : Driver, R/o.Soni, Tahsil – Lakhandur, District – Bhandara	(Original Respondent No.1)
4) Devidas S/o Ganpat Sukhdeve, age : 52 years, Occ : Owner, R/o.Soni, Tahsil – Lakhandur, District – Bhandara	(Original Respondent No.2)

Mr. H.N. Verma, Advocate for appellant.
Ms.Aditi Timande, Advocate h/f Mr.K.S.Motwani, Advocate for respondents No.1 and 2.
Mr. J.K. Matale, Advocate for respondents No.3 and 4.

CORAM : ABHAY J. MANTRI, J.

DATED : AUGUST 19, 2025

ORAL JUDGMENT

(1) Heard. **Admit**. Heard finally with the consent of the learned counsel appearing for the parties forthwith.

(2) The appellant/original respondent No.3 Insurance Company, being aggrieved by the judgment and award dated 13/04/2017 passed by the learned Member, Motor Accident Claims Tribunal, Bhandara (hereinafter referred to as **'the *Tribunal*'**) in M.A.C.P. No.85/2012, whereby the claim petition was partly allowed, has preferred this appeal.

Brief facts of the case are as follows:-

(3) On 06/04/2012, at about 11 hrs., the deceased Durgabai, along with her relatives, was waiting for a bus in front of the bus stop to go to Kanalgaon. Suddenly, a tractor bearing No.MH-36-L-592 (for short, '***Tractor'***) came from Lakhandur in a rash and negligent manner and gave a dash to Durgabai. Due to said dash, she fell on the road and succumbed to the injuries sustained by her on the same day. Accordingly, Kusan, uncle of the deceased, lodged the report to Lakhandur Police Station, against the driver of the tractor, which was registered vide Crime No.25/2012, for the offence punishable under Sections 279 and 304-A of the Indian Penal Code, 1860.

(4) The tractor was owned by respondent No.2 and insured with the appellant, Insurance Company.

(5) At the time of the accident, the deceased was 3 years old and therefore, respondent Nos. 1 and 2 have filed a claim petition for claiming compensation to the tune of Rs. 2,50,000/- on account of loss suffered by them due to the death of their daughter.

(6) The original respondent No.1 driver of the tractor, Suresh Enchillwar, appeared in the matter, but failed to file a Written Statement; therefore, the matter proceeded without his Written Statement. Similarly, respondent No.2, owner Devidas Sukhdeve, failed to appear in the matter, though served, hence the matter was proceeded ex parte against him.

(7) Appellant Insurance Company filed a Written Statement and denied the contents of the petition in toto. It is denied that the driver of the tractor was negligent. On the contrary, it is contended that the petitioners were negligent and did not take care of their daughter and allowed her to go with her relatives on the road. The driver of the tractor did not possess a valid and effective driving licence. The tractor was not insured with it at the relevant time, and therefore, respondent No.3 Insurance Company was not liable to indemnify the compensation amount on behalf of respondent No.2; hence, urged for dismissal of the claim petition.

(8) Based on the rival pleadings of the parties, the learned Tribunal framed issues. Pursuant to the issues, petitioners led their evidence and produced and proved documents. On the other hand, respondents No.1 and 2, i.e. driver and owner of the tractor, failed to adduce any evidence. Also, the application for grant of time to adduce evidence filed by respondent No.3/appellant Insurance company, was rejected by the learned Tribunal, and a closing of the evidence order was passed below Exhibit 1; then, the matter proceeded without its evidence. After considering the evidence on record, the learned Tribunal partly allowed the application. Being aggrieved by the same, appellant Insurance Company has preferred this appeal.

(9) Learned counsel for the appellant Insurance Company vehemently contended that the learned Tribunal did not give an opportunity to adduce evidence in support of its defence. The learned Tribunal has erred in rejecting the application for grant of time to adduce evidence without recording any sufficient reason, and thereby, the learned Tribunal deprived the appellant Insurance Company from adducing evidence before it. Therefore, he submitted that, on the ground that it was deprived of adducing evidence, the matter is liable to be remanded back to the learned Tribunal. During the argument, learned counsel for the appellant has taken me through the entire record and canvassed that learned Tribunal has erred in rejecting the application to adduce evidence, therefore, he submitted that it is a fit case to remand back the matter to the learned Tribunal for deciding the matter afresh by affording an opportunity to the appellant Insurance Company to adduce evidence.

(10) Learned counsel for the respondents No.1 and 2, i.e. original petitioners, does not dispute the said fact and consented to remand of the matter. Similarly, learned counsel for respondents No.3 and 4, i.e. owner and driver of the tractor, have also consented to the submissions of learned counsel for the appellant Insurance Company in that regard.

(11) Having considered the above submissions and going through the record and proceedings, the following points arise for determination :-

> *"1. Whether the matter is liable to be remanded back to the Tribunal for fresh consideration?*
>
> *2. Whether any interference is required in the impugned judgment and award?*
>
> *3. What order ?"*

<u>As to points No. 1 and 2</u> :-

(12) On perusal of the record, at the outset, it appears that on 19/10/2013, learned Tribunal framed issues and fixed the matter for evidence of the petitioners. From 2013 till 18/01/2016, from time to time learned Tribunal has granted time to the petitioners to adduce evidence. Lastly, on 22/02/2016, petitioner No.1 examined himself and produced and proved the documents and the matter was adjourned for cross-examination of respondent No.3 Insurance Company. From 19/03/2016 to 01/08/2016, the matter was adjourned from time to time. On 01/08/2016, petitioners filed evidence close pursis and the matter was adjourned for evidence of respondents on 10/08/2016.

(13) On 01/10/2016, respondent No.3/appellant Insurance Company filed an application for amendment, which came to be allowed on 03/12/2016. Accordingly, respondent No.3/appellant Insurance Company carried out an amendment on 13/01/2017, and, after carrying out an amendment on 03/02/2017 had filed an affidavit of evidence; however, the same was not taken on record on the same day, then matter was adjourned to 10/02/2017, on that day time was granted to adduce evidence and matter was listed on 04/03/2017. On 04/03/2017, the appellant Insurance Company filed an application for the grant of adjournment stating that "***the witness is unable to attend the Court, since he is on an important official tour***"; however, the said application was rejected by the learned Tribunal and order to close the evidence of appellant Insurance Company was passed below Exhibit 1 and fixed the matter for argument. After that, also, at the request of learned counsel for the petitioners, time was granted from time to time on 15/03/2017, 17/03/2017, 07/04/2017, and lastly on 10/04/2017, the argument was heard, and judgment was passed on 13/04/2017.

(14) The above factual position itself clearly indicates that from 2013 to 2016, three years were granted to the petitioners to adduce evidence; however, no opportunity was given to the respondent No.3 Insurance Company to adduce evidence despite filing of the application stating the appropriate reason that the witness was on important official tour unable to attend, same was rejected. Again, time was granted for argument to the learned counsel for the petitioners. The approach adopted by the learned Tribunal was not proper while considering the application for grant of an opportunity to lead evidence to respondent No.3 Insurance Company, when it was granted ample opportunity to the petitioners to lead evidence and also argue the matter.

(15) The record further denotes that respondent No.3 Insurance Company filed an affidavit of evidence on record; however, the application for the grant of adjournment was rejected by the learned Tribunal, and the matter was kept for hearing. In fact, it was incumbent on the part of the Tribunal to give an opportunity to the respondent No.3 Insurance Company to adduce evidence in support of its defence. It does not appear that the matter was prolonged on account of the respondent No.3, but it seems from the record that the matter had been prolonged on the part of the petitioners themselves. As such, the order of closure of the evidence of respondent No.3 itself indicates that the learned Tribunal has deprived respondent No.3 Insurance Company of adducing evidence in support of its defence, and it would certainly affect its right to adduce evidence.

(16) Apart from this, learned counsel for respondents No.1 to 4 have given their no objection to remand the matter back to the learned Tribunal for giving an opportunity to the original respondent No.3, i.e. appellant Insurance Company, to lead the evidence. They have not disputed that respondent No.3 is entitled to adduce evidence in support of their defence.

(17) In view of the aforesaid discussion and deliberation of the facts, in my view, learned Tribunal was hastily without assigning any reason for closing evidence of respondent No.3, restraining it from leading evidence in support of its defence. In such circumstances, in my opinion, it would be appropriate to remand the matter back to the learned Tribunal for giving an opportunity to the appellant to adduce evidence in support of their defence. If the matter is remanded and an opportunity is given to the original respondent No.3, i.e. appellant Insurance Company, it would not cause prejudice to the rights of the original petitioners and owner and driver of the tractor. On the contrary, the issue involved in the matter would be resolved by offering an opportunity to respondent No.3. Thus, I find substance in the contention of learned counsel for appellant in that regard and interference is required in the impugned judgment and award; consequently, ***I answer points No.1 and 2 in the affirmative***.

<u>As to point No.3</u> :-

(18) As a result of the above discussion, the appeal is allowed. The impugned judgment and award dated 13/04/2017 passed by Member, Motor Accident Claims Tribunal, Bhandara in M.A.C.P. No.85/2012 is hereby quashed and set aside, and the matter is remanded back for fresh consideration by giving an opportunity to the respondent No.3 to adduce evidence in support of its defence.

(19) Parties are directed to appear before the learned Tribunal on **22/09/2025**. It is made clear that the matter is an old one; therefore, the learned Tribunal shall endeavour to decide the same ***as expeditiously as possible within six months from the date of appearance of the parties***.

(20) The amount deposited by the appellant Insurance Company, including the statutory amount in this Court, be transmitted along with accrued interest thereon to the learned Tribunal forthwith.

(21) R and P be sent back to the Tribunal forthwith.

[ABHAY J. MANTRI, J.]

KOLHE