IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

51 CIVIL APPLICATION NO. 5834 OF 2024
IN/WITH FA/2903/2023

Smt Deepali Sachin Salve
VERSUS
Union Of India Insurance Co Ltd Through Its Branch Manager and others

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Advocate for Applicant : Mr. Pramod C. Mayure
Advocate for Respondent No.1 : Mr. S. R. Bagal
Advocate for Respondent No.2 : Mr. V. N. Shinde
Advocate for Respondent No.3 : Mr. D. R. Jethliya

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CORAM : SANJAY A. DESHMUKH, J.
DATED : 19th JANUARY, 2026

PER COURT :-

1. This civil application is preferred by the claimant seeking permission to withdraw the amount deposited as per the impugned judgment and award passed by the learned Member, Motor Accident Claims Tribunal, Parbhani.

2. Learned advocate for the applicant submitted that the accident in this case took place in which the husband of the claimant viz. Sachin Bhaskarrao Salve died. It is the case of the claimant that her husband was the pillion rider of respondent No.3 who is owner of the the Scooty bearing No. MH-22-Y-2591. At that time a tractor bearing No. MH-22-AD-1959, owned by respondent No.1, which was

not insured with the Insurance Company, gave a dash to the said scooty and the husband of the applicant died in the said accident.

3. Learned advocate for the applicant submitted that the claimant has established the negligence on the part of the rider of the Scooty and therefore, the claimant is entitled for compensation from the valid insurer of the said scooty. The directions are given by the Tribunal to pay the amount of compensation jointly and severally. He submitted that the insurance company is liable to pay the compensation as the deceased was not gratuitous passenger. The principle of pay and recover should have been applied and the Insurance company was held liable and directed to pay that amount, as per the law laid down in the case of ***Sunita and others vs. United India Insurance Co. Ltd. and others, AIROnline 2025 SC 601.*** He further submitted that the composite negligence is the joint and several liability of tortfeasor. The claimant can sue any of the joint tortfeasor. It is optional for the claimant to recover entire damages from anyone of them and if both the tort feasors are impleaded and apportionment to the extent of their negligence and liability is determined by the Tribunal, one of the joint tortfeasor can recover that amount from other in the same execution proceeding, as held in the case of ***Khenyei vs. New India Assurance Co. Ltd. and others, LAWS (SC) 2015 526***. He therefore, submitted that the

claimant is entitled to claim the said amount deposited in this Court as per the impugned judgment and award.

4. Learned advocate Mr. Bagal, for the respondent insurance company strongly opposed the application and submitted that claimant is not entitled for compensation as the negligence of the rider of the scooty is not found, as has been held in the cases of ***Sakharam Suryabhan Jadhav vs. Popat Shahurao Ghadge and others***, in First Appeal No. 1154 of 2017 decided on 13.08.2019, ***New India Assurance Co. Ltd. vs. Sunita Gajanan Shinde and others***, First Appeal No. 3532 of 2018 decided on 24.04.2019 and ***Janardhan Sitaram Surve and another vs. Sunil Ramesh Ukrulkar and others***, First Appeal No. 1848 of 2024 decided on 09.12.2025. He submitted, on the apparent facts of the case, that it is undisputed that the rider of the scooty was not negligent while riding it; therefore, in the absence of any negligence on the part of the rider of the scooty, the Insurance Company with whom it was insured is not liable.

5. Admittedly, the amount of compensation is deposited by the Insurance Company in this Court. Though there are directions of the Tribunal to the respondent Nos. 1 to 3 to pay the amount jointly and severally, the Tribunal has not held that the rider of the offending

vehicle was negligent, despite the submission of the learned advocate for the Insurance Company in paragraph 49 that the driver of the offending tractor was prosecuted vide Crime No. 170 of 2017. Therefore, considering the law laid down by this Court in the above cases, cited on behalf of the respondent Insurance Company, the claimant, is certainly not entitled to claim the said amount. Therefore, at this stage, the application deserves to be rejected. Hence, the following order:-

O R D E R

I. The application is rejected.

II. It is clarified that the observations made in this order are prima facie in nature and not on appreciation of the entire evidence and the same cannot be the basis for deciding the appeal finally on merits.

(SANJAY A. DESHMUKH, J.)

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