IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 689 OF 2024

1. Swati Piyush Paltiwale
2. Atharv Piyush Paltiwale
3. Hemant Rajaram Paltiwale …Appellants

Versus

1. Fareed Abdul Ghani Waghu
2. Cholamandalam MS. Gen. Insurance Co. Ltd. …Respondents

Mr. T.J. Mendon, *for Appellants.*
Mr. Sarthak Diwan *a/w. Mr. T.R. Kale, for Respondent No. 2.*

CORAM : R.M. JOSHI, J.

Date : January 29, 2026

PC :

1. Respondent No. 1 is duly served with the notice. Respondent No. 1 is not present today. Hence, proceeded *ex parte* against Respondent No. 1.

2. By consent of Learned Counsel for the Appellants and Respondent No. 2, heard finally at the stage of admission.

3. The present Appeal filed by the claimants takes exception to the judgment and award passed by the Tribunal in M.A.C.P. No. 37 of 2021, whereby the claim petition came to be rejected.

4. It is the case of the claimants that on 22nd February, 2021, the deceased was riding a motorcycle, and when he reached at the spot of the accident, he was hit by a motor vehicle bearing No. MH05-AM-1976 from behind. The said vehicle was driven by its driver in a rash and negligent manner, and as a result of which accident occurred. In the said accident, the deceased sustained grievous injuries and subsequently succumbed to them. It is claimed by the claimants that the deceased was earning, and therefore, they have suffered loss of dependency.

5. Though the learned Tribunal has computed the amount of compensation to the extent of Rs.1,30,13,632/-, the claim petition was dismissed for the reason the claimants have failed to prove the involvement of the offending vehicle, i.e., tempo bearing No. MH-05-AM-1976 in the accident. Learned counsel for the Appellants/Claimants submit that the Tribunal committed errors in not appreciating the position of law that the Claimants are required to prove the involvement of the vehicle on preponderance of probability. It is his submission that the evidence before the Tribunal shows that an offence came to be registered against the driver of the offending tempo. It is his submission that in these circumstances, the onus would shift upon the owner and

insurer to prove otherwise. It is further argued that on the basis of evidence of the investigating officer examined by the insurer, it cannot be stated that the involvement of the tempo in question is not there in the accident. He further argues that the Tribunal has committed error in not accepting the income of the deceased as proved by the documentary evidence in the form of income tax returns. He, therefore, seeks the claim petition to be allowed with enhancement of the compensation granted by the Tribunal.

6. Learned Counsel for Respondent No. 2 Insurer supports the impugned judgment and award. It is his submission that the initial burden is upon the claimants to establish the involvement of the offending vehicle in the accident. According to him, even if, it is accepted that the charge sheet was filed against the driver of the offending tempo, the charge sheet by itself, does not indicate the involvement of the said vehicle. He drew attention of the Court to the charge sheet, more particularly, statement of the witness, at whose instance, the report came to be lodged. It is submitted that the witness is the friend of the deceased and he is not an eye witness to the accident. It is further argued by referring to the evidence of the investigating

officer recorded before the Tribunal that the registration number of the offending vehicle was supplied by police personnel and not by any eyewitness. On these, among other grounds, it is his contention that it is not the case to cause any interference in the impugned judgement and award.

7. Without prejudice to above submissions, it is further argued that the Tribunal has recorded the finding with regard to there being a breach of the conditions of policy for the reason that the owner of the vehicle permitted the said vehicle to be driven by the driver who was not having effective license for riding the said category of vehicle. To this submission that in case this Court finds the reason to cause interference to the impugned judgment and award, order should be passed on a pay-and-recover basis against the owner.

8. Needless to say that initial burden on the claimants to prove the occurrence of the accident and involvement of the vehicle is on the standard of preponderance of probability. The claimants placed reliance on the police papers/charge sheet which indicates that the offence came to be registered against the driver of the offending vehicle. Thus, it can be stated that the initial burden is discharged by the claimants to show

the involvement of the vehicle in the accident. The onus, therefore, shifted on the owner and the insurer of the offending vehicle to prove otherwise. Admittedly, the owner has failed to cause appearance before the Tribunal, and therefore, there is no evidence on behalf of the owner in this regard. The Insurer, however, examined the investigating officers Smt. Jadhav, who conducted investigation into the Crime No. 76 of 2021. Though she admits that she was not able to find out any eyewitness to the accident, in the cross examination, she accepts that during the course of the investigation, it was found that the deceased was riding motorcycle and that the motorcycle was given dash by the tempo bearing No. MH05-AM-1976. Thus, the evidence of the Investigating Officer also does not support the claim of the insurer of non-involvement of the vehicle in the accident.

9. It was always open for the insurer to call the driver of the said vehicle as a witness before the Tribunal and his evidence would have been conclusive in nature. There is nothing on the record to indicate that any attempt even was made by the insurer to call the driver in the witness box. Consequently, it cannot be said that on the basis of the evidence on record, the insurer was able to substantiate its case of non-

involvement of the vehicle.

10. Pertinently, the owner of the offending vehicle failed to appear before the Tribunal and contest the claim of the claimants. In this backdrop, neither pleadings nor suggestion is there to the claimants with regard to this being a collusive proceedings filed by the claimants. In the absence of any such plea or any evidence on record, this Court finds no reason to accept the contention of the Counsel for the Insurer that this is a collusive claim.

11. Learned Tribunal failed to take into consideration the requirement of law for the claimants to prove the involvement of the offending vehicle in the accident on probability. The finding recorded by the Tribunal with regard to the non-involvement of the offending vehicle in the accident warrants interference.

12. Insofar as the quantum of compensation is concerned, having regard to the evidence led by the claimants, this Court finds no perversity in the findings recorded by the Tribunal with regard to the quantum of compensation, as such, no interference is required therein. The Tribunal observed in Paragraph 19 of the impugned judgement and award that the insurer has succeeded in proving the breach of conditions

of policy. As a result of the said proof of breach of conditions of policy, the Insurer is permitted to recover the amount of compensation from the owner. As a result of above discussion, the following order is passed :

ORDER

(i) The Appeal stands ***partly allowed***.

(ii) The impugned judgement and award passed by the Tribunal to the extent of rejection of the claim on the ground of non-involvement of the vehicle in the accident is set aside.

(iii) The rest of the findings recorded by the Tribunal on breach of the policy conditions so also the quantum of compensation, stand confirmed.

(iv) Original Opponent No. 1 and Respondent No. 2 — Insurer shall jointly and severally pay compensation of Rs.1,30,13,632/- to the claimants with interest at the rate of 7.5% from the date of Application till realization with liberty to the insurer to recover the said amount from the owner in accordance with law.

[R.M. JOSHI, J.]

** Order is corrected by Order dated 2nd February, 2026*