

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 1906 of 2024**

United India Insurance Company Limited
Through its manager, having their office at 1st
Floor, Pinak Galaxy, Opposite Big Bazar,
Majiwada, Kapurbawdi, Thane West,
Thane 400607.

Appellant

(Insurer of Motor Cycle No. MH-48-BG-2307)

Policy No.0207003118P105921401,
policy period 04-08-2018 to 03-08-2019.

Also having office at

United India Insurance Co. Ltd.

TP HUB MRO II

Union Coop Ins. Building, 5th Floor,
Sir P.M. Road, Fort, Mumbai 400023

Versus

- 1 Suresh Ramasurya Tadikonda @
Suresh Ramasurya Gupta Tadikonda age
about 43 years, occupation Nil, resident of B-106,
Dhoop Chaon Apartment, Near Krishna Township,
Diwanman, Ambadi Road, Vasai (West), Dist.
Palghar but at present residing at G-9, Ground
Floor, Survey No. 25, Priya Enclave Apartments,
Balamrai, Secundrabad 400003 through next
friend, (brother) Mr. Naresh Tadikonda, age 42
years.

- 2 Pravin Keshav Vanmali
Adult, resident of Umakant Sadan, Chulna
Road, Behind Dr. Sutaria Manickpur,
Vasai (W), Thane 401202
(owner of Motor Cycle No. MH-48-BG-2307)

Respondents

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**with
FIRST APPEAL NO. 1577 of 2024**

Suresh Ramasurya Tadikonda @ Suresh Ramasurya Gupta Tadikonda age about 43 years, occupation Nil, resident of B-106, Dhoop Chaon Apartment, Near Krishna Township, Diwanman, Ambadi Road, Vasai (West), Dist. Palghar but at present residing at G-9, Ground Floor, Survey No. 25, Priya Enclave Apartments, Balamrai, Secundrabad 400003 through next friend, (brother) Mr. Naresh Tadikonda, age 42 years.	Appellant
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Versus

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| <p>1. Pravin Keshav Vanmali
Adult, resident of Umakant Sadan, Chulna
Road, Behind Dr. Sutaria Manickpur,
Vasai (W), Thane 401202
(owner of Motor Cycle No. MH-48-BG-2307)</p> <p>2. United India Insurance Company Limited
Through its manager, having their office at 1st
Floor, Pinak Galaxy, Opposite Big Bazar,
Majiwada, Kapurbawdi, Thane West,
Thane 400607.
(Insurer of Motor Cycle No. MH-48-BG-2307)
Policy No.0207003118P105921401,
Policy Period 04-08-2018 to 03-08-2019.</p> | <p>Respondents</p> |
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Ms. Varsha Chavan, Advocate for the Insurance Company-Appellant in First Appeal No.1906 of 2024 and for Respondent No.2 in First Appeal No.1577 of 2024.

Ms. Rina Kundu, Advocate for the Original Claimant/Respondent No.1 in First Appeal No.1906 of 2024 and for Appellant in First Appeal No.1577 of 2024.

CORAM : R. M. JOSHI, J.

RESERVED ON : 23rd DECEMBER, 2025.

PRONOUNCED ON : 05th JANUARY, 2026.

Oral Judgment :

1. These appeals are filed by the Insurer and Claimant under Section 173 of the Motor Vehicles Act, 1988 against the judgment and award dated 1st March 2024 passed in MACP No. 37 of 2023 (old MACP No. 87 of 2019). Parties are referred to as claimant, insurer and owner of the offending vehicle.

2. The facts which led to the filing of these appeals can be narrated in brief as under:

It is a case of the claimant before the Tribunal that on 3rd September 2018 at about 8.30 p.m., he was proceeding from Sun City towards Omnagar on motorcycle bearing registration number MH-04-E-8966. When he reached opposite the National Automobile Garage, another motorcycle bearing registration number MH-48-BG-2307 came from the opposite direction on its wrong side and gave dash to the motorcycle of the claimant. As a result of the said dash, the claimant fell down and sustained serious injuries and was taken to Golden Park Hospital, Vasai. He claims to have been admitted there and thereafter shifted to P.D.Hinduja National Hospital and Medical Research Centre, Mahim, by ambulance on 4th September 2018. He claims to have been an

indoor patient in the said hospital till 30th September 2018 and further claims to have spent Rs.10,00,000/-on hospitalization and treatment. It is further the contention of the claimant that even after his discharge from the hospital, he is still in a quadriplegic condition and his forelimbs are powerless. He claims to be dependent on others and since the time of the accident could not attend his work. It is further claimed that the offending motorcycle was owned by original opponent No.1, whereas it was insured with opponent No.2, the insurer. It is claimed that the accident has occurred due to the negligence on the part of the rider of the offending motorcycle. It is further claimed that an offence came to be registered against the rider of the said motorcycle vide Crime No.334 of 2018 and after the conclusion of investigation, charge-sheet has been filed against the driver of the said vehicle. The claimant, therefore, has raised the claim for compensation on account of sustainment of permanent disability which has resulted in loss of ability to work and consequent loss of income.

3. The owner of the offending vehicle, though served with notice, failed to appear before the Tribunal and hence the claim proceeded ex-parte against him. Opponent- insurer, however, filed a written statement and contested the claim. It is the case of the insurer that the offending vehicle is falsely involved in the accident. It is contended that the accident has allegedly taken place on 3rd September 2018, whereas the First Information Report in this regard came to be registered on 26th September 2018. It is thus claimed that the insurer is not liable for

payment of any compensation. It is further claimed that the accident has occurred due to the negligence on the part of the claimant himself. On these, amongst other contentions, the insurer has sought dismissal of the claim.

4. After framing of the issues, the claimant examined himself at Exhibit 19 and also led evidence of Ms. Bhakre (Exhibit 36), Suhas Bharadkar (Exhibit 61), Dr. Pestanji Malcolm Darais (Exhibit 81), Ghanashyam Yadav(Exhibit 83), and Dr. Sameer Lokare (Exhibit 84). The insurer took over the defence of the owner of the offending vehicle and examined Akash Kore(Exhibit 96) and Ramesh Pote(Exhibit 104). Apart from examining witnesses before the Tribunal, the claimant placed reliance on documentary evidence which includes police papers i.e. charge-sheet, injury certificate, discharge card, disability certificate and other documents indicating incurrence of medical expenses. The learned Tribunal allowed the claim and directed payment of compensation by opponent Nos.1 and 2 jointly and severally to the tune of Rs.1,74,26,471/- with interest at the rate of 6% per annum.

5. At the outset, learned counsel appearing on behalf of the insurer submitted that the Tribunal has committed an error in not considering the plea/defence of the insurer appropriately with regard to non-involvement of the offending vehicle in the occurrence of the accident in question. It is her submission that not only a specific defence has been taken in this regard, but the insurer has also led evidence pursuant to

taking over all defences of the owner of the vehicle by making an application under Section 170 of the Motor Vehicles Act (Exhibit 18). It is her submission that the alleged accident has taken place on 3rd September 2018, whereas the First Information Report came to be lodged on 26th September 2018. In this regard, she made reference to the evidence led by the claimant, which according to her indicates that the involvement of the offending vehicle has been falsely shown in this case in order to seek a claim from the insurance company. It is further argued that police papers and the copy of the charge-sheet on record indicate that there is no substance in the contention of the claimant about the involvement of the offending vehicle in the accident. Without prejudice to these submissions, it is further argued that in any case, if this Court comes to the conclusion that there is involvement of the offending vehicle in the accident, it be held that the accident has occurred due to the negligence on the part of the claimant himself. In this regard, reference is made to the spot panchnama which, according to her, indicates that the accident has occurred in the middle of the road and, therefore, the claimant himself needs to be considered as negligent for its occurrence.

6. On the point of the claim of the claimant with regard to causing of injuries and permanent disability, so also loss of income, it is argued that the injury certificate at Exhibit-27 indicates only three injuries caused to the claimant, namely CLW over frontal region, fracture of left hand and abrasion on face. She also referred to the discharge summary which

according to her shows that there was no further deterioration seen in the neurological status of the patient. It is submitted that from the medical evidence on record it cannot be said that the claimant is still in quadriplegic condition and his forelimbs are powerless. It is her further submission that the doctor who has assessed the disability of the claimant is not the treating doctor and the treating doctor has not deposed about any such condition of the claimant. By referring to the cross-examination of Dr. Lokare, it is argued that the assessment of disability has been done without taking any new/fresh X-ray or CT scan report and he admitted that he cannot say about present condition of patient. It is thus submitted that on the basis of such evidence, the assessment of disability of the claimant cannot be accepted.

7. On the point of quantum of compensation determined by the Tribunal, it is argued that the Tribunal has committed an error in accepting the income of the claimant and his alleged termination from service. It is contended that the Tribunal ought to have deducted the amount of mediclaim received by the claimant from the total amount of compensation. It is submitted that the mediclaim is received towards the injuries caused in the same accident and therefore the claimant is not entitled to receive such compensation thrice in respect of the same accident. Lastly, it is argued that the Tribunal has committed an error in presuming that this is a case of quadriplegia and proceeded to grant compensation which is excessive in nature. On these, amongst other

submissions, the learned counsel for the insurer sought setting aside of the impugned judgment and award.

8. On the other hand, learned counsel for the claimant has supported the impugned judgment and award on the point of findings recorded by the Tribunal regarding involvement of the offending vehicle in the accident and negligence on the part of the rider of the said vehicle. In this regard, it is submitted that there is documentary evidence on record in the form of charge-sheet indicating that the rider of the offending vehicle was charged for negligent driving and the said charge-sheet has not been challenged by him. It is further argued that it was open for the insurer to examine the pillion rider of the said vehicle. However, for want of examination of the said pillion rider, it cannot be said that the insurer has succeeded in establishing the defence taken in the written statement. It is submitted that the claimant is required to prove the claim on probability and on the basis of evidence of the claimant himself coupled with the police papers/charge-sheet, he has succeeded in proving the involvement of the offending vehicle in the accident and negligence on the part of the rider of the said vehicle. With regard to the injuries caused to the claimant and disability, it is argued that there is no cross-examination conducted of the witnesses examined by the claimant in order to deny causing of injuries or disability. She, however, made grievance that the Tribunal has committed an error in not considering the revised salary of the claimant. In this regard, reference is made to communication dated 18th May 2018

which according to her indicates that the salary was revised and bonus was also included therein. Thus, it is her submission that the judgment and award passed by the learned Tribunal requires modification and the claimant is entitled for enhancement of compensation on heads not considered by the Tribunal including pain and suffering, medical bills etc..

9. The claimant is required to prove his case on the preponderance of probability. In order to substantiate his case with regard to occurrence of the accident and involvement of the offending vehicle therein, he examined himself and also led evidence in the form of charge-sheet filed against the rider of the offending motorcycle. It is needless to say that merely because the FIR came to be lodged after a lapse of substantial period that by itself it does not become a ground for discarding the same. The Court is required to take into consideration the overall circumstances in which the report came to be lodged belatedly. If the circumstances are self-explanatory and there is other material on record to hold involvement of the offending vehicle in the accident, it would not be open for the Court to discard the case of the claimant. From the evidence on record, it is clear that after the occurrence of the accident, the claimant was immediately taken to the hospital and was treated in the Intensive Care Unit of P.D. Hinduja Hospital. It is pertinent to note that there is a history recorded in the discharge card with regard to the patient i.e. the claimant having met with a road traffic accident involving two motorcycles. Merely because in the first hospital, i.e. Golden Park

Hospital, no MLC was registered, it cannot be held that no accident had occurred as claimed by the claimant. The injury certificate issued by Golden Park Hospital also indicates that this is a case of history of road traffic accident. It further indicates that the claimant was brought to the hospital by local public in unconscious condition. These circumstances clearly indicate that having regard to the nature of serious injuries caused to the claimant, and as he was not able to move, the family members and relatives were not expected to go to the police station and lodge the report immediately. Non-lodging of the report by the concerned hospital cannot become a ground for discarding the case sought to be made out by the claimant with regard to the occurrence of the accident and involvement of the offending motorcycle therein.

10. Though learned counsel for the insurer has sought to draw attention of the Court to the inconsistencies in statements of eyewitnesses with regard to taking note of information regarding the motorcycle and its number, it is pertinent to note that the claimant examined himself and narrated the manner in which the accident occurred. Needless to say that having sustained serious injuries, it was not expected of the claimant to report the matter to the police. Pertinently, in his cross-examination, it has come on record that after the occurrence of the accident, he became unconscious. He denied the suggestion that the offending vehicle i.e. the motorcycle was not involved in the accident and was falsely implicated therein.

11. The claimant examined Ghanashyam Yadav, an eyewitness to the accident. He deposed about having seen the accident and involvement of the offending motorcycle therein. He was thoroughly cross-examined by the counsel for the insurer. In the cross-examination, it has come on record that at the time of the occurrence of the accident he was standing at National Automobile Garage. It is further clear from the suggestions made to this witness that at the time of the accident, both two-wheelers had fallen on the road. It is claimed that the rider of the offending vehicle got up and left the spot with his vehicle. He further stated that at the time of the said motorcycle leaving the spot, he noted the number. Though this statement appears to be not in tune with other statements but not enough to discard his testimony completely. It must be noted that this is not a criminal trial wherein strict proof of the fact is contemplated. The evidence on record coupled with documentary evidence ie. the charge-sheet filed against the rider of the motor-cycle clearly indicates that the claimant has succeeded in proving his case with regard to the involvement of the offending vehicle in the accident on the basis of probability. The onus, therefore, shifted on the owner of the offending vehicle and insurer to prove otherwise. In the regard, since, the owner of the offending vehicle failed to appear before the Tribunal, the burden was on the insurer to take over the defences of owner and prove the same. The insurer examined witness-Akash Kore at Exhibit 96, who is the rider of the offending motor-cycle. He claimed that he did not make

any statement to police and was asked to sign papers. In his cross-examination, however, he admitted that he never lodged any complaint with the police regarding obtaining his signatures on paper. He admits that the proceedings viz. the criminal case is pending against him. From his evidence, it is clear that he never took objection to tenability of the charge-sheet against him for non-involvement of the motorcycle in question in the accident. The entire evidence on record, therefore, clearly indicates that this is not a case wherein a false report has been lodged with regard to the involvement of the offending motorcycle in the accident. Therefore, it is held that the offending vehicle was involved in the accident and the owner and insurer were rightly joined as opponents to the claim petition.

12. Learned counsel for the insurer alternatively sought to attribute negligence to the claimant in the occurrence of the accident. The spot panchnama is referred to, which according to her indicates that the accident occurred in the middle of the road, which is indicative of the fact that the claimant has contributed therein. Perusal of the spot panchanama shows that it is a rough sketch and it does not indicate that the accident occurred exactly in the middle of the road. Rather, it appears to be more on the correct side of the claimant's motorcycle. Apart from this, it is pertinent to note that even in the cross-examination, no suggestion was made to the claimant regarding his negligence in the occurrence of the accident. In fact, what was suggested was that the motorcycle skid on the road and one unknown vehicle knocked him down. These suggestions do

not support the case sought to be made out by the insurer about negligence on the part of the claimant in the occurrence of the accident. This Court, therefore, finds no hesitation to accept the findings recorded by the learned Tribunal with regard to the involvement of the offending vehicle in the accident, so also negligence on the part of the rider of the offending motorcycle in question.

13. On the point of sustainment of injuries in the said accident, the claimant on oath deposed about causing of the injuries and treatment being taken at Golden Park Hospital. It has come on record in cross-examination that discharge was obtained by the claimant against medical advice and thereafter he was taken to Hinduja Hospital. Claimant examined Suhas Bharadkar, an employee of P.D.Hinduja Hospital. This witness deposed about period of hospitalization of claimant. He also deposed about the operative procedures conducted on the claimant. According to this witness, the claimant has spent a sum of Rs. 7,61,025/- on medical treatment at this hospital. The claimant also examined Dr. Sameer Lokare, who had assessed the disability of the claimant. He had not treated the patient, however, he examined him for the purpose of assessment of his disability. It is further stated by this witness that the claimant was brought to him on a stretcher and he found Grade 2/5 power loss in the bilateral upper and lower limbs. Dr. Sameer Lokare assessed disability at 96% and issued disability certificate (Exhibit 85). During the cross examination the expertise of the witness to assess disability was not

challenged. Merely because treating doctor has not issued the disability certificate, the same cannot be discarded if assessment is done by expert correctly. In the cross-examination, the insurer's counsel could not elicit anything in order to discard the assessment of the disability done by this doctor. Apart from this, the Tribunal has recorded in notes of evidence that the claimant was brought to the Court on wheelchair. All these facts clearly indicate that the disability assessed by the medical officer, deserves acceptance and owing to the said disability, the claimant could not even perform his daily routine without assistance.

14. According to the claimant, he was serving as Assistant Manager with DHFL Primerica and earning Rs.7,71,460/- per annum. He further claimed that because of the physical condition, he could not attend the work thereafter. He was relieved from the service with effect from 20th September 2019. His oral testimony gets support from the evidence of Ms. Maria Bhakre, Manager(HR) of the said company. She placed on record the appointment letter of the claimant, as well as the compensation and reward statement for the assessment year 2017–2018. In the cross-examination of this witness, it has come on record that for financial year 2017-18, the claimant had drawn a salary of Rs 6,31,370/- per annum and an amount of Rs 11,374/- was deducted towards the statutory taxes. Similarly, it is confirmed in the cross-examination that the claimant was relieved from the services. No other reason for his discontinuation from service has been brought on record. Thus, more is the reason to believe

that owing to physical disability caused on account of accidental injuries, his employment was terminated.

15. Learned Tribunal has accepted the income of the claimant at Rs 6,30,683/-. Learned counsel for the claimant has sought to convince this Court that the Tribunal has failed to take into consideration the revised salary of the claimant and bonus has not been included, while determining the amount of compensation. Perusal of the impugned judgment indicates that the Tribunal has considered original appointment order, so also revised salary on promotion and accepted the annual income of the claimant of Rs.6,30,683/-. Considering the evidence on record, this Court finds no reason or justification for not accepting the findings recorded by the Tribunal with regard to the employment and income of the claimant.

16. As stated earlier, the claimant has sustained disability to the extent of 96% and on that account, he has lost his earning capacity. The compensation amount determined by the learned Tribunal by applying appropriate multiplier is correct requiring no interference therein. As far as the attendant charges granted by the Tribunal are concerned, it is pertinent to note that having regard to the health condition of the claimant, he will definitely require assistance. Apart from this, it is rightly held by the Tribunal that he will need physiotherapy for almost his entire life. Needless to say that towards special diet, conveyance, wheelchair etc., he is entitled to be compensated. The learned Tribunal has granted the

compensation under different heads and this Court finds no reason to add anything thereto.

17. It is argued on behalf of the insurer that in the admission given by witness- Maria, the amount of medical treatment came to be reimbursed by Birla Health Insurance Company and, therefore, the said amount requires deduction from the total compensation. In this regard, it is pertinent to note that there is no further explanation sought from this witness as to whether the said reimbursement is against mediclaim policy taken by the claimant or the said insurance was obtained by the employer. In the first case, since such reimbursement is on the basis of contract of insurance, the claimant would be entitled to receive the same irrespective of the said claim being allowed under the Motor Vehicles Act. In second eventuality, insurance policy taken by Employer becomes integral part of service benefits/conditions. Needless to say that in respect of any benefit provided by the employer to an employee, he/she is required to render services against the same. Thus, it cannot be said that something over and above the service condition has been paid to the claimant. Therefore, there is no justification for deduction of the amount of medical expenses reimbursed to the claimant under insurance policy.

18. The aforestated discussion clearly indicates that there is no merit in both appeals and, consequently, both appeals stand dismissed. No order as to cost.

19. The claimant is permitted to withdraw the deposited amount along with accrued interest thereon.
20. The statutory amount be transmitted to the Tribunal along with accrued interest thereon. The parties are at liberty to withdraw it as per Rule.
21. Pending applications, if any, stand disposed of.

(R. M. JOSHI, J.)