MPBalekar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 127 OF 2026
WITH
INTERIM APPLICATION NO. 1020 OF 2026

The Oriental Insurance Company Ltd. … Appellant
V/s.
Kisan Shankar Kator and Ors. … Respondents

Mr. Deepika P. a/w S. Mitra and Gargi Mandvikar i/by Res Juris for the appellant.
Mrs. Rina K. for the respondents.

CORAM : R. M. JOSHI, J.

DATED : FEBRUARY 26, 2026

P.C.:

1. The learned Counsel for the respondents / original claimants has filed compilation of documents. The same is taken on record.

2. By consent of both the sides, heard finally at the stage of admission.

3. This Appeal filed by the Insurer takes exception to the judgment and award dated 19th July, 2025 passed in Motor Accident Claim Petition No. 704 of 2017, whereby the claim filed by the Claimant came to be allowed by directing payment for compensation of Rs. 31,73,806/- with interest at the rate of 9% p.a.

4. The only ground for challenge to the impugned judgment and award is that according to the learned Counsel for the Appellant, the Tribunal has failed to take into consideration the evidence placed on record by the Claimant in the form of Police Report. It is the submission of the learned Counsel that the First Information Report does not indicates that the driver of the vehicle in which the deceased was traveling was responsible for occurrence of the accident, but offence came to be registered against him.

5. It is submission of the learned Counsel for the Appellant that the initial burden will be upon the claimants to prove that the driver of the other vehicle was also responsible to any extent for the purpose of fastening liability of payment of compensation to the owner and insurer of such vehicle. He placed reliance on the judgment of the Hon'ble Supreme Court in the case of ***Oriental Insurance Company Ltd. Vs. Premlata Shukla and Ors.***, (2007) 13 SCC 476, wherein it is held that once the claimant places reliance on the FIR, it is not open for the Claimant to contend contrary thereto.

6. The learned Counsel for the Respondents / Claimants supported impugned judgment and award. It is her submission that there is admission given by the Insurer with regard to the negligence on the part of the driver of the other vehicle that is insured with the present Appellant to the extent of 10 %.

7. Perusal of the record indicates that the Claimants are relying upon police papers in order to substantiate their contention with regard to negligence on the part of the driver of the vehicle in which deceased was traveling, so also the another vehicle involved in the accident.

8. Apart from the fact that there is admission on the part of the insurer with regard to the negligence of the vehicle insured to the extent of 10%, the evidence on the record in the form of Spot Panchnama indicates that there is no mention therein with regard to the tanker being in stationary position with tail lights on. The Spot Panchnama reflects the position at the spot. If the tail lights of the tanker were on, the same ought to have been mentioned in the Spot Panchnama, non-mention thereof leads to the inference that tail lights of the tanker were not on. This clearly shows that there is negligence even on the part of the driver of the tanker in occurrence of the accident.

9. Needless to say that it is open for the claimant to file claim against both joint tortfeasor or any one of the other. Hence, the impugned judgment and award deserves no interference.

10. In view of the above, this Appeal stands dismissed. The statutory deposit amount shall be transferred to the Tribunal within a period of one month for disposal in accordance with law.

11. In view of dismissal of the Appeal, Interim Application, if any, stands disposed of.

(R. M. JOSHI, J.)