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

FIRST APPEAL NO.683 OF 2018

The United India Insurance Co. Ltd.,
Abhishek, Mul Road, Chandrapur. **---APPELLANT**

---VERSUS---

1. Ratnakar S/o. Shioram Niranjane,
Aged 59 years, Occu. : Labour.

2. Smt. Shakuntala w/o. Ratnakar Niranjane,
Aged 54 years, Occu. Household,
Both R/o. Navin Daheli, Tah. Ballarpur,
Distt. Chandrapur.

3. Shareef Mohammad s/o. Azam Shareef,
Aged not known, Occu.: Transport,
R/o. 8-4-371/141, Prabhatnagar,
Borabanda, At & PO Hyderabad (AP).

4. The National Insurance Co. Ltd.,
through Branch Manager,
The National Insurance Co. Ltd.,
Division No.3, Hyderabad (AP).

5. Prakash S/o. Bansi Ramteke,
Aged about 39 years, Occu.: Service,
R/o. Naginabagh, Chandrapur. **----RESPONDENTS**

WITH

CROSS APPEAL NO.15 OF 2025

United India Insurance Co. Ltd.,
Abhishek, Mul Road, Chandrapur. **---APPELLANT**

---VERSUS---

1. Ratnakar S/o. Shioram Niranjane,
   Aged abt.- 60 yrs., Occ. : Labour.

2. Shakuntala w/o. Ratnakar Niranjane,
   Aged abt. 55 yrs., Occ.- Household,
   Both R/o. Navin Daheli, Tah. Ballarpur,
   Distt. Chandrapur.

3. Shareef Mohammad s/o. Azam Shareef,
   Aged abt.- not known, Occ.: Transport,
   R/o. 8-4-371/141, Prabhatnagar,
   Borabanda, At & PO Hyderabad
   (Andhra Pradesh).

4. The National Insurance Co. Ltd.,
   through Branch Manager,
   The National Insurance Co. Ltd.,
   Division No.3, Hyderabad (AP).

5. Prakash S/o. Bansi Ramteke,
   Aged 40 years, Occu.: Service,
   R/o. Naginabagh, Chandrapur. **----RESPONDENTS**

Mr. M. R. Joharapurkar, Advocate for Appellant.
Mr. N. A. Chawhan, Advocate for Respondent Nos.1 and 2.
Mr. A. M. Kukdey, Advocate for Respondent No.4.

CORAM : NEERAJ P. DHOTE, J.
JUDGMENT RESERVED ON : 07.01.2026.
JUDGMENT PRONOUNCED ON : 13.01.2026

JUDGMENT

. This is an Appeal under Section 173 of the Motor Vehicles Act, 1988 (for short, 'M.V.Act) directed against the Judgment and Order/Award dated 04.07.2016 passed by the learned Motor Accident Claims Tribunal (for short, M.A.C.T.), Chandrapur in Motor Accident Claims Petition No.02/2007 directing the Appellant and the Original Respondent No.4 owner of the two-wheeler driven by the deceased to jointly and severally pay the compensation of Rs.5,18,000/- to the Original Claimants along with interest.

2. The Original Claimants have preferred the Cross-Appeal contending that the observations by the learned Tribunal that, the deceased drove the two-wheeler in a rash and negligent manner and thereby gave dash to the truck, was improper. The learned Tribunal failed to consider that the truck was parked without indicators and parking lights. Therefore, the Insurance Company of the truck shall be held liable to pay the compensation.

3. The facts giving rise to the Appeal are as follows :

Respondent Nos.1 and 2, who are the parents of deceased filed the above referred claim petition contending that, on

21.10.2006 around 19 hours i.e. 07.00 p.m., when the deceased was travelling on the two-wheeler bearing registration No.MH-34/H-5562 on Kalmana-Ballarpur highway, the two-wheeler dashed the truck bearing registration No.AP-09/Y-5589, which was parked on the road without any indication/mark/sign. Due to the accident, the deceased suffered severe injuries to which he succumbed. The accident was reported to the concerned Police Station and crime bearing No.237/2006 came to be registered against the deceased for the offences punishable under Section 279, 304-A of the Indian Penal Code, 1860 (for short, 'IPC'). The Original Claimants claimed the compensation against the owners of the two-wheeler, the truck and the Insurance Companies with which the said vehicles were insured.

4. The claim petition was resisted by the Appellant – Insurance Company and the Original Respondent No.2 – Insurance Company of the truck by filing their Written Statements below Exhibits 25 and 31, respectively, thereby denying the liability to pay the compensation. On the basis of the pleadings, the learned Tribunal framed the issues below Exhibit – 38. The Original Claimant No.2 filed her evidence affidavit in support of the claim

petition below Exhibit-41 and she was cross-examined by the Original Respondent No.2- Insurance Company of the truck. The relevant documents were brought on record in her evidence. No evidence was led by the Respondents. Appreciating the evidence on record, the learned Tribunal passed the impugned Judgment and Order/Award.

5. It is submitted by learned Advocate for the Appellant that, the truck was parked without any indication or parking lights and in negligent manner. Had the truck not being parked without any indicator, the accident could have been avoided. When the offence was registered against the deceased, the learned Tribunal erred in imposing the liability on the Appellant which was the Insurance Company of the two-wheeler. He submits that the impugned Judgment and Order/Award needs interference. In support of his submission, he cited the following judgments :

i] *Sushma Vs. Nitin Ganapati Rangole and Ors.* ***[2024 SCC OnLine SC 2584]***

ii] *New India Assurance Co. Ltd. Vs. Mangal Ravindra Divate and Ors.* ***[2024 SCC OnLine Bom 916]***

iii] *Trupti Tukaram Matkar alias Shetkar and Anr. Vs. Anthony R. Monterio & Ors.* ***[2008(4) Bom. C.R. 460]***

6. It is submitted by the learned Advocate for the Original Claimants that, when the truck was parked on the road without any indicator or lights, the Claimants rightly filed the claim petition against the owners and the Insurance Companies of both the vehicles. There was no question of deceased being negligent in the accident. The truck was parked without any indicator and the same caused the accident which proved fatal for the deceased.

7. It is submitted by the learned Advocate for the Respondent No.4 – Insurance Company of the truck that, the learned Tribunal has recorded the finding that, the truck was stationed on the side of the road and the contention that the truck was parked on the road is incorrect. The Spot Panchanama supports the said observations. The First Information Report was registered on enquiry and it shows that, the victim was found negligent. The Insurance Company of the truck cannot be saddled with the liability and the learned Tribunal has rightly passed the impugned Judgment and Order/Award. In supports of his contention, he relied on the following judgments :

i] *Archit Saini and another Vs. Oriental Insurance Company Ltd.* ***[2018 (6) Mh.L.J. 19]*** ii] *National Insurance Company Ltd., Warora Vs. Mansi Swapnil Deokar and Ors.* ***[2020 (1) Mh.L.J. 312]***

8. There is no dispute on the following aspects :

i] The deceased - Hiroj Niranjane was son of the Original Claimants.

ii] The spot, the date, the time and the vehicles involved in the accident.

iii] The two-wheeler upon which the deceased was travelling was not of the deceased and was insured with the Appellant – Insurance Company.

iv] The truck was insured with the Respondent No.4 – Insurance Company.

v] The crime for rash and negligent driving was registered against the deceased.

9. The Claimant No.2 i.e. mother of the deceased examined herself as a witness by filing her evidence affidavit. She was cross-examined on behalf of the Original Respondent No.2 – Insurance Company of the truck. Her evidence further shows that she did not witness the accident. In her cross-examination, she clearly admitted that, her deceased son was not having valid driving

licence. The Original Claimants relied on the police papers in support of their claim petition. Undisputedly, the offence for rash and negligent driving and causing death by rash and negligent act was registered against the deceased. The Spot Panchanama which is the part of the police papers brought on record in the claim petition shows that, the truck was standing by the side of the road (रोडचे कडेला).

10. From the material on record, no inference can be drawn that, the accident occurred due to the said stationary truck. The evidence before the learned Tribunal clearly indicate that the accident was due to the fault of the deceased. The learned Tribunal in the impugned Judgment observed that "*on going through the documents filed on record and the submissions of petitioners, it appears that, the accident took place on 21.10.2006 on Kalmana-Ballarpur main road near Forest Depot due to rash and negligent driving of scooty driver".* It further observed that, it cannot be said that there was involvement of the said truck at the spot of incident and there is no single document to show the involvement of the said truck in the occurrence of the accident. The said observations

by the learned Tribunal are based on the material brought on record by the claimants.

11. More or less similar situation arose in the case of *G. Nagarathna and Ors. Vs. G. Manjunatha and Ors* ***[MANU/KA/4885/2024]*** decided by the Division Bench of Karnataka High Court. The relevant Judgments of the Hon'ble Apex Court of India in *Ningamma and Anr. Vs. United India Insurance Company Limited* ***[(2009) 13 SCC 710]*** and *Minu B. Mehta and Anr. Vs. Balkrishna Ramchandra Nayan and Anr.* ***[(1977) 2 SCC 441]*** are considered in said Judgment of Division Bench. The relevant paragraph from the judgment of *G. Nagarathna (supra)* is reproduced as below :

> *"14. Insofar as entitlement of compensation and maintaining the claim petition under Section 166 of the Act, the Hon'ble Supreme Court in the judgment in Ningamma's, case referred to supra has clearly held that when an application for claim of compensation is made under Section 166 of the Act, the Tribunal is required to hold an enquiry into the claim and then proceed to make an award. It has further observed that when such claim is made by the legal representatives of the deceased, it has to be proved that the deceased was not himself responsible for the accident by his rash and negligent driving and it would also be necessary to prove that the deceased would be covered under the policy so as to make the Insurance Company liable to make payment to the legal heirs. In the*

> *instant case, admittedly the accident occurred due to the rash and negligent driving of the deceased himself and he being self tort-feasor, the legal heirs cannot claim any compensation for his death, otherwise it would amount to a person who committed breach getting the compensation for his own wrongs. In the instant case, the deceased has borrowed the vehicle in question from respondent No. 1, hence, he stepped into the shoes of the owner of the vehicle and for the negligence of the owner or borrower of the vehicle, the Insurance Company cannot be compelled to indemnify for such wrongs. Our view gains support from the judgment of Hon'ble Supreme Court in the case of Minu B.Mehta and another, referred to supra. The judgment relied on by the learned counsel for the Insurance Company referred to supra also support our view with regard to entitlement of compensation by the heirs of the deceased when the deceased himself is tort-feasor."*

12. Considering the above principles, the learned Tribunal erred in allowing the claim petition even though it held that the deceased was negligent in driving the scooty. Moreover, as discussed above, the deceased was not holding valid driving licence. In this view of the matter, the Appeal preferred by the Insurance Company of the scooty succeeds and the Cross-Appeal preferred by the Claimants fails. Hence, the following order :

i] The First Appeal No.683/2018 is allowed.

ii] The impugned Judgment and Order/Award dated 04.07.2016 passed by the M.A.C.T., Chandrapur in Motor Accident Claims Petition No.02/2007 is quashed and set aside.

iii] Cross-Appeal No.15/2015 stands dismissed.

iv] The amount deposited by the Appellant – Insurance Company in this Appeal be remitted back to the Appellant – Insurance Company along with interest, if any, accrued thereon.

v] The Original Claimants be do the needful pursuant to the undertaking given while withdrawing 50% amount deposited by the Appellant in this Court pursuant to the order dated 05.07.2018.

vi] Record and proceedings be sent back to the learned Tribunal.

The Appeals stand disposed of in above terms.

(NEERAJ P. DHOTE J.)

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