



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

FIRST APPEAL NO. 1208 OF 2025

New India Assurance Company Ltd., Through its Branch Manager, Yerawar Building, 1st Floor, Datta Chowk, Yavatmal, Taluka and Dist. Yavatmal. Through its Regional Manager, Regional Office, 1st Floor, Riaan House, Opp. Kasturjan Park, Nagpur.

APPELLANT

VERSUS

1. Tarabai Narayan Gawande, Age 55 years, Occ: Household, R/o Dhamangaon Road, Near Gram Panchayat, Pimpalgaon, Yavatmal, District Yavatmal.
2. Tushar Santosh Bopche, Age: 25 years, Occ: Driver, R/o 114, Shastri Ward, Godam Fail, Yavatmal, Taluka and District Yavatmal.
3. Jitu Prakash Bannawade, Age: 40 years, Occ: Business, R/o Satyanarayan Layout, Wadgaon Road, Yavatmal, Taluka and District Yavatmal.

RESPONDENTS

Shri Amey Chourasiya with Shri Collin Anthony, counsel for the appellant.
Shri Vivek Awachat, counsel for the respondent no.1.
Shri P.S. Girdekar, counsel for the respondent nos.2 and 3.

CORAM : PRAFULLA S. KHUBALKAR, J.

DATE : FEBRUARY 03, 2026

ORAL JUDGMENT

ADMIT. Heard finally with consent of the learned counsel for the parties.

2. This appeal at the instance of the Insurance Company assails the judgment and order dated 09.06.2025 passed by the Member, Motor Accident Claims Tribunal, Yavatmal (for short, 'the Tribunal') in M.A.C.P No.2 of 2022, by which the claim petition filed by the claimant was allowed.

3. By the impugned judgment, the Tribunal partly allowed the claim petition directing the respondents therein to pay Rs.22,27,000/- to the claimant as compensation under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act of 1988') with interest at the rate of 6% per annum from the date of claim petition till its full realization. The claim petition was filed by the respondent no.1 seeking compensation on account of death of her son Yogesh in a vehicular accident which occurred with the offending Tractor bearing registration no.MH-29-V-2228 along with Trolley bearing registration no.MH-29-AK-5458.

The accident occurred on 19.10.2021 at about 7.30 pm to 8.00 pm near Visava Colony on Pimpalgaon to Varco City Road, Yavatmal. It is the case of the claimant that deceased Yogesh while riding on his Honda Activa motorcycle got dashed to the parked Tractor – Trolley and sustained fatal injuries to his vital organs resulting into his death, when he was taken to the medical hospital. The First Information Report no.158 of 2021 dated 22.10.2021 was registered against the driver of the Tractor for offences under Section 304-A read with Section 283 of the Indian Penal Code, 1860. The mother of deceased, i.e. the respondent no.1 filed the claim petition under Section 166 of the Act of 1988 against the owner, driver and the Insurance Company of the Tractor and Trolley. The claimant led evidence and proved all the relevant documents including the First Information Report, Spot Panchanama, Form AA, Inquest Panchanama, Death Certificate, Post Mortem Report, Insurance Policy of the Tractor, Driving License of the Driver and several other important documents. The

non-applicants in the claim petition including the Insurance Company did not examine any witness on their behalf. On the basis of material available before it, considering the undisputed fact of the accident and involvement of the Tractor and the Trolley, the Tribunal fastened the liability upon the Insurance Company with whom the vehicle was validly insured at the time of the accident.

4. The learned counsel for the appellant-Insurance Company while assailing the impugned judgment submitted that the liability cannot be fastened against the Insurance Company since the deceased himself was negligent in giving dash to the stationary vehicle. He submitted that the Tractor and Trolley was not at all being driven on road and the manner in which the accident occurred, demonstrated the contributory negligence on the part of the deceased. He also submitted that at the time of accident, only Trolley was parked at the spot of incident which was not insured with the appellant-Insurance Company and only Tractor was insured with it, which infact was not involved in the accident and as such, the liability cannot be fastened upon the Insurance Company. He also submitted that the award of compensation by considering the notional income of the deceased to be Rs.15,000/- per month is exorbitant and on all these counts, prayed for dismissal of the appeal.

5. Per contra, the learned counsel for the respondent no.1-original claimant vehemently opposed the appeal. He submitted that the grounds raised by the appellant are afterthought and there is no support to the

contentions canvassed by the appellant. He submitted that the Insurance Company has not at all put up any defence of contributory negligence and in absence of any pleadings and evidence, bare contentions cannot be accepted. He submitted that undisputedly, deceased Yogesh suffered injuries in the accident involving the insured motor vehicles. The police investigation has revealed the involvement of the Tractor and the Trolley involved in the accident as owned by the respondent no.3 herein. As regards the contention about the negligence on the part of the deceased, he vehemently submitted that the negligence on the part of Tractor and the Trolley was apparent from the fact that there were no reflectors or indicators on the said stationary vehicle. As such, in absence of any evidence in that regard, nothing can be concluded about any negligence on the part of the deceased. He submitted that considering the object and nature of legislation being a social welfare legislation, the entitlement of the claimant/respondent no.1 for compensation is rightly adjudicated by the Tribunal and no perversity as such is demonstrated with the impugned judgment and award.

6. While considering the controversy involved, following points arise for my consideration:-

- (i) Whether the impugned judgment and award passed by the Tribunal requires interference?
- (ii) Whether the accident occurred on account of fault of the deceased?
- (iii) Whether the Insurance Company is entitled to be exonerated?

7. For considering the controversy involved in the instant appeal with respect to the above mentioned points, it has to be noted that undisputedly the accident occurred on 19.10.2021 at about 7.30 pm to 8.00 pm when Honda Activa motorcycle driven by the deceased gave dash to the stationary Tractor and Trolley which was parked on one side of the road. The documents which are part of the criminal case including the First Information Report, Spot Panchanama and other several documents proved the involvement of the Tractor and the Trolley in the accident. The insurance policy of the vehicle involved in the accident, placed at Exhibit 33 on the record of the Tribunal, is also proved. As such, for testing the primary contention of the appellant-Insurance Company about negligence on the part of the deceased, it has to be seen as to what evidence was available before the Tribunal. The Insurance Company has failed to examine any witness in support of its case either to prove alleged contributory negligence or the contention that the Tractor and the Trolley were not at all at fault. As such, there is no evidence to prove that at the relevant time when the accident occurred, there were any reflectors or indicators cautioning the public at large about the parking of the Tractor and the Trolley on the road. Although the appellant has tried to contend that the vehicle was parked at extreme left side, posing no danger, however it is crucial to note that apart from bare contentions there is no evidence in this regard. Hence, in absence of any evidence on record, the contentions put forward by the appellant about negligence of deceased Yogesh cannot be inferred.

8. The counsel for the original claimant/respondent no.1 has placed reliance on the judgment of the Hon'ble Supreme Court in ***Archit Saini & Another Versus Oriental Insurance Company Ltd. & Others*** [(2018) 3 SCC 365], in which the position with respect to the accident involving a stationary vehicle is clarified. While dealing with the case of alleged contributory negligence in an accident in which the vehicle was parked without any reflector or indicator, the entitlement of the claimants for compensation was considered by the Hon'ble Supreme Court and it is observed in paragraph 8 as under:-

“8. After having perused the evidence of PW7, site map (Ext.P-45) and the detailed analysis undertaken by the Tribunal, we have no hesitation in taking the view that the approach of the High Court in reversing the conclusion arrived at by the Tribunal on Issue 1 has been very casual, if not cryptic and perverse. Indeed, the appeal before the High Court is required to be decided on fact and law. That, however, would not permit the High Court to casually overturn the finding of fact recorded by the Tribunal. As is evident from the analysis done by the Tribunal, it is a well-considered opinion and a plausible view. The High Court has not adverted to any specific reason as to why the view taken by the Tribunal was incorrect or not supported by the evidence on record. It is well settled that the nature of proof required in cases concerning accident claims is qualitatively different from the one in criminal cases, which must be beyond any reasonable doubts. The Tribunal applied the correct test in the analysis of the evidence before it. Notably, the High Court has not doubted the evidence of PW7 as being unreliable nor has it discarded his version that the driver of the Maruti car could not spot the parked Gas Tanker due to the flashlights of the oncoming traffic from the front side. Further, the Tribunal also adverted to the legal presumption against the driver of the Gas Tanker of having parked his vehicle in a negligent manner in the middle of the road. The sit plan (Ext.P-45) reinforces the version of PW7 that

the truck (Gas Tanker) was parked in the middle of the road but the High Court opined to the contrary without assigning any reason whatsoever. In our view, the site plan (Ext.P-45) filed along with the charge-sheet does not support the finding recorded by the High Court that the Gas Tanker was not parked in the middle of the road. Notably, the High Court has also not doubted the claimant's plea that the Gas Tanker/offending vehicle was parked without any indicator or parking lights. The fact that PW7 who was standing on the opposite side of the road at a distance of about 70 ft, could see the Gas Tanker parked on the other side of the road does not discredit his version that the Maruti car coming from the opposite side could not spot the Gas Tanker due to flashlights of the oncoming traffic from the front side. It is not in dispute that the road is a busy road. In the cross-examination, neither has any attempt been made to discredit the version of PW7 nor has any suggestion been made that no vehicle with flashlights on was coming from the opposite direction of the parked Gas Tanker at the relevant time."

9. In the backdrop of the legal position and the available evidence before the Tribunal, the Tribunal has recorded its inferences holding the Insurance Company liable to pay the compensation to the claimant. As regards the income of the deceased, the Tribunal has recorded the inferences about his notional income being Rs.15,000/- per month considering his age and occupation as driver. By calculating other entitlements of the claimant including loss of earning and dependency, the total amount of compensation is awarded.

10. On a perusal of the judgment and award passed by the Tribunal and considering the detail analysis undertaken by the Tribunal, I find the view taken by the Tribunal to be a plausible view based on proper appreciation of evidence available before it requiring no interference.

11. The position of law is settled that a claim petition under the Motor Vehicles Act, 1988 has to be decided by considering the object and purpose behind the legislation. In catena of judgments, the Hon'ble Supreme Court has laid down that the nature of legislation being a social welfare legislation, the entitlement of the claimant has to be considered by adopting a pragmatic and liberal approach. In view of the aforesaid discussion, I answer the points framed in paragraph 6 of this judgment in the negative.

12. Having regard to the factual and legal aspects involved in the matter, I do not find any perversity with the impugned judgment and award. Hence, I concur with the judgment and award passed by the Tribunal. The appeal is dismissed with no order as to costs.

13. Having regard to the dismissal of the appeal, C.A.F. No.716 of 2026 filed by the respondent no.1 is allowed and she is permitted to withdraw the amount of compensation deposited by the appellant in this Court alongwith accrued interest, if any. The civil application is disposed of.

(PRAFULLA S. KHUBALKAR, J.)