



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 667 OF 2014

The New India Assurance Co. Ltd.
A Subsidiary of the General Insurance
Corporation of India and a company
incorporated under the Companies Act
having one of its Divisional Office at
Adalat Road, Aurangabad.
Through its Authorized Signatory,

....Appellant
(Orig. Resp.No.2)

Versus

1. Babasaheb Yashwant Shinde
Deceased, through his L.Rs.

1-A) Ashok s/o Babasaheb Shinde
Age : 33 years, Occu.: Agri.,

1-B) Pandurang s/o Babasaheb Shinde
Age : 30 years, Occu.: Agri.,

1-A & B - R/o. Thirthpuri,
Tq.Ghansavangi, District Jalna.

1-C) Chhaya Pralhad Supekar
Age: 28 years, Occu.: Household,
R/o. Sonak Pimpalgaon,
Tq. & Dist.Jalna.

2. Ahmed Sale Sarkat
Age: Major, Occu.: Business,
R/o. Nandvi, Tq. Mangaon,
Dist.Raigarh
(Owner of Jeep No.
MH-06 G-5297)

....Respondents
(Resp.No.1 Org. Claimant,
Resp.No.1-A to 1-C – L.Rs.
Resp.No.2 – Org. Resp.No.1)

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Advocate for Appellant : Mr. M. M. Ambhore
Advocate for Respondent Nos.1-A to 1-C : Mr. Rahul A. Tambe
Respondent no.2 served through paper publication

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CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 26 MARCH, 2026

PRONOUNCED ON : 27 MARCH, 2026

JUDGMENT :-

1. This is Insurance Company's Appeal whereby exception has been taken to the judgment and award passed by learned Motor Accident Claims Tribunal, Aurangabad in MACP No.446 of 2008.

2. Above referred claim petition was instituted by one Babasaheb Shinde alleging that on 17-02-2008, while he was behind wheels of Jeep No.MH06 G-5297, at around 10:30 p.m. in the vicinity of Sindhi College, breaks suddenly failed, he lost controlled and the Jeep collided resulting into the accident causing him injuries and he ultimately suffered permanent disability. Therefore, he set up claim under various heads to the tune of Rs.3,00,000/-, which he claimed from opponent no.1 owner of the Jeep and its insurer.

3. The above claim was contested by appellant wherein there was denial of age, denial of failure of breaks and plea of driver not

holding valid licence was raised. It was also contended that condition of the Jeep was not well maintained and as breaks had failed, Insurance Company cannot be held liable.

4. Learned Tribunal appreciated the respective contentions and was pleased to pass award directing payment of Rs.2,61,200/- with interest 9% per annum, which was directed to pay jointly and severally by owner and insurer. Hence, instant appeal by Insurance Company.

5. Learned counsel for appellant would submit that judgment and award passed by learned Tribunal is erroneous and not maintainable. According to him, admittedly, breaks of the vehicle had suddenly failed and due to own fault of owner and also driver, who lost control over the vehicle, the accident had taken place. That, Insurance Company was not at all liable, however along with owner, they are directed to jointly pay compensation to the claimants. According to him, Insurance Company was not liable for any of the above acts and therefore, there ought not to have been directions to the Insurance Company also to jointly pay the compensation. For above reasons, interference is called for in the judgment and order passed by the Tribunal.

6. Learned counsel for respondents/claimants would emphasize that admittedly petition was by invoking Section 163-A of the Motor Vehicles Act (MV Act) and in the light of the same, issue of negligence does not arise and he finally supports the order of Tribunal.

7. Here, a short issue, which this Court is called upon to address is whether in a petition under Section 163-A of the MV Act, defence of negligence can be raised and dealt. For ready reference, Section 163-A of the MV Act, is reproduced as under :

“Section 163-A Special provisions as to payment of compensation on structured formula basis : - (1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorized insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation as indicated in the Second Schedule to the legal heirs of the victim, as the case may be.

Explanation - For the purposes of this sub-section “permanent disability” shall have the same meaning and extent as in the Workmen’s Compensation Act 1923 .

(2) In any claim for compensation under sub-section (1) the claimant shall not be required to plead or establish that the death or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.

(3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from the time to time amend the Second Schedule.”

8. Key landmark judgments on above Section are as under :

(i) *Oriental Insurance Company Ltd. v. Hansrajbhai v. Kodala and Ors.*, (2001) 5 SCC 175.

(ii) Very recently the Hon'ble Apex Court in the case of *United India Insurance Company Ltd. v. Sunil Kumar and another*, MANU/SC/1562/2017 decided on 24-11-2017 laid down a ratio that in proceeding under Section 163A of the Act, it is not open for the insurer to raise any negligence on the part of the victim.

9. Resultantly, in view of above settled position, there is no force in the solitary ground raised by appellant Insurance Company that there was negligence on the part of driver/owner for not maintaining the vehicle in good condition resulting into failure of breaks. Therefore, there being no merits in the appeal, the same deserves to be dismissed. Accordingly, following order is passed :

ORDER

First Appeal stand dismissed.

(**ABHAY S. WAGHWASE**)
JUDGE