



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 326 OF 2015

Dr. Milind Shyamrao Kanhekar,
Age : 41 years, Occu. : Medical Practitioner,
R/o. : Shastrinagar, Parbhani,
Tq. & Dist. Parbhani

... Appellant
(Orig. Resp. No.1)

Versus

1. Kamal W/o. Baburao Pawar,
Age : 50 years, Occu. : Household,
2. Anand S/o. Baburao Pawar,
Age : 30 years, Occu. : Business,
3. Jyotsana D/o. Baburao Pawar,
Age : 28 years, Occu. :
4. Harish S/o. Baburao Pawar,
Age : 26 years, Occu. : Education,

All R/o. Bhogaon (Devi), Tq. Jintur,
Dist. Parbhani,
At present residing at Hutatma Chowk,
Jintur, Dist. Parbhani.

... Orig. Claimants

5. ICICI Lombard General Insurance Co. Ltd.,
Through its Branch Manager,
Having branch at Zenith House,
Keshav Kharde Marg, Mahalaxmi,
Maumbai.

... Respondents

.....
Mr. Swpanil Rathi, Advocate for Appellant.
Mr. Manoj Shinde, Advocate for Respondent Nos.1 to 4.
Mr. Mohit Deshmukh, Advocate for Respondent No.5.

.....

CORAM : ABHAY S. WAGHWASE, J.
RESERVED ON : 16 FEBRUARY 2026
PRONOUNCED ON : 26 FEBRUARY 2026

JUDGMENT :

1. Original respondent in M.A.C.P. No. 284 of 2008 hereby assails judgment and award passed by the learned Member, M.A.C.T./District Judge-1, Parbhani dated 03.11.2014, by which present appellant has been directed to pay accident claim compensation to the original claimants to the tune of Rs. 41,91,616/- along with interest at the rate of 6% per annum.

2. On 12.07.2008, vehicle bearing No. MH-22-H-4400 was traveling from Nanded to Jintur, which was occupied by 5 to 6 persons. When the vehicle came in the vicinity of Telgaon Pati on Basmath-Jintur road, rear tyre of the vehicle burst out, as a result of which, said vehicle turned turtle. That, the said vehicle was owned by present appellant. One of the incumbent namely Baburao Pawar succumbed to the fatal injuries, whereas, rest were injured. While undergoing treatment, on statement of one injured Dr. Ankush Hake, crime was registered against present appellant holding him to be the driver and consequently, FIR bearing No.121/2008 was registered at Hatta Police Station, Parbhani.

3. That, legal heirs of Baburao Pawar set up above accident claim bearing M.A.C.P. No.284 of 2008 against present appellant as

well as Insurance Company by invoking section 166 of Motor Vehicles Act and prayed compensation to the tune of over Rs.37,00,000/-. The learned Tribunal by its judgment and order dated awarded compensation to the tune of Rs.41,91,616/-.

SUBMISSIONS ON BEHALF OF APPELLANT :

4. Learned counsel Shri Rathi would also apprise this court about the above accident dated 12.07.2008. However, he emphatically submitted that, in fact, vehicle at that relevant time was driven by Dr. Vishalsingh Parihar and not appellant. That, on 13.07.2008 i.e. on next day, statement of injured incumbent of the vehicle namely Dr. Ankush Hake came to be recorded, who was under fear and trauma and on the strength of the same, present appellant was inadvertently recorded to be driver, at that relevant time. That, subsequently when statement of others were recorded, it emerged that, Dr. Vishalsingh Parihar was behind the wheels and not present appellant. That, said Dr. Vishalsingh Parihar himself had stepped into witness box to state that he was driving the vehicle. That, on similar lines, there were statements of others namely Dr. Gajre and Dr. Pokharna as well as present appellant, and there were statements of independent witnesses namely Vittal Raut, Ishwar Kanode and Trimbak Kanode, who had indulged in the rescue of the injured from the vehicle. That, in statement of all said persons, it was categorically

stated that, Dr. Vishalsingh Parihar was actually behind the wheels and not present appellant. Thus, he submitted that there was overwhelming evidence ruling out appellant to be driver.

5. He further pointed out that, above evidence has not been correctly appreciated by the learned Tribunal and objection and evidence of present respondent - Insurance Company was directly accepted and even relied to, and therefore, he criticizes the findings and conclusion reached at by the learned Tribunal holding present appellant to be responsible.

6. Learned counsel took this court through the statements of claimants and heirs of deceased Baburao, statements of present appellant at Exh.57, statement of Dr. Vishalsingh Parihar at Exh.90, statement of Dr. Ankush Hake at Exh.95 as well as statement of Investigating Officer.

Learned counsel also took this court through the evidence adduced by Insurance Company i.e. of Dr. Praveen Sangve at Exh.109, Dr. Ajay Patil at Exh.116, statement of Vaijinath at Exh.113, who is a Head Constable, recorded statement of Dr. Hake and other officers of Insurance Company.

7. Pointing to the above evidence, learned counsel for

appellant would emphasize that there was no basis at all for the Tribunal to form an opinion that to avoid liability of Insurance Company for holding that drivers have been swapped by setting up a false, afterthought and concocted version. According to him, here, in fact, deceased Baburao was occupying rear seat, and witnesses have given the position of each of the incumbent in the vehicle while traveling, and as such, learned Tribunal ought not to have held present appellant to be behind the wheels at the relevant time. He strenuously submitted that, more particularly when Dr. Vishalsingh Parihar took responsibility over himself to be the driver. Consequently he submitted that, Dr. Parihar was handed over keys by present appellant when he expressed his ability to drive, as the driver was not available on account of ill health and it was so stated also in the evidence by the said witness.

8. He further pointed out that, at the time of accident, vehicle was indisputably insured with respondent herein under package policy/comprehensive policy, and therefore, when the driver Dr. Vishalsingh Parihar had valid and effective driving licence, it was sole responsibility of Insurance Company to pay the compensation.

9. It is his submission that, learned Tribunal has precisely and rather heavily relied only on sole FIR and has failed to study the

remaining charge sheet, which comprised of statement of other incumbents including that of Dr. Vishalsingh Parihar. It is his submission that, here, there was direct injured eye witness account, which definitely prevailed over solitary statement of Dr. Hake, which was admittedly given under trauma while undergoing treatment. Rather, on realizing the mistake to that extent the same was corrected by way of supplementary statement.

10. He would forcefully submits that, while recording findings, that appellant was driving, reliance has primarily been placed by the Tribunal as well as the Insurance Company on the evidence of witness no.3 Dr. Ajay Patil, who was said to be an expert in forensic science and medicine. However, it is pointed out that, this witness merely had an opportunity to examine medical papers and he had no opportunity to either treat any of the witness or even examine them and as such his opinion is entirely based on medical papers. Thus, he merely had opportunity to go through the medical papers for drawing inference that Dr. Milind Kanhekar having suffered fracture injury to the ribs, could be said to be the driver at relevant time. However, according to learned counsel for appellant, so much evidence itself was not sufficient to record above findings, more particularly when admittedly there was no head-on collision between two vehicles. He pointed out that, here, there is no denial

that the vehicle turned turtle, and according to him, nobody was in a position to state for sure as to what nature of injury would be caused to whom, while sitting in the vehicle. According to him, rather there were chances for any of the incumbents to suffer injury to the ribs. For said reason, he criticizes the Tribunal's findings to that extent.

11. He further pointed out that, admittedly, vehicle was standing in the name of Dr. Milind Kanhekar, but as he had no licence and in answer to the suggestion to this witness, it has come on record that he had engaged and employed driver to drive the vehicle. Thus, it is his submission that when appellant was not holding valid driving licence, there was no question of he driving the vehicle at relevant time. According to learned counsel, it has come on record that, regular driver being ill, did not drive that day, and consequently one of the friend namely Dr. Parihar took the responsibility to drive as he has valid licence.

12. Learned counsel pointed out that, though on the statement of Dr.Hake, in the FIR name of Dr. Milind Kanhekar was inadvertently stated, the said mistake was rectified by way of supplementary statement. Moreover, before the learned Tribunal while leading evidence, Dr. Hake had categorically stated that it was Dr. Parihar, who was driving the vehicle. That, even charge sheet,

upon detailed investigation was filed against Dr. Vishalsingh Parihar. However, appellant's grievance is that in spite of above evidence, the same has not been taken into account, and rather, sole medical expert's evidence is relied, which is a mere opinion evidence. He pointed out that, rather here, injured / direct eye witness account would prevail over an expert evidence.

Lastly, in support of above contentions, he seeks reliance on the following judgments :-

- (i) *National Insurance Co. Ltd. v. Chamundeswari and Ors, (2021) 18 SCC 596*
- (ii) *National Insurance Co. Ltd. v. Deepali Raju Mohite, First Appeal No.2485 of 2022 (High Court of Bombay Bench at Aurangabad)*
- (iii) *Sunita and Ors. v. Rajasthan State Road Transport Corporation and Anr. AIR 2019 SC 994;*

SUBMISSIONS ON BEHALF OF RESPONDENT - INSURANCE COMPANY :

13. Per contra, learned counsel for respondent - Insurance Company put up stiff resistance and would take this court through the issues framed by the learned Tribunal and according to him, the judgment and award of the learned Tribunal is on the strength of oral and documentary evidence, which has been correctly appreciated for reaching to a just conclusion.

14. He would submit that there is no denial that the vehicle had turned turtle, however, according to him, in the First Information Report, which is on the statement of injured Dr. Hake, crime was registered against Dr. Milind Kanhekar. That, said statement of Dr. Hake was recorded, who was duly admitted in Surya Hospital, Parbhani, on the basis of MLC. Said statement was the first statement in point of time and that too in presence of the Doctor, who certified fitness of Dr. Hake to give statement. That, only on endorsement and certification about consciousness and fitness to give statement, police constable had recorded the statement, resulting into registration of crime and said constable has also been examined.

15. Taking this court through the statement of Dr. Hake, it is pointed out that, this witness has given the position occupied by each of the incumbent in the vehicle and on the strength of said description, Dr. Kanhekar i.e. present appellant was shown to be driving the vehicle.

16. He further advanced an argument that, to strengthen the version above witness, Insurance Company had engaged Dr. Ajay Patil, who is an expert in forensic science, examined at Exh.116 and he had deposed by taking into account the nature and site of the injuries. Learned counsel highlighted the qualification and

acquisitions of this witness and would further submit that, evidence of this witness has virtually remained unchallenged in cross. He pointed out that, this doctor has noticed that, there were fractures to 3rd, 5th, 6th and 7th ribs along with haemothorax and the expert had categorically opined that such injuries are typically caused to direct impact from the front side due to steering of the vehicle. That, this expert has further clarified that, said injuries are possible on account of impact while sitting in a driver's position.

17. He thus submitted that, here, FIR is against present appellant for driving the vehicle. He had no valid and effective driving licence at relevant time, and therefore, learned Tribunal rightly exonerated Insurance Company from paying the compensation and rather rightly fixing liability on present appellant.

18. He pointed out that, subsequently attempt has been made to swap the drivers with sole intention to project that Dr. Vishalsingh Parihar, who allegedly had driving licence, to be behind the wheels and this was precisely done to shift liability over Insurance Company. That, fresh case has been introduced to evade liability and shift it on the Insurance Company. That, though charge sheet is filed, it is by way of connivance and collusion between occupants of the vehicle as well as the investigating machinery.

19. He next pointed out that, if at all Dr. Vishalsingh Parihar, who is projected to be behind the wheels, then there ought to have been natural conduct on his part to duly report the same. According to learned counsel, his conduct is apparently unnatural and he has stepped in to take responsibility at a belated stage which renders his version doubtful. He also expressed surprise as to how this witness did not suffer a single scratch, even when there was said to be a major mishap involving death of one person.

20. It is also pointed out that, Investigating Officer, while under cross, has admitted that, supplementary statements are recorded after four days after the incident, and as such, there was ample time to create a story for swapping drivers and project Dr. Parihar to be the driver merely because he has licence to drive.

21. According to learned counsel, though there is charge-sheet, equally there is also an expert's evidence and that having been correctly appreciated and relied, so he at the end justifies the conclusion drawn by learned Tribunal and prays to keep it intact.

In support of his contentions, he also seeks reliance on the following rulings :

- (i) *Vanita and Ors. v. M/s. Shriram Insurance Co. Ltd & Anr. in Civil Appeal No.6794 of 2025 (The Supreme Court of India)*

- (ii) *The United India Insurance Co. Ltd. v. Dattarao S/o. Madhavrao Deshmukh, in First Appeal No.1602 of 2021 (High Court of Bombay Bench at Aurangabad).*
- (iii) *Shriram General Insurance Co. Ltd. v. Tilottam and Ors. 2022 SCC OnLine Bom 5112 (High Court of Bombay)*
- (iv) *Sithara N.S. and Ors. etc v. Sai Ram General Insurance Co. Ltd., Civil Appeal No.14718-14719 of 2025 arising out of S.L.P. (C) Nos.281-282 of 2019*
- (v) *Swapnil S/o. Suresh Mandlik v. The Branch Manager and Anr. In First Appeal No.567 of 2019 (High Court of Bombay Bench at Aurangabad)*

EVIDENCE ON BEHALF OF CLAIMANTS BEFORE TRIBUNAL

22. Evidence of original claimant Kamal is at Exh.31, wherein she has reiterated the contents of the claim petition. In cross examination, she admitted that offending vehicle owned by Dr. Milind Kanhekar i.e. present appellant. She admitted that she did not lodge FIR. She expressed ignorance as to whether Dr. Kanhekar was driving the offending vehicle. Rest of the cross is on the referral of patients by her husband to present appellant and on the point of income and income tax etc.

23. PW2 Sk. Sagera Ahemad, who is examined on behalf of claimant, is on the point of employment of deceased Baburao Pawar as Medical Officer and drawing salary. Even in cross examination, this witness is confined to the salary and deduction of deceased

Baburao Pawar.

24. Exh.57 is the testimony of present appellant Dr. Milind Kanhekaer and in his testimony, he deposed about he to be owner and possessor of Tata Safari bearing No. MH-22-H-4400 and about traveling in the same on 12.07.2008 with colleagues namely Dr. Ankush Hake, Dr. Vishalsingh Parihar, Dr. Rajendra Pokharna, Dr. Sunil Gajare and deceased Baburao Pawar and they to be proceeding towards Parbhani. According to him, at that time, Dr. Vishalsingh Parihar was driving the vehicle in slow and moderate speed, when the vehicle came in the vicinity of Telgaon Pati on Basmat - Parbhani road, suddenly tyre of vehicle burst out and vehicle turned turtle. That, in the said accident, Baburao Pawar died and all remaining injured were taken to various hospitals. In paragraph no. 4, he stated that, Dr. Hake was admitted in Surya Hospital, during which police Station Hatta recorded his statement, where he wrongly mentioned in FIR that this witness was driving the vehicle, but actually Dr. Vishalsingh Parihar was driving the vehicle. He further deposed that, during investigation, in statement of all persons it had come on record that Dr. Parihar was driving the vehicle, and therefore, after completion of investigation, charge sheet was filed against Dr. Vishalsingh Parihar. Said vehicle bearing No. MH-22-H-4400 was insured with original respondent no.2 at the time of accident and

policy drawn as comprehensive.

Above witness has faced cross examination, wherein after answering to the extent of his qualification and running hospital, he answered that, R.C. particular Exh.38 of vehicle No. MH-22-H-4400 are true and correct. He denied that, since the date of purchase he has not engaged driver. He gave name of his driver as Jafroddin to be currently in his employment. Further he answered and admitted that, at the time of accident, Jafroddin was not in the vehicle. In paragraph no.3 of his cross examination, he answered that there were six persons in the vehicle including himself, Dr. Parihar, Dr. B. D. Pawar, Dr. Gajare, Dr. Hake and Rajendra Pokharna. He answered that, they started journey from Parbhani to Nanded to attend one marriage. He further answered that, at relevant time, he was not able to drive the vehicle. He again answered that, in journey from Nanded to Parbhani Dr. Vishalsingh Parihar driving the vehicle. This witness has then given a position as regards to who was sitting where in the said vehicle and he specifically stated that Dr. Vishalsingh Parihar was driving the vehicle, Dr. B. D. Pawar occupying seat by the side of the driver, behind the driver seat Dr. Hake was sitting and next to him was Dr. Pokharna, Sunil Gajare and he himself. He answered that, in the return journey same sitting arrangement was continued. He again answered that, at the time of accident Dr. Parihar was

driving the vehicle in controlled speed. He is unable to state exactly which tyre got burst. He is unable to recollect whether vehicle toppled. He admitted that, all six traveling in the vehicle suffered injuries, but is unable to state who admitted them in the hospital. He further admitted that, he was himself admitted in Spandan Hospital, then shifted to Yashoda Hospital, Nanded, and thereafter, at Hinduja National Hospital and Research Center, Mumbai. He further answered that, Dr.Parihar as well as Dr. Ankush Hake were admitted in the Surya Hospital, Parbhani. Then he answered duration and time spent each of the above hospital. He admitted receipt of communication dated 12.11.2008 and 29.11.2008 from Insurance Company and he relying on the same. Then he is questioned whether news of the accident was reported in newspaper. In paragraph no. 4 he has answered that, currently he was equipped with driving licence and he is ready to produce the same. Then he stated that his regular driver Jafroddin had informed him that he is unable to drive the vehicle on account of illness. He further answered that, when he made inquiry with his colleague doctors gathered there, whether anybody is to drive the vehicle and as Dr. Parihar informed that he is able to drive, he handed over the vehicle to drive. He further answered that, here, he has not claimed personal benefits from the Insurance Company. Then in paragraph no. 5 he is questioned about proceedings in the consumer forum. Rest is all denial including that

at relevant time Dr. Parihar was not having authority to drive the vehicle.

25. Another crucial witness here Dr. Vishalsingh Parihar at Exh.90 and this witness, according to claimant as well as other witness, was said to be behind the wheels of the vehicle. He also deposed about joining his colleagues and returning from marriage ceremony towards Parbhani, and that time, he was driving Safari Jeep No. MH-22-H-4400 in moderate speed and that when the vehicle reached at Telgaon Pati on Basmat - Parbhani road, suddenly the tyre of the vehicle burst and the vehicle turned turtle. He stated that, Baburao Pawar died, whereas he and Dr.Hake, Dr. Kanhekar, Dr. Pokharna had suffered multiple fracture injuries and were shifted to various hospitals. Even he, in his evidence at paragraph no.4, stated that, Dr. Hake while being admitted at Surya Hospital, his statement was recorded by police of Hatta, was in fear mind due to grievous injuries and he wrongly mentioned that Dr. Milind Kanhekar was driving the vehicle at relevant time of the accident and in fact actually this witness was driving the vehicle. In paragraph no. 5, he stated that, he was arrested on 11.08.2008 and he being charge-sheeted upon investigation vide charge sheet no.109 of 2009.

Above witness is also subjected to cross, wherein he has

also given his occasion and position of who was sitting where i.e. he has also given the position of who was sitting where. He answered that he was driving the vehicle in routine speed, but he is unable to give exact speed. He answered that, he was having driving licence. He admitted that he was shifted to Surya Hospital, and on next shifted to Nanded. He admitted that, Dr. Kanhekar was also seriously injured and sustained more injuries than other inmates. He admitted that he did not file claim petition. In paragraph no. 5, he flatly denied the suggestion that Dr. Milind Kanhekar was driving the vehicle and he also denied that in collusion with other fellow colleagues, he falsely deposed that, he was driving the vehicle.

26. Evidence of Dr. Ankush Hake is at Exh.95. In initial deposition, after stating about they were after completing marriage ceremony, returning from Nanded towards Parbhani. He stated that, Dr. Vishalsingh Parihar was driving the said vehicle in slow and moderate speed, and suddenly tyre of the vehicle burst out near Telgaon Pati on Basmat-Parbhani road and the vehicle turning turtle in which Dr. Baburao died and he and other suffered injuries. After stating that, he was admitted in Surya Hospital, Parbhani, his statement was recorded by Police Station, Hatta, but due to grievous accidental injuries and being in fear, he wrongly named Dr. Milind Kanhekar to be driving the vehicle, at the time of accident. According

to him, Dr. Vishal Parihar was driving the vehicle and he had given supplementary statement to that extent. He further stated that Dr Vishalsingh Parihar was arrested and charge sheeted.

While under cross he admitted that, he was admitted in Surya Hospital for two days, and that he was not unconscious after the accident. He volunteered that Dr. Pawar, who was his best friend had expired in the accident, and therefore, he was in tremendous pressure. He admitted that he giving statement to police on next day, but according to him, his statement taken by police was wrong. He is unable to state the doctor in whose presence the statement was recorded. He stated that, after recording the said statement, PSI had shown his statement after 8 to 10 days, and that he had told him that, contents of his statements were not correct, and therefore, his other statement was recorded. He denied that, contents of Exh.39 are as per his say. He also denied that, immediately prior to the accident, Dr. Kanhekar was driving the vehicle.

27. PW4 is the Investigating Officer, wherein he has narrated the events since taking over investigation.

While under cross, he answered that, he had recorded statement of Dr Gajare, Dr. Hake, Dr Pokharna on the same day. He answered that, he had recorded the statement of witnesses at

Telgaon and Jintur on the same day. He admitted that he did not record statement of the doctor in whose presence the statement of Dr. Hake was recorded on 13.07.2008 and he also did not record statement of constable, who recorded statement of Dr. Ankush Hake at Surya Hospital. He admitted that, he did not collect the licence of Dr. Parihar, but he recorded statement of Dr. Hake four days after 13.07.2008. Investigating Officer has denied the suggestion that on the date of accident Dr. Milind Kanhekaer was driving the vehicle and that in collusion with him and his friends, false charge-sheet has been filed.

EVIDENCE ON BEHALF OF INSURANCE COMPANY :

28. Insurance Company has examined statement of Dr. Pravin Sanghve at Exh.109, wherein he stated that, he has recorded statement of Dr. Hake on 13.07.2008, who was in ICU at Surya Hospital, while he was fully conscious and he accordingly made endorsement that patient was in conscious to give statement.

While under cross, he admitted that, he did not make endorsement on the case paper that, around 10.45 a.m, patient was in conscious and oriented mind. He answered that, he was present throughout the statement was being recorded, but he admitted that there is no remark to that extent.

29. Another witness on behalf of Insurance Company is Dr. Ajay Patil and he is star witness for Insurance Company. He in his evidence at Exh.116, on affidavit stated that, he is medical practitioner, holding degree of MBBS, Diploma in Forensic Medicine, MD in Forensic Medicine, Diploma in Forensic Science and law, Diplomate of National Board (Forensic Medicine), Associate fellow of industrial health. After stating his above expertise and acquisitions in paragraph no. 2, he stated that, he received letter and papers from ICICI Lombard GIC on 24.12.2009 along with medical papers like discharge summary card of Dr. Kanhekar, transfer summary of Dr. Raturaj Jadhav for issuing opinion about nature of accident by which said injury can be possible. He claims that, he gone through the documents and noted that, Dr. Milind Kanhekar had suffered fracture ribs along with head injury in a road traffic accident dated 12.07.2008. There was fracture to the right 3rd, 5th, 6th and 7th ribs with haemothorax. He claims to have referred the literature of Christopher I Doty, Md, FAAEM. He further deposed that, after considering the clinical findings and the details in this case, he concluded that, (the rib fractures are typical injuries caused due to direct impact from front due to steering wheel). According to him, this happens in a situation where the patient is sitting in a position as driver at the time of impact. Lastly, he stated that, he has issued opinion on the basis of his professional knowledge of medicine,

forensic medicine, forensic science, and documents i.e. discharge summary card and transfer summary notes.

The sum and substance of the cross of above expert at the hands of learned counsel for petitioner is that, medical jurisprudence by Modi and Parikh are recognized books. He denied that, fracture will be caused when the body comes in contact with any hard and blunt object. He answered that, rib fracture will be caused by steering wheel and steering wheels is one of the hard and blunt object. He admitted that, he personally has not examined injured Dr. Milind Kanhekar. He answered that, Doctor, who examined the injured can also give opinion. Rest all suggestion are denied by him.

While under cross at the hands of original respondent no.1, he admitted that, injuries will be caused based on the nature of the accident. He denied that when the driver seat came back side, such injuries are possible.

30. Next witness on behalf of Insurance Company is Constable Vijnath at Exh.113. According to him, he recorded statement of Dr. Ankush Hake at Exh.89 and as per his statement offending vehicle was driven by Dr. Milind Kanhekar and at the time of statement Dr. Hake was conscious and his statement was recorded in presence of Dr. Pravin Sangve.

While under cross he admitted that Dr. Parihar was also injured in the accident and he too was hospitalized, but he did not record statement of Dr.Parihar.

Above is the sum total of evidence before the learned Tribunal.

31. The controversy here is, on the day of mishap, whether present appellant was behind the wheels ? or it was Dr. Vishalsingh Parihar ?

32. According to Insurance Company, in the FIR on behalf of the injured Dr. Hake, name of present appellant Dr. Milind Kanhekar has emerged to be driving the vehicle. Specific case is raised that, in collusion attempt is made to swap the driver and it is tried to be projected that Dr. Parihar was driving the vehicle. That, such attempt is made to shift liability over Insurance Company.

33. On the other hand, present appellant has come with a case that, Dr. Hake on whose statement, his name has come, is in fact incorrect and that Dr. Hake had under fear and trauma, wrongly mentioned his name as driver. It is his further case that, not only Dr. Hake gave supplementary statement rectifying the above mistake, but rather there is evidence of all other incumbents of the vehicle,

who too were injured, deposing about Dr. Parihar to be behind the wheels and not Dr. Kanhekar. It is strenuously submitted that, here, very Vishalsingh Parihar has also deposed as a witness taking upon himself the liability in the capacity of driver and he being arrested and even charge sheeted by police.

34. In the light of above submissions and counter submissions, here, evidence of Dr. Patil does assume significance because the same is heavily relied by Insurance Company and even learned Tribunal has taken the same into account while drawing conclusion that, present appellant was driver and nobody else. This witness is thus a sheet-anchor for Insurance Company and even Insurance Company heavily banks over it.

On studying the evidence of above witness, it is noticed that, there is no doubt that, he is a forensic science expert, but, he has admitted that he has issued opinion only on the strength of case papers and discharge summary referred to him for opinion by Insurance Company. He has admitted that, he did not personally examine the appellant. Therefore, his opinion is apparently based on study of medical papers. It needs to be noted that this witness had no advantage or occasion to either see the vehicle, nor he had opportunity to examine the injured. Re-constructed evidence was

also not made available to him for his expert opinion and as stated above, primarily his opinion is thus based on going through the medical papers and discharge summary. He has admitted in cross that even treating and examining doctor can also give opinion. Had the Insurance Company taken efforts before the Tribunal to examine the treating and examining doctor, it would have been more advantages. However, no such steps are taken.

35. Thus, there is also force in the submission of learned counsel Shri Rathi for appellant that, here, there is a vehicle turning turtle i.e. going upside down, and not a head-on collision so as to readily accept the opinion of expert that the fracture to the ribs is only due to impact of steering wheel. There are several other possibilities in a road accident to cause injuries or fracture to ribs and it cannot be said for sure that said injuries are attributable only and only to the impact of steering wheel.

36. It is not known, nor is there any material to suggest, how many times the vehicle rolled over after turning turtle. Under such circumstances, it is difficult to form an concrete opinion as to what type of injuries the incumbents may have suffered.

37. Here, on the contrary, apart from claimants themselves, other incumbents in the vehicle including present appellant, have

appeared before the Tribunal for evidence and have offered them for cross examination also. All of them have denied the suggestion that present appellant was driving. They all attributed wrong information being passed by Dr. Hake. Dr. Hake also in his cross answered that his such statement taken by police is wrong. He in his cross has admitted that while undergoing treatment, being under pressure and on account of losing Dr. Pawar, he had wrongly named present appellant to be the driver, but subsequently he has given supplementary statement correcting himself. Pertinently, even Dr. Parihar himself has deposed about he to be driving, he to be arrested and even charge-sheeted. Why would a person face prosecution readily accepting the guilt by stepping into the witness box. Resultantly, his evidence cannot be doubted. Moreover, evidence of appellant shows that he had no licence to drive and he had rather engaged driver namely Jafroddin, but on account of his ill health, appellant called upon Dr. Parihar to drive as he knew driving and as he had licence.

38. Thus, here, though FIR carries name of appellant Dr. Kanhekar, but supplementary statement of informant coupled with statements of incumbents of the vehicle including that of Dr. Parihar, it has unequivocally come on record that Dr. Parihar was driving the vehicle of appellant. Admittedly, crime and charge-sheet is also filed

against Dr. Parihar, i.e. upon complete investigation, and Investigating Officer was also examined before the Tribunal, who too names Dr. Parihar to be the driver and not present appellant. Apart from evidence of injured incumbents of the vehicle, charge-sheet shows statements of two other persons, namely Vithal Raut and Ishwar Kanode, who allegedly came to the rescue immediately after occurrence and they too named Dr. Parihar. Their statements are shown to be exhibited by the learned Tribunal.

39. Resultantly, here, there is FIR versus charge-sheet comprising statement of several persons including the one who is charge-sheeted for committing accident. In such peculiar circumstances, as to which of the two would prevail, there is no hesitation to hold that it is the charge-sheet that would prevail over FIR. Scope of FIR is only for setting law into motion. It mere triggers registration of crime. Though it is a foundational document, its value is limited. Responsibility and liability gets fixed only on completion of investigating in the form of charge-sheet. It is the final report on conclusion of entire investigation. It always has been judicial approach to recognize charge sheet as a significant piece of evidence. It has been the normal trend that, while deciding accident cases before Tribunal, it is the charge-sheet that is looked upon and relied

and not mere FIR. Once charge-sheet is produced, then burden shifts on Insurance Company to rebut or disprove its contents. There is no automatic presumption that Investigating Officer filed charge-sheet without proper investigation or in collusion.

40. In the light of above situation, the ruling relied by learned counsel for appellant is squarely applicable and it would be fruitful to refer to the same, i.e. ***National Insurance Company Limited v. Chamundeshwari and Others***, (2021) 18 SCC 596, and the relevant observations in paragraph no.8 are borrowed, quoted and reproduced as under :

“It is clear from the evidence on record of PW1 as well as PW3, that Eicher van which was going in front of car had taken a sudden right turn without giving any signal or indicator. The evidence of PW1 and PW3 is categorical and in absence of rebuttal evidence by examining the driver of Eicher van, the High Court has rightly held that, the accident occurred only due to negligence of the driver of the Eicher van. It is to be noted that, PW1 herself travelled in the very car and PW3, who has given statement before the police was examined as eye witness. “In view of such evidence on record, there is no reason to give weightage to the contents of the First Information Report.” If any evidence before the Tribunal runs contrary to the contents in the First

Information Report, the evidence which is recorded before the Tribunal has to be given weightage over the contents of the First Information Report.

(emphasize laid)

41. Learned counsel for Insurance Company has also placed on record above referred rulings, however, facts in those cases are not identical to the one involved in the case in hand, and therefore, the same cannot be relied upon.

42. Resultantly, in the light of ruling referred above ***National Insurance Company Limited*** (supra), when surviving injured's direct eye witness account is available, it would definitely stand at higher pedestal and would prevail over First Information Report. Appellant - original respondent no.1 can not be held liable to pay compensation and so he deserves to be exonerated from the said liability. Consequently, appellant succeeds. Hence, the following order :-

ORDER

- I. The First Appeal is allowed.
- II. Appellant - original respondent no.1 is exonerated from the liability to pay compensation to the original claimants.

III. The Insurance Company- original respondent no.2 is held liable to pay compensation to the original claimants, as determined in First Appeal No.687 of 2022 preferred by original claimants.

IV. The First Appeal is accordingly disposed off.

(ABHAY S. WAGHWASE, J.)