

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 641 OF 2016

ICICI Lombard General Insurance Co. Ltd.)
 Through its authorized representative)
 Mr. Prathamesh Dinde)
 Having its office at Peninsula House, 4th Floor,)
 Dr. D. N. Road, Fort, Mumbai – 400 001)... Appellant

Versus

1 Jayashree Anandrao Medshinge)
 Aged 37 years, Occu – Housewife)
 2 Samrat Anandrao Medshinge)
 Aged 19 years, Occu- Education)
 3 Vishwajeet Anandrao Medshinge)
 Aged 14 years, Occu - Education)
 4 Marutrao Bauso Medshinge)
 Age : 60 year, Occu. Labour)
 5 Laxmibai Marutrao Medshinge)
 Age : 55 years, Occu : Housewife)
 (Applicant No.3 is minors through his Legal)
 Guardian Mother Applicant No.1))
 All applicants are residing at Kandgaon,)
 Tq – Karveer, District - Kolhapur)
 6 Harad Bhagwal Rasal)
 Aged Major, Occu – Owner of Eicher Tempo)
 R/o. Deulgaon Rasal, Tq. Baramati, Pune.)
 7 Hiralal Pundlik Vetekar)
 Age : 22 years, Occu. Driver of E. Tempo)
 R/o. Karavgabj, Tq. Baramati, District -Pune)... Respondents

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Mr. Rajesh Kanojia i/b. Res Juris, Advocate for the Appellant.
 Mr. Pritesh K. Bohade, Advocate for Respondent Nos. 1 to 5.

CORAM : SHIVKUMAR DIGE, J.
DATED : 4th JULY, 2025.

ORAL JUDGMENT. :

1. The issue involved in this appeal is accident occurred due to sole negligence of the deceased.
2. It is contention of learned counsel for the appellant that, the Eicher Tempo was stationed on side patti of Express Highway, at that time, Mahindra Bolero Jeep which was driven by the deceased came from back side and gave dash to the Eicher Tempo. In the said accident, deceased died. The accident was occurred due to sole negligence of the deceased as he was driving the jeep in rash and negligent manner. Learned counsel further submitted that FIR was lodged against the deceased. Learned counsel further submitted that the three lanes were available for Bolero jeep to proceed ahead but instead of that, he gave dash to the tempo which was stationed on side lane, but these facts are not considered by the Tribunal and has passed impugned Judgment and Order which is erroneous, hence requested to allow the appeal.

He relied on *Oriental Insurance Co. Ltd. Vs. Premlata Shukla and Ors.*¹

3. It is contention of learned counsel for the respondents/claimants that accident occurred at 11:35 p.m. It was midnight, no lights were available on the express way. Though, the tempo was stationed on side patti of the express way, but no indicators or tail lamps of the tempo were

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on, hence deceased was not aware about the stationing of the tempo and due to darkness, he gave dash to the tempo from back side. It was the duty of the driver of the tempo to show sign/indicator of stationed tempo but it was not done. The Tribunal has passed well reasoned order. No interference is required in it. Hence requested to dismiss the appeal.

4. I have heard both the learned counsel. Perused Judgment and Order passed by the Motor Accident Claims Tribunal, Kolhapur (for short “**the Tribunal**”). It is claimants’ case that on 12.02.2013 at about 11.15 p.m., the deceased Anandrao Medshinge was driving his Mahindra Bolero Jeep, with his friends from Mumbai towards his house at Mangaon, Kolhapur. He was driving safely, cautiously and in moderate speed. When he reached to the spot of accident i.e. on Mumbai-Pune expressway near mile stone No. 18/200 within the jurisdiction of Riss, District Raigad, at that time, offending abandoned unattended Eicher Tempo No. MH-42/B-9446 was parked on roadside creating traffic hazard and was totally invisible. Because of that the deceased Anandrao could not notice said unattended parked Eicher Tempo and gave dash to its rear side, thereby he sustained grievous injuries and died on the spot. The offence was registered against the deceased. To prove the negligence, the claimants have relied on police papers and examined Sitaram Gupta, API Rasayani Police Station, at Exhibit-30. He has stated that on 12.02.2013, he was posted at Rasayani

Police Station, District Raigad, he had investigated C.R.No. 8/2013. That accident was occurred between Tempo and Bolero jeep. As per FIR, crime was registered against Bolero jeep driver. During the investigation, nobody has told him that the bolero jeep driver was driving the said vehicle in excessive speed. He has further stated that nine witnesses referred in the FIR are the witnesses who had been there after occurrence of accident and he cannot state what was the speed of Bolero jeep at the time of accident. He has further stated that there was turn just before the spot of accident. Due to that turn, vehicle coming from Mumbai leaves its lane. At the spot of accident, there is no board of parking. The spot panchanama at Exhibit-32 was confronted to this witness. He has stated that this panchnama disclose that the tempo was stationed on the road and it was parked on non parking zone on Expressway. He further stated that tempo was loaded with iron bars and iron bars were protruding to the extent of 5 feet from its rear side. He further stated that on the spot of accident, there was no street light. He admits that there was a report mentioning that tempo was parked in negligent manner. The said report is at Exhibit-33. He further stated that the statement of tempo driver is at Exhibit-35. In cross examination, he admits that the offence was registered against the Bolero jeep driver and on 21.03.2013, another crime No. 1/ 2013 was registered against the tempo driver. He further admits that after investigation he

came to the conclusion that, the said accident took place due to rash and negligent driving of bolero jeep. He further admits that, while registering another crime against the tempo driver, he did not seek permission from the concern Magistrate to re-open the investigation. He admits that there was gap of 35 days between registration of first crime and crime against Tempo driver. He admits that Mumbai-Pune Expressway has three lanes.

4.1. While dealing with the issue of negligence, the Tribunal has observed that after perusal of spot panchanama coupled with the evidence of witness PW-2 Sitaram, it is clear that Eicher Tempo was loaded with iron rods which were protruding outside the tempo from rear side. The said tempo was parked on road side i.e. side strip and beneath bridge where there was no facility of light. Further, just before the spot of accident there was curve to the road and therefore, the another vehicle was not in a position to see the parked tempo beneath the bridge. Therefore, all these circumstances clearly show that driver of offending tempo had parked Eicher Tempo beneath the bridge in rash and negligent manner as well as in dangerous situation, thereby it will cause obstruction and impediment to other vehicles that too in non parking zone without taking proper precautions.

As per provisions of Section 122 and Section 127 of Motor Vehicles Act, the Tribunal has considered that, accident occurred due to negligence

of the driver of offending Tempo, I do not find infirmity in it.

In my view, admittedly, accident occurred at midnight. The tempo was stationed on side strip of express way. At the accident spot, there were no street lights. It has come on record that near the spot of accident, there was curve and the driver of the vehicle could not be in a position to see the stationed tempo. No parking lights or tail lamps of the said tempo were on, to show that it was parked there and it was night time, so tempo was invisible in darkness, unless tail lamps or headlights of the tempo were kept on. No one was guessing that the said tempo was parked on the road. It is contention of learned counsel for the appellant that the said tempo was parked on side patti of the road, hence it cannot be considered as the negligence of the driver of tempo. In my view, it has come on record that due to curve, the vehicle driver who was running on the other lanes had to come on left side of the road. Moreover, the driver of the tempo did not step into witness box to show that he had taken precautions when the tempo was stationed on the express highway. No evidence is produced on record by the appellant/Insurance Company to show that the said side patti was used for stopping the broken down vehicle as it has come in the evidence of PW-2 Investigating Officer that, it was parked in no parking zone. Moreover, the accident occurred on express highway, so proper precautions should have been taken by the driver of offending tempo when

he stationed the tempo on express highway. It is important to note that, the tempo was carrying iron bars and those iron bars were protruding from the tempo. The death of the deceased may have caused because of protruding iron bars which had pierced in the Bolero jeep of the deceased. Had not protruding iron bar been there, the deceased would not have died. But the driver of tempo did not take proper precautions about protruding iron bars. When the vehicle is stationed on the road, the driver must take proper precautions. Section 15 of the said Rules reads thus:

“ Section 15 in the Rules of the Road Regulations, 1989:

15. Parking of the vehicle:-

(1) Every driver of a motor vehicle parking on any road shall park in such a way that it does not cause or is not likely to cause danger, obstruction or undue inconvenience to other road users and the manner of parking is indicated by any sign board or markings on the road side, he shall park his vehicle in such manner.

(2) A driver of a motor vehicle shall not park his vehicle:

- (i) at or near a road crossing, a bend, top of a hill or a humpbacked bridge;
- (ii) on a foot-path;
- (iii) near a traffic light or pedestrian crossing;
- (iv) in a main road or one carrying fast traffic;
- (v) opposite another parked vehicle or as obstruction to other vehicle;
- (vi) alongside another parked vehicle;
- (vii) on roads or at places or roads where there is a continuous white line with or without a broken line;
- (viii) near a bus stop, school or hospital entrance or blocking a traffic sign or entrance to a premises or a fire hydrant;
- (ix) on the wrong side of the road;
- (x) where parking is prohibited;
- (xi) away from the edge of the footpath.”

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“Regulation 28 of the Motor Vehicles (Driving) Regulation:

Vehicle breakdown:

In case a vehicle with more than two wheels has broken down at a place where it can be recognised in time as a stationary obstacle,-

(i). the hazard warning lights of the vehicle shall be switched on immediately;

(ii). on highways and major roads with fast speed, reflective traffic warning triangles shall be placed at a distance of fifty meters behind the broken-down vehicle; and In present case, it shows that the driver of the said Truck has clearly violated all the rules and regulations of the Central Motor Vehicle Rules, Motor Vehicle Rules and the Rules of the Road and Regulation, 1989, and Regulations made under the Act.”

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“When any vehicle is stationed on the road at night time, as per Rule 109 of the Central Motor Vehicles Rules, 1989, proper precautions are necessary to be taken. It reads thus:-

109. Parking light:-

[Every construction equipment vehicle, combine harvester and motor vehicle] and every motor vehicle other than motor cycles and three wheeled invalid carriages shall be provided with one white or amber parking light on each side in the front. In addition to the front lights, two red parking lights one on each side in the rear shall be provided. The front and rear parking lights shall remain lit even when the vehicle is kept stationary on the road:

Provided that these rear lamps can be the same as the rear lamps referred to in rule 105 sub-rule (2): [Provided also that construction equipment vehicles [and combined harvesters], which are installed with food light lamps or sports lights at the front, rear or side of the vehicle for their off highway or construction operations, shall have separate control for such lamps or lights and these shall be permanently switched of when the vehicle is travelling on the road.]”

As per Central Vehicles Rule, this Court has taken the view in the case of *Mohini Mohanrao Salunke Vs. Ramdas Hanumant Jadhav, 2022 Live Law (Bom) 428.*

5. I have gone through the case law cited by learned counsel for the appellant/ Insurance company. The facts of cited case and present case are different, hence not applicable.

6. It is contention of the learned counsel for the appellant that, interest awarded by the Tribunal is on higher side. I find substance in it. The

awarded amount is more than one crore, hence I am considering @7.5% interest on the compensation amount.

7. Considering above reasons, I pass following order.

ORDER

- (i) The appeal is partly allowed.
- (ii) The claimants are entitled for @7.5% p.a. on compensation amount awarded by the Tribunal from the date of filing claim petition till realisation of the amount.
- (iii) The appellant is permitted to withdraw the excess interest amount from the deposited amount. The claimants are permitted to withdraw deposited amount along with accrued interest thereon.
- (iv) The statutory amount along with accrued interest be transmitted to the Tribunal. The parties are at liberty to withdraw it.
- (iv) Pending applications, if any, stands disposed of.
- (v) R & P be sent back to the Tribunal.