

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
FIRST APPEAL NO.81 OF 2001

National Insurance Company Ltd.,
having its Head and Registered
Office at 3, Middleton Street,
Calcutta having branch at
Hanuman Chowk Latur Divisional
Office at Sholapur and
Aurangabad

..Appellant

Versus

1] Bhanudasrao Ganpatrao Khandale,
age about 63 years, occ. Advocate,
r/o. Ambejogai Road, Renapur Naka,
Latur

2] Jalinder Dagadu Borade, age 43
years, occ.Truck Driving of
Truck No.MTD 4501, r/o.
Khadakpura Road, Beed,

Appeal dismissed as against
Resp No.2 vide order dt.6-1-2004

3] Prakash Chansukhlal Nahar,
age 43 years, occ. business
owner of Truck MTD 4501,
r/o. Nava Mondha Beed

..Respondents

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Mr.S.L.Kulkarni, advocate for appellants

Mr.H.A.Joshi, advocate for respondent no.1

Mrs.A.N.Ansari, advocate for respondent no.3

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CORAM : M.T. JOSHI, J.
DATE : FEBRUARY 06, 2015

ORAL JUDGMENT :

Heard both sides.

2] Aggrieved by the direction to pay the compensation in Motor Accident Claim Petition, present appellant – the insurer, original respondent no.3 is before this Court.

3] The appellant is the insurer of the truck involved in the accident, which was owned by respondent no.3 and driven by present respondent no.2. The pleadings and the documents would show that on 24th May, 1995, at about 8:30 pm., the insured, claimant was proceeding on Ambejogai – Latur road on his scooter. When the scooter came near Mahapur S.T. Stop, the accident has occurred as the scooter dashed the goods truck bearing registration no.M.T.D. 4501, which was stationary

on the road. Respondent no.1 – claimant came with the case that at 8:30 in the night, he was driving the scooter. One tanker came from the opposite side. It's headlights were full. Therefore, he took the scooter to the left side of the road. Suddenly, the present truck was located in stationary position on the road as it had no parking lights. Resultantly, the scooter dashed the truck from behind. Thus, the accident has occurred solely due to the negligence of the goods truck driver, as the parking lights of the truck were not on.

4] However, it was the case of the appellant – the insurer that the accident has occurred solely due to the rash and negligent driving the scooter.

5] Learned Member took into consideration all the circumstances on record so also the deposition of the claimants and eye witnesses as well as the

certified copy of the spot of occurrence recorded by the police during the investigation and came to the conclusion that the driver of the goods truck was solely responsible for the accident as parking lights of the truck were not put on. Therefore, the compensation of Rs.3,50,000/- was granted to the claimant.

6] Mr.Kulkarni, learned counsel for the appellant submits that when the claimant himself was driving the scooter and has dashed the stationary goods truck, that itself would be sufficient to show that the claimant did not take proper care while driving the scooter. He submits that at the most, it may be a case of contributory negligence and in the circumstances, learned Member was wrong in holding the goods truck driver solely responsible for the accident.

7] On the other hand, Mrs. Ansari, learned counsel for respondent no.3 - original claimant opposes the appeal.

8] On the basis of this material, following point arises for my determination :-

Whether the accident has occurred due to solely or contributory negligence of respondent no.1 - claimant ?

9] My finding to the above point is in negative and the appeal is, therefore, dismissed without any order as to costs, for the reasons to follow.

R E A S O N S

10] The oral evidence that was led by respondent no.1 before learned Member and the certified copy of the panchnama of the spot of occurrence, would

show that the road in question was a 18 feet tar road flanked by 5 feet offsets each from both sides. The panahnama would show that the goods truck was parked six feet away from the extreme eastern side of the road. It would, thus, mean that the goods truck was parked completely on tar road even by leaving 1 foot tar road from the eastern side. It was, thus, on the tar road and even parking lights were not put on. The time of the accident was 8:30 p.m. and there was no abadi nearby the road. In the circumstances, there cannot be contributory negligence of the scooter driver - respondent no.1 in causing the accident.

11] In the circumstances, the appeal is dismissed without any order as to costs.

[M.T. JOSHI, J.]