

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**FIRST APPEAL NO. 741 OF 2002
WITH CA/4498/2002 IN FA/741/2002**

- 1] The Oriental Insurance Co.
Divisional Office, R.P.Marg,
Aurangabad, through its
Divisional Manager
- 2] Oriental Insurance Co.
Branch Khamgaon, Dist. Buldhana
through its Manager.

.. APPELLANTS
[NO.1 & 2 ARE ORIG.
RESPDT.NO.1 & 2]

VERSUS

- 1] Ramkrishna s/o Changdeo Bhorde
Age 32 years, Occ-service
R/o Malibabhulgaon, Tq. Pathardi
Dist. Ahmednagar.
- 2] Sk. Chand s/o Badsha
Age 34 yrs, occ-Agril & Service
R/o at Present Bazar Galli,
Khultabad, Dist. Aurangabad.
- 3] Dnyandeo s/o Mahadeo Kharat
Age Major, Occ-Business
r/o Ghodap, Tq, Chikhali
Dist. Buldhana.

.. RESPONDENTS
[NO.1 & 2 ARE ORIG
CLAIMANTS NO.1 & 2]

.. RESPONDENT NO.3
[ORIG. RESPT. NO.1].

....

Shri Anil A. Joshi, Advocate for appellants
Shri N.S. Jain h/f Shri A.S. Bajaj, Advocate for respondent no.2.

CORAM : S.V.GANGAPURWALA,J.

DATED : 26TH OCTOBER, 2015

ORAL JUDGMENT :-

Application for compensation was filed seeking compensation on account of damage to the vehicle. The same is partly allowed. Aggrieved thereby, the insurance company has assailed the said judgment in the present appeal.

2] Mr.Joshi, learned counsel submits that the Tribunal held driver of both the vehicles to be negligent to the extent of 50%. As such liability of the insurance company would be limited to the extent of 50%. Present appellant was the insurer of the other vehicle involved in the accident, however the Court has passed on total liability on the present appellant.

3] Learned counsel for respondent supports judgment and submits that earlier estimate was also considered. The expenses towards repairs was also to be considered wherein the total damage was to the extent of Rs.46874/-. Present appellant is made liable to the extent of Rs.30391/-.

4] I have considered judgment and report Exh.37 of the surveyor. Earlier estimate was with regard to the repair of the body shell and Exh.37 is the cost of the new body shell. Naturally the claimant cannot have the amount towards repairs of the body shell and also cost of the new body shell. The Court has awarded cost of new body shell i.e. Rs.30,391/-. In the judgment, the Court has observed that

the driver of both the vehicles were negligent to the extent of 50%. As 50% liability was of the driver of the vehicle owned by claimant, naturally the insurance company of the other vehicle would not be liable to the extent of 50%.

5] In light of above, as the present insurance company would be liable to the extent of 50% only and the cost of new body shell to the extent of Rs.30,391/- present appellant would be liable to the extent of 50% of Rs.30,391/- i.e. Rs.15195.50.

6] In the result, impugned judgment and award is modified. It is held that the original opponent nos. 1 to 3 i.e. present appellants and respondent no.3 are jointly and severally liable to pay Rs.15,195.50 to the original claimant. The claimant is entitled to withdraw the amount deposited by the appellant as per order of this Court. Remaining amount is allowed to be withdrawn by the appellant.

7] In view of disposal of Appeal, Civil Application also disposed of.

[S.V.GANGAPURWALA,J.]

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