

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.1 OF 1997

M/s New India Assurance Company Ltd.,
having its Regd. and Head Office at
New India Assurance Building, 87, M.G. Road
Fort, Bombay, 411 001, Branch Office at
Jalgaon, Jalgaon Branch, Jalgaon,
and Divisional Office at Adalat Road,
Ajay Engg. Compound, Aurangabad-431005
Through its Divisional Manager and
Duly Constituted Attorney
Mr Mohanrao s/o Pandurang Patil, Service

...APPELLANT
(Orig. 3rd Opponent)

VERSUS

1) Dwarkabai Bhika Patil,
Age: 55 years, Occ. : Nil,
R/o Pimprisekam, Bhusawal,
Dist. Jalgaon
(appeal is abated against R.No.1
as per Registrar Court's order
dated 08/04/2008)

...(Orig. Applicant)

1A) Sukhdev Bhika Patil,
Age: 40 years, Occ. : Agri.,
R/o As above

2) Dhondu Lotu Nannaware,
Truck Driver, Age:30 years

3) Sadashiv Madhav Tayade,
Truck Owner, Age : 58 years,
Both resident of Bambhori,
Taluka Erandol, Dist. Jalgaon

...RESPONDENTS

Mr V. N. Upadhye, Advocate for appellant;
Mr Shaikh Naser, Advocate for respondent No.1A

CORAM : N.W. SAMBRE, J.

DATE : 2nd July, 2015

ORAL JUDGMENT :

The present appeal is by original non applicant no.3 – insurance company to the M.A.C.P. No.164 of 1990, which came to be allowed by judgment and award dated 7th November, 1996, rendered by District Judge & *Ex officio* Member, Motor Accident Claims Tribunal, Jalgaon, whereby the Tribunal has held the Driver, owner and the insurance company responsible for the payment of Rs.70,000/-, which includes no fault liability, with proportionate costs and interest at the rate of 12% per annum from the date of the application, i.e. 17th September, 1990 till realisation of the amount.

2. The accident in question occurred on 19th March, 1990, when the truck insured with the present appellant, bearing registration No.MHS-5825, was parked on the road facing towards Bombay direction. It is claimed in the claim petition that the said truck, which was loaded with coal, was parked on the tar road. Since the accident took place at 9.15 p.m. and there were no indicators showing the parked vehicle, the accident in question took place, resulting into the death of Shivaji. Thus, the claimants claimed compensation of Rs.1,25,000/-.

3. The claim was resisted by appellant-insurance company by filing written statement at Exh.19. It is *inter alia* stated that the Driver of the truck, who had parked the vehicle on the side of the tar road, has taken all precautions while the said vehicle was parked, as he had put on the parking lights, which were blinking at the relevant time. According to Mr Upadhye, learned Counsel appearing on behalf of the appellant, the deceased was negligent in driving his two wheeler. In addition to above, Mr Upadhye would urge that three persons were riding the two wheeler, including deceased Shivaji, who was driving the same at the relevant time, which according to him, amounts to breach of the policy conditions and as such, the Tribunal has committed an error in holding the appellant-insurance company liable to pay the compensation.

4. With a view to analyze the submissions of Mr Upadhye, it is required to be noted that in support of their claim, the claimants have examined a pillion rider, namely, Dattatraya, who has deposed that the truck was parked on the tar road without any indicators indicating that the vehicle was parked in the dark hours. It is required to be noted that so as to establish the claim, the claimants have placed on record copy of the first information report, the spot panchnama and the death certificate.

5. So as to counter the said evidence, the appellant herein has relied upon the evidence of the truck driver, who has deposed that he had taken

appropriate precaution about parking of the vehicle by putting the parking lights on. In view of above, the said evidence of the Driver is relied upon for the purpose of accepting the contention that at the relevant time, in all three persons including deceased Shivaji were riding the two wheeler.

6. So far as the above submissions of Mr Upadhye are concerned, the same are required to be rejected in view of the fact that apart from the evidence of the Truck Driver, there is no independent evidence brought on record, much less from the evidence of the investigating agency that at the relevant time the two wheeler was being driven by deceased Shivaji along with two pillion riders. In my opinion, the Tribunal has rightly rejected the same.

7. The learned Tribunal, having considered the testimony of an eye-witness Dattatraya, who was pillion rider on the two wheeler, has proceeded to award the compensation in question. As the accident in question was established and it is not in dispute that the vehicle in question was insured with the appellant-insurance company, in my opinion, the Tribunal has rightly rendered the impugned award.

8. In that view of the matter, no case for interference is made out.
Thus, the appeal fails and stands dismissed with no order as to costs.

(N.W. SAMBRE, J.)

amj