

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

**FIRST APPEAL NO. 10 OF 2000
WITH
CIVIL APPLICATION NO. 284 OF 2000**

Oriental Insurance Company Ltd.,
through its Branch Manager, Jalna
Dist. Jalna.

...Appellant

versus

1. Kulbhushan s/o Jaykumar Waykosh,
Age: 38 years, Occ: Business,
2. Vanita w/o Kulbhushan Waykosh,
Age: 35 years, Occ: Household,
Both r/o. College Road, Jalna,
Dist. Jalna.
3. Shaikh Jaleel Sk. Hushain,
Age: Major, Occ: Business,
R/o. Station Road, Parbhani,
Dist. Parbhani.
4. Dnyaneshwar s/o Bhujangrao Dongre,
Age: 30 years, Occ: Business,
R/o. Hadapsawargaon,
Tq. & Dist. Jalna.

...Respondents

.....
Mr. S.M. Godsay, Advocate for appellant
Mr. S.P. Sonpawale, Advocate for respondent Nos. 1 & 2.
Mr. B.R. Sontakke Patil, Advocate for respondent No. 4.
.....

CORAM : N.W. SAMBRE, J.

DATE : 26th JUNE, 2015

ORAL JUDGMENT :

This appeal is by the Insurance Company under the provisions of Motor Vehicles Act.

2. The appellant Insurance Company has questioned the award dated 01/09/1999 passed by the Motor Accident Claims Tribunal, Jalna in Motor Accident Claims Petition No. 147 of 1998, whereby the tribunal has ordered to pay jointly and severally by respondent Nos. 1 to 3 compensation amount of Rs.1,80,000/- with interest @ 12% p.a.

3. Parties are referred to by their status in the claim petition.

4. The brief facts, as are necessary for deciding the appeal, are as under.

One Vaibhav died in the accident on 12/05/1998. When he was travelling in jeep from Ramnagar to Jalna, the accident took place in between jeep and tanker coming from opposite direction. The claimants-parents of the deceased filed Motor Accident Claims Petition No. 147 of 1998 claiming compensation of Rs.3,00,000/-. Present appellant Insurance Company was added as party respondent to the claim petition, as tanker was insured with the appellant.

5. The appellant herein amongst other has raised defence

of denial of negligence on the part of tanker driver and tried to establish the case of negligence of jeep driver, in which deceased Vaibhav was travelling. The claim about income of the deceased was also disputed.

6. The tribunal based on the rival claims of the parties framed following issues at Exhibit-19 and answered the same accordingly.

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|--|---------------------------------------|
| (1) Whether the claimants prove that the accident dt. 12.5.98 took place due to rash and negligent driving of tanker no. MWP 9578 and jeep no. MH-21/8562 resulting in causing death of Vaibhav? | Yes due to tanker driver no.MWP 9578. |
| (2) Whether the claimants are entitled for compensation. If yes from whom? | Yes from respondents 1 to 3. |
| (3) What judgment and award? | Award as per final order. |

7. In support of claim petition, claimant No.1 has entered into witness box at Exhibit-20 and proved the accident in question. In support of his claim, he has produced copy of F.I.R. at Exhibit-21, which demonstrates the registration of Crime No. 72/98 against driver of tanker under Section 279, 304-A, 338, 427 of the Indian Penal Code. The spot panchnama at Exhibit-22 was also proved, which demonstrates that the tanker having given dash to jeep in

question. The said spot panchnama reflects that the jeep in question upon dash by tanker in question was lying 170 ft. from bridge and 40 ft. from side of road, whereas tanker was about 80 ft. away from bridge.

8. The respondent i.e. appellant herein has not adduced any evidence so as to overcome the claim. Respondent No. 3 Insurance Company admitted about the insurance of the tanker in question.

9. Mr. Godse, learned Counsel for the appellant, while questioning the award, would urge that the age of deceased Vaibhav was not established to be a major, so also his income was not proved. In addition to above, Mr. Godse has urged that the vehicle in question which was responsible for the accident was jeep and not tanker, which was insured with it.

10. In support of the said contentions, Mr. Godse has taken me through the observations made by the tribunal in its award. In addition to above, with his assistance I have perused the written statement filed by respondent No. 3 appellant Insurance Company, wherein certain defences were raised.

11. Perusal of evidence of the claimant at Exhibit-20, if read

along with F.I.R. at Exhibit-21 and spot panchnama at Exhibit-22 reflects the negligence of the tanker driver.

12. Admittedly, in the present case, the Insurance Company has not discharged its burden by examining any of the witnesses in support of its defence, particularly the defence as is raised in the written statement. Even though in the written statement, the negligence of jeep driver was sought to be raised, however the same was not established by cogent evidence. The earning capacity of late Vaibhav, dependency of claimants though disputed, however the same was also not established by the insurance company by discharging its burden.

13. In my opinion, as such, the award delivered by the Motor Accident Claims Tribunal, Jalna on 01/09/1999 in Motor Accident Claims Petition No. 147 of 1998 does not call for any interference. The appeal fails, stands dismissed. The amount, if any, remain balance which was deposited by the insurance company be permitted to be withdrawn by the claimants. For balance amount, if any, the claimants will execute the decree.

14. Consequently, civil application stands disposed of.

[N.W. SAMBRE, J.]