

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 494 OF 1999

Shri. Dinkar s/o Raosaheb Chepate,
Age: 45 yrs, Occu: Owner of the
Vehicle & Farmer, R/o Ramgavan,
Post: Wadigodri, Taluka : Ambad,
Dist. Jalna

...APPELLANT
(Orig. Resp. No.1)

VERSUS

1. Namdeo s/o Khandu Chavan,
Age: 45 yrs, Occu: Agril.
and service, R/o Ramnagar Tanda,
Tq. Ambad, Dist. Jalna
2. Sow. Tarabai w/o Namdeo Chavan,
Age: 35 yrs, Occu: Household,
R/o as above
3. Shivaji s/o Radhakishan Waghmare,
Age: Major, Occu: Driver,
R/o Ramgavan, Tq. Ambad,
Dist. Jalna
4. The Manager,
New India Insurance Company,
Near Shivaji Statue, at Jalna
(Policy No. 004520)

...RESPONDENTS
(Resp. No. 1 & 2 Ori.
Claimants, Resp. No.3 &
4 ori. Respondents)

Mr B. N. Palve, Advocate for appellant;
Mr S. P. Sonpawale, Advocate for respondent Nos. 1 and 2;
Mr V. N. Upadhye, Advocate for respondent No. 4

**WITH
FIRST APPEAL NO. 1806 OF 2008**

M/s New India Assurance Co. Ltd.,
 having its Regd. and Head office at
 The New India Assurance Building
 87, M.G. Road Fort, Bombay, Branch office
 at Jalna and Divisional office No. II
 323-324 N/3, CIDCO, Jalna Road,
 Aurangabad 431 003 through its
 Divisional Manager & Constituted
 Attorney Mr. Vishwas Bansi Gaikwad

...APPELLANT
 (Orig. III rd Resp.)

VERSUS

1. Namdeo s/o Khandu Chavan,
 Age: 45 yrs, Occu: Agril.
 and service, R/o Ramnagar Tanda,
 Tq. Ambad, Dist. Jalna

2. Tarabai w/o Namdeo Chavan,
 Age: 35 yrs, Occu: Household,
 R/o as above

...(Orig. Claimants)

3. Dinkar Raosaheb Shepte,
 Age: Major, Occu: Owner of
 Vehicle, R/o Ramgavan,
 Tq. Ambad, Dist. Jalna

4. Shivaji s/o Radhakishan Waghmare,
 Age: Major, Occu: Driver,
 R/o As above

(Orig. Resp. No. 1 & 2)

...RESPONDENTS

Mr V. N. Upadhye, Advocate for appellant;
 Mr B. N. Palve, Advocate for respondent No. 3

CORAM : N.W. SAMBRE, J.

Date : 3rd July, 2015

ORAL JUDGMENT :

Both these appeals arise out of the judgment and award dated 7th September, 1999, rendered by Member, Motor Accident Claims Tribunal, Jalna, in Motor Accident Claim Petition No.170 of 1998, whereby the appellant and respondent no.4 herein have been jointly and severally directed to pay respondents no.1 & 2/original claimants compensation of Rs.85,000/- in equal share, inclusive of amount of no fault liability, with proportionate costs and interest at the rate of 12% per annum.

2. Few facts, necessary for decision of these appeals, are as under :-

First Appeal No.494 of 1999 is preferred by Dinkar Chepte, who was owner of the vehicle involved in the accident, whereas First Appeal No.1806 of 2008 is preferred by the insurance company with whom the vehicle in question was insured.

3. It is claimed in the claim petition by respondents no.1 & 2/claimants that on 10th March, 1998 their son Ankush was proceeding towards village Ramnagar Tanda from school on bicycle and when he was near the bridge on Ambad – Beed road, near Matsyodari Devi temple, the truck owned by the appellant bearing registration No.MWP-3153 came in a high speed from Beed side and gave dash to the bicycle of the deceased, as a result of which he sustained severe injuries and died. The age of the deceased, at the time of death, was 14 years and was a school going boy and as

such compensation of Rs.2,50,000/- was claimed.

4. Though the respondents to the claim petition were served, they have chosen not to file their appearance, so also the written statement.

5. On the basis of the above pleadings, the Tribunal framed issues at Exh.14 and answered the same, as under :-

Sr. No.	Issues	Findings
1	Whether it is proved that the accident dt. 10.3.98 took place due to rash and negligent driving of the truck No.MWP-3153 resulting in causing death of Ankush Chavan ?	Yes
2	Whether the claimants are entitled for compensation. If yes, from whom ?	Yes from respondents 1 to 3
3	What judgment and order ?	Award as per final order

6. In order to prove the contents of the claim petition, Claimant No.1 Namdeo has deposed at Exh.15 that his son Ankush died in an accident which occurred because of he truck in question, which was insured with the appellant – insurance company. It is further established vide first information report (Exh.16) that the Driver of the truck was rash and negligent in driving and as such, was charge-sheeted for offences punishable under sections 304-A, 279nd 337 of the Indian Penal Code.

7. The Tribunal proceeded to give finding as regards the negligence of the Truck Driver, based on the evaluation of the evidence and the spot panchnama (Exh.17) and ordered the payment of compensation.

8. Learned Counsel appearing on behalf of appellant in First Appeal No.494 of 1999 preferred by the vehicle owner, has placed on record compromise dated 5th September, 2000, signed by the appellant and the claimants. By virtue of the said compromise, the appellant – vehicle owner has paid an amount of Rs.45,000/- in cash and has permitted the claimants to withdraw the amount of Rs.25,000/- lying in the Court in the present appeal.

9. During the course of hearing of the appeal, learned Counsel appearing on behalf of respondents no.1 & 2/original claimants has admitted the contents thereof and submitted that the claim to the extent of the vehicle owner was satisfied. In view thereof, First Appeal No.494 of 1999 stands disposed of as infructuous, as the award as against the vehicle owner stood satisfied.

10. So far as First Appeal No.1806 of 2008, preferred by the insurance company is concerned, learned Counsel appearing on behalf of the insurance company would urge that the vehicle in question was never insured with the appellant – insurance company.

11. According to the learned Counsel for the appellant, in view of communication gap, the insurance company has not appeared in the claim petition, however, has sought to rely upon the application preferred under Order XLI, Rule 27 of the Code of Civil Procedure, for production of additional evidence.

12. After hearing the learned Counsel appearing on behalf of the appellant, it is noticed that the appellant, though served in the claim petition, chose to remain absent and the Tribunal as such, has proceeded to award the compensation of Rs.85,000/-, for which the insurance company; vehicle owner and the truck driver were jointly held responsible in equal share.

13. The vehicle owner has already settled the matter by paying an amount of Rs.70,000/- to respondents no.1 & 2/claimants. So far as the claim in the appeal is concerned, in my opinion, though the appellant – insurance company was served, for no good reason it remained absent before the Tribunal, which has promoted the Tribunal to proceed and decide the claim petition on merits.

14. The application under Order XLI, Rule 27 of the Code of Civil Procedure sought to be moved in the present appeal, having regard to the

above background, in my opinion, will be of hardly any consequence and help to the appellant. Though the appellant was given sufficient opportunity to appear in the claim petition, it has chosen to remain absent.

15. In view thereof, in my opinion, no material illegality or irregularity is noticed in the impugned judgment and award. The appeal of the insurance company fails and same stands dismissed with no order as to costs.

16. The amount, if any, deposited in this Court in the present appeal is permitted to be withdrawn by respondents no.1 & 2/claimants.

17. In view of above, all Civil Applications, except Civil Application No.1182 of 2000 in First Appeal No.1806 of 2008, do not survive and stand disposed of.

(N.W. SAMBRE, J.)

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