

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

FIRST APPEAL (ST) NO. 15719 OF 2014

National Insurance Co.Ltd.
Through its Divisional Office,
Divisional Manager,Hajari Chambers,
Station Road, Aurangabad.

...Appellant

versus

1. Navnath s/o Abhiman Shinde,
Age: 35 years, Occ: Labour and
cleaner, R/o. Sawangi Kathi,
Tq. Tuljapur, Dist.Osmanabad.
2. Rameshsing s/o Thakarsing Sindhu,
Age: Major, Occ: Business,
R/o. Punjab Engineering Suryanagar
Bhandara Road, Nagpur,
Tq. & Dist. Nagpur.
3. Sigonda s/o Shankar Narsgonde,
Age: Major, Occ: Business,
R/o.Teramali, Tq. South Solapur,
Dist. South.
4. Rajesh s/o Ramdas Jadhav,
Age: Major, Occ: Business,
R/o. Kamanves Tuljapur,
Dist. Osmanabad.
5. United India Insurance Company
Solapur through its Branch Manager
United India Insurance Company
Near S.T. Stand, Minakshi Lodge
Building, Osmanabad,
District Osmanabad.

...Respondents

WITH

CIVIL APPLICATION NO.4607 OF 2015

IN

FIRST APPEAL (ST) NO. 15719 OF 2014

Navanath Abhiman Shinde.

...Applicant

versus

Rameshsing s/o Thakarsing Sindhu
& ors.

...Respondents

.....
Mr. S.V. Kulkarni, Advocate for appellant.
Mr. Sushant B. Choudhari, Advocate for applicant
in C.A. No. 4607/2015 and for respondent No.1 in
FAST No.15719/2014.

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CORAM : N.W. SAMBRE, J.

DATE : 18TH APRIL, 2015

ORAL ORDER :

The appeal is taken out for final disposal at admission stage with the consent of the parties.

2. Learned Counsel for the appellant-Insurance Company has questioned the legality of the award delivered by learned Motor Accident Claims Tribunal, Osmanabad in Motor Accident Claim Petition No. 254 of 2010 on 17/02/2014 on the ground that the tribunal has given findings of contributory negligence without properly appreciating the evidence. According to him, two trucks which are involved in the accident in question namely having registration No. MH-13/R-4869 which was proceeding towards Solapur and another truck having registration No. MH-31/CB-2348 was stationary. The earlier vehicle dashed from the back side, to later and the claimant was working as cleaner on the earlier vehicle. According to him, there

is statement of the driver of earlier vehicle in the evidence that they have noticed the stationary vehicle from about 80 feet and as such, according to learned Counsel, findings of contributory negligence recorded by the tribunal are not sustainable.

3. The said claim is opposed by learned Counsel for the claimant on the ground that latter vehicle i.e. MH-31-CB-2348 was parked on the road and there were no signals about parking of such vehicle. He submits that it was specifically brought on record that no indicators/signals were played when the said vehicle was stationary in early morning hours.

4. According to him, the Insurance Company with whom the vehicle No. MH-13/R-4869 was insured, has already honoured the claim, whereas the appellant herein are refusing to discharge their liability.

5. In view of above submissions, the point that needs to be considered is; whether the tribunal was right to give a finding about contributory negligence on the part of vehicle owner of Truck No.MH-31/CB-2348 which was stationary.

6. After considering the above referring submissions, with

the aid of learned Counsel for the parties, I have gone through the observations made by learned tribunal in the judgment in question It is noticed that it has been specifically brought on record that the accident took place at about 5-00 a.m. on 21/09/2009 which was winter season.

7. It has been also brought on record that Truck No. MH-31/CB-2348 was parked on the road and no signals or indicators were played so that other vehicle drivers notice that the vehicle was parked. Once it is established that stationary vehicle No. MH-31/CB-2348 was parked on the road and there were no signals given to other vehicles that the vehicle is in stationary condition, the tribunal, in my opinion, has rightly gave finding as regards contributory negligence.

8. One more aspect of which this Court must take note that other Insurance Company with whom the vehicle No. MH-13/R-4869 was insured and already honoured delivered by the Motor Accident Claims Tribunal.

9. In that view of the matter, in my opinion, no case for interference is made out. The appeal fails, stand dismissed.

10. In view of dismissal of the first appeal, the civil application for withdrawal of the amount stands granted. The applicant-claimant will be at liberty to withdraw the entire amount deposited in this Court. The civil application stands disposed of.

[N.W. SAMBRE, J.]