

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

**BENCH AT AURANGABAD**

**FIRST APPEAL NO. 2 OF 2007**

The Oriental Insurance Co. Ltd. **... Appellant**  
Divisional Office, Near S.T. Stand  
Railway Station, Road,  
Ahmednagar, Tq.& Dist. Ahmednagar.

**VERSUS**

1. Savita Anthony Kardak  
Age 24 yrs. Occu: Tailoring Work  
R/o Yerwada, Dist. Pune
2. Maharashtra State Road Transport **... Respondents.**  
Corporation, Bombay  
(Summons be served on Depot  
Manager, Ahmednagar)
3. Madanlal Jagannath Sharma,  
Age Adult, Occu: Driver  
R/o Gujar Galli, Ahmednagar
4. M/s Digvijay Automobiles  
R/o S.No.301/7, Patikhal,  
Taluka and District Satara  
Owner of Vehicle No.MH-11-A-2111

**WITH**

**FIRST APPEAL NO. 3 OF 2007**

The Oriental Insurance Co. Ltd. **... Appellant**  
Divisional Office, Near S.T. Stand  
Railway Station, Road,  
Ahmednagar, Tq.& Dist. Ahmednagar.

**VERSUS**

1. Malanbai Sajan Kardak  
Age 66 yrs. Occu: Household  
R/o Yerwada, Dist. Pune

2. Maharashtra State Road Transport ... Respondents.  
Corporation, Bombay  
(Summons be served on Depot  
Manager, Ahmednagar)
3. Madanlal Jagannath Sharma,  
Age Adult, Occu: Driver  
R/o Gujar Galli, Ahmednagar
4. M/s Digvijay Automobiles  
R/o S.No.301/7, Patikhal,  
Taluka and District Satara  
Owner of Vehicle No.MH-11-A-2111

Mr. V. N. Upadhye, Advocate for appellants  
Mr. Balaji Shinde h/for Mr.V. P. Latange Advocate for  
respondent No.1  
Mr. Manoj Shinde h/for Mr. M. K. Goyanka, Advocate for  
respondent No.2

**CORAM** : A. M. BADAR, J.

**DATE** : 4th December, 2015

**J U D G M E N T:**

. Both these appeals are at the instance of original respondent No.4, insurer of Swarj Mazda Truck bearing No. MH-11-A-2111 owned by respondent no.3 under section 173 of the Motor Vehicles Act, 1988 thereby challenging the judgment and award passed by the learned Motor Accident Claim Tribunal, Ahmednagar on 29.06.2006 in MACP No.987/1995 and MACP No.992/1995, respectively.

2. Respondent No.1 in both these appeals, were the

original complainants in respective claim petitions. Respondent No.2 and respondent No. 3 herein were original respondent Nos. 1 and 2. They are driver and owner of the S. T. Bus involved in the accident. Respondent No.4 herein is owner of Swraj Mazda Truck as stated above. He was original respondent No.3. For the sake of convenience, the parties shall be referred to in their original capacity.

3. Brief facts, leading to the institution of the present appeals can be summarized thus:

- i. Claimant Savita in MACP No.987/195 (FA 2/07) lodged claim of Rs.3 lakhs under section 166 of the Motor Vehicles Act against respondents with an averment that she was injured in the vehicular accident caused on 06.06.1995 by collusion of ST Bus, in which she was travelling from Ahmednagar to Pune, with Swaraj Mazda Truck coming from opposite direction. Registration No. of ST Bus involved in the accident is MH-12R-1276 and that of Swaraj Mazda Truck is MH-A-2111. Claimant Savita averred that accident was caused as S.T. Bus was driven in rash and negligent manner and at a very high speed, without following rules of traffic. It is her case

that because of this accident caused by collusion between ST Bus and Swarj Mazda Truck, she suffered injuries and consequent permanent disability. She prayed for awarding compensation of Rs.3 lakhs from the respondents.

ii. Claimant Malanbai in MACP No.992/1995 (FA 3/07) averred that while she was travelling in the ST Bus, accident occurred because of rash and negligent driving of ST Bus and she is permanently disabled because of injury suffered in the accident. She laid a claim of Rs.2 lakhs as against the respondents.

iii. Respondents opposed the claim by filing written statements. Respondent No.4/appellant herein, by filing written statements in both the claim petitions, contended that it was driver of the ST Bus, who was driving the ST Bus in high and excessive speed, responsible for causing accident in question. Driver of the Truck insured by it was not holding valid and effective driving licence. As such, owner of the Truck insured by it committed breach of terms and conditions of insurance policy. On these averments, respondent No.4 Insurance Company opposed the claim.

iv. After hearing the parties, the learned Chairman of the Motor Accident Claim Tribunal, Ahmednagar was pleased to allow both the claim petitions partly. It was held by the impugned judgment and award that responsibility of Truck driver in causing the accident is to the extent of 75% and that of the ST Bus is to the extent of 25%. Accordingly, liability in respect of compensation payable to claimants in both the claim petition was apportioned amongst respondents. In claim petition MACP No. 987/1995, compensation assessed by the learned Tribunal is to the tune of Rs.1 lakh whereas in MACP No.992/1995, compensation of Rs.50,000/- is awarded to the claimant therein.

v. It needs to mention here that at the time of admission of these appeals, by order dated 09.01.2007, this Court had framed issue in respect of driving licence of driver of Swaraj Mazda Truck involved in the accident and it was referred to the learned Tribunal for the purpose recording finding and decision thereon. Order dated 09.01.2007 of this Court makes it clear that both these appeals are admitted on the short question in respect of driving

licence of driver of Swaraj Mazda Truck. So far as other grounds raised in both these appeals are concerned, learned Judge has not entertained the appeals as seen from order dated 09.01.2007.

4. Heard Shri Upadhye, learned counsel appearing for appellant Insurance Company. He fairly conceded that learned Tribunal has recorded finding as well as decision on the issue referred to it and held that driver of Swaraj Mazda Truck bearing registration No. MH-11-A-2111 was holding valid licence and as such, answered the issue referred to it in the negative.

5. Learned counsel for the appellant strenuously urged that evidence on record coupled with police papers in respect of accident do show that driver of ST Bus contributed more in happening of the accident in question and therefore his composite negligence ought to have been estimated at 75% instead of 25%. For that purpose, learned counsel for the appellant placed reliance on the evidence of the claimants as well as driver of the ST Bus and spot panchanama.

6. Shri Shinde, learned counsel holding for Shri Latange, learned counsel appearing for respondent No.1 in

both these appeals justifies the impugned judgments and awards and contended that considering the order of admission of appeals, quantum of compensation assessed by the learned Tribunal cannot be reexamined and finding of the learned Tribunal on this aspect has attained finality. Shri Shinde, learned counsel holding for Shri Goyanka, Advocate appearing for respondent MSRTC also supported the judgment and award.

7. Issue as to whether Insurance Company has proved that driver of Swaraj Mazda Truck was not holding valid driving licence at the relevant time and therefore the Insurance Company is not liable to indemnify the owner of the said Truck is answered in the negative by the learned Tribunal. Driving licence of the said Truck driver was verified by the learned Tribunal from the Regional Transport Office and all parties to the proceedings had given no objection for accepting the same. In the wake of this categorical finding recorded by the Tribunal, it becomes clear that the Insurance Company cannot disown its liability on the ground of breach of terms and condition of policy. Though appeals are admitted on limited question as to whether driver of the Truck was holding valid driving licence, it needs to mention that

these are appeals under section 173 of the Motor Vehicles Act 1988. They being first appeals, the same cannot be admitted on limited question, unless and until other grounds raised in the appeals are examined and finding in respect of the same is recorded by the Appellate Court. The order dated 09.01.2007 passed by this Court while admitting the appeals does not reflect application of mind by the Appeal Court on other grounds raised in the Appeal. Hence, I proceed to examine the ground regarding apportionment of negligence qua the ST Bus and Swaraj Mazda Truck in the ratio of 25:75 assessed by the learned Tribunal in the award.

8. Claimants in both these cases came up with the pleadings that driver of the S.T. Bus owned by Respondent No.1 involved in the accident was rash and negligent and the accident occurred because of his fault. The learned learned Tribunal has rightly disbelieved the averments in respect mode and manner of happening of accident stated by the claimants. It is seen that learned Tribunal has minutely dealt with and examined the police papers and more particularly spot Panchanama recorded by the police.

9. I have carefully gone through the evidence of claimants as well as Spot Panchanama at Exh.65. I have

also perused evidence of driver of ST Bus namely Madanlal Jagannath Sharma. Though the driver of the ST Bus has categorically stated in his evidence that it was the Truck who came from opposite direction gave dash to the ST Bus from driver side, this evidence cannot be believed unless and until, contemporaneous police papers are examined. Ultimately, this witness is an interested witness and instinct of self preservation may lead him to give incorrect account of the accident in question.

10. Spot panchanama is at Exh.65. It shows that at the place of occurrence of accident, width of the tar road was 23 feet. It is road running east to west from Nagar to Pune. ST Bus was found standing facing west direction at the side of the road. Brake marks found on the tar road reflect application of brake by driver of ST Bus. ST Bus was found damaged from the driver side and its body was found to be cut up to six benches from the driver side. ST Bus was found to be stopped by the driver of the Bus. As against this, it appears from the Panchanama that after giving dash to the ST Bus, Truck went ahead and turned turtle. This fact goes to show that driver of the Truck was not even able to stop the Truck at the place of accident. This was obviously

because the Truck must be in uncontrollable speed at the spot of the accident. Driver of the Truck, as such, had not taken proper care in driving the Truck. As such, no fault can be found in apportionments of negligence between the drivers of the Truck and ST Bus in the ratio of 75:25 by the learned Tribunal. In fact, driver of the ST Bus is also held to be negligent on the finding that ST Bus was not at the extreme left side of the road. The finding of the learned Tribunal while apportioning the composite negligence is perfectly on the basis of evidence on record.

11. In the result, both these appeals fail. Hence order:

- i. First Appeal Nos.02./2007 and 03/2007 are dismissed with no order as to costs.
- ii. Amount of compensation under the award, if any, deposited by the Insurance Company and MSRTC is permitted to be withdrawn by the original claimants in terms of the awards passed by the learned Tribunal.

12. First appeals are accordingly disposed of with no order as to costs.

( A. M. BADAR, J. )