

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

**FIRST APPEAL NO. 178 OF 2002
WITH
CA/3500/2002 IN FA/178/2002
WITH
CA/11759/2004 IN FA/178/2002**

The New India Assurance Company Ltd.,
having its registered and head office at
New India Assurance Building, 87,
M.G. Marg, Fort, Mumbai and Divisional
Office at Aurangabad and branch office
at Chandranagar Latur by its authorized
Representative Shri Namdeo Gangaram Mali,
age 49 years, Occ. Service, R/o Aurangabad.
..Appellant..

VERSUS

1. Prakash Narayan Gomande,
age 30 years, Occ. Busines,
R/o Main Road, At. Ausa,
Post Ausa, Dist. Latur.
2. Kalimuddin s/o Shamshddin Shaikh,
age 29 yrs, Occ. Business, r/o
Kat Ghar Galli, At Ausa, Post Ausa,
Dist. Latur.
3. The Branch Manager, Oriental Insurance
Co. Ltd., Opposite Bus Stand, Latur.
At Post Tq. Dist. Latur.
4. Jamalsing s/o Lachmansingh, age major,
Occ. Business, r/o Narayannagar, Ghatkopar,
Mumbai
(owner of Tanker bearing No.MCY 3650)

5. Jagdeo s/o Kalappa Araji,
age 43 years, Occ. Driver,
R/o Navshil-Naka, Belapur Road,
At Post Thane, Dist. Thane. ...Respondents..

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Advocate for Appellant : Mr D S Kulkarni h/f S L
Kulkarni

Advocate for Respondents : Mr R B Deshmukh For R/1,
Mr S M Godsay For R.No.3

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CORAM : V.K. JADHAV, J.

Dated: April 04, 2016

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ORAL JUDGMENT :-

1. Being aggrieved by the common Judgment and Award passed by the Member, Motor Accident Claims Tribunal, Latur dated 26.11.2001 in MACP No.99 of 1998 alongwith connected petitions arises out of one and the same accident, the Respondent-Insurer of the vehicle Tempo Trax involved in the accident, preferred this appeal.

2. Brief facts, giving rise to the present appeal, are as follows :-

a] On 24.10.1997, all the claimants were travelling by Tempo Trax bearing registration No.MH-24/A-7329 from Ausa to Pune. On the way, when the said jeep reached

within the limits of Bhigwan, Tq. Indapur, Dist Pune, a tanker bearing registration No.MCY-3650 came from opposite direction and gave dash to the tempo trax. In consequence of which, the driver of the tempo trax died on the spot, whereas, other claimants travelling in the same vehicle sustained injuries. The claimant in Claim petition No.100/1998 has become permanently disabled to the extent of 15% due to the injuries sustained by him in the accident. He claimed total amount of Rs.2,05,000/- under the different heads, but restricted his claim to the tune of Rs.2.00 lacs.

B] The appellant-insurer has resisted the said claim by filing written statement. According to respondent no.5, the driver of the tanker was driving the said vehicle in a rash and negligent manner and that, the tempo trax driver was not at fault. The appellant-insurer has also raised the ground that the claimants herein have claimed exorbitant amount of compensation. The appellant-insurer in the alternate has also raised the ground that the driver of the tempo trax has contributed the negligence to the extent of

20%. The learned Member of the Motor Accident Claims Tribunal, Latur, by its impugned judgment and Award dated 26.11.2001 partly allowed the claim petition and thereby directed respondents No.1 and 2 on one hand and respondents No.3 to 5 on the other hand to pay jointly and severally compensation of Rs.1,35,230/- alongwith proportionate costs and interest @ 9% p.a. to the claimant to the extent of 50 : 50% each. Being aggrieved by the same, the appellant-insurer has preferred this appeal.

3. The learned counsel for the appellant submits that, the driver of the tanker had driven the vehicle in excessive speed and in rash and negligent manner and is alone responsible for the accident. Learned counsel submits that, the Tribunal has erroneously arrived at conclusion that it is a case of equal negligence of both drivers and accordingly directed the respondents to pay compensation to the claimants. Learned counsel submits that, considering the road situation, and contents of panchnama, at the most driver of the tempo trax can be held responsible to the extent of 20%.

4. Learned counsel for the respondents/claimants submits that, after the accident crime was registered against both the drivers of the vehicles involved in the accident. Learned counsel submits that contents of the spot panchnama speaks that, there was head on collision between the two vehicles. Learned counsel submits that, the Tribunal has therefore rightly come to the conclusion that both the vehicles have equally contributed the negligence and accordingly directed the owners thereof to pay compensation.

5. I have also heard learned counsel for respondent no.3-the Insurer of the vehicle tanker involved in the accident.

6. It appears from the evidence that both drivers of the vehicles were negligent in driving their respective vehicles. Though, the claimants in their respective claim petitions deposed about the rash and negligent driving of the driver of the tanker, still it is not possible to find out the rash and negligent driving of a particular vehicle. On perusal of spot panchnama, it appears that

the panchas did not notice any tyre marks of either of the vehicles on the road. It also appears from the damage caused to the vehicles that there was head on collision between the two vehicles. In the circumstances, I do not find any fault in the finding recorded by the learned Member of the Tribunal that both the drivers are equally responsible for the accident. So far as quantum is concerned, it appears that, the learned Member of the Tribunal has awarded just and reasonable compensation.

7. In view of this, I do not find any merit in this appeal. Hence, following order is passed.

O R D E R

- I. Appeal is hereby dismissed.
- II. In the circumstances, there shall be no order as to costs.
- III. First appeal is accordingly disposed of.
- IV. Pending Civil Applications also stand disposed of.

sd/-

(V.K. JADHAV, J.)

aaa/-

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