

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
FIRST APPEAL NO.1121 OF 2011**

New India Assurance Co. Ltd.
Through Its Divisional Manager
Adalat Road, Aurangabad

**...APPELLANT
(Org. Respondent No.2)**

VERSUS

1. Smt. Chandrakuvar Jaysingh Rawal
Age: 65 years, Occu.: Household,
R/o. Hawaimahal, Dondaicha,
Taluka Shindkheda, District Dhule
2. Smt. Shantabai W/o. Yogendrasingh Jamadar,
Age:48 years, Occu.: Household,
R/o. As above,
3. M/s. Universal Starch Chem. Allied Ltd;
Regd. Office - Mhatre Pen Bldg.,
'B' Wing, 2nd floor, Senapati Bapat Marg,
Dadar (W) Mumbai-28
Notice to be served on
The Manager,
Universal Starch Chem. Allied Ltd;
Factory - Dondaicha, District Dhule

**...RESPONDENTS
(Resp.No.1 - Orig. Claimant)**

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Mr. S.G.Chapalgaonkar, Adv., for appellant.
Mr. P.R.Patil, Adv., for respondent nos. 1, 2 and 3.

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CORAM: P.R.BORA, J.

DATE : NOVEMBER 23rd, 2016

ORAL JUDGMENT:

1. The present appeal is filed against the judgment and award passed in MACP No.449/2000 by the Motor Accident Claims Tribunal, Dhule, on 3rd October, 2007. The aforesaid claim petition was filed by the present respondent nos. 1 and 2 seeking compensation on account of the death of Shri Dadasaheb Jaysinh Rawal in a vehicular accident happened on 24/09/1999 having involvement of a Car bearing Registration No. MH-01/Y-1384 and a truck bearing registration No.MTT-3399.

2. It was the contention of the claimants before the Tribunal that the alleged accident happened because of the negligence of the Car driver. The claimants had therefore, claimed compensation of Rs.50,00,000/- (Rs. Fifty lacs) from the Driver, owner and insurer of the said Car.

3. The petition so filed was resisted by the appellant Insurance Company on various grounds. It was the contention of the appellant Insurance Company that

since the criminal case in respect of the alleged accident was filed against the driver of the truck involved in the accident, and as per the investigation carried out by the Police, the alleged accident had happened because of the sole negligence on the part of the driver of the truck, the claimants must have impleaded the driver, owner and insurer of the truck as respondents in the said petition and the compensation ought to have been claimed from them. The appellant Insurance Company had also taken a contention that there was no negligence on the part of the Driver of the insured Car and, as such, no compensation be awarded against the owner and insurer of the said Car. It was also contended that since deceased was the sitting Director of the Company, to which the Car involved in the accident was belonging, no compensation could have been claimed against the owner and insurer of the said Car. The claim petition was also contested on quantum.

4. Learned Tribunal after having assessed the oral and documentary evidence on record, held that the alleged accident had happened because of the composite

negligence of the driver of the Car and the Driver of the truck involved in the accident and awarded the compensation of Rs.8,52,660/- to be paid jointly and severally by the owner and insurer of the car involved in the accident. Aggrieved thereby, the present appeal is filed.

5. Shri Chapalgaonkar, learned Counsel appearing for the appellant Insurance Company, at the outset, submitted that the Insurance Company had raised an objection that the Director of the Company, when travelling through the vehicle belonging to the Company, meets with an accident, and suffers an injury or death, the legal heirs of such a person cannot maintain a petition against the owner and insurer of the said vehicle, relying on the judgment of the Honourable Apex Court in the case of **Oriental Insurance Company Ltd. Vs. Meena Variyal and others (2007) 5 SCC (Cri.) 527** wherein it is held that if a person travelling in a car belonging to a company is a Director of the said company, he steps in

the shoes of owner of the said Car and is to be treated at par with the owner of the Car and, as such, the legal heirs of such a person cannot maintain a petition against the owner and insurer of the said car.

6. Learned Counsel further submitted that in the meanwhile, on the basis of certain circulars which were issued by IRDA the Delhi High Court in one of the judgment took a different view and it was upheld by the Hon'ble Apex Court in the case of **National Insurance Company Vs. Balakrishnan and Another (2013 1 SCC 731)**. In the aforesaid case the Apex Court has held that if a policy is comprehensive one, the risk of the occupant in the said Car, may be a Director of the said Company, is to be covered and the legal heirs are entitled to receive the compensation from the owner and insurer of the said vehicle.

7. In view of the submission so made, the ground

which has been raised in the appeal as about maintainability of the petition does not survive.

8. Learned Counsel further submitted that, in so far as negligence aspect is concerned, when the claimants had relied on the Police papers, the contents of the Police papers must have been considered by the Tribunal as a whole and there cannot be part reliance on such papers. Learned Counsel submitted that when the Police papers, clearly indicate sole negligence of the driver of the truck in causing the accident in question no negligence can be attributed on the part of the driver of the Car insured with the appellant insurance company.

9. Learned Counsel further submitted that it was the primary burden on the claimants to prove that the accident happened because of the negligence of the driver of the Car by which the deceased was travelling at the relevant time. Learned Counsel submitted that in absence of any cogent and sufficient evidence, the Tribunal should not have recorded a finding holding that, in occurrence of

the alleged accident, the driver of the Car was also responsible merely on the basis of certain statements made in the claim petition, and repeated in the evidence of the witnesses examined on behalf of the claimants. Learned Counsel submitted that if at all the Tribunal was to take any contrary view, it was incumbent on the part of the Tribunal to state reasons for holding the Car driver also negligent in occurrence of the accident. Learned Counsel pointed out the observations made by the Tribunal in paragraph No.6 of the impugned judgment and submitted that a very cryptic discussion is made by the Tribunal while holding that the alleged accident happened because of composite negligence of drivers of both the vehicles i.e. Car and the truck. Learned Counsel submitted that from the material on record the only inference which emerges is that the alleged accident had happened because of the sole negligence of the driver of the truck and, as such, the finding recorded by the Tribunal cannot be sustained.

10. Learned counsel further submitted that if this

Court also reaches to the conclusion that there was no negligence on the part of the driver of the car, obviously the order passed by the Tribunal would be liable to be quashed and set aside. On the aforesaid grounds the learned Counsel prayed for setting aside the impugned Judgment and award and ultimately to dismiss the claim petition.

11. Shri P.R.Patil, learned Counsel appearing for the original claimants, has supported the impugned judgment. Learned Counsel submitted that the Tribunal has passed a well reasoned order and no inference is required in the conclusions so recorded by the Tribunal. Learned Counsel submitted that it is not necessary that a very lengthy discussion is to be made if the conclusion can be recorded in few lines. Learned Counsel submitted that though the Tribunal has not made any exhaustive decision, whatever has been stated by the Tribunal is sufficient to hold that the alleged accident was the result of composite negligence on the part of the driver of the Car and the driver of the truck. Learned Counsel, therefore, prayed

for dismissal of the appeal.

12. I have carefully considered the submissions advanced by the learned Counsel appearing for the respective parties. I have also perused the impugned judgment and the evidence on record as well as the other material placed on record. As noted hereinabove, the main ground which was agitated by the appellant Insurance Company as about the maintainability of the petition against the owner and insurer of the vehicle no more survives. The only point which needs to be considered is about the negligence; whether composite or solely of the driver of the truck.

13. I have carefully gone through the Police papers pertaining to the alleged accident. It is true that the offense was registered only against the driver of the truck involved in the accident. However, on perusal of the spot panchnama and the situation on the spot of occurrence, there is reason to believe that the alleged accident did not occur because of sole negligence on the part of the driver

of the truck. Some negligence is attributable on part of the driver of the car through which deceased was travelling. In the circumstances, though the Tribunal has not elaborately discussed the relevant facts, I do not see any reason to interfere in the ultimate conclusion recorded by the Tribunal that the accident in question happened because of composite negligence. Moreover, the Tribunal has, while determining the amount of compensation, rightly taken into account the said aspect and has awarded compensation from the owner and insurer of the Car only to the extent of 50 per cent.

14. In so far as the quantum of compensation is concerned, from the evidence on record there appears no infirmity in the amount so determined.

15. In view of the above, I do not see any reason to cause any interference in the impugned judgment and award. The Appeal, therefore, fails and is accordingly dismissed. Pending Civil Applications, if any, stand disposed of. No order as to costs.

16. The appellant Insurance Company has deposited the entire amount of compensation under the impugned award. The record further shows that previously certain amounts were permitted to be withdrawn by the original claimants. In view of the fact that the appeal has been now dismissed, the original claimants are entitled to withdraw the amount which may be lying in this Court along with the interest accrued thereon. The Registry is directed to release the said amount in favour of the original claimants in terms of the award passed.

(P.R. BORA, J.)

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