IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.49 OF 2001

United India Insurance Co.
Branch office at Latur
Through its Divisional Manager,
& authorized representative and
Signatory, Aurangabad Division,
Aurangabad. = **APPELLANT**
(orig.Resp.No.3)

VERSUS

1) Khudbuddin s/o Sumsherali
Inamdar, Age: 57 Yrs.,
occu. Advocate.
R/o 3-46, Osmanpura, Latur.

2) Bhagwan s/o Shankar Salve,
Age: Major, occu. Driver
R/o Kingaon, Tq. Chikli,
District Buldhana.

3) Pradeep s/o Bhanukumar Kothari,
(owner of luxury bus, died
His L.rs.)

3/1) Balukumar alias Bhanukumar
Kothari
age: 60 Yrs.,

3/2) Sarojabai w/o Balukumar Kothari,
Age: 55 Yrs.,

Both R/o Cidco, N-3, Block No.32,
Aurangabad.

4) Anil s/o Narayanrao Pudale,
Age: 35 Yrs., occu. Business.
R/o Hanuman Mandir, Udgir.

5) New India Insurance Co. Ltrd.
Through its Branch Manager,
Chandranagar, Latur. = **RESPONDENTS**

(Nos. 1 to 4 orig. claimants; Nos. 5 to 8 orig. opponents Nos.1,2 5 and 6)

WITH

FIRST APPEAL NO.50 OF 2001

United India Insurance Co.
Branch office at Latur
Through its Divisional Manager,
& authorized representative and
Signatory, Aurangabad Division,
Aurangabad. = **APPELLANT**
(orig.Resp.No.3)

VERSUS

1) Sajedabegum w/o Khudbuddin
Inamdar, Age: 45 Yrs.,
occu. Household.
R/o 3-46, Osmanpura, Latur.

2) Bhagwan s/o Shankar Salve,
Age: Major, occu. Driver
R/o Kingaon, Tq. Chikli,
District Buldhana.

3) Pradeep s/o Bhanukumar Kothari,
(owner of luxury bus, died
His L.rs.)

3/1) Balukumar alias Bhanukumar
Kothari
age: 60 Yrs.,

3/2) Sarojabai w/o Balukumar Kothari,
Age: 55 Yrs.,

Both R/o Cidco, N-3, Block No.32,
Aurangabad.

4) Anil s/o Narayanrao Pudale,
Age: 35 Yrs., occu. Business.
R/o Hanuman Mandir, Udgir.

5) New India Insurance Co. Ltd.
Through its Branch Manager,

Chandranagar, Latur. = **RESPONDENTS (Nos. 1 to 4 orig. claimants; No.5 to 8 orig.opponents Nos.1,2 5 and 6)**

WITH

FIRST APPEAL NO.51 OF 2001

United India Insurance Co.
Branch office at Latur
Through its Divisional Manager,
& authorized representative and
Signatory, Aurangabad Division,
Aurangabad. = **APPELLANT (orig.Resp.No.3)**

VERSUS

1) Sunny Mathew s/o Abdul Kadar
Age: 23 Yrs., occu. Service.
R/o Latur.

2) Bhagwan s/o Shankar Salve,
Age: Major, occu. Driver
R/o Kingaon, Tq. Chikli,
District Buldhana.

3) Pradeep s/o Bhanukumar Kothari,
(owner of luxury bus, died
His L.rs.)

3/1) Balukumar alias Bhanukumar
Kothari
age: 60 Yrs.,

3/2) Sarojabai w/o Balukumar Kothari,
Age: 55 Yrs.,

Both R/o Cidco, N-3, Block No.32,
Aurangabad.

4) Anil s/o Narayanrao Pudale,
Age: 35 Yrs., occu. Business.
R/o Hanuman Mandir, Udgir.

5) New India Insurance Co. Ltd.
Through its Branch Manager,

Chandranagar, Latur. = **RESPONDENTS (Nos. 1 to 4 orig. claimants; Nos. 5 to 8 orig.opponents Nos.1,2 5 and 6)**

WITH

FIRST APPEAL NO.52 OF 2001

United India Insurance Co.
Branch office at Latur
Through its Divisional Manager,
& authorized representative and
Signatory, Aurangabad Division,
Aurangabad. = **APPELLANT (orig.Resp.No.3)**

VERSUS

1) Aminabee w/o Md. Riyazoddin Siddiqui,
Age: 50 yrs., occu. Household

2) Kumari Raisabanu d/o Md. Riyazoddin
Siddiqui, Age: 26 Yrs., occu.education

3) Kumari Ahmadabanu d/o Md.Riyazoddin
Siddiqui, Age: 24 Yrs., occu. Education

4) Kumari Kausarbanu d/o Md. Riyazoddin
Siddiqui, Age; 22 Yr., occu. Education

All R/o Mohalla Bagesham, Near
Railway Station, Udgir,
District Latur.

5) Bhagwan s/o Shankar Salve,
Age: Major, occu. Driver
R/o Kingaon, Tq. Chikli,
District Buldhana.

6) Pradeep s/o Bhanukumar Kothari,
(owner of luxury bus, died
His L.rs.)

6/1) Balukumar alias Bhanukumar
Kothari
age: 60 Yrs.,

6/2) Sarojabai w/o Balukumar Kothari,
Age: 55 Yrs.,

Both R/o Cidco, N-3, Block No.32,
Aurangabad.

7) Anil s/o Narayanrao Pudale,
Age: 35 Yrs., occu. Business.
R/o Hanuman Mandir, Udgir.

5) New India Insurance Co. Ltd.
Through its Branch Manager,
Chandranagar, Latur. = **RESPONDENTS**
(Nos. 1 to 4 orig. claimants; Nos. 5 to 8 orig. opponents Nos.1,2 5 and 6)

Mr.AB Gatne, Advocate for Appellant;

Mr.SS Manale, Advocate for Respondent No.1;

Mr.Pratap G. Rodge, Advocate for Resp.No.4 (in FA Nos. 49/2001; 50/2001 & 51/2001 and for Resp. No.7 in FA No.52/2001)

Mr. MM Ambhore, Advocate for Respondent No.5 (in FA Nos.49/2001; 50/2001 & 51/2001) and for Resp. No.8 (in FA No.52/2001)

CORAM : P.R.BORA, J.

DATE OF RESERVING JUDGMENT: 5th April,2016
DATE OF PRONOUNCING JUDGMENT: 2nd May,2016

JUDGMENT:

1) Heard. Since the issue involved in all these appeals is common, all these appeals are

being decided by this common reasoning.

2) An accident had happened on 17.4.1995 having involvement of luxury bus bearing registration No.MH-20-F-9991 and a truck bearing registration No.MWE-1561. The persons, who were injured in the said accident and the legal heirs of deceased persons, who suffered death in the said accident, filed Motor Accident Claim Petitions before the Motor Accident Claims Tribunal, at Latur (for short, the Tribunal). Two Claim Petitions bearing MACP No.362/1995 and 220/1995 were filed in the year 1995; whereas three claim petitions were filed in the year 1996. MACP No.362/1995 wad decided on 21.2.1998; whereas the other four claim petitions came to be decided on 22.6.2000. MACP No.362/1995 was decided by the then Ex-officio Member of the Tribunal viz. Shri V.R.Kingaonkar; whereas MACP Nos.60/1996; 79/1996; 220/1995 and 187/1996 were decided on one and the same day, i.e. 22.6.2000 by the then Ex-officio Member of the Tribunal

viz. Shri S.K.Raut. In MACP Nos.220/1995 and 187/1996, the learned Member of the Tribunal has written separate judgment whereas MACP Nos.60/1996 and 79/1996, common judgment and award is passed.

3) In the aforesaid four Claim Petitions, the learned Tribunal, which has decided the said claim petitions had held the owner, driver and insurer of the luxury bus liable to pay the total amount of compensation to the respective claimants in the said claim petitions and has not saddled any liability upon the owner and insurer of the truck involved in the accident. Whereas, the learned Tribunal, who decided MACP No. 362/1995 has held the drivers of both the vehicles, i.e. luxury bus and the truck responsible for occurrence of the alleged accident and has held the negligence on the part of the drivers of the said respective vehicles in the proportion of 60:40 i.e. 60% of the driver of the luxury bus; whereas 40% of the driver of the

truck.

4) Shri Gatne, the learned Counsel appearing for the appellant/insurance company would submit that before passing of the judgment in the aforesaid claim petitions, the appellant/insurance company had placed on record the certified copy of the judgment delivered in MACP No.362/1995 and had brought to the notice of the learned Member of the Tribunal that in the said petition, the driver of the luxury bus and the truck both have been held responsible for causing the alleged accident in the proportion of 60:40. Shri Gatne further submitted that in view of the aforesaid finding recorded in the judgment delivered in MACP No.362/1995, the learned Member of the Tribunal, who decided the subsequent four claim petitions, must have followed the said finding in so far as negligence part was concerned. The learned counsel submitted that the Tribunal, however, completely ignored the said finding recorded in the earlier decision in

the claim petition arising out of the same accident and held the only the driver, owner and insurer of the luxury bus fully responsible for paying the compensation to the claimants in the respective claim petitions. Shri Gatne further submitted that the respondent No.5 – New India Insurance Co. Ltd. has not challenged the Judgment and Award passed in MACP No.362/1995. The learned counsel further submitted that on the contrary, the said insurance company has satisfied the award passed in the aforesaid claim petition. In the background facts, as aforesaid, the learned Counsel for the appellant/insurance company prayed for modification in the impugned Awards and to allow the appeals to that extent filed by the appellant/insurance company.

5) Shri Ambhore, learned counsel appearing for Respondent No.5/insurance company has fairly submitted that Respondent No.5/insurance company has not challenged the Judgment and Award passed in MACP No.362/1995. The learned Counsel further

conceded that the Award passed in the aforesaid claim petition has been satisfied by Respondent No.5-insurance company.

6) The learned counsel, however, further submitted that the appellant insurance company had not raised any specific plea in their written statement filed before the Tribunal in the respective claim petitions that on the part of negligence, the same finding may be recorded, as was recorded in the judgment delivered in MACP No.362/1995. The learned Counsel further submitted that in such circumstances, the learned Tribunal, on its own assessment of the evidence on record, has independently recorded a finding thereby holding the driver of the luxury bus solely negligent and consequently responsible for the occurrence of the alleged accident. According to the learned counsel, since the evidence in MACP No.362/1995 and the subsequent claim petitions was not similar, the finding recorded in MACP No.362/1995, was not binding

while deciding the subsequent claim petitions. The learned counsel, therefore, prayed for dismissal of the appeals.

7) After having considered the submissions advanced by the learned counsel appearing for the respective parties and on perusal of the record in the respective claim petitions, the following point has arisen for my consideration, -

> " Whether the finding on the issue of negligence recorded in the judgment delivered in MACP No. 362/1995, would operate as *res judicata* against Respondent New India Insurance Company, in the four claim petitions subsequently decided arising out of the same accident?"

8) As mentioned earlier, total five claim petitions were filed, arising out of one and the same accident. Admittedly, out of the said five claim petitions, MACP No.362/1995 came to be decided first, i.e. on 21.02.1998. In the

aforesaid claim petition, the Tribunal, which has decided the said petition, has held the drivers of both the offending vehicles negligent in causing the alleged accident and proportion of their negligence is fixed by the said Tribunal in the ratio of 60:40. New India Insurance Company has admittedly not challenged the judgment delivered in MACP No.362/1995; on the contrary, has satisfied its part in the award passed in the said petition.

9) At the outset, it has to be noted that when the copy of the judgment and award passed in MACP No.362/1995 was placed on record by the present appellant, the learned Tribunal was not justified in taking a different view on the issue of negligence.

10) In MACP No.362/1995, a specific issue (No.4) was framed by the Tribunal, 'whether it was a case of composite or contributory negligence?' and the said Tribunal has recorded a finding that it was a case of composite

negligence. Issue No.2 in the said petition was , - "Whether the luxury bus and truck were being rashly and negligently driven by Respondent No.1 and Raju Biradar, and as such, the accident occurred?” and the said issue has also been answered by the Tribunal in affirmative holding thereby that the driver of the luxury bus and truck both were negligent and alleged accident was the result of their composite negligence. In para 12 of the judgment, the Tribunal has observed thus,

> "12. I have no hesitation in holding that both the drivers were rash, negligent and careless in driving their respective vehicles. Negligence of Respondent No.1 was little more as compared to that of the deceased driver of the goods truck vehicle. Hence, I deem it proper to hold that the Respondent No.1 and the deceased driver of the goods truck vehicle have contributed to the accident due to their negligence and rashness and their respective contribution is

60:40."

11) I reiterate that in view of the discussion made and the finding recorded on the point of negligence in the judgment delivered in MACP No.362/1995 by the Tribunal, there was no reason for the tribunal, which subsequently decided the matters arising out of the same accident, to take a different view and to record a contrary finding.

12) As held by the Hon'ble Apex Court in the case of **Ferro Alloys Corp. Vs. Union of India – AIR 1999 SC 1236,** "where there is a conflict of interest between co-defendants and it is necessary to decide that conflict in order to grant relief to the plaintiff, such adjudication will operate as *res judicata* between the co-defendants."

. In the present case, it was the contention of the claimants in all the claim petitions filed by the respective claimants arising out of the one and the same accident, that the alleged accident had happened because of the rash and negligent driving of the driver of the luxury bus as well as the deceased driver of the offending truck. The luxury bus was insured with United India Insurance Co. whereas the truck was insured with the New India Insurance Co. In their respective written statements, both the insurance companies have taken a defence that the alleged accident had not happened because of the negligence on the part of the driver of the vehicle insured with them. Since the claim petitions were filed under Section 166 of the Motor Vehicles Act, it was obligatory on the part of the respective claimants to establish as to because of whose negligence the alleged accident had occurred. It was thus necessary for the Tribunal to decide as to because of whose negligence, the alleged accident had happened so as to grant relief to the claimants in the respective claim petitions. Whereas there was a conflict of interest in between the United India

Insurance Co. and New India Insurance Co.; both were defendants/respondents in the respective claim petitions. As stated earlier, both were alleging negligence on the part of driver of the other vehicle. In the circumstances, the Tribunal adjudicated the said issue and recorded a finding that in occurrence of the alleged accident, drivers of both the vehicles were negligent and proportion of their negligence was 60:40. In view of the law laid down by the Hon'ble Apex court in the aforesaid judgment, such adjudication and finding recorded will operate as res judicata between the co-defendants, i.e. United India Insurance Co. and New India Insurance Co. in the subsequent suits/claim petitions.

13) The doctrine of res judicata applies between the co-defendants if the following conditions are fulfilled, -

i) The conflict of interest between the co-defendants;

ii) The necessity to decide that conflict in order to give the plaintiff appropriate relief; and

iii) The decision on the question between the co-defendants.

If the aforesaid three conditions are present, the doctrine of res judicata would apply.

14) In the instant matter, all the aforesaid three conditions are fulfilled and as such, the finding as about the negligence recorded by the Tribunal in MACP No.362/1995 was binding on both the Insurance Companies. in all the subsequent claim petitions arising out of the same accident. The New India Insurance Co. is now estopped from raising a plea that in subsequent matters, it was open for the Tribunal to take a contrary view.

15) In the case of **Himachal Road Transport Corporation and Ors. Vs. Krishna Devi and Ors. - 2006 ACJ 1248**, a bus of Himachal Road Transport Corporation and the truck were involved in an

accident, which gave rise for filing of 18 claim petitions. Out of the said 18 claim petitions, 12 petitions were compromised before the Lok Adalat and the Himachal Road Transport Corporation and the insurance company, with which the truck was insured, agreed to bear the compensation in the ratio of 50:50. In the remaining matters, Awards which were passed were challenged by the Himachal Road Transport Corporation before the High Court on the point of negligence and also on quantum. While deciding the said appeals, the High Court of Himachal Pradesh held that it was not permissible for the Himachal Road Transport Corporation to challenge the finding on the point of negligence in view of the fact that out of the 18 claim petitions, 12 petitions which were compromised before the Lok Adalat, the appellant- Himachal Road Transport Corporation, had agreed to bear the compensation in the ratio of 50:50.

16) In the case of **Managing Director,**

Tamilnadu State Corporation Ltd. Vs. A.T. Narendiran and others - 2010 ACJ 77, before the Madras High Court, similar facts were involved. In the said matter also, in collision between a Car and a bus belonging to Tamilnadu Road Transport corporation, several persons were injured and claim petitions were filed by the said injured persons claiming compensation before the Tribunal. Some of such matters were settled before the Lok Adalat and liability to pay compensation was accepted by the Tamilnadu Road Transport Corporation also. In some other claim petitions, which were not settled in Lok Adalat, the awards came to be passed by the Tribunal and in one of such appeals filed against the said Award, the Tamilnadu State Road Transport Corporation challenged the finding recorded by the Tribunal against its driver. The Madras High Court rejected the contention of the Tamilnadu State Road Transport Corporation, observing that the said Transport Corporation which has accepted the liability on account of negligent driving of its driver and settled the claims in respect of the claimants in CMA Nos.767 to 769 of 2001, was estopped from taking up the plea of `no negligence' in the appeals before it. The High Court has further observed that, as the Award passed by the Lok Adalat has the effect of a decree of a civil court, it was final and binding on all the parties to the dispute and it was not open to the appellant Transport corporation to raise it as a ground in the said appeal.

17) In **United India Insurance Co. Ltd., v. Smt. Muthumma 2000 ACJ 289**, (Karnataka) High Court considered a case whether the Transport Corporation having accepted the liability on account of negligent driving of his driver can take up other contentions in the claim petitions. The facts of the reported case are that the claimants filed petitions for compensation stating that the driver of the Transport Corporation was responsible for the accident. The matter was referred to the Lok Adalat and settled. The Transport Corporation made the payments and a compromise was arrived at. Considering the objections

raised by another claimant, that once the K.S.R.T.C. has entered into comprise before the Lok Adalat in respect of two other petitions which also arise out of the same accident, the Court held that the Transport Corporation is estopped from taking up the contention that the driver of the jeep in which the claimant was travelling, was responsible for the accident. The Court at Para 5 held as follows:

> "5. At the very outset, it has to be stated that in this case the law of estoppel operates. It is an admitted fact that the K.S.R.T.C. in M.V.C. Nos.596 and 586 of 1987 have settled the matter before the Lok Adalat and it has made full payment also. This goes to show that by this settlement accepting the liability on account of the negligent driving, it is now estopped from taking up any other contention. This is a fit case where the law of estoppel comes into play very effectively. The learned Member of the Tribunal ought to have taken this aspect into consideration. He has failed to consider this aspect and unnecessarily has ventured to make some futile exercise which were uncalled for looking to the facts and circumstances of the case."

18) In view of the law laid down as above, the New India Insurance Company is now estopped from taking up a plea that, in occurrence of the alleged accident, there was no negligence on the

part of deceased driver of the Truck insured with the said Insurance Company, or can dispute the proportion of the negligence on the part of said driver when it had accepted the Judgment and Award passed in M.A.C.P.No.362/1995 arising out of the same accident decided on 21.02.1998 and has also satisfied the liability cast on its part in the said Judgment and Award, wherein the learned Tribunal, which has decided the said claim petition, has held the negligence to the extent of 40% on the part of deceased driver of the Truck in occurrence of the alleged accident. Similarly, when in a petition arising of the said accident, decided earlier, the Tribunal which has decided the said petition, has recorded a finding on the point of negligence, it was not open for the learned Tribunal which decided the remaining matters arising out of the same accident subsequently, to take a contrary view and to record a contrary finding.

19) In the above circumstances, the finding recorded by the learned Tribunal in the Judgments

impugned in the present appeals on the point of negligence, is liable to be quashed and set aside and it is accordingly set aside. The finding recorded on the point of negligence in the Judgment delivered in M.A.C.P. No.362/1995 would as it is apply in the present matters also. It is accordingly held that, the alleged accident was the result of composite negligence of driver of the Luxury Bus and the deceased driver of the Truck involved in the accident and the proportion of their negligence is held 60:40, meaning thereby that, the owner and insurer of the Luxury Bus are responsible to shell the liability to the extent of 60% and that of the truck to the extent of 40%..

20) The United India Insurance Company has admittedly deposited the entire amount of compensation under the Awards in the present appeals, together with interest accrued thereon till the date of deposit of the said amount and the respective claimants have withdrawn the

entire said amount under the orders of this court. In view of the fact that now the New India Insurance Company is held liable to pay the amount of compensation to the extent of 40%, the appellant United India Insurance company has become entitled to recover from The New India Insurance Company the said amount of 40%. In the result, the following order, -

ORDER

i) The finding recorded on the point of negligence in the judgments impugned in the present appeals is quashed and set aside;

ii) It is held that the alleged accident happened as a result of composite negligence on the part of driver of the luxury bus and the deceased driver of the truck involved in the said accident and the proportion of such negligence and consequent liability to pay the amount of compensation to the respective claimants, is held in the ratio of 60:40, as has been held in the judgment in MACP No.362/1995;

iii) Consequently, The New India Insurance company shall pay to the United India Insurance Company 40% of the total amount of compensation, which has been paid by the United Insurance Company to the claimants in the respective claim petitions along with the interest @ 6% p.a. from the date of deposit of the said amount by the United India Insurance Company in this Court till its actual realization.

iv) The First Appeals are thus allowed in the aforesaid terms without any order as to costs.

sd/-
(P.R.BORA)
JUDGE

bdv/

fldr 22.4.16