

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

FIRST APPEAL NO. 1311 OF 2006

The United India Insurance
Company Ltd., through its
Divisional Office, Divisional
Manager, United India Insurance
Company, Aurangabad.

**...APPELLANT
(Orig. Resp. No.2)**

VERSUS

1. Vijaykumar S/o. Shantilal Patni,
Age:54 years, Occu.: Business,
R/o. Kuwarphalli, Aurangabad.
2. Aruna W/o. Vijaykumar Patni,
Age:50 years, Occu.:Household,
R/o. Kuwarphalli, Aurangabad.
3. Rashid S/o. Ahmed Shaikh,
Proprietor Trade Transport,
Plot No.195/4 GIDC Vapi,
Dist. Valsad (GUJRAT)
4. Ram Ashane
Age:30 years, Occu.:Driver,
R/o. 3/164, MHB Colony, Kala
Chowk, GIDC, Vapi, Dist. Valsad,
Gujrat.
5. Mihirbhai Arvindbhai Patel,
Age:50 years, Occu.: Business,
R/o.: Baroda, at present,
residing at near Atul Bread
Factory, Diwan Deodi, Aurangabad.

6. The Oriental Insurance Co. Ltd.,
2nd Floor, Bank of Baroda
Old Building, Baroda

...RESPONDENTS
(Resp. 1 & 2 are Orig.
Claimants & Resp. No. 3 to
5 are Orig. Resp.)

**...
WITH**

FIRST APPEAL NO.1091 OF 2005

The United India Insurance
Company Ltd., Through its
Divisional Office, Divisional
Manager, United India Insurance
Company, Aurangabad.

...APPELLANT
(Org.respndt.no.2)

VERSUS

1. Tejpal s/o Motilal Kasliwal,
Age 53 yrs. occu. Business,
R/o Balaji nagar, Aurangabad
Tq. & Dist. Aurangabad.
2. Alka w/o Tejpal Kasliwal,
Age 48 yrs. Occu.Household
R/o. as above.
3. Rashid s/o Ahmad Shaikh
Proprietor Trade Transportation
Plot No.195/4 GIDC Vapi,
Dist. Valsad (GUJRAT)
4. Ram Ashane,
Age 30 years, occu. driver
R/o. 3/164, MHB colony, Kala
Chowk, GIDC, Vapi, Dist.Valsad
Gujrat.

5. Mihirbhai Arvindbhai Patel,
Age 50 yrs. occu. business,
R/o. Baroda, at present
residing at near Atul Bread
Factory, Diwan Deodi, Aurangabad.
6. The Oriental Insurance Co.Ltd.,
2nd Floor, Bank of Baroda
Old Building, Baroda,
Gujrat State.
Summons to be served at office
of Aurangabad i.e.
Adalat Road, Aurangabad.

...RESPONDENTS

(Resp.1 &2 are org.claimants &
respndt.no.3 to 6 are org.respdt).

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IN BOTH MATTERS:

Shri S.V.Kulkarni, Adv., for appellants.
Shri V.I.Thole, Adv., for respondent nos. 1 and 2.
Shri Manoj Shinde, Adv., h/f Shri M.K.Goyanka, Adv.,
for respondent no.6.

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CORAM: P.R.BORA, J.

DATE : October 7th, 2016

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ORAL JUDGMENT:

1. First Appeal No.1311 of 2006 is filed against the judgment and award passed in M.A.C.P.No.537 of 2001 whereas First Appeal No.1091 of 2005 is filed against the judgment and award in M.A.C.P.No. 135 of 2002. Both the aforesaid Claim Petitions had arisen out of one accident. In the present appeals both the judgments are

challenged on common grounds. I, therefore, deem it appropriate to decide both these appeals by common reasoning.

2. The only ground which is pressed in both these appeals is about the entire responsibility being fixed on only one vehicle involved in the alleged accident which was insured with the appellant Insurance Company. In the alleged accident two vehicles were involved; a Maruti Omni car, and a truck. The truck was insured with the present appellant Insurance Company. It is the case of the present appellant that the alleged accident had happened as a result of head on collision between the Maruti car and the Truck and, as such, the negligence on the part of the driver of the Maruti Car was writ large. According to appellant, it was a case of composite negligence and, as such, some responsibility of paying compensation ought to have been cast on the driver, owner and insurer of the Maruti Car also.

3. Shri Kulkarni, learned Counsel for the appellant Insurance Company invited my attention to the contents of

the FIR and spot panchnama in connection with the accident in question and submitted that the averments of spot panchnama clearly show that it was a head on collision and drivers of both the vehicles were equally responsible for occurrence of the alleged accident. Learned Counsel further submitted that the Tribunal has failed in considering the aforesaid aspect and has thus erred in holding the Driver of the truck solely responsible for causing the accident. Learned Counsel, therefore, prayed for setting aside the aforesaid finding recorded by the Tribunal and consequently prayed for recording a further finding holding the drivers of both the offending vehicles equally responsible in causing the alleged accident.

4. The submissions so made are opposed by the learned Counsel appearing for the respondents in both the appeals. Learned Counsel submitted that the Tribunal has elaborately discussed as to how the negligence on the part of the driver of the truck is solely responsible for occurrence of the alleged accident.

5. I have carefully perused the spot panchnama. Perusal of the situation, as is revealing from the spot panchnama, makes it difficult to agree with the argument made by the learned Counsel appearing for the appellant Insurance Company. The situation of the vehicles on the spot clearly reveals that the truck had entered on wrong side and gave a dash to the Maruti car. The description of the vehicles, which is existing on record, as reflected in the spot panchnama, also supports the conclusion that the truck has entered on the wrong side and had given dash to the Maruti Car. The Maruti Car is damaged on right side and only one side is damaged which rules out the possibility of head on collision, as is alleged by the learned Counsel appearing for the Insurance Company. In para no.9 of the judgment in MACP No.537/2001, the learned Tribunal has elaborately stated reasons for holding the truck driver solely responsible for occurrence of the alleged accident. I deem it appropriate to reproduce the observations so made by the Tribunal which are thus:

"9. Complaint filed in the matter is by Chimanbhai Patel who had been to hospital at Gandevi on receiving information that his relative met with accident. He gave information of accident to Police. He has no personal knowledge about

accident. However, on the basis of complaint filed by him police registered offence against truck driver. Panchnama of place of accident is also filed on record. It is seen from this document that road on the place of accident is South North. Deceased was proceeding by Maruti van to Baroda from Billmohra i.e. from South to North. Place of accident is south North. Deceased was proceeding by Maruti van to Baroda from Billmohra i.e. from South to North. Place of accident is within limits of village Boripach Road at the place of accident is straight one. Its width is shown as 25 ft. tar road and 5 ft. rough road on both sides. Maruti van was seen to western end of road. It was seen toppled down. There was considerable damage to this van. Dash to van was from eastern portion. Truck was seen at a distance of 15 ft. from this place. Damage to truck was to its front portion. Truck was seen to western side of this road. All these facts suggest that truck by coming to wrong side gave dash to maruti van. When these are the facts on record, it is expected from truck driver or truck owner to come forward and explain about the accident. When all this evidence is coming on behalf of petitioner and no evidence is led by respondent nos. 1 to 3 one has to draw adverse inference against truck driver. Therefore, there is no hesitation in holding that truck driver was responsible for accident. Though respondent no.5 initially disputed policy of truck with it, when copy of it was filed on record it was not challenged later on by Insurance Company. It is a fact on record that no fault liability was passed against the respondent No.1 to 3 and no appeal or revision is preferred against said award. Insurance Company also has not led any evidence to say that truck driver was not holding valid driving licence when accident took place. Thus liability to pay compensation to petitioners is joint and several on respondent Nos. 1 to 3 and no liability can be fastened against respondent No.4 and 5. Therefore, let us determine compensation that can be awarded to petitioners. "

6. After having gone through the observations so made, it does not appear that the Tribunal has committed any error in holding the truck driver solely responsible for occurrence of the alleged accident and consequently making the driver, owner and insurer of the truck liable for payment of compensation.

7. During the course of the arguments, learned Counsel appearing for respondent nos. 1 and 2 in F.A.No.1311/2006 had submitted that in the event the appeals are dismissed, the claimants be permitted to withdraw the amount of compensation deposited by the Insurance Company in this Court. It was further contended by learned Counsel for respondent no.1 that, respondent no.1 namely, Vijaykumar Shantilal Patni has become physically crippled and is unable to move out of the house and may not be able to come to this Court for collecting the cheque in his name. Learned Counsel, therefore, prayed for giving direction to the Registry to hand over the cheque in the name of the said respondent to his wife Aruna Vijaykumar Patni. I do not find any difficulty in accepting the request so made by the learned

Counsel. Hence, the following order:

ORDER

1. Both the Appeals are dismissed without any order as to costs. Pending Civil Applications, if any, stand disposed of.
2. The claimants are permitted to withdraw the amount deposited by the Insurance Company in this Court in terms of the impugned award/s.
3. It is further directed that the cheque of the amount of compensation to be paid to claimant Vijaykumar Shantilal Patni shall be handed over to his wife who is co-claimant in the claim petition.

(P.R.BORA)
JUDGE

AGP/1311-06 & 1091-05fa