

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

FIRST APPEAL NO. 3218 OF 2008

New India Assurance Company Ltd.,
through its Divisional Manager,
Adalat Road, Aurangabad
For Branch Office at Jalgaon,
District Jalgaon.

... Appellant
(Orig. Resp. No.2)

VERSUS

1. Sanjay S/o Pandhari Wanare,
Age: 25 years,
Occup: Majuri (Fixing Floor Tiles),
R/o Laxmi Nagar, Chalisgaon,
Taluka Chalisgaon,
District Jalgaon.

2. M/s. Eagal Tankers,
52 Vooda
Co-operative Society,
Sardar Patel Shopping Center,
Post Chhani Baroda,
District Bharuch,
Gujrat – 39001

... Respondent
(Resp.No.1-Orig. Claimant
Resp.No.2-Orig. Resp.No.1)

**WITH
FIRST APPEAL NO. 3220 OF 2008**

New India Assurance Company Ltd.,
through its Divisional Manager,
Adalat Road, Aurangabad
For Branch Office at Jalgaon,
District Jalgaon.

... Appellant
(Orig. Resp. No.2)

VERSUS

1. Suresh S/o Nagarmal Kumawat,
Age: 24 years,
Occup: Majuri (Fixing Floor Tiles),
R/o in front of Hotel Rani Park,
Dhule Road, Chalisgaon,
Taluka Chalisgaon,
District Jalgaon.

2. M/s. Eagal Tankers,
52 Vooda
Co-operative Society,
Sardar Patel Shopping Center,
Post Chhani Baroda,
District Bharuch,
Gujrat – 39001

... Respondent
(Resp.No.1-Orig. Claimant
Resp.No.2-Orig. Resp.No.1)

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Advocate for Appellant : Mr. Mohit Deshmukh h/f Mr. S. G.
Chapalgaonkar

Advocate for Respondent No. 1 in both the FAs : Mr. Mukul Kulkarni
Respondent No. 2 is deleted as per order of Registrar (Judicial)
dated 05.10.2010

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CORAM : V. K. JADHAV, J.

DATED : 22nd MARCH, 2016

ORAL JUDGMENT :-

1. Being aggrieved by the judgment and award passed by learned Member, Motor Accident Claims Tribunal, Jalgaon dated 08.04.2008 in MACP No. 356 of 2004 viz Sanjay Pandhari Wanare vs. M/s. Eagal Tankers and Another and in MACP No. 357 of 2004 viz. Suresh Nagarmal Kumawat vs. M/s. Eagal Tankers and Another, respectively, respondent No.2-insurer in both the claim petitions has

preferred these two separate appeals.

2. Brief facts giving rise to these First Appeals are as follows:

On 08/05/2004, claimant Sanjay, alongwith another claimant Suresh, was proceeding on his motorcycle bearing registration No. MH-19-5311 on Chalisgaon-Dhule road. On the way, at 7.00 p.m., one tanker bearing registration No. GJ-07-X-9464 came from the opposite direction in high speed and in negligent manner, and gave forcible dash to the motorcycle, in consequence of which, claimant Sanjay, who was riding the motorcycle at the time of accident and another claimant Suresh, who was the pillion rider, sustained grievous injuries which resulted in permanent disablement. Both of them filed two separate claim petitions as stated above. In MACP No. 356 of 2004, the tribunal has awarded compensation of Rs.5,90,000/- along with interest against respondent Nos. 1 and 2 , whereas, in MACP No. 357 of 2004, the tribunal has awarded Rs.1,00,000/- as compensation payable by the respondents, along with interest. Hence, these two appeals preferred by the insurer.

3. Learned counsel for the appellant-insurer submits that claimant Sanjay, who was riding the motorcycle at the time of accident, had driven his motorcycle in rash and negligent manner and also contributed negligence to certain extent. Learned counsel further

submits that as per the contents of F.I.R., at the time of accident, one truck was passing by that road and in an attempt to overtake said truck, claimant Sanjay, who was riding the motorcycle, dashed against the tanker coming from the opposite direction. Learned counsel submits that after the accident, as per the contents of the F.I.R. itself, motorcycle of the claimant came below the rear wheels of the said truck. Learned counsel submits that, the owner, the driver and the insurer, if any, of the said truck are not impleaded as party to the claim petitions, nor the tribunal had issued notice to the driver of the said truck. Learned counsel submits that the tribunal has not considered the negligence on the part of claimant Sanjay while riding motorcycle and saddled the entire liability on the respondent-insurer.

4. Learned counsel for the appellant-insurer submits that, as per the order passed by this Court, the appellant-insurer has deposited entire amount of compensation before the tribunal.

5. Learned counsel for both the claimants submits that claimant Sanjay has examined himself before the tribunal. Learned counsel submits that he is the best witness to the incident and he has deposed that the accident had taken place on account of rash and negligent driving of driver of the tanker. Learned counsel submits that the tribunal has not only considered the evidence of claimant-

injured, however, also considered the Police papers, and accordingly, arrived at correct conclusion. Learned counsel submits that the appellant-insurer has, however, not examined any witness on the point that claimant Sanjay has contributed negligence and he was also responsible for the accident to some extent. Learned counsel further submits that so far as the alleged involvement of another vehicle-truck in the accident is concerned, admittedly, the said vehicle is not at all responsible for the accident and after the accident, the motorcycle came below the rear wheels of the said truck. Learned counsel submits that the appellant-insurer has also not pleaded while opposing the claim petition that the driver of the said truck is responsible for the accident. Learned counsel submits that the tribunal has rightly held that the driver of the tanker alone is responsible for the accident, and accordingly, assessed the compensation after considering the income and the nature of permanent disablement sustained by the claimants. Learned counsel submits that no interference is required and both the appeals are liable to be dismissed with costs.

6. So far as the compensation assessed by the tribunal is concerned, I do not find any fault in it. Learned Member of the tribunal has considered the income of both the claimants and after appreciating medical evidence in respect of permanent disablement

sustained by both the claimants, has awarded just and reasonable compensation. Both the learned counsel have also not disputed the same.

7. In view of the above, following points arise for my determination and I have recorded my findings to those points for the reasons given below :

	POINTS	FINDINGS
1	Whether the claimants prove that, due to rash and negligent driving of the driver of tanker bearing registration No. GJ-07-X-9464, the accident had taken place?	In the affirmative.
2	Whether respondent No.2-insurer proves that claimant Sanjay has contributed negligence by riding motorcycle in rash and negligent manner?	In the negative.
3	Whether the impugned judgment and order calls for any interference ?	In the negative.
4	What order ?	As per final order.

REASONS

8. Claimant Sanjay has examined himself by filing affidavit of evidence before the tribunal. Claimant Sanjay has deposed that the accident has taken place because of rash and negligent driving on the part of the tanker driver. On careful perusal of the contents of F.I.R. dated 08.05.2004, it appears that, on the same day, driver of the said another vehicle-truck lodged complaint in the concerned Police Station. It is stated in the said complaint that at the time of accident, one motorcycle had overtaken his truck and thereafter, one tanker bearing registration No. GJ-07-X-9464 came from the opposite direction in high speed and gave dash to the motorcycle which was proceeding by that road in front of his truck. Thus, the evidence of claimant Sanjay coupled with the contents of the F.I.R., is sufficient to conclude that the accident had taken place because of rash and negligent driving of the tanker driver. The First Information Report was lodged by an independent person and the accident had taken place in front of his truck. On the same day, the said truck driver had lodged complaint in Police Station alleging therein that the tanker driver had driven the tanker in fast speed and gave dash to the motorcycle from its driver side. The appellant-insurer has not examined the tanker driver to substantiate its case that claimant

Sanjay has also contributed negligence by riding motorcycle in rash and negligent manner. There is no evidence at all to draw inference that claimant Sanjay had driven the motorcycle in rash and negligent manner and also contributed negligence to some extent. I, thus, do not find any fault in the impugned judgment and award passed by the tribunal in both the claim petitions.

9. In the claim petition filed by Sanjay, even though claimant Sanjay has deposed about his earning as Rs.7,500/- p.m., in light of the evidence available on record, the tribunal has considered his monthly income as Rs.3,000/- and by applying correct multiplier, assessed the compensation. Learned Member of the tribunal, considering the disablement i.e. amputation of right leg of claimant Sanjay, awarded compensation corresponding to 90% permanent disablement sustained by claimant Sanjay. Learned Member of the tribunal has also considered the medical expenses incurred by the claimant, his pains and sufferings and the other relevant expenditures. In another claim petition also, the tribunal has considered the income and the nature of disablement, and accordingly, awarded just and reasonable compensation to the claimant.

10. In view of the above discussion, I answer point No.1 in the

affirmative, point Nos.2 and 3 in the negative and I proceed to pass the following order:

O R D E R

- I. Both the appeals bearing First Appeal No. 3218 of 2008 “New India Assurance Company Ltd. vs. Sanjay Pandhari Wanare and Another” and First Appeal No. 3220 of 2008 “New India Assurance Company Ltd. vs. Suresh Nagarmal Kumawat and Another”, are hereby dismissed. In the circumstances, there shall be no order as to costs.
- II. The Respondents-original claimants in both the appeals are permitted to withdraw the amount deposited by the appellant-insurer in respective claim petitions before the tribunal.
- III. Both the First Appeals are accordingly disposed of.

(V. K. JADHAV, J.)

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