

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

**FIRST APPEAL NO. 599 OF 2001
WITH
CA/6197/2001 IN FA/599/2001**

Kumar Murlidhar Narwade,
age 31 yrs, R/o New Gulmandi Road,
Aurangabad.

Appellant.
Orig resp no.5.

VERSUS

1. Smt. Nalinibai Pralhad Kawale
abated.
2. Kishor Pralhad Kawale,
age 34 yrs, Occ. Service.
R/o as above.
3. Mukesh Pralhad Kawale,
age 28 yrs, Occ. Service and
Education, R/o as above.
4. Tatyarao Manikrao Shinde
age major, Occ. Business,
R/o Chakur, Dist. Latur.
5. Sambhaji Sitaram Gawali,
abated.
6. United India Insurance Company
Ltd., Through Its Manager,
Divisional Office, New Osmanpura,
Aurangabad.
7. Shaikh Majid Shaikh Maheboob
appeal dismissed against R/7.
8. Divisional Manager,
Oriental Insurance Co. Indraprakash,

Adalat Road, Aurangabad.

Respondents.

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Advocate for Appellant : Mr P.V.Jadhavar h/f V J Dixit
Sr. Counsel.

Advocate for Respondent 6 : Mr S V Kulkarni

Advocate for Respondent 8 : Mr V N Upadhye

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CORAM : V.K. JADHAV, J.

Dated: February 14, 2017

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ORAL JUDGMENT :-

1. Being aggrieved by the judgment and award passed by the Member, Motor Accident Claims Tribunal, Aurangabad dated 26.7.2000 in MACP No.220/1996 original respondent no.5 (owner of the jeep involved in the accident) has preferred this appeal on two counts. Firstly, the Tribunal has erroneously exonerated the insurer from liability to pay the compensation and secondly, though the claimant no.1, who happened to be an eye witness has deposed about the negligence on the part of the driver of the truck alone, the Tribunal has erroneously fastened the liability on both the vehicles in equal shares.

2. Learned counsel for the appellant submits that, the respondent insurer though raised a defence of

breach of the policy conditions, failed to substantiate the same. The learned Member of the Tribunal has erroneously exonerated the respondent insurer from the liability to pay the compensation jointly and severally alongwith the appellant. Learned counsel submits that, the claimant no.1, who was also travelling with her husband in the jeep involved in the accident has deposed about the negligence on the part of the truck alone and, the spot panchnama exh.45 also supports the case of the appellant. The learned Member of the Tribunal ought to have held that the driver of the truck alone was responsible for the accident and driver of the jeep is not at fault.

3. Learned counsel for respondent no.6-insurer of the truck involved in the accident submits that, though, claimant no.1 has deposed about negligence on the part of the driver of the truck, she has admitted in her cross examination that she was sitting on the seat at the rear portion of the jeep and she was looking at the back. Learned counsel submits that, she has further admitted that she came to know about the accident only after the

accident. Learned counsel submits that thus, the only inference could be drawn that she had not actually witnessed the accident. Further she has also admitted in her cross examination that both the vehicles were brushed each other. Learned counsel submits that, considering the admissions given by claimant no.1 in her cross examination, and further the contents of the spot panchnama exh.45, the learned Member of the Tribunal has rightly fastened the liability on both the vehicles in equal shares. No inference is required.

4. Learned counsel appearing for the respondent insurer for the vehicle jeep involved in the accident submits that, claimant no.1 has admitted in her cross examination that passengers paid Rs.4/- each as a fare for travelling up to Lehakhedi. The appellant has not examined his driver to substantiate his contentions. The learned Member of the Tribunal has therefore rightly exonerated the respondent insurer from the liability to pay the compensation jointly and severally alongwith the appellant. The learned counsel for respondent insurer submits that the Tribunal has

awarded interest @ 12% instead of 7.5%. Learned counsel submits that interest @ 7.5% may be awarded. No inference is required.

5. On perusal of the pleadings, the evidence lead by the claimant and the impugned judgment and award passed by the Tribunal, it appears that the learned Member of the Tribunal has rightly exonerated the respondent insurer of vehicle jeep from the liability to pay the compensation jointly and severally alongwith the appellant. It is well settled that burden is on insurer to substantiate its defence and the insurer can discharge the said burden either by examining the witness or by relying on the cross examination of the claimant, or other witnesses. In the instant case, claimant no.1 has admitted in her cross examination that passengers travelling in the jeep paid Rs.4/- each for travelling in the jeep as passengers to the driver for destination to village Lehakhedi. In light of these admissions, the Tribunal has rightly exonerated the respondent-insurer of the jeep from the liability to pay the compensation.

6. Claimant no.1 is an eye witness to the incident. She was also travelling in a jeep at the time of accident with her husband. She has deposed that dash was given by the truck to the right side and her husband who was sitting on right side just behind the driver sustained injuries as he was thrown out from the jeep after the dash. She has also deposed that, truck was coming in high speed. She had seen the accident herself and according to her fault was that of the truck driver. Though, crime was registered against drivers of both the vehicles involved in the accident, the claimant has deposed about the negligence on the part of the driver of the truck alone. She has admitted in her cross examination that, she sat on the back seat of the jeep and she was looking at the backside and only after the accident she realized that accident had taken place. On perusal of the contents of the spot panchnama exh.45, it appears that, jeep mostly damaged on the driver side portion. It also appears from the contents of the spot panchnama that bumper of the jeep also got damaged to some extent. However, inference could be drawn that vehicle truck gave dash to the jeep on driver side right

portion of the jeep. Thus, considering the size of the vehicles and admissions given by the claimant no.1 and registration of the crime against the drivers of both the vehicles, it would be just and appropriate to hold that the driver of the jeep had contributed negligence to the extent of 30%, whereas, the driver of the truck had contributed the negligence to the extent of 70%. Even though, jeep got damaged on right side portion, the learned Member of the Tribunal has erroneously observed that there was head on collusion between the two vehicles and accordingly held that drivers of both the vehicles were responsible for the accident in equal shares.

7. In view of the above discussion, the judgment and award passed by the Tribunal requires modification to the extent of shares only. Hence, I proceed to pass the following order.

O R D E R

- I. First Appeal is hereby partly allowed with proportionate costs.
- II. The judgment and award passed by the

Member, Motor Accident Claims Tribunal, Aurangabad dated 26.7.2000 in MACP No.220/1996 is hereby modified in the following manner :-

- a] Respondents no. 1 to 3 are jointly and severally liable to pay 70% of the total compensation i.e. Rs.1,52,280/- (Rs. One Lakh fifty two thousand two hundred eighty only) alongwith interest @ 7.5% to the claimants from the date of application till realization of the entire amount.
- b] The respondent nos. 4 and 5 are jointly and severally liable to pay 30% of the compensation i.e. Rs.65,263/- (Rs. Sixty five thousand two hundred sixty three only) to the claimants alongwith interest @ 7.5% from the date of application till realization of the entire amount.

III. Rest of the judgment and award stands confirmed.

IV. Award be drawn up as per the above modifications.

V. Needless to say that, if the appellant has deposited the amount as per the impugned judgment and award passed by the Tribunal, the appellant would get refund of the excess amount as per the modified award.

VI. Appeal is accordingly disposed of.

VII. Pending Civil application also stands disposed of.

sd/-
(V.K. JADHAV, J.)

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aaa/-