

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

**FIRST APPEAL NO.3 OF 2003**

The United India Insurance Company Limited,  
City Branch Office,  
Malhar Cinema Building, 2<sup>nd</sup> Floor,  
Gokhle Road, Naupada,  
Thane-400 062.

...APPELLANT..

VERSUS

1. Bashirkhan S/o Gaffarkhan,  
Age. 30 years, Occu. Nil,  
R/o. Hari File, Khamgaon,  
Tq. Khamgaon, Dist. Buldhana. .orig applicant.
2. Sk. Isa, S/o Sk. Chand,  
Age. 55 years, Occu. Transport Business,  
R/o. Atali, Tq. Khamgaon, Dist. Buldhana.
3. Amul Vasant Gule,  
Owner & driver of truck No. MWD-2410,  
Since deceased during the  
pendency of this proceeding,  
through his L.Rs. As per Ex. 23.
  1. Anamika Amul Gole,  
Age. 26 years, Occu. Service,
  2. Abhay Amul Gole,  
Age. 5 years, Minor through  
mother No. 1
  3. Vasant Bhikoba Gole,  
Age. 61, Occu. Service,  
(abated)
  4. Sau. Yamunabai, w/o Vasant Gole,  
Age. 57 years, Occu. Household,

All R/o. Remond Woolen Mills,  
Staff Quarter, J.K. Gram,  
Thane-6.  
(abated)

4. Amul Vasant Gule,  
(deleted)
5. The New India Assurance Company  
(deleted)
6. The New India Assurance Company,  
Branch Malkapur,  
Dist. Buldhana. ...RESPONDENTS..

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Mr D V Soman, Advocate for the Appellant.  
Mr Kalyan Patil h/f Mr. S.R.Barlinge, advocate for  
respondent No.1.

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**CORAM : V.K. JADHAV, J.**

**Dated: June 07, 2017**

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**ORAL JUDGMENT :-**

1. Being aggrieved by the judgment and Award passed by the Member, Motor Accident Claims Tribunal, jalgaon dated 18.2.1994 in MACP No.138/1987, the original respondent no.6 insurer has preferred this appeal.

2. Brief facts, giving rise to the present appeal are as follows :-

a] The respondent-original claimant Bashirkhan was

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serving as a driver with respondent Sk. Isa and on 21.2.1987 he was carrying oil cakes in the truck bearing registration No.MHV-9594 from Khamgaon to Nandurbar. On way, within the limits of village Parola at about 6.00 am one truck bearing registration No.MWD-2410 coming from the opposite direction in high speed gave dash to the truck of the claimant Bashirkhan by coming to the wrong side of the road. In consequence of which, claimant Bashirkhan had sustained injuries to his left hand, right leg, fracture on his left hand wrist and right leg. He was required to take treatment for 3-4 months in the hospital. He had sustained fractured injuries on his left wrist, which resulted into permanent disablement. He was not in a position to use his hand below wrist. He had to give up his service as driver. He was getting Rs.1,500/- p.m. from respondent Shaikh isa. Thus, the claimant Bashirkhan had approached the Tribunal for grant of compensation under various heads.

b] The driver cum owner of the truck bearing

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registration No.MWD-2410 also died in the said accident. His legal representatives are brought on record.

c] Respondent No.5-Insurer of truck No.MHV-9594 filed written statement and strongly resisted the claim petition with the contention that the accident had taken place mainly on account of the rash and negligent driving of the driver of the truck bearing registration no.MWD-2410.

d] The appellant-insurer of the truck MWD-2410 strongly resisted the claim petition by filing his written statement. It has been contended that there was no negligence on the part of the driver of the truck MWD 2410 and that the accident had taken place on account of rash and negligent driving by claimant Bashir Khan himself.

e] The claimant Bashir Khan adduced oral and documentary evidence in support of his contentions, however, respondents including appellant-insurer have

not adduced any evidence. The learned Member of the Tribunal had partly allowed the claim petition and directed the owner of vehicle bearing registration no.MWD-2410 and its insurer i.e. the appellant to pay compensation of Rs.92,500/- alongwith interest with proportionate costs. Hence, this appeal.

3. The learned counsel for the appellant insurer submits that, this is a case of head on collision between the said two trucks and claimant Bashirkhan was driving the truck bearing registration No.MHV-9594 involved in the accident. Learned counsel submits that, this is a case of composite negligence, however, tribunal has fastened the liability on owner of truck bearing registration No.MWD-2410 and its insurer i.e. the appellant.

4. The learned counsel for respondent/original claimant submits that, the claimant has examined himself before the Tribunal and deposed that after noticing the truck coming from the opposite direction in

speed, he had taken his truck to the left side and gave signal to the driver of the truck bearing registration no.MWD-2410. Even then, the driver of the said truck has not reduced the speed of the truck and given dash to his truck by coming on wrong side of the road. Learned counsel submits that, evidence of the petitioner is consistent with the contents of the spot panchnama exh.38. The appellant-insurer has not examined any witness to substantiate its contention that the claimant was also responsible for the accident and as such, it is a case of composite negligence. The learned Member of the tribunal has therefore, rightly recorded the findings in the affirmative to issue no.1 and thereby held that the accident had taken place on account of the negligence on the part of the driver of the vehicle bearing registration no.MWD-2410 alone and that claimant Bashirkhan had not contributed the negligence in any manner. Learned Member of the Tribunal has awarded just and reasonable compensation. No interference is required.

5. On perusal of the evidence and impugned judgment and Award, it appears that, the claimant has deposed that, after noticing the said truck bearing registration No.MWD-2410, he has taken his truck towards left side of the road and also gave signal to the driver of the said truck, however, the driver of the said truck has not paid any heed to the said signal and given dash to his truck by coming to the wrong side of the road. On careful perusal of the contents of the spot panchnama exh.38, it appears that the truck bearing registration No.MHV-9594 being driven by the claimant Bashirkhan found by the side of the tar road in turtled condition. The claimant Bashirkhan has also deposed that the said truck bearing registration No.MWD-2410 came to the wrong side in high speed and given dash to his truck and in consequence of which, his truck was thrown away from the road and turned turtled. It thus, appears that his evidence is fully corroborated by the contents of the spot panchnama exh.38. Though, the driver side of both the vehicles got damaged in the accident, in the judgment of acquittal Criminal Court

observed that, defence raised by the accused (Bashir Khan) appears to be probable and only because death of driver of other vehicle occurred, no inference about negligence on the part of the claimant Bashir Khan could be inferred. On the basis of evidence on record, the learned Member of the Tribunal has rightly recorded the findings that the accident took place due to rash and negligent driving of the driver of truck bearing registration No.MWD-2410 and that the claimant Bashirkhan has not contributed the negligence.

6. So far as quantum of compensation is concerned, the learned Member of the Tribunal has rightly assessed the future loss of income on account of disablement sustained by the claimant Bashirkhan.

7. In view of the same, I do not find any fault in the judgment and award passed by the Tribunal. No interference is required. There is no substance in the appeal. Hence, following order.

**O R D E R**

- I. First Appeal is hereby dismissed with costs.
- II. Respondent-original claimant is hereby permitted to withdraw the compensation alongwith accrued interest, if any, deposited by the appellant-insurer before this Court or the Tribunal.
- III. Appeal is accordingly disposed of.

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( **V.K. JADHAV, J.**  )

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