

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

FIRST APPEAL NO. 461 OF 2002  
WITH CA/4826/1995 IN FA/461/2002 WITH CA/626/1999 IN FA/461/2002  
WITH CA/625/1999 IN FA/461/2002 WITH CA/2053/2002 IN FA/461/2002  
WITH CA/7726/1995

The Oriental Insurance  
Company Limited,  
Through Branch manager,  
Nanded

...Appellant

versus

1. Sushilabai w/o Ramkishan Waghunde  
Age 29 years, Occ. Household
2. Surekha d/o Ramkishan Waghunde  
Age 9 years,
3. Suwarna d/o Ramkishan Waghunde  
Age 7 years,
4. Vandana d/o Ramkishan Waghunde  
Age 5 years,
5. Dattatraya s/o Ramkishan Waghunde  
Age minor

The claimant Nos. 2 to 5 are u/g  
of claimant No.- the real mother

All R/o. Suvarnakar Nagar,  
Jalna, Tq. and district Jalna

6. Shaikh Jaleel s/o Shaikh Hussain  
Age major, Occ. Business,  
R/o. House No. 1038,  
Sarfraj Nagar, Parbhani  
(owner of tanker No.MUP-9578)
7. Sarfrajkhan s/o Lalkhan  
Age 45 years, Occ. Private service  
R/o. Behind Prabhat Talkies  
Parbhani (deleted)

8. The Inspector General of Police  
Bombay, through Superintendent  
of Police, at Jalna  
(the owner of police Jeep No. MZA 361)
9. The Constable-Driver  
Anil Prasad s/o Bhikaprasad,  
Age major, R/o. Office of  
Superintendent of Police,  
at Jalna

...Respondents

...  
Advocate for Appellant : Mr. Anil A Joshi  
Advocate for Respondents 1to 5 : Mr. R.M. Deshmukh

.....

**CORAM : V. K. JADHAV, J.**  
**DATED : 3<sup>rd</sup> MAY, 2017**

**ORAL JUDGMENT:-**

1. Being aggrieved by the judgment and award dated 20.4.1995 passed by the Member, M.A.C.T. Jalna in M.A.C. No. 37 of 1990 the original respondent No.3 insurer has preferred this appeal.

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

a) The deceased Ramkishan was serving as police constable posted at Asti, Tq. Partur at the relevant time. On 9.12.1989, deceased Ramkishan was travelling in police jeep and one tanker bearing registration No. MUP 9578 came from opposite direction and gave dash to the police jeep. In consequence of which, the deceased Ramkishan had sustained severe injuries and died on the spot.

b) The legal representations of deceased Ramkishan approached the Tribunal by filing M.A.C.P. No. 37 of 1990 for grant of compensation against the owner and insurer of both the vehicles. It has been contended that deceased Ramkishan was getting salary of Rs.1514/- p.m. and claimants were entirely depending upon him.

c) Respondent No.2 owner of the tanker has strongly resisted the claim petition by filing written statement. It has been contended that the accident has taken place due to rash and negligent driving of the police jeep and driver of the tanker is not responsible for the accident.

d) The appellant/insurer has also resisted the claim petition by filing written statement. It has been contended that the accident taken place on account of negligence on the part of the driver of the police jeep. In the alternate the appellant/insurer has raised a plea of contributory negligence. It has been specifically contended that there is negligence of 75% on the part of driver of police jeep whereas the driver of tanker is liable to the extent of 25%.

e) The respondent No.4 has strongly resisted the claim by filing written statement. It has been contended that the driver of the police jeep was not responsible of the accident and the tanker driver alone is reasonable for the accident.

f) The claimants led oral as well as documentary evidence in support of their contentions. The respondent No.4 has examined driver of the police jeep.

g) The learned Member of the Tribunal has partly allowed the claim petition and thereby directed the respondents to pay compensation of Rs.2,50,000/- to the claimants. The Tribunal has also directed the respondent Nos. 1 and 3 to contribute the share of 50% and respondent Nos. 4 and 5 to contribute 50% share of compensation.

h) Being aggrieved by the same, the appellant/insurer has preferred this appeal to the extent of negligence and quantum of compensation.

3. Learned counsel for the appellant insurer submits that the Tribunal has not considered oral and documentary evidence in its proper perspectives and erroneously held that both the vehicles are equally responsible for the accident. Learned counsel submits that the documentary evidence produced on record, unmistakably points out that the driver of police jeep was responsible for the accident and tanker driver is not responsible for the accident. Learned counsel submits that the Tribunal has awarded exorbitant amount of compensation.

4. Learned counsel for the respondents/original claimants submits that the Tribunal has awarded just and reasonable compensation and

on the basis of oral and documentary evidence has rightly directed the respondents to pay compensation in equal share to the claimants. There is no substance in the appeal and the appeal is thus liable to be dismissed.

5. On careful perusal of evidence and the judgment and award passed by the Tribunal, it appears that the police jeep driver Anil has stated on oath that he was driving his vehicle in moderate speed. There was no considerable damage to the police jeep in the accident as small portion of rear side of the police jeep was damaged to some extent. From his evidence, it appears that the tanker has given dash to the police jeep on rear side. Though this witness has denied that he drove the jeep in negligent manner and in high speed and gave dash to the tanker, however, from the police documents, it appears that drivers of both the vehicles, involved in the accident, are responsible for the accident. The road at the spot of accident was straight and plain and there was no reason for the drivers of both the vehicles to drive in such manner to cause the accident. The learned Member of the Tribunal has rightly held that both the drivers of the vehicles involved in the accident are equally responsible for the accident. I do not find any fault in the findings recorded by the Tribunal to that effect.

6. So far as the quantum of compensation is concerned, deceased Ramkishan was getting salary of Rs.1514/- per month and he was 32

years of old at the time of accident. Though the learned Member of the Tribunal has not awarded compensation by applying the multiplier method, it appears that the Tribunal has awarded just and reasonable compensation. No interference is required. There is no merit in the appeal. The appeal is hereby dismissed with costs. The appeal is accordingly disposed of.

7. As per the order passed by this Court, the amount deposited by the appellant/insurer has been transferred to the Tribunal. The respondents/claimants are permitted to withdraw the said amount before the Tribunal alongwith accrued interest.

8. Pending civil applications are also disposed of.

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

rlj/