

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

FIRST APPEAL NO. 702 OF 2003

Tatia Credit Corporation,
M.G.Road, Chopada, District-Jalgaon,
Through its Partner:
Shri Suresh Anandraj Jain,
Age: Major, Occu: Business,
R/o Jalgaon (Tempo Owner)

... APPELLANT
(Original Respondent No.1)

VERSUS

- 1) Bakubai w/o Kisan Pawar,
Age: Major, Occu: Household,
R/o Khandala, Tq. Vaijapur,
District – Aurangabad.
- 2) Popat s/o Kisan Pawar,
Age: about 33 yrs, Occu: Agril.,
R/o. as above.
- 3) Balu s/o Kisan Pawar,
Age: about 28 yrs, Occu: Agril.,
R/o. as above.
- 4) Vilas s/o Kisan Pawar,
Age: about 28 yrs, Occu: Agril.,
R/o. as above.
- 5) Ramesh s/o Pandurang Bodkhe,
Age: Major, Occu: Truck Owner,
R/o. At Post Bhoraj, Tq. Jafrabad,
District – Jalna (Truck Owner).
- 6) Ratan s/o Namdeo Telange,
Age: about 33 yrs, Occu: Driver,
R/o. Bharoj, Tq. Jafrabad,
District – Jalna.

- 7) Oriental Insurance Company Ltd.,
Jalgaon, through its Manager.
- 8) United India Insurance Company,
Aurangabad.

... RESPONDENTS

(Resp.Nos.1 to 4 are Claimants: and
Rest Resp. are org. Respondents)

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Mr. A. P. Bhandari, Advocate for Appellant.

Mr. V. B. Garud, Advocate for Respondent Nos.1 to 4.

Mr. Rupesh Bora, h/f Mr. P. P. Bafna, Advocate for Respondent No.7.

Mr. S. V. Kulkarni, Advocate for Respondent No.8.

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

DATE : 04th May, 2017.

ORAL JUDGMENT:

. Being aggrieved by the judgment and award passed by the learned Member of the Motor Accident Claims Tribunal, Aurangabad dated 25th September, 1995 in MACP No.250 of 1992, original Respondent No.1 (Tempo Owner) has preferred this appeal.

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

- a) Deceased Kisan was travelling by a tempo bearing registration No.MH-19-2148. The said tempo was proceeding towards Vaijapur. On way,

the said tempo collided with one truck bearing registration No.MCB-8833 coming from the opposite direction. In consequence of which, three persons died including the driver of the tempo. The legal representatives of deceased Kisan have filed MACP No.250 of 1992 for grant of compensation under the various heads. It has been contended that deceased Kisan was 45 years of age at the time of his accidental death. He was cultivating his agricultural land and he was also doing the labour work in the lands of others.

- b) Appellant / owner of the tempo has strongly resisted the claim by filing the written statement. It has been contended that the said tempo has been sold to one Ranganath Jagannath Borde on 16th April, 1991 i.e. prior to the accident. It has also been contended that the vehicle was insured with Respondent / Oriental Insurance Company and as such, the Appellant / owner is not liable to pay the compensation. The other Respondents excluding

the Insurer of the vehicle tempo also resisted the claim petition by raising the appropriate defence. However, the Respondent / Insurer of the vehicle tempo has raised the defence that the vehicle tempo involved in the accident is not at all insured with it and as such, Respondent / Insurer is not liable to pay the compensation.

- c) The learned Member of the Tribunal vide its impugned judgment and award directed Respondent No.1 (Appellant herein) to pay Rs.26,000/- alongwith interest at the rate of 12% per annum from the date of filing of the claim petition till realization and further directed Respondent Nos.2, 3 and 6 to pay jointly and severally an amount of Rs.39,000/- alongwith the same rate of interest. Hence, this appeal.

3 The learned counsel for Appellant submits that the learned Member of Tribunal has erroneously considered the contributory negligence on the part of the driver of tempo. In fact, the

driver of the truck was entirely responsible for the accident. The learned counsel submits that the Tribunal has erroneously considered the percentage of the negligence inter-se between drivers of two vehicles at 40% x 60%. The learned counsel submits that the Tribunal has awarded the interest at the rate of 12% instead of 6% and the same may be corrected.

4 The learned counsel for Respondents / Claimants submits that the Tribunal has awarded just and reasonable compensation and considering the evidence on record rightly fixed the inter-se liability on the Respondents. No interference is required.

5 The learned counsel for Respondent / Insurer submits that the Tribunal has awarded just and reasonable compensation and fixed the liability on the owners of the vehicles as per the evidence on record. No interference is required.

6 On perusal of the evidence and the judgment and award passed by the Tribunal, it appears that the Tribunal has rightly considered the negligence on the part of the drivers of both the vehicles involved in the accident to the extent of 40% on the part of the driver of the tempo and 60% on the part of the owner of the truck.

I do not find any fault in the findings recorded by the Tribunal and as such, no interference is required in that.

7 So far as the rate of interest as awarded by the Tribunal, it appears that the Tribunal has awarded the compensation with excessive rate of interest. The learned counsel for Respondents / Claimants has pointed out that other joint tort-feasor has already deposited the amount alongwith interest at the rate of 12% and if the order is modified to that extent, the Claimants will have to refund the amount. Considering the entire evidence on record and the fact that the other joint tort-feasor has already deposited the amount alongwith interest at the rate as awarded by the Tribunal, the Appellant shall pay the interest at the rate as awarded by the Tribunal from the date of application till the judgment and award passed by the Tribunal and thereafter, at the rate of 6% per annum till realization of the entire amount. Hence, the following order.

ORDER

- I. The appeal is, hereby partly allowed. No costs.
- II. The judgment and award passed by the learned
Member of the Motor Accident Claims Tribunal,

Aurangabad dated 25th September, 1995 in MACP No.250 of 1992, is hereby modified in the following manner:

“Respondent No.1 shall deposit an amount of Rs.26,000/- (Rupees Twenty-Six Thousand Only) alongwith interest at the rate as awarded by the Tribunal from the date of application till the judgment and award passed by the Tribunal and thereafter, at the rate of 6% per annum till realization of the entire amount.”

- III. Rest of the judgment and award stands confirmed.
- IV. Award be drawn up as per the above modification.
- V. If any amount is deposited by the Appellant in terms of the judgment and award passed by the Tribunal, the same shall be the part of the judgment and award after modification.
- VI. The appeal is accordingly disposed of.

[V. K. JADHAV, J.]