

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

FIRST APPEAL NO. 1541 OF 2007

Oriental Insurance Co. Ltd.
Divisional Office, 442 West
Mangalwar Peth, Solapur, through
its Authorised Signatory,
Mr. Akhtar s/o Abbas Halari,
Age 54 yrs, Occ. Service, Div. Manager,
Oriental Insurance Co. Ltd.
R/o Aurangabad.

... APPELLANT
(Orig. Resp. No.4)

VERSUS

1. Shamrao Baburao Dikale,
Age 59 yrs, Occ. Agri / Business,
R/o. Tandulwadi, Tq. Kallam,
Dist. Osmanabad.

Orig. Claimant.

2. Rajendra Rupchand Malpani,
Age 55 yrs, Occ. Business,
R/o Shantiniketan Colony,
Near S. T. Depot, Latur.

3. Sharnny Parmeshwar Swami,
Age 53 yrs, Occ. Pvt. Service,
R/o Kothali, Tq. Omerga,
Dist. Osmanabad.

4. National Insurance Co. Ltd.
Shivaji Chowk, Latur.

... RESPONDENTS
(Orig. Claimant and Resp. 1 to 3)

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Mr. Dhananjay Deshpande, Advocate for Appellant.

Mr. V. D. Sapkal, Advocate for Respondent No.1.

None present for Respondent No.2.

Mr. Rupesh Bora, Adv. h/f Mr. P. P. Fafna, Advocate for Respondent No.4.

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WITH

**CROSS OBJECTION (STAMP) NO. 8669 OF 2008
IN
FIRST APPEAL NO. 1541 OF 2007**

Shamrao Baburao Dikale,
Age 58 yrs, Occ. Agri / Business,
R/o. Tandulwadi, Tq. Kallam,
Dist. Osmanabad.

... APPELLANT
(Orig. Claimant)

VERSUS

1. Rajendra Rupchand Malpani,
Age: Major, Occu: Business,
R/o Shantiniketan Colony,
Near S. T. Depot, Latur.
2. Sharnnya Parmeshwar Swami,
Age: Major, Occu: Private Service,
R/o Kothali, Tq. Omerga,
Dist. Osmanabad.
3. National Insurance Co. Ltd.,
Shivaji Chowk, Latur.
4. Oriental Insurance Co. Ltd.
Division Office, 442 West
Mangalwar Peth, Solapur

... RESPONDENTS

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

DATE : 06th July, 2017.

ORAL JUDGMENT:

. Being aggrieved by the judgment and award passed by the learned Chairman of the Motor Accident Claims Tribunal, Osmanabad dated 27th December, 2006 in MACP No.130 of 1996, original Respondent No.4 / oriental insurance company has preferred this appeal.

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

- a) Respondent No.1 / original Claimant claims to be the owner of Taxi Car No.MH-25/9030. On 4th June, 1995, he was driving the said car on Osmanabad to Kallam road in slow speed from correct left side of the road. At the relevant time, one tractor bearing registration No.MHZ-8754 coming from the opposite direction, gave dash to the said car. In consequence of which, the occupants of the car as well as Respondent No.1 / Claimant sustained the injuries and also the

said car was totally damaged in the accident.

The said car is insured with the present Appellant. Respondent / original Claimant has approached to the Tribunal by filing MACP No.130 of 1996 for grant of compensation for the damage caused to the car. It has been contended in the claim petition that Respondent / original Claimant had purchased the said car in the year 1994 for Rs.3,00,000/- and it was comprehensively insured with the present Appellant. Respondent No.1 / original Claimant has also sustained loss of earning because of total damage to the car. The loss of income is about Rs.1,00,000/-. Thus, Respondent / original Claimant is entitled to the damage of Rs.4,00,000/- including the price of the car. According to the Respondent / original Claimant all the Respondents including the present Appellant are liable to pay the compensation jointly and severally.

- b) Original Respondent No.1 / owner of the tractor failed to appear and contest the claim petition. Respondent No.2 / driver of the tractor also failed to contest the claim petition.
- c) Original Respondent No.3 / Insurer of the tractor has strongly resisted the claim petition by filing written statement. It has been contended that the driver of the car is solely responsible for the accident and the driver of the tractor is not responsible for the accident. It has also been contended that the tractor attached to the trolley was used for commercial purpose and as such, there has been breach of the specified conditions of the policy.
- d) The Appellant / Insurer has also strongly resisted the claim petition by filing written statement. It has been contended that the driver of the car was not having valid and effective driving licence to drive the car and as such, there has been breach

of policy conditions. It has been contended that the accident occurred because of the fault of the car driver and as such, the Claimant is not entitled to claim the damages.

- e) Original Claimant has adduced the evidence in support of his contentions. The Respondents including the present Appellants have not adduced any evidence. The learned Chairman of the Motor Accident Claims Tribunal, Osmanabad vide its impugned judgment and award dated 27th December, 2006 in MACP No.130 of 1996 partly allowed the claim petition and thereby directed the original Respondent Nos.1 to 3 to pay half of the amount of damages whereas the Appellant is directed to pay remaining half of the amount of damages. Respondent No.3 / Insurer of the tractor further held to be entitled to recover from original Respondent No.1 the amount required to be paid to the Claimant / Petitioner. Hence, this appeal.

3 The learned counsel for Appellant / Insurer submits that the Tribunal has no jurisdiction to decide the own damage claim. The learned counsel submits that the Tribunal has recorded the finding about the contributory negligence and further held that the drivers of both the vehicles are equally responsible for the accident. The learned counsel submits that if the driver of the car is held to be equally responsible for the accident, then the Appellant, which is the Insurer of the car, is not liable to pay any compensation to that extent and the owner / driver of the other vehicle i.e. tractor and its Insurer are at the most liable to pay the compensation. The learned counsel submits that OD claim filed by the Respondent / original Claimant came to be dismissed by the Appellant / Insurer way back in the year 2007 itself.

4 The learned counsel for Respondent / original Claimant submits that the said car was insured by the Appellant under the comprehensive policy and as such, the Tribunal has rightly directed the Appellant to pay the compensation to the extent of the share as determined by the Tribunal. The learned counsel submits that in the alternative, Respondent No.1 / original Claimant may be granted a

liberty to approach the Consumer Forum in case the OD claim is not settled by the Appellant / Insurer. The learned counsel submits that though the Claimant has claimed the compensation to the tune of Rs.4,00,000/-, the Tribunal has awarded the compensation to the extent of Rs.2,50,000/- only. The learned counsel submits that the entire car was damaged in the accident and further the Claimant has also lost his earnings due to the damage caused to the car and as such, the Claimant is entitled for the entire amount of compensation as claimed.

5 None present for Respondent Nos.2 and 3.

6 The learned counsel for Respondent No.4 / Insurer of the tractor submits that considering the depreciation in the costs of car, the Tribunal has rightly assessed the value of the car at the time of accident approximately at Rs.2,50,000/-. Since the car was totally damaged and it was beyond repairs, the Tribunal has considered the said damage equal to the value of the car. The Claimant has failed to adduce any evidence to the satisfaction of the Tribunal that his car was kept idle for 11 months after the accident.

7 On careful perusal of the pleadings, evidence and the judgment and award passed by the Tribunal, it appears that the Tribunal has recorded the finding in the affirmative to issue No.1 and held that because of the rash and negligent driving of the driver of tractor, the car was damaged. However, in the body of the judgment, the Tribunal has discussed the evidence and recorded the finding that the drivers of both the vehicles involved in the accident, contributed the negligence equally and as such, they are liable to pay the compensation equally. The learned counsel appearing for parties have also not disputed that the Tribunal has recorded the finding of contributory negligence and thereby held that the drivers of both the vehicles are equally responsible for the accident. In these circumstances, so far as the claim on account of the damages caused to the car is concerned, Respondent / original Claimant is not entitled to claim the compensation to the extent of his contribution in the accident and the approach of the Tribunal is improper, incorrect and illegal in directing the Appellant / Insurer alone to pay the compensation to the extent of 50%. So far as the order passed against Respondent Nos.1 to 3 to pay half of the amount of damages, the same is not under challenge in this appeal and as such, the

judgment and award passed by the Tribunal to the extent directing the present Appellant to pay the remaining half of the amount of damages is not sustainable in the eyes of law and the same is thus, liable to be quashed and set aside. Even it appears from the common judgment and award passed by the learned Member of the Motor Accident Claims Tribunal, Osmanabad in MACP No.239 of 1995 and MACP No.176 of 1996 arises out of the said accident that the Tribunal has recorded the finding in the affirmative and fastened the entire liability on the driver and owner of the tractor its Insurer. In the instant case, the Tribunal has recorded the finding holding thereby both the drivers responsible for the accident equally. Any way, the Appellant / Insurer of the car is not liable to pay the compensation so far as own damage to the car is concerned.

8 So far as the quantum of compensation is concerned, I do not find any fault in the observations made by the Tribunal. The Tribunal has awarded the compensation in respect of the damage to the car equivalent to the value of the car after considering the depreciation. Further, the Tribunal has also not deducted the salvage value. In the circumstances, I do not find any fault in the impugned judgment and award passed by the Tribunal to the extent of

determination of the compensation. There is no merit in the cross-objection. The cross-objection is liable to be dismissed. So far as liberty claimed by the Respondent / Claimant is concerned, the same cannot be granted since the Appellant / Insurer has already dismissed the OD claim in the year 2007 itself. Hence, the following order:

ORDER

- I. The appeal is hereby partly allowed. No costs.
- II. The judgment and award passed by the learned Chairman of the Motor Accident Claims Tribunal, Osmanabad dated 27th December, 2006 in MACP No.130 of 1996, is hereby quashed and set aside to the extent directing Respondent No.4 / Insurance Company (present Appellant) to pay the remaining half of the amount of damages. Motor Accident Claims Petition No.130 of 1996 is hereby dismissed as against Respondent No.4 / oriental insurance company limited
- III. Statutory amount if deposited, be refunded to the Appellant / Insurer

IV. Award be drawn up accordingly.

V. The cross-objection is hereby dismissed. No costs.

VI. The appeal and the cross-objection are accordingly disposed of.

[V. K. JADHAV, J.]

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