

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

**FIRST APPEAL NO.4139 OF 2016**

Vilas s/o. Babaji Raut,  
Age: 29 years, Occu.: Nil,  
R/o. Takarwadi, Tq. Majalgaon,  
Dist. Beed

= **APPELLANT**  
**(Orig. Claimant)**

**VERSUS**

- 1) Masuram S/o. Baburao Roman  
Age: Major, Occu.: Agri.,  
R/o. Wadwani, Tq. Wadwani,  
Dist. Beed,
- 2) Kisan S/o. Hanumant Shinde,  
Age: Major, Occu.: Driver,  
R/o. Wadwani, Tq. Wadwani,  
Dist.: Beed,
- 3) Oriental Insurance Company Ltd.,  
Mathura Complex, Ist Floor,  
Hotel Shantai, Beneath Kohinoor  
Technical, Jalna Road, Beed,  
Tq. & Dist. Beed.

= **RESPONDENTS**  
**(Orig. Respondents)**

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Mr. Pramod C. Mayure, Advocate for Appellant;  
Mr. Uday S. Malte, Advocate for Respondent No.3;  
Mr. Mandar Deshmukh, Advocate h/f. Mr. P.N.  
Mule, Advocate for respondent Nos. 1 and 2.

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CORAM : P.R. BORA, J.  
Dated: June 27, 2017

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**ORAL JUDGMENT :**

1. Heard Shri P.C.Mayure, learned Counsel appearing for the appellant, Shri Mandar Deshmukh, learned Counsel, holding for Shri P.N.Mule, learned Counsel for respondent nos. 1 and 2 and Mr. Uday S.Malte, learned Counsel for respondent

No.3 - Insurance Company.

2. Shri P.C.Mayure, learned Counsel appearing for the appellant, submitted that the appellant is pressing only one ground that the Tribunal has wrongly held that the owner and insurer of the tractor are liable to pay 50 per cent of the amount of compensation found payable to the appellant for the reason that the appellant did not make party to the owner and insurer of the another vehicle i.e. Rickshaw involved in the accident. Learned Counsel, placing reliance on the judgment of the Honourable Apex Court in the case of Pawan Kumar Vs. M/s Harkishan Dass Mohan Lal ( **(2014) 3 SCC 590**), submitted that the finding so recorded by the Tribunal is apparently unsustainable. Learned Counsel invited my attention to paragraph no.6 of the said judgment and submitted that in view of the law laid down by the Honourable Apex Court in the said judgment, the appeal deserves to be allowed and the entire amount of compensation as was determined by the Tribunal found payable to the present appellant shall be made payable by respondent nos. 1 to 3 jointly and severally.

3. Shri Mandar Deshmukh, learned Counsel, holding for Shri P.N.Mule, learned Counsel for respondent no.1, has supported the impugned judgment and award. Shri Uday S. Malte, learned Counsel appearing for respondent no.3 Insurance Company also supported the impugned judgment and award. Learned Counsel submitted that in view of the finding recorded by the Tribunal that in occurrence of the alleged accident, negligence on the part of drivers of both the vehicles was in equal proportion, the Tribunal was right in holding that the appellant is entitled only for 50 per cent of the

amount of compensation found payable to the appellant from the owner and insurer of the Tractor. Learned Counsel submitted that no interference is required in the impugned judgment and award. Learned Counsel further prayed that in the event Court reaches to the conclusion that the owner and insurer of the tractor are liable to pay the entire amount of compensation to the appellant claimant, liberty may be given to Insurance Company to proceed against the owner and insurer of another vehicle involved in the alleged accident.

4. I have carefully considered the submissions made by learned Counsel appearing for the respective parties. It is not in dispute that the auto rickshaw bearing registration No.MH-23/H-8756 and the tractor bearing registration No.MH-44/D-7181 were involved in the alleged accident. It is further not in dispute that the appellant was travelling through the said auto rickshaw. It is further not in dispute that the auto rickshaw and the tractor collided with each other and in the accident so happened the appellant received certain injuries and also incurred permanent disability to the extent of 40 per cent. It is further not in dispute that the appellant had filed the claim petition only against the Driver, owner and insurer of the tractor involved in the alleged accident. The learned Tribunal has, on all other issues, recorded findings in favour of the appellant. Perusal of the impugned judgment shows that the Tribunal has also assessed the amount of compensation payable to the appellant claimant. The Tribunal has held the claimant entitled for the total compensation of Rs.6,71,756/-. Perusal of the judgment shows that after having assessed the entire evidence adduced on record by the appellant as about expenditure incurred by him, loss of future income and the

pains suffered by him, Tribunal has determined the aforesaid amount of compensation. However, in the subsequent part, the Tribunal recorded a further finding that since the appellant did not make party to the driver, owner and insurer of the auto rickshaw which was involved in the accident, he was entitled to the compensation only to the extent of 50 per cent i.e. in proportion to the negligence of the driver of the tractor involved in the alleged accident and has, therefore, awarded the compensation to the extent of 50 per cent as was determined by it.

5. Similar controversy was at issue in the matter before the Honourable Apex Court in the case of Pawan Kumar Vs. M/s Harkishan Dass Mohan Lal (cited supra). While deciding the said controversy, the Honourable Apex Court in paragraph nos. 5 and 6, of its judgment, has made following observations:

"5. Where the plaintiff/claimant himself is found to be a party to the negligence the question of joint and several liability cannot arise and the plaintiff's claim to the extent of his own negligence, as may be quantified, will have to be severed. In such a situation the plaintiff can only be held entitled to such part of damages/compensation that is not attributable to his own negligence. The above principle has been explained in T.O. Anthony (supra) followed in K. Hemlatha & Ors. (supra). Paras 6 and 7 of T.O. Anthony (supra) which are relevant may be extracted hereinbelow:

"6. "Composite negligence" refers to the negligence on the part of two or more persons. Where a person is injured as a result of negligence on the part of two or more wrongdoers, it is said that the person was injured on account of the composite negligence of those wrongdoers. In such a case, each wrongdoer is jointly and severally liable to the injured for payment of the entire damages and the injured person has the choice of proceeding against all or any of them. In such a case, the injured need not establish the extent of responsibility of each

wrongdoer separately, nor is it necessary for the court to determine the extent of liability of each wrongdoer separately. On the other hand where a person suffers injury, partly due to the negligence on the part of another person or persons, and partly as a result of his own negligence, then the negligence on the part of the injured which contributed to the accident is referred to as his contributory negligence. Where the injured is guilty of some negligence, his claim for damages is not defeated merely by reason of the negligence on his part but the damages recoverable by him in respect of the injuries stand reduced in proportion to his contributory negligence.

7. Therefore, when two vehicles are involved in an accident, and one of the drivers claims compensation from the other driver alleging negligence, and the other driver denies negligence or claims that the injured claimant himself was negligent, then it becomes necessary to consider whether the injured claimant was negligent and if so, whether he was solely or partly responsible for the accident and the extent of his responsibility, that is, his contributory negligence. Therefore where the injured is himself partly liable, the principle of "composite negligence" will not apply nor can there be an automatic inference that the negligence was 50:50 as has been assumed in this case. The Tribunal ought to have examined the extent of contributory negligence of the appellant and thereby avoided confusion between composite negligence and contributory negligence. The High Court has failed to correct the said error."

6. In the present case, neither the driver/owner nor the insurer has filed any appeal or cross objection against the findings of the High Court that both the vehicles were responsible for the accident. In the absence of any challenge to the aforesaid part of the order of the High Court, we ought to proceed in the matter by accepting the said finding of the High Court. From the discussions that have preceded, it is clear that the High Court was not correct in apportioning the liability for the accident between drivers/owners of the two vehicles. "

In view of the law laid down by the Honourable Apex Court, there remains no doubt that the Tribunal has apparently erred

in not awarding the entire amount of compensation which was found payable to the claimant on the ground that the appellant did not make party to the driver, owner and insurer of the offending vehicle. In case of composite negligence, it was the choice of the appellant, as has been held by the Honourable Apex Court, to proceed either against the owner and insurer of both the vehicles or anyone of the vehicles involved in the accident. As has been held by the Honourable Apex Court, since liability to pay the compensation was joint and several, the appellant may proceed against anyone of the joint tortfeasors. In view of the law laid down by the Honourable Apex Court, the finding recorded by the Tribunal cannot be sustained and deserves to be set aside and quashed.

6. In so far as the point raised by Shri Malte, learned Counsel appearing for the Insurance Company, it has to be stated that it may not fall within the scope of present appeal.

7. For the reasons stated above, the following order is passed:

#### ORDER

1. Respondent nos. 1 to 3 are jointly and severally held liable to pay to the appellant the entire amount of compensation of Rs.6,71,756/- as determined by the Tribunal with interest thereon at the rate of 9 per cent per annum from the date of filing of the petition till realization. The award be drawn accordingly.

The First Appeal (No.4139/2016) stands allowed in aforesaid terms.

**( P.R. BORA, J. )**