IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.195 OF 2014

1. Smt. Sangeeta w/o. Suresh Sarode,
   Age: 31 years, Occu.:Household

2. Kiran S/o. Suresh Sarode,
   Age: 13 years, Occu.:Education

3. Monali D/o. Suresh Sarode,
   Age: 10 years, Occ.: Education

4. Namrata D/o. Suresh Sarode,
   Age: 6 years, Occu.:Education

   (Appellant Nos. 2 to 4 being
   minors under guardianship of
   Appellant No.1, mother)

5. Gangubai W/o. Trimbak Sarode,
   Age: 58 years, Occu.: Household,

6. Trimbak S/o. Punjaji Sarode,
   Age: 61 years, Occu.: Nil

   All R/o. Wasai, Taluka Sillod,
   Dist. Aurangabad.

= **APPELLANTS**
(Orig. Applicants)

VERSUS

1. Vitthal Digambar Jadhav
   Age: Major, Occu.: Business,
   R/o. Surewadi, Harsul,
   Aurangabad.

2. Rahul S/o. Hiralal Sure,
   Age: Major, Occu.: Driver,

R/o. Surewadi, Harsul,
Aurangabad.

3. ICICI Lombard General Insurance
Company Limited,
Through its Divisional Manager,
Divisional Officer at Adalat Road,
Aurangabad.

4. Yeduba S/o. Hari Jarare,
Age: Major, occu.: Owner
R/o. Wasai, Taluka Sillod,
Dist. Aurangabad.

5. Sanjay Bhaurao Sapkal
Age: Major, Occu.: Driver,
R/o. Wasai, Taluka Sillod,
Dist. Aurangabad.

6. United India Insurance Co.Ltd.
Through its Divisional Manager,
House No.5-5-76, V.P. Chowk,
New Osmanpura, Aurangabad.

= **RESPONDENTS**
(Orig. Respondent
Nos. 1 to 6)

***

Mr. Mundada Aniket V., Advocate for appellants;
Mr. A.R. Vyawahare, Advocate for respondent nos. 1 & 2;
Mr. V.N. Upadhye, Advocate for respondent No.3;
Mr. R.R. Karpe, Advocate for respondent no.4;
Mr. S.S. Rathi, Advocate for respondent No.6.

***

WITH

FIRST APPEAL NO.355 OF 2014

United India Assurance Company Ltd.,
through its Deputy Manager TP Cell,

Shri. Bhaurao S/o. Rambhau Kankal
Age: 57 years, Occu.: Service,
R/o. Divisional office-I,
United India Insurance Co., Ltd.,
Osmanpura, Aurangabad. = **APPELLANT**
(Orig. Respondent No.6)

VERSUS

1. Sangeeta W/o. Suresh Sarode
Age: 31 years, Occu.: Household,
R/o. Wasai, Tq. Sillod,
Dist. Aurangabad.

2. Kiran S/o. Suresh Sarode,
Age: 13 years, Occu.:Student,
R/o. As above,

3. Monali d/o. Suresh Sarode,
Age: 10 years, Occu.: Student,
R/o. As above,

4. Namrata d/o. Suresh Sarode,
Age: 6 years, Occu.: Student,
r/o as above.
(No.2 to 4 being minor through
their natural guardian i.e. mother
Respondent No.1)

5. Gangubai w/o. Trimbak Sarode
Age: 57 years, Occu.: Household,
R/o. As above,

6. Trimbak S/o. Paraji Sarode,
Age: 61 years, Occu.: Nil,
R/o. As above, **Ori. Claimants**

7. Vitthal S/o. Digambar Jadhav
Age: Major, Occu.: Business,
R/o. Surewadi, Harsul,
Aurangabad.

8. Rahul S/o. Hiralal Sure,
Age: Major, Occu: Driver,

R/o. Surewadi, harsul
Aurangabad.

9. ICICI Lombard General Insurance Co.,
Through its Divisional Manager,
Divisional Officer,
Adalat Road, Aurangabad.

10. Yeduba s/o. Hari Jarare,
Age: Major, Occu.: Owner,
R/o. Wasai, Tq. Sillod,
Dist. Aurangabad.

11. Sanjay s/o. Bhaurao Sapkal,
Age: Major, Occu.:Driver,
R/o. As above, **RESPONDENTS**

***

Mr. Swapnil S. Rathi, Advocate for appellant;
Mr. A.V. Mundada, Advocate for respondent nos. 1 to 6;
Mr. V.N. Upadhye, Advocate for respondent no. 9

***

WITH

FIRST APPEAL NO.335 OF 2014

United India Assuarance Company Ltd.,
Through its Deputy Manager TP Cell,
Shri. Bhaurao S/o. Rambhau Kankal
Age: 57 years, Occu.: Service,
R/o. Divisional Office-I,
United India Insurance Co., Ltd.,
Osmanpura, Aurangabad.

= **APPELLANT**
(Orig. Respondent No.6)

VERSUS

1. Dnyaneshwar Ramesh Misal
Age: 14 years, Occu.: Student,
Being minor U/g of his mother
Sumanbai Ramesh Misal
Age: 39 years, occ.: Household,
R/o. Wasai, Tq. Sillod,
Dist. Aurangabad. **Ori. Claimant**

2. Sanjay s/o. Bhaurao Sapkal
Age: Major, Occu.:Driver,
R/o. As above,

3. Yeduba s/o. Hari Jarare
Age: Major, Occ.: Owner,
R/o. Wasai, Tq. Sillod,
Dist. Aurangabad.

4. Rahul Hiralal Sure,
Age: Major, occ.: Driver,
R/o. Surewadi, Harsul,
Aurangabad.

5. Vitthal Digambar Jadhav,
Age: Major, Occu.: Driver,
R/o. As Above,

6. ICICI Lombard General Insurance Co.,
Through its Divisional Manager,
Divisional officer,
Adalat Road, Aurangabad. **RESPONDENTS**

***

Mr. Swapnil S. Rathi, Advocate for appellant;

Mr. R.R. Karpe, Advocate for respondent No.3

Mr. A.R. Vyavhare, Advocate for respondent Nos. 4 & 5

Mr. Abhijit Choudhari, Advocate for respondent No.6

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WITH
FIRST APPEAL NO.336 OF 2014

United India Assurance Company Ltd.,
Through its Deputy manager TP Cell,
Shri. Bhaurao S/o. Rambhau Kankal
Age: 57 years, Occ: Service,
R/o. Divisional Office-I,
United India Insurance Co., Ltd.,
Osmanpura, Aurangabad. = **APPELLANT**
(Orig. Respondent No.3)

VERSUS

1. Rajaram Rangnath Shelke
Age: 53 years, Occu: Agril,
R/o. Vasai, Tq. Sillod,
Dist. Aurangabad. **Ori. Claimant**

2. Sanjay s/o. Bhaurao Sapkal
Age: Major, Occu.: Driver,
R/o. As above,

3. Yeduba s/o. Hari Jarare
Age: Major, Occ.: Owner,
R/o. Wasai, Tq. Sillod,
Dist. Aurangabad.

4. Rahul S/o. Hiralal Sure,
Age: Major, Occu.: Driver,
R/o. Surewadi, Harsul,
Aurangabad.

5. Vitthal Digambar Jadhav
Age: Major, Occu.:Driver,
R/o. As above,

6. ICICI Lombard General Insurance Co.,
Through its Divisional Manager,
Divisional Officer,
Adalat Road, Aurangabad. **RESPONDENTS**

***

Mr. Swapnil S. Rathi, Advocate for appellant;
Mr. Sunil Hiware, Advocate for respondent no.1
Mr. R.R. Karpe, Advocate for respondent no.3
Mr. A.R. Vyawhare, Advocate for respondent nos. 4 & 5
Mr. Abhijit Choudhari, Advocate for respondent no.6

***

WITH
FIRST APPEAL NO.350 OF 2014

United India Assurance Company Ltd.,
Through its Deputy Manager TP Cell,
Shri. Bhaurao S/o. Rambhau Kankal,
Age: 57 years, Occu.: Service,
R/o. Divisional Office-I,
United India Insurance Co., Ltd.
Osmanpura, Aurangabad. **APPELLANT**
(Ori. Resp. No.6)

VERSUS

1. Narayan Rama Pandit,
Age: 57 years, Occu.: Nil,
R/o. Wasai, Po. Halda,
Tq. Sillod, Dist. Aurangabad.

2. Anusayabai Narayan Pandit,
Age: 53 years, Occu.: Household,
R/o. As above, **Ori. Claimants**

3. Rahul S/o. Hiralal Sure,
Age: Major, Occu.: Driver,
R/o. Surewadi, harsul,
Aurangabad.

4. Vitthal S/o. Digambar Jadhav,
Age: Major, Occ.: Business,
R/o. Surewadi, Harsul,
Aurangabad.

5. ICICI Lombard General Insurance Co.,

Through its Divisional Manager,
Divisional Office,
Adalat Road, Aurangabad.

6. Sanjay S/o. Bhaurao Sapkal,
Age: Major, Occu.:Driver,
R/o. As above,

7. Yeduba S/o. Hari Jarare,
Age: Major, Occu.:Owner,
R/o. Wasai, Tq. Sillod,
Dist. Aurangabad. **RESPONDENTS**

***

Mr. Swapnil S. Rathi, Advocate for appellant;
Mr. R.V. Gore & Mr. S.K. Hiwale, Advocate for Respondent nos. 1 & 2
Mr. A.R. Vyawhare, Advocate for respondent nos. 3 & 4;
Mr. Abhijit Choudhary, Advocate for respondent no.5;
Mr. R.R. Karpe, Advocate for respondent no.7

***

WITH
FIRST APPEAL No.354 OF 2014

United India Assurance Company Ltd.,
Through its Deputy Manager TP Cell,
Shri Bhaurao S/o. Rambhau Kankal
Age: 57 years, Occu.: Service,
R/o. Divisional Office-I,
United India Insurance Co., Ltd,
Osmanpura, Aurangabad. **APPELLANT**
(Ori. Resp. No. 6)

VERSUS

1. Rekha Raju Suradkar,
Age: 33 years, Occu.: Household,
R/o. Wangi, Tq. Sillod,

Dist. Aurangabad.

2. Jaishree Raju Suradkar,
Age: 13 years, Occu.: Student,
R/o. As above,

3. Vishal Raju Suradkar,
Age: 10 years, Occu.: Student,
R/o. As above,

4. Deepak Raju Suradkar,
Age: 9 years, Occ:Student,
R/o. As above.
(No.2 to 4 being minor through
Their natural guardian i.e. Mother
Respondent No.1)

5. Shantabai Rangnath Suradkar,
Age:57 years, Occ.:Household
R/o. As above. **Ori. Claimants**

6. Vitthal s/o. Digambar Jadhav
Age: Major, Occ.: Business,
R/o. Surewadi, Harsul,
Aurangabad

7. Rahul s/o. Hiralal Sure,
Age : Major, Occ: Driver,
R/o. Surewadi, Harsul,
Aurangabad

8. ICICI Lombard General Insurance Co.,
Through its Divisional Manager,
Divisional Office,
Adalat Road, Aurangabad

9. Yeduba s/o. Hari Jarare,
Age: Major, Occ: Owner,
R/o. Wasai, Tq. Sillod,
Dist. Aurangabad

10. Sanjay s/o. Bhaurao Sapkal
Age: Major, Occ: Driver,

R/o. As above. **..RESPONDENTS**

***

Mr. Swapnil S. Rathi, Advocate for appellant;
Mr. R.V. Gore, Advocate for respondent nos. 1 to 5
Mr. A.R. Vyawhare, Advocate for respondent nos. 6 & 7
Mr. R.R. Karpe, Advocate for respondent no.9

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WITH
FIRST APPEAL NO.356 OF 2014

United India Assurance Company Ltd.,
Through its Deputy Manager TP Cell,
Shri. Bhaurao s/o. Rambhau Kankal
Age: 57 years, Occ: Service,
R/o. Divisional Office-I
United India Insurance Co., Ltd.,
Osmanpura, Aurangabad **..APPELLANT**
(Ori. Resp.No.6)

VERSUS

1. Sahebrao Hari Shelke,
Age: 43 years, Occ: Agril,
R/o. Wasai, Po. Halda,
Tq. Sillod, Dist. Aurangabad

2. Kamalbai Sahebrao Shelke
Age:43 years, Occ:Household,
R/o. As above, **Ori. Claimants**

3. Rahul s/o. Hiralal Sure
Age: Major, Occ: Driver,
R/o. Surewadi, Harsul
Aurangabad

4. Vitthal S/o. Digambar Jadhav
Age: Major, Occ: Business,
R/o. Surewadi, Harsul,
Aurangabad,

5. ICICI Lombard General Insurance Co.,
Through its Divisional Manager,
Divisional Office,
Adalat Road, Aurangabad

6. Sanjay S/o. Bhaurao Sapkal,
Age: Major, Occ: Driver,
R/o. As above,

7. Yeduba S/o. Hari Jarare,
Age: Major, Occ: Owner,
R/o. Wasai, Tq. Sillod,
Dist. Aurangabad

..RESPONDENTS

***

Mr. Swapnil S. Rathi, Advocate for appellant;
Mr. A.R. Vyawhare, Advocate for respondent nos. 3 & 4;
Mr. Abhijit Choudhari, Advocate for respondent no.5
Mr. R.R. Karpe, Advocate for respondent no.7

***

WITH

FIRST APPEAL NO.817 OF 2014

United India Assurance Company Ltd.,
Through its Deputy Manager TP Cell,
Shri. Bhaurao s/o. Rambhau Kankal
Age: 57 years, Occ: Service,
R/o. Divisional Office-I
United India Insurance Co., Ltd.,
Osmanpura, Aurangabad **..APPELLANT**
(Ori. Resp.No.3)

VERSUS

1. Sadashiv Ambadas Sonawane
Age: 29 years, Occu:Agril.,
R/o. Vasai, Tq. Sillod,
Dist. Aurangabad **Ori. Claimant**

2. Yeduba S/o. Hari Jarare,

Age: Major, Occ: Owner,
R/o. Wasai, Tq. Sillod,
Dist. Aurangabad

3. Sanjay S/o. Bhaurao Sapkal,
Age: Major, Occ: Driver,
R/o. As above,

4. Rahul S/o. Hiralal Sure,
Age: Major, Occ: Driver,
R/o. Surewadi, Harsul,
Aurangabad

5. ICICI Lombard General Insurance Co.,
Through its Divisional Manager,
Divisional Office,
Adalat Road, Aurangabad **..RESPONDENTS**

***

Mr. Swapnil S. Rathi, Advocate for appellant;
Mr. S.R. Pande, Advocate for respondent no.1
Mr. R.R. Karpe, Advocate for respondent no.2
Mr. A.R. Vyawhare, Advocate for respondent no.4

***

WITH
FIRST APPEAL NO.819 OF 2014

United India Assurance Company Ltd.,
Through its Deputy Manager TP Cell,
Shri. Bhaurao s/o. Rambhau Kankal
Age: 57 years, Occ: Service,
R/o. Divisional Office-I
United India Insurance Co., Ltd.,
Osmanpura, Aurangabad **..APPELLANT**
(Ori. Resp.No.3)

VERSUS

1. Rekha Raju Suradkar
Age: 33 years, Occ: Agril,
R/o. Wangi, Tq. Sillod,
Dist. Aurangabad **Ori. Claimant**

2. Sanjay S/o. Bhaurao Sapkal
Age: Major, Occ: Driver,
R/o. As above,

3. Yeduba S/o. Hari Jarare,
Age: Major, Occ: Owner,
R/o. Wasai, Tq. Sillod,
Dist. Aurangabad

4. Rahul S/o. Hiralal Sure,
Age: Major, Occ: Driver,
R/o. Surewadi, Harsul,
Aurangabad

5. Vitthal Digambar Jadhav,
Age: Major, Occ: Driver,
R/o. As above,

6. ICICI Lombard General Insurance Co.,
Through its Divisional Manager,
Divisional Office,
Adalat Road, Aurangabad

..RESPONDENTS

***

Mr. Swapnil S. Rathi, Advocate for appellant;
Mr. R.R. Karpe, Advocate for respondent no.3
Mr. A.R. Vyawhare, Advocate for respondent no.4 & 5.

***

WITH

FIRST APPEAL NO.824 OF 2014

United India Assurance Company Ltd.,
Through its Deputy Manager TP Cell,
Shri. Bhaurao s/o. Rambhau Kankal
Age: 57 years, Occ: Service,
R/o. Divisional Office-I
United India Insurance Co., Ltd.,
Osmanpura, Aurangabad **..APPELLANT**

(Ori. Resp.No.6)

VERSUS

1. Nirmalabai Sitaram Dandge
Age: 39 years, Occ: Household,
R/o. Wasai, Po. Halda,
Tq. Sillod, Dist. Aurangabad

2. Sitaram Vithobad Dandge
Age: 43 years, Occ: Labourer,
R/o. As above, **Ori. Claimants**

3. Rahul s/o. Hiralal Sure,
Age: Major, Occ: Driver,
R/o. Surewadi, Harsul,
Aurangabad

4. Vitthal s/o. Digambar Jadhav
Age: Major, Occ: Business,
R/o. Surewadi, Harsul,
Aurangabad

5. ICICI Lombard General Insurance Co.,
Through its Divisional Manager,
Divisional Office,
Adalat Road, Aurangabad

6. Sanjay S/o. Bhaurao Sapkal
Age: Major, Occ: Driver,
R/o. As above,

7. Yeduba s/o. Hari Jarare,
Age: Major, Occ: Owner,
R/o. Wasai, Tq. Sillod,
Dist. Aurangabad

..RESPONDENTS

***

Mr. Swapnil S. Rathi, Advocate for appellant;

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CORAM : P.R.BORA, J.

DATE : 19th July,2017.

ORAL JUDGMENT:

1) These are total ten First Appeals arising out of one accident. The Tribunal has, however, delivered separate judgments in each of the claim petitions. Out of ten, nine appeals are filed by the Insurance Company viz. United India Assurance Company Ltd; whereas First Appeal No. 195/2014 is filed by original claimants, in M.A.C.P. No.378/2010, seeking enhancement in the amount of compensation, as awarded by the Tribunal. Since all these appeals arise out of one accident, I have heard common arguments of the parties in all these appeals and I deem it appropriate to decide all these appeals by a common reasoning.

2) Few facts, which are relevant for the decision of the appeals, are thus.

(i) The alleged accident happened on 21st February, 2010 on Aurangabad - Phulambri road at about 1.00 p.m. Two vehicles were involved in the said accident, one was Mahindra Pick up van bearing registration No.MH-20-AT-3069 and another was a goods truck bearing registration No. MH-04-CU-5130. The Mahindra van was proceeding towards Aurangabad, whereas the truck was proceeding towards Phulambri.

(ii) In the claim petitions filed by the claimants, it was their common contention that the alleged accident happened because of the negligence of the drivers of both the vehicles and in such circumstances, owner and insurer of both the vehicles were made parties to all the claim petitions and the compensation was claimed against all of them.

(iii) The drivers of both the vehicles were prosecuted in relation to the accident in question.

(iv) Before the Tribunal, a specific defense was raised by the insurer of Mahindra van that the owner of the insured vehicle has committed breach of policy conditions by carrying fare paying passengers in a goods vehicle. A plea was also taken that there was no negligence of the driver of the Mahindra van in occurrence of the alleged accident.

(v) The learned Tribunal, on the basis of the evidence which was adduced before it, held the drivers of both the vehicles negligent in equal proportion for causing the alleged accident and consequently, held the owner and insurer of both the vehicles liable to pay the amount of compensation in equal proportion to the respective claimants. Aggrieved by, the insurance company of Mahindra van has filed the present appeals.

3) Shri Rathi, learned Counsel, appearing

for the appellant, assailed the impugned judgments mainly on the ground of liability of the appellant – insurance company. The learned Counsel submitted that the Tribunal has manifestly erred in directing the appellant insurance company to first pay the amount of compensation to the respective claimants and then to recover the same from the owner of the Mahindra van. The learned counsel submitted that overwhelming evidence has come on record, evidencing that the persons, who died in the alleged accident or got injured in the said accident, were all fare paid passengers in the Mahindra van.

4) The learned Counsel further submitted that the Mahindra van is undisputably a goods vehicle and the passengers were not allowed to be carried through the said van either gratuitously or with fare. The learned Counsel submitted that in order to prove that the insurance policy was not covering the risk of the persons, who

suffered death or got injured in the said accident, the appellant has examined its Deputy Manager (Legal) viz. Bhaurao Rambhau Kankal and through his evidence, has sufficiently proved the policy of the insurance and the terms and conditions of the said policy. The learned Counsel submitted that it has been fully proved by the appellant insurance company that the risk of the passengers, who were being carried through the said Mahindra van at the relevant time, was not covered by the insurance policy.

5) The learned Counsel submitted that even though the the Tribunal has also recorded the same finding based upon the evidence which was adduced on behalf of the appellant insurance company, that no risk of fare paid passengers was covered by the policy of insurance, has eventually erred in directing the appellant insurance company to first pay the amount of compensation to the respective claimants and thereafter to recover the same from the owner of the Mahindra van.

6) The learned Counsel, relying upon the judgment of the Hon'ble Apex Court in the case of *National Insurance Company Vs. Rattani and Ors. - AIR 2009 SC 1499,* submitted that the impugned order so far as it directs the appellant insurance company to first pay the amount of compensation and then to recover it from the owner of the vehicle, deserves to be quashed and set aside and the insurance company needs to be exonerated from the liability to pay the amount of compensation.

7) The learned Counsel further submitted that the Tribunal has also erred in holding the driver of the offending Mahindra Jeep responsible in equal proportion in occurrence of the alleged accident. The learned Counsel submitted that since beginning, the plea was taken by the appellant insurance company that in occurrence of the alleged accident, there was no negligence on the part of the driver of the Mahindra van and

the alleged accident had happened because of the sole negligence on the part of driver of the offending truck.

8) The learned Counsel taking me through the police papers, FIR, spot panchanama and the evidence of the driver of Mahindra van, submitted that the said evidence if collectively read, no negligence can be attributed on the part of the driver of the Mahindra van. The learned Counsel submitted that the Tribunal has held the accident to have happened as head on collision and has consequently held the driver of the Mahindra van responsible in equal proportion in occurrence of the accident. The learned Counsel submitted that the Tribunal has failed in appreciating that the Mahindra van was found to have been dashed on its rear right side by the truck which was coming from the opposite direction and the aforesaid circumstance was quite sufficient to draw an inference that it was not a head on collision accident. The learned Counsel submitted that from

the circumstances, which have come on record and the facts, which have been deposed by the driver of the Mahindra van before the Court, it is quite clear that the truck was being driven in rash and negligent manner and at excessive speed and it gave dash to the rear right side portion of the Mahindra van

9) The learned Counsel submitted that the material on record sufficiently shows that the driver of the Mahindra van had made genuine attempt to avoid the accident, however, the truck was being driven in such a manner and speed that ultimately it dashed to the rear side right portion of the Mahindra van. The learned Counsel submitted that considering the circumstances and the evidence on record, the finding recorded by the Tribunal holding the driver of the offending Mahindra van responsible in equal proportion for causing the alleged accident, needs to be set aside.

10) Opposing the submissions made on behalf of the learned Counsel appearing for the appellant insurance company, Shri Upadhye, learned counsel appearing for the respondent insurance company viz. ICICI Lombard, submitted that the Tribunal has rightly recorded a conclusion that the accident in question was a result of composite negligence on the part of drivers of both the vehicles and the proportion of negligence was equal. The learned Counsel, taking me through the contents of the FIR, submitted that the FIR clearly discloses that in an attempt to overtake the vehicle running ahead of it, the driver of the van lost the control over the van and dashed to the truck coming from the opposite direction. The learned Counsel submitted that looking to the situation of both the vehicles on the spot, it can be reasonably inferred that it was head on collision accident and has occurred because of the negligence on the part of both the vehicles. The learned Counsel submitted that the Tribunal has not committed any

error in holding the drivers of both the vehicles equally responsible for causing the alleged accident.

11) The learned Counsel appearing for the original claimants in all these appeals, submitted that the Tribunal has rightly recorded a finding on the point of negligence and no interference is required in the finding so recorded. In so far as the other objection raised by the appellant insurance company as about the order passed by the Tribunal directing the appellant insurance company to first pay the amount of compensation to the claimants and then to recover it from the owner, the learned Counsel submitted that the said order has also been passed by the Tribunal considering the overall circumstances and having regard to the settled law and hence no interference is warranted in the order so passed. The learned Counsel relied upon the judgment of this Court in the case of *Bajaj Allianz Genral Insurance C. Ltd. Vs. Sangita wd/o*

Bhagwan Raut and Ors. reported in *2015 (1) Mh.L.J. 883* and one another judgment in the case of *New India Assurance Co. Ltd. Vs. Sindhu w/o Hiralal Tawade and Ors. - 2012 4 Mh.L.J. 446*.

12) The learned Counsel inviting my attention to para 14 of the judgment in the case of **Bajaj Allianz Genral Insurance (cited supra),** submitted that in the similar situation, this court has declined to cause any interference in the order passed by the Tribunal directing the insurance company to first pay the amount of compensation and then to recover the same from the owner. The learned Counsel further submitted that the claimants in all these appeals are either victims of the alleged accident or the legal heirs of the deceased, who suffered death in the said accident and in such circumstances, taking the same view, as taken in the case of Bajaj Alliaz (cited supra) this Court shall also not cause any interference in the order so passed.

13) I have carefully considered the submissions made on behalf of the learned counsel appearing for the respective parties. I have perused the impugned judgment, the evidence on record and the authorities relied upon by the parties. First I would like to deal with the objection raised by the appellant – insurance company as about the proportion of negligence, as has been determined by the Tribunal, on part of two vehicles involved in the alleged incident. The Tribunal has held the drivers of both the vehicles equally responsible for occurrence of the alleged incident.

14) Shri Rathi, learned Counsel for the insurance company has seriously disputed the finding so recorded alleging the same to be contrary to the evidence on record.

15) After having read the evidence on the point and the contents of the FIR and the spot

panchnama, it is difficult to agree with the finding recorded by the Tribunal that the alleged accident was a head on collision. The driver of the Mahindra Pick Up Van has testified before the Court that the truck was being driven in a rash and negligent manner and it dashed to the rear right side portion of the jeep. Had there been a head on collision accident, the damage to the jeep would have been caused to its front side. It is nobody's case that the offending Mahindra Pick Up Van was damaged at its front side. One of the claimant has corroborated the fact stated by the driver of the Pick Up Van that the truck dashed to pick up van at its rear right side.

16) It was sought to be canvassed by Shri Upadhye, learned Counsel appearing for the ICICI Insurance Company that looking to the damage caused to the jeep, the only inference which emerges is that the jeep was not being driven in moderate speed, and the driver of the jeep was

negligent in plying the said jeep. Learned Counsel further submitted that the FIR clearly suggests equal negligence on the part of the drivers of both the vehicles. Learned Counsel further submitted that both the drivers have been prosecuted and the criminal trial against both of them is still pending. In such circumstances, according to him, the finding of fact recorded by the Tribunal may not be interfered with.

17) I am, however, not convinced with the submissions so made. The facts which have come on record and the scene of the spot, the description of which is revealed from the spot panchnama, are enough to reach to a conclusion that in occurrence of the alleged accident, the negligence cannot be attributed on the part of the driver of the Pick Up Van as equal to, or at par with the negligence of the truck driver. The appellant Insurance Company had specifically raised the defense in its written statement, denying the negligence on the part of the driver

of the insured vehicle and in order to substantiate the said contention it has also examined the driver of the said vehicle. In his testimony, the said driver has deposed that he was driving his vehicle correctly from his left side and was dashed by the truck coming from the opposite direction in a high speed at its rear right side. The fact that the truck dashed to rear right side portion of the Jeep is fully established. As I have earlier stated, this fact alone is enough to reach to a conclusion that the alleged accident was not a head on collision.

18) After having considered the evidence on record, however, no such conclusion can also be recorded that there was absolutely no negligence on the part of the driver of the Pick Up Van. The spot of occurrence as shown in the spot panchnama, though is not at the midst of the road, is also not much away from the center of the road. It is, thus, evident that the

offending Mahindra Van was also not being driven by keeping a safe margin from the center of the road. Further, as submitted by Shri Upadhye, learned Counsel appearing for another Insurance Company, the contents of FIR reveal that the alleged accident happened when the Jeep driver overtook a vehicle running ahead of it. There is, therefore, reason to believe that though some attempt would have been made by the jeep driver at the eleventh hour, to take the jeep at the left side, he could not fully succeed and was dashed by the truck on its rear right side. Considering such fact situation, some negligence certainly needs to be attributed on the part of the driver of the offending jeep also. Considering the entire evidence and the overall circumstances as are revealing from the oral and documentary evidence, according to me, the negligence on the part of the driver of the van can be held maximum to the extent of 30 per cent. I hold accordingly.

19) The finding recorded by the Tribunal thus needs to be modified to the aforesaid extent.

20) The next question, which falls for my consideration is, - whether the appellant – insurance company can be jointly and severally held liable to pay the amount of compensation to the claimants and whether the directions given by the Tribunal in the impugned judgments against the appellant insurance company to first pay the amount of compensation to the claimants and then to recover the said amount from the owner of the offending vehicle, can be sustained?

21) In the instant matters, it is undisputed that the persons, who died and injured in the alleged accident, were all the fare-paid passengers travelling through Mahindra pick up van. The said van was admittedly a goods carrier. It was thus impermissible to carry through the said Mahindra van the passengers, either gratuitously or by accepting fare from

them. It was the specific defence raised by the appellant insurance company that the owner of the Mahindra van committed breach of policy conditions by carrying fare paid passengers through the said van and as such, the insurance company was not liable to indemnify the insured. To prove the defence so raised by it, the appellant insurance company examined its Deputy Manager (Legal) and through his evidence sufficiently proved the terms of the policy of insurance. Based on the said evidence, the learned Tribunal has also recorded a finding that the policy of the insurance pertaining to Mahindra van was not covering the risk of the fare paid passengers. However, in spite of recording such finding, the learned Tribunal has passed the order, directing the insurance company to first pay the amount of compensation to the claimants and then to recover the same from the owner of the offending vehicle. As noted by me herein above, the question raised, therefore, is whether such an order can be sustained?

22) Section 147 of the Motor Vehicles Act, 1988 (hereinafter referred to as the 'Act') speaks about the requirements of policy and limits of liability. Section 147 (1) (b) (i) of the Act provides that, in order to comply with the requirements of chapter XI of the Motor Vehicles Act, a policy of insurance must be a policy which, insures the person or classes of persons specified in the policy to the extent specified in sub-section (2) against any liability which may be incurred by him in respect of the death of or bodily injury to any person, including the owner of the goods or his authorised representative carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place.

23) Section 149(1) of the Act provides that, if, after a certificate of insurance has been issued under sub-section (3) of section 147 of

the Act in favour of the person by whom a policy has been effected, judgment or award in respect of any such liability as is required to be covered by a policy under clause (b) of sub-section (1) of section 147 (being a liability covered by the terms of the policy), the insurer shall, subject to the provisions of this section, pay to the person entitled to the benefits of the decree any sum not exceeding the sum insured payable thereunder, as if he were judgment debtor, in respect of the liability, together with any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments.

24) The conjoint reading of Section 147 (1) (b) and Section 149 (1) of the Act leaves no doubt that the insurer cannot be fasten with liability to satisfy the judgment and award passed against the insured in respect of the death of or bodily injury to any person whose

risk is not covered under the policy of the insurance issued by the insurer under Section 147 (3) of the Act. "

25) Having regard to the provisions, as aforesaid, when the risk of the fare paid passengers was not covered under the policy of insurance and when the persons, who died or got injured in the alleged accident, were admittedly fare paid passengers travelling in the said Mahindra pick up van, in no case, the Tribunal could have directed the insurance company to first pay the amount of compensation to the claimants and then to recover the same from the owner of the Mahindra van.

26) The Hon'ble Apex Court in the case of National Insurance Company Vs. Rattani and others (cited supra), has clearly held that in the cases where no statutory liability arises of covering the risk, the insurance company, in any case, cannot be held liable to pay the amount of

compensation. The Hon’ble Apex court therefore exonerated the insurance company in the said matter from its liability to pay the amount of compensation.

27) I have carefully considered the judgments relied upon by the learned Counsel appearing for the respondents. There cannot be a dispute as about the ratio laid down in the said judgments, however, the same may not apply in the facts of the present case. In the cases so relied upon, though breach of policy condition by the insured was proved by the insurance company, since the insurance policy was statutorily covering the risk of the deceased or injured in the said matters, the insurance company was directed to first satisfy the Award and thereafter to recover the amount of compensation paid by it to the claimants from the insured, i.e. owner of the vehicle. In the instant matters, I reiterate that the risk of death or bodily injury to the persons travelling in a goods vehicle as fare paid passengers, was not

statutorily covered and as such, no such direction was liable to be issued against the appellant insurance company to first satisfy the Award and then to recover the said amount from the owner of the offending vehicle.

28) For the reasons stated above, the order passed in the impugned judgments and awards directing the insurance company to first satisfy the Award and then to recover the said amount from the insured, cannot be sustained and deserves to be set aside.

29) Now falls for my consideration the request for enhancement in the amount of compensation, made in First Appeal No.195/2014 by the claimants in M.A.C.P. No.378/2010. Learned Tribunal has awarded total compensation of Rs.4,10,000/- to the appellants. It was the case of the appellants that deceased was working as a Welder and was also carrying a business of selling she-goats. According to the

appellants, the total average income of the deceased was around Rs.10,000/- per month and, accordingly, compensation was claimed by them. The Tribunal has, however, held the income of the deceased to the tune of Rs.3,000/- per month by applying criteria of notional income and has accordingly determined the amount of compensation.

30) Learned Counsel for the appellants submitted that the appellants have placed on record the certificate issued by the employer where deceased was working as a welder and it was certified that the deceased was being paid Rs.6,000/- per month. Learned Counsel submitted that the appellants had also placed on record the certificate issued by the Gram Sevak certifying that the deceased was carrying out the business of selling she-goats. Learned counsel submitted that the Tribunal should not have outrightly rejected the said documents. Learned Counsel submitted that the amount of

compensation, therefore, needs to be enhanced by holding the income of the deceased as was certified in the salary certificate placed on record. Learned Counsel further submitted that the Tribunal has also erred in deducting one third of the amount from the total income of the deceased towards his personal expenses while determining the amount of dependency compensation. Learned Counsel submitted that considering the number of dependents on the income of the deceased, the Tribunal could not have deducted more than 1/4th of his total income towards personal expenses. Learned Counsel further submitted that the compensation awarded by the Tribunal towards the non pecuniary damages is also wholly unjust and improper and the same also needs to be enhanced in view of the guidelines laid down by the Honourable Apex Court.

31) Shri Rathi, learned Counsel for the appellant, and Shri Upadhye, learned Counsel

appearing for the respondent Insurance Company, supported the impugned judgment on the point of quantum. Learned counsel submitted that in absence of any cogent and sufficient evidence placed on record by the claimants, there was no other alternative before the Tribunal than to assess the amount of dependency compensation by holding the income of the deceased on notional basis. In so far as one third amount deducted by the Tribunal towards personal expenses, learned Counsel were fair enough in submitting that only one fourth amount was liable to be deducted and, as such, the appropriate enhancement may be made in the amount of compensation. About the non pecuniary damages, learned Counsel submitted that the Tribunal has exercised its discretion judiciously and, as such, no interference is warranted in the amount so awarded towards non pecuniary damages.

32) After having carefully considered the submissions advanced by the learned Counsel for

the respective parties, it apparently appears that the amount of compensation deserves to be enhanced under some heads. Though the learned Counsel was persuasive in submitting that the Tribunal has not appropriately considered the income of the deceased, I am not convinced with the argument so made by the learned Counsel. The onus to sufficiently prove the income of the deceased was on the claimants. Mere filing salary certificate was not enough. Nothing has come on record to show why the claimants did not examine the employer before the Court so as to substantiate their contention as about the income of the deceased. In so far as income as claimed by the claimants on account of the business which was being carried out by the deceased of selling she-goats, except the testimony of the claimants, there is no other evidence on record. The certificate from the Gram Sevak or any village official cannot be an acceptable proof for holding income of a person. In such circumstances, it does not appear to me that any error has been committed by the Tribunal in determining the income of the deceased.

33) However, in so far as deduction of one third amount by the Tribunal towards the personal expenses is concerned, interference is certainly warranted. Having regard to the number of dependents on the income of the deceased, only one fourth of amount was liable to be deducted and dependency compensation has to be assessed on the basis of the remaining 75 per cent of the annual income of the deceased. The Tribunal has held the income of the deceased to the tune of Rs.36,000/-; deducting one fourth of it, the dependency compensation was liable to be computed on the remaining amount i.e. Rs.27,000/- and by applying multiplier of 16, which is appropriate multiplier in the present matter, the said amount comes to Rs.4,32,000/-. I hold the applicants entitled for the said amount.

34) Towards non pecuniary damages i.e. loss of estate, funeral expenses and loss of consortium, etc., the Tribunal has awarded a total compensation of Rs.26,000/-. The compensation so awarded is apparently unjust and inadequate. It needs to be substantially enhanced. In view of the guidelines laid down by the Honourable Apex Court, I deem it appropriate to enhance the said amount to Rs.2,00,000/- (Rs. Two lakhs). I, hence hold the appellants entitled to the consolidated sum of Rs.2,00,000/- (Rs. two lakhs) by way of compensation towards loss of love and affection, loss of consortium, funeral expenses, etc.

35) The appellants are, thus, held entitled for the compensation of Rs.6,32,000/- in total. In the circumstances of the case, it appears to me that this will be the just and fair compensation payable to the appellants claimants.

36) It has to be stated that the finding

recorded by me to the effect that, in occurrence of the alleged accident the negligence on part of the drivers of the two vehicles involved in the alleged accident was in the proportion of 70:30 i.e. negligence on the part of the driver of the truck to the extent of 70 per cent and on the part of the driver of the Pick Up van to the extent of 30 per cent, will necessarily result in increasing the liability of the owner and insurer of the truck by 20%.

37) For the reasons stated above, following order is passed:

ORDER

1. The Judgments and awards passed in Motor Accident Claim Petition Nos. 378/2010, 772/2010, 611/2010, 530/2010, 659/2010, 402/2010, 629/2010, 690/2010 and 506/2010, so far as they relate to orders passed therein directing the United India Assurance Co. Ltd. to jointly and severally pay the amount of compensation determined in each of

the said petition along with the owner of the Mahindra Pick Up Van and the further direction that the United India Assurance Company Ltd. shall first pay the amount of compensation of its share and then recover the same from the owner of the Mahindra Pick Up Van, initiating the execution proceedings against him, stand quashed and set aside. Consequently, all the aforesaid Motor Accident Claim Petitions stand dismissed against the United India Assurance Company Ltd.

2. The amount of compensation in Motor Accident Claim Petition No.378/2010 stands enhanced to Rs.6,32,000/- from Rs.4,10,000/-. The claimants shall be entitled for the interest on the enhanced amount of compensation at the rate of Rs.9 per cent per annum from the date of application till its realisation.

3. The owner of the truck, namely, Vitthal Digambar Jadhav and the insurer of the said truck, namely, ICICI Lombard General Insurance

Company Ltd. are held liable to jointly and severally pay 70 per cent of the total amount of compensation as determined by the Tribunal in the aforesaid Claim Petitions and in so far as the Claim Petition No.378/2010, as has been enhanced by this Court, together with the interest thereon at the rate of 9 per cent per annum from the date of filing of the respective petitions till realization of the said amount.

4. The owner of the Mahindra Pick Up Van, namely, Yeduba Hari Jarare is held liable to pay 30 per cent of the amount of the total compensation as has been determined by the Tribunal in all the aforesaid Claim Petitions and as enhanced by this Court in M.A.C.P.No.378/2010, together with the interest thereon at the rate of 9 per cent per annum from the date of filing of the respective petitions till its realisation.

5. The orders passed, if any, in the impugned judgments and awards as about the

apportionment of the amount of compensation amongst the claimants therein and as about the investments of the amounts in Fixed Deposit Receipts in the name of claimants or minors therein, are as it is maintained.

6. The amounts deposited by the appellant Insurance Company i.e. United India Assurance Company Ltd. in this Court in the respective First Appeals be refunded to it along with the interest, if any, accrued thereon.

7. The First Appeals stand allowed in the aforesaid terms.

8. Pending Civil Applications, if any, stand disposed of.

(P.R.BORA)
JUDGE

fldr 19.7.17
title-Kotgire
Jt.BDV & AGP