

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

FIRST APPEAL NO. 1272 OF 2005

New India Assurance Company Ltd.
Having its Head and registered office
At New India Assurance Building,
87, M.G. Marg, Fort, Mumbai,
Bench Office at Latur, Divisional
Office at Aurangabad.

.. Appellant
(Orig. Respondent No.3)

Versus

1. Keshavrao s/o Bhimrao Tike,
Age 59 yrs. Occ. Nil

2. Sow. Anusayabai w/o. Keshavrao Tike.
Age 54 yrs. Occ. Household,
Both R/o. Haldurga Tq. Ausa

.. Respondent
(Ori.Respdt. 1 and 2)

3. Sanjay s/o Nagnathrao,
Age major Occ. Driver,
R/o Fulari Galli, Udgir,
Dist. Latur.

Respondents
(Ori.Resp.No.1)

4. Devendra s/o Baburao Patil
Age Major, Occ. Business,
R/o Daithana, Tq. Udgir,
Dist. Latur.

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Mr. Mohit R. Deshmukh, Advocate for Appellant.
Mr. H.R.Pathak, Advocate for Respondents No. 1 and 2 - Absent.
Mr. V.D.Godbharle, Advocate for Respondents No.3,4 -Absent

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WITH
FIRST APPEAL NO. 1 OF 2005

New India Assurance Company Ltd.
Through its branch Manger,
Chandra Nagar Latur, Tq. and Dist.
Latur and its Divisional Office at Latur
at Aurangabad.

.. Appellant
(Org.Opponent)

Versus

1. Smt. Chitrarekha widow of Baburao
Magar, age 45 years, Occ. Household

2. Murlidhar s/o Baburao Magar,
Age 30 years Occ. Agri.

3. Miss. Meera d/o Baburao Magar,
Age 18 years, Occ. Household,
All R/o Bhada Tq. Ausa
Dist. Latur.

Respondents
Claimants

4. Devendra s/o Baburao Patil,
Age Major, Occ. Truck owner,
R/o. Daithana, Tq. Udgir,
Dist. Latur.

5. Sanjay s/o Nagnath Sawale
age major Occ. Driver,
R/o Phular Galli, Bodhan Road
Udgir, Tq. Udgir, Dist. Latur.

Respondents

6. Sanjay s/o Baburao Tike,
age major Occ. Jeep owner,
R/o Naldurg, Tq. Ausa, Dist. Latur.

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Mr. Mohit R. Deshmukh, Advocate for Appellant.
Mr. B.N.Patil, Advocate for Respondents No.1 to 3 -Absent
Mr. V.D.Godbharle, Advocate for Respondents No. 4 & 5- Absent.
Mr. M.L.Dharashiv, Advocate for Respondent No.6 -Absent

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WITH

FIRST APPEAL NO. 2 OF 2005

New India Assurance Company Ltd.
Through its branch Manger,
Chandra Nagar Latur, Tq. and Dist.
Latur and its Divisional Office at Latur
at Aurangabad.

.. Appellant
(Org.Opponent)

Versus

1. Smt. Chitrarekha widow of Baburao
Magar, age 45 years, Occ. Household
2. Miss Meera d/o Baburao Magar,
Age 18 years, Occ. Household,
All R/o Bhada Tq. Ausa
Dist. Latur. .. Claimants
3. Devendra s/o Baburao Patil
Age Major, Occ. Truck owner,
R/o Daithana, Tq. Udgir,
Dist. Latur.
4. Sanjay s/o Nagnath Sawale
age major Occ. Driver,
R/o Phular Galli, Bodhan Road .. Respondents
Udgir, Tq. Udgir, Dist. Latur.
5. Sanjay s/o Baburao Tike,
age major Occ. Jeep owner,
R/o Naldurg, Tq. Ausa, Dist. Latur.

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Mr. Mohit R. Deshmukh, Advocate for Appellant.
Mr. B.N.Patil, Advocate for Respondents No.1 and 2 -Absent
Mr. V.D.Godbharle, Advocate for Respondents No. 3 & 4- Absent.
Mr. M.L.Dharashiv, Advocate for Respondent No.5 -Absent
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WITH
FIRST APPEAL NO. 3 OF 2005

New India Assurance Company Ltd.
Through its branch Manger,
Chandra Nagar Latur, Tq. and Dist.
Latur and its Divisional Office at Latur
at Aurangabad.

.. Appellant
(Org.Opponent)

Versus

1. Smt. Madhavi @ Rani widow of
Sudhakar Magar, Age 20 years,
Occ. Household
2. Smt. Chitrarekha widow of Baburao
Magar, Age 45 years, Occ. Household,
.. (Claimants)
3. Miss Meera d/o. Baburao Magar,
Age 18 years, Occ. Household,
All R/o Bhada, Tq. Ausa, Dist. Latur.
4. Devendra s/o. Baburao Patil,
Age Major Occ. Truck Owner,
R/o. Daithana, Tal. Udgir, Dist.Latur.
5. Sanjay s/o Nagnath Sawale,
Age Major Occ. Driver,
R/o. Fular Galli, Bodhan Road,
Udgir, Tal.Udgir, Dist.Latur.
6. Sanjay s/o. Baburao Tike,
Age Major, Occu. Jeep Owner,
R/o. Naldurg, Tal.Ausa, Dist.Latur.

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Mr. Mohit R. Deshmukh, Advocate for Appellant.
Mr. B.N.Patil, Advocate for Respondents No.1 to 3 -Absent
Mr. S.H.Walke, Advocate for Respondent No.4 -Absent
Mr. V.D.Godbharle, Advocate for Respondents No. 5 & 6- Absent.

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CORAM : A.M. DHAVALÉ, J.

DATE: 10st AUGUST, 2018

JUDGMENT :-

1. These appeals are filed by Insurance Company. Heard learned Advocate Shri. Mohit Deshmukh for the appellant-Insurance Company.

2. The only challenge to the Judgment and Award dated 23.09.2004 passed by the Member, Motor Accident Claims Tribunal, Latur is on the ground that two vehicles were involved and the driver, owner and insurer of a Jeep were not made parties. The claim was made only against the owner, driver and insurer of the truck. There was contributory negligence, and therefore, the entire liability should not have been fastened on the Insurance Company of the truck. It is not disputed that all the claimants were occupants of the Jeep. In such a case, even if there was contributory negligence on the part of the driver of both the vehicles, still, it is a case of composite negligence. The issue is covered in **KHENYEI Vs. New India Assurance Company Ltd. [2016 (2) Mh.L.J.514]**, wherein it is observed as follows :-

7. Pollock in Law of Torts, 15th Edn. has discussed the concept of composite negligence. The relevant portion at page 361 is extracted below :

“ Another kind of question arises where a person is injured without any fault of his own, but by the combined effects of the negligence of two persons of whom the one is not responsible for the other. It has been supposed that A could avail himself, as against Z who has been injured without any want of due care on his own part, of the so-called contributory negligence of a third person B. It is true you were injured by my negligence, but it would not have happened if B had not been negligent also, therefore, you cannot sue me, or at all events not apart from B. Recent authority is decidedly against allowing such a defence, and in one particular class of cases it has been emphatically disallowed. It must, however, be open to A to answer to Z: You were not injured by my negligence at all, but only and wholly by B's. It seems to be a question of fact rather than of law (as, within the usual limits of a jury's discretion, the question of proximate cause is in all ordinary cases) what respective degrees of connection, in kind and degree, between the damage suffered by Z and the independent negligent conduct of A and

B will make it proper to say that Z was injured by the negligence of A alone, or of B alone, or of both A and B,. But if this last conclusion be arrived at, it is now quite clear that Z can sue both a and B.

At page 362 Author has observed as :-

“The strict analysis of the proximate or immediate cause of the event: the inquiry who could last have prevented the mischief by the exercise of due care, is relevant only where the defendant says that the plaintiff suffered by his own negligence. Where negligent acts of two or more independent persons have between them caused damage to a third, the sufferer is not driven to apply any such analysis to find out whom he can sue. He is entitled- to sue all or any of the negligent persons. It is no concern of his whether there is any duty of contribution or indemnify as between those persons, though in any case he cannot recover in the whole more than his whole damage.”

3. Thus, it is clear that the legal heirs of deceased persons are free to select any of the owner and insurance company of any of the two vehicles. It is not necessary that they should join the driver, owner and insurer of both the vehicles. It is further clear that even if they have obtained decree against the driver and insurer of both the vehicles, they have discretion to execute it and only against the

insurance company of any of the vehicles. If the claimants join the driver, owner and insurance company of both the vehicles, then court has to consider the apportionment of liability and if one insurance company is required to pay the entire amount, it can recover the proportionate amount from the other insurance company as per the Award. In such circumstances, there is no substance in the contention that the entire liability could not have been fastened on the insurer of the truck. No other point was canvassed before me.

4. Therefore, there is no substance in the appeals and those are liable to be dismissed, and are accordingly dismissed with no order as to costs.

(A.M.DHAVAL, J)

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