

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

FIRST APPEAL NO. 4 OF 2005

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| 1. The New India Assurance Co. Ltd.
Through its branch Manager,
Chandra Nagar Latur Tq. And Dist.
Latur and its Divisional Office at Latur,
And at Aurangabad. | Appellant
Ori.Opponent |
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VERSUS

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| 1. Smt. Naimunbee w/o Sharfoddin Shaikh
Age 20 years Occ. Household | |
| 2. Sikandar s/o Sharafoddin Shaikh
age 4 years minor | The Respondents
Claimants |
| 3. Hazroddin s/o Sharafoddin Shaikh,
age 2 years Minor. | |

The claimants No. 2 and 3 are
Minors and they are under
Guardianship of natural mother,
i.e Naimubee w/o Sharafoddin Shaikh

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| 4. Maheboob s/o Abbas Shaikh
Age 66 years, Occ. Household
All R/o Korangala Tq. Ausa, Dist. Latur. | |
| 5. Sanjay s/o Nagnath Sawale,
age 28 years, Occ. Driver
R/o Bhodhan Road, Udgir,
Tq. Udgir, Dist. Latur. | |
| 6. Devendra s/o Baburao Patil,
Age Major Occ. Business,
R/o Daithana, Tq. Udgir, Dist. Latur. | |

7. Sanjay s/o Babruvan Tike,
Age Major occu. Business,
R/o Haidurg, Tq. Ausa, Dist. Latur. Respondents.

Mr. M.R. Deshmukh, Advocate for the Appellant
Mr.B.N. Patil, Mr. S.H. Walke, Advocates for Respondent Nos.
1 to 4 (Absent)

Mr. V.D. Godbharle, Advocate for Respondent No. 5 & 6

Mr. M.L.Dharashive, Advocate for Respondent No. 7
(Absent)

CORAM : A.M. DHAVALÉ,J.

DATE: 10th AUGUST, 2018

ORAL JUDGMENT :

1. Heard.

2. Admitted. With the consent of the parties, First Appeal is taken up for final hearing.

3. This is an Appeal by the insurance company challenging the Judgment of MACP No. 79 of 2001 decided by Member, Motor Accident Claims Tribunal, Latur on 23.09.2004 wherein, the insurance company was held jointly and severally liable to pay to the legal heirs of the deceased Rs. 2,81,432/- along with interest @ 9% per

annum. His challenge is restricted on the point of rashness and negligence of the truck driver. The driver of the truck is insured with the appellant. It is the contention that there was contributory negligence on the part of the deceased, who was driving Jeep as there was head on collision.

4. As per the papers, deceased Sharfoddin on 07.10.2000, was driving the Jeep MH-24-C-0954 and was proceeding from Latur to Ausa. When the Jeep came near Budhoda, truck No. MH-24 A 2478 belonging to original respondent No.2 driven by respondent No.1 and insured with respondent No.3 was driven rashly and negligently and in high and in excessive speed and gave a dash to the Jeep whereby the driver of the Jeep as well as four occupants of the Jeep died on the spot.

5. The crime has been registered for the offences registered against the truck driver - respondent No.1. The truck driver and owner though served and appeared, did not file the written statement. The insurance company denied the rashness and negligence of the truck driver and alternatively claimed contributory negligence of the Jeep driver.

6. The learned Member has held that there was total rashness and negligence on the part of the truck driver and he fastened the liability to pay the compensation of Rs.2,81,432/- jointly and severally on respondent Nos.1 to 3 (including the appellant appearing as respondent No.3 in the trial court.)

7. Shri. Mohit Deshmukh, learned advocate for the appellant argued that there was headon collusion at the centre of the road. The claimants have not examined any witness to prove the rashness and negligence of the truck driver. In the circumstances as per record, there should have been findings of contributory negligence and fixation of liability on the insurance company should have been proportionately reduced. Mr. Godbharle, the learned counsel for Respondent Nos. 5 and 6 supported Advocate Mohit Deshmukh.

8. None present for the claimants/Respondent No.1 to 4.

9. The point for my consideration with my findings is as follows:

- (i) Whether there was contributory negligence by the deceased Jeep driver? if yes, how much ? In the negative
- (ii) Whether any interference is called for? In the negative
- (ii) What order? The appeal is dismissed with costs.

REASONS

10. CW1-Mehboob, father of the deceased Jeep driver was examined but he has no personal knowledge of the accident. He has relied on police papers namely, FIR Exh.39, inquest panchama Exh. 40, spot panchanama Exh.41 and Postmortem report Exh.42. Respondent No.1 has examined himself. He has stated that he was in employment of the respondent No.2 and was driving the truck from AUSA to Latur. That time, near Budhoda while Jeep came from the middle of the road, he applied the brakes, but it being rainy season vehicle slipped and it gave a dash to the rear side of jeep. The said accident occurred due to mistake of Jeep driver. In cross-examination, he denied that his truck was in excessive speed. He admitted that after the dash against the jeep, the truck had proceeded to a ditch. Then he

admitted that the crime was registered against him in connection with the offence but denied that due to his rash and negligence driving, he was responsible for the accident. The FIR Exh.23 was filed by Dayanand Shinde. He has no personal knowledge about it.

11. The spot panchanama was drawn on 08.10.2000 on the next day and copy is at Exh.15. It shows that the road of the spot was 25 feet in width and there were side strips of 5 feet width. The Jeep was proceeding from Latur to AUSA and after the accident, it was found lying on the left side of the road while facing to AUSA. Its rear right wheel is on the road and the remaining Jeep was found on the side strip. The Spot panchnama shows that the truck was proceeding from AUSA to Latur i.e. south to north and it is found to have left the road and was found lying at a distance of 57 feet on its wrong side in a ditch. In the accident, all the 6 passengers in the Jeep died. The factual situation in the spot panchnama speaks for itself that the place of impact is on the correct side of the Jeep and wrong side of the truck. The truck had left its lane and went to the wrong side and must be in excessive speed. Therefore, after the accident, it has covered a distance of 57 feet. The charge sheet is filed

against the truck driver. The evidence of the Jeep driver does not indicate any rashness and negligence on the part of the Jeep driver. Therefore, I hold that the trial court has rightly held that there was rashness and negligence entirely on the part of the truck driver. No other point has been canvassed. Therefore, no interference is called for in the judgment of the trial court. Hence the order:

ORDER

The appeal is dismissed with costs.

(**A.M.DHAVALA, J**)

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