

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

FIRST APPEAL NO. 2958 OF 2015

1. Sahebrao S/o Dhondiba Jadhav,
Age 62 yrs occ. Agril.,
R/o Vaibhav Nagar, Karegaon Road,
Parbhani, Tq. & Dist. Parbhani.
2. Vimal W/o Sahebrao Jadhav,
Age 58 yrs, Occu. Household,
R/o Vaibhav Nagar, Karegaon Road,
Parbhani, Tq. & Dist. Parbhani. ..Appellants

Versus

1. Laxmibai W/o Ganpatrao Jadhav,
Age 61 yrs, Occu. Household,
R/o Vaibhav Nagar, Karegaon Road,
Parbhani, Tq. & Dist. Parbhani.
2. The Oriental Insurance Company
through its Branch Manager,
Shivaji Chowk, Parbhani.
3. Yunuskhan S/o Daulatkhan Pathan,
Age 50 yrs, Occu. Business,
R/o Akhada Balapur, Tq. Kalamnuri,
Dist. Hingoli. ..Respondents

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Mr. Mahesh P. Kale, Advocate for the Appellants.
Mr. A.V. Deshpande, Advocate for Respondent No.2.

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CORAM : P.R. BORA, J.

DATE : 30th OCTOBER, 2018.

ORAL JUDGMENT:-

. The original claimants in Motor Accident Claim Petition No. 209 of 2008 have preferred the present appeal against the judgment and order passed by the Motor Accident Claims Tribunal at Parbhani in the aforesaid petition decided on

30.12.2014.

2. The claimants had filed the aforesaid petition claiming compensation on account of death of their son namely Sham in a road accident happened on 25.04.2008 having involvement of Indica Car bearing Registration No. MH-04-BW-9852 and Commander jeep bearing Registration No. MH-26-C-1119. Deceased Sham @ Shrikant Jadhav was traveling by Indica car and the said car was dashed by the aforesaid Commander jeep. In the accident so happened, deceased Sham died on the spot. As stated in the petition, age of deceased Sham was 18 years on the date of accident and he was a student. The appellants who are hereinafter referred to as the claimants, therefore, filed the aforesaid claim petition claiming the compensation from the owner of the jeep as well as owner and insurer of the Indica car.

3. The learned Tribunal has held the accident to have been caused as a result of composite negligence on part of the drivers of both the vehicles involved in the alleged accident i.e. Indica car and the Commander jeep. The learned

Tribunal after having considered the evidence adduced by the parties before it, determined the amount of compensation to the tune of Rs. 2,84,000/-. The Tribunal, however, held the claimants entitled to receive only 40% of the said amount jointly and severally from originally respondent nos. 1 and 2 i.e. owner and insurer of the Indica car. Impliedly, the Tribunal has dismissed rest of the claim against the owner and driver of the Commander jeep. Aggrieved by, the claimants have preferred the present appeal.

4. Shri M.P. Kale, the learned counsel appearing for the appellants-claimants assailed the impugned judgment mainly on the ground that when the Tribunal has recorded an unambiguous finding that the accident had happened because of the composite negligence of the drivers of both the vehicles, there was no reason for the Tribunal to make any further order making apportionment of proportion negligence inter se the two tortfeasors. The learned counsel relied upon the judgment of the Hon'ble Apex Court in the case of **"T.O. Anthony Vs. Karvarnan and Ors, 2008 (5) Mh.L.J. 7"**. The learned counsel also relied upon

the subsequent judgment of Hon'ble Apex Court in the case of **"A.P.S.R.T.C and Anr Vs. K. Hemlata and Ors, AIR 2008 SC 2851"**. The learned counsel submitted that the Tribunal has manifestly erred in apportioning the amount of compensation and making only 40% payable jointly and severally from the owner and insurer of the Indica car. The learned counsel submitted that in so far as the deceased is concerned, he was a third party and as such both the tort feasons are jointly and severally liable to pay the entire amount of compensation to the claimants.

5. Shri Deshpande, the learned counsel appearing for respondent no.2-insurance company supported the impugned judgment and award. The learned counsel submitted that a well reasoned judgment has been passed by the Tribunal and no interference is required in the judgment and award so passed.

6. I have given due consideration to the submissions made by the learned counsel for the parties. I have also perused the impugned judgment and award as well as the evidence on record. It is

not in dispute that two vehicles were involved in the alleged accident. One was Indica Car and another was Commander Jeep. The Tribunal has recorded a finding that the alleged accident happened as a result of composite negligence of the drivers of both the vehicles involved in the alleged accident. The Tribunal has further held that negligence on part of the jeep driver was to the extent of 60% whereas it was 40% on part of the driver of Indica Car. Consequently, respondents nos. 1 and 2 i.e. the owner and insurer of the Indica Car are held liable by the Tribunal to jointly and severally pay to the claimants only 40% of the total amount of compensation determined by it. It is the matter of record that the petition was dismissed against respondent no.3.

7. The decision of the Tribunal to determine the extent of liability of each wrong doer separately is apparently unsustainable. As has been held by the Hon'ble Apex Court in the case of **"T.O. Anthony Vs. Karvarnan and Ors, (2008) 3 SCC 748"** in a case of composite negligence each wrong doer is jointly and severally liable to the injured or to the legal heirs of deceased, as the case may

be, for payment of the entire compensation and the claimants have the choice of proceeding against all or any of them. The Hon'ble Apex Court has further held that injured or the legal heirs of deceased as the case may be need not establish the extent of responsibility of each wrong doer separately, nor it is necessary for the court to determine the extent of liability of each wrong doer separately.

8. In the instant case, when the Tribunal has recorded an unambiguous finding that the accident in question happened because of the composite negligence on part of the drivers of both the vehicles involved in the alleged accident, each of the wrong doer must have been held jointly and severally liable to the legal heirs of deceased for making payment of the entire amount of compensation as was determined by the Tribunal. The Tribunal has manifestly erred in determining the extent of liability to pay to the claimants the compensation to the extent of only 40% of the total compensation determined by it. The order so passed by the Tribunal cannot be sustained and deserves to be set aside. Respondent nos. 1 and 2 are to be jointly and severally held liable to pay the entire amount

of compensation as has been determined by the Tribunal to the legal heirs of deceased Sham.

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

ORDER

- i) Respondent nos. 1 and 2 are jointly and severally held liable to pay the entire amount of compensation as has been determined by the Tribunal i.e. Rs. 2,84,000/- to the appellants-claimants with interest thereon at the rate of 9% p.a. from the date of filing of the claim petition till realization of the said amount.
- ii) The appeal stands allowed in the aforesaid terms. Award be prepared accordingly.
- iii) Pending civil applications, if any, stand disposed of.

(P.R. BORA, J.)