

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

FIRST APPEAL NO. 2225 OF 2012

The Oriental Insurance Co. Ltd.
Divisional Office, Aurangabad
Through its Divisional Manager,
Aurangabad.

.. Appellant
(Ori. R.No.4)

Versus

1. Meenabai w/o. Babanrao Sukre,
Age 32 Years, Occu. Household,
2. Rameshwar s/o. Babanrao Sukre,
Age 13 Years, Occu. Education,
3. Dnyaneshwar s/o. Babanrao Sukre,
Age 11 Years, Occu. Education,
4. Kiran s/o. Babanrao Sukre,
Age 09 Years, Occu. Education,
5. Jijabai d/o. . Babanrao Sukre,
Age 07 Years, Occu. Education,
No. 2 to 5 Minors and U/g. Of
Respondent No.1 their mother
6. Manubai w/o. Kisanrao Sukre,
Age 65 Years, Occu. Household,
All presently residing at
Nayakota, Taluka Sonpeth,
District Parbhani.
7. Shakir Musa Patel,
Age Major, Occu. Business,
R/o. Kaderabad Plot,
Parbhani, Tq. Dist. Parbhani.
8. The Branch Manager,
United India Insurance Co.
Dayavan Complex 2nd Floor,
Station Road, Parbhani,
Dist. Parbhani.
9. Abasaheb s/o. Deorao Wagh,
Age Major, Occu. Business,
R/o. Pokharni, Tq. Dist. Parbhani.

.. Respondents
(R-1 to 6 Ori. Claimants)
(R-7 & 8 Org. R-1 & 2)
(R-9 Org. R-3)

Mr. A.G. Kanade, Advocate for the appellant.
Mr. M.P. Kale, Advocate for respondent Nos. 1 to 6.
Mr. P.K. Ippar advocate h/f. Mr. S.J. Salunke, Advocate for respondent No.9.
Mr. A.S. Deshpande, Advocate for respondent No.7
Mr. S.S. Rathi, Advocate for respondent No.8

CORAM : V.L. ACHLIYA,J.

DATED : 12th August, 2018.

JUDGMENT :-

1. By consent, heard finally at the stage of admission.
2. In view of the limited challenge raised in the appeal, it is not necessary to discuss the facts in detail. The appellant - original respondent No.4 has preferred this appeal, challenging the judgment and order dated 6th March, 2012 passed by the MACT, Parbhani, in M.A.C.P. No. 4 of 2011, on the grounds set out in detail in the memo of appeal. The award is challenged, mainly for the reason, the Tribunal has apportioned the liability imposed on two vehicles involved in the accident in the ratio of 60:40 and made the appellant liable to pay compensation to the extent of 40%.
3. Mr. Kanade, learned counsel for the appellant assailed the reasons and findings recorded by the Tribunal with contention that there is absolutely no evidence to show that the driver of the auto-rickshaw which was insured with the appellant, in any manner responsible for causing the accident and resultant death of the deceased. He submits that, as per the case pleaded by the claimant, the accident was occurred solely due to the rash and negligent driving on the part of driver of the water tanker bearing Registration No. MH-15/G-7770. It is submitted that the claimant has approached with the

case that the accident had occurred solely due to the rash and negligent driving on the part of the driver of water tanker owned by respondent No.7 and insured with respondent No.8. The circumstantial evidence proves that the accident was caused due to sole negligence on the part of the driver of water tanker. He contended that the respondent No.1 i.e. wife of deceased has admitted in her cross-examination that the accident was occurred due to sole negligence on the part of the driver of the water tanker. It is submitted that there is no iota of evidence to establish that the driver of auto-rickshaw was negligent in driving the vehicle and in any manner contributed in causing accident and consequent death of the deceased. He further submitted that the reasons and findings recorded by the Tribunal are totally unjust, improper and unsustainable in law, and urged to set aside the judgment to the extent of making the appellant liable to pay compensation.

4. On the other hand, the learned counsel representing the respondents have supported the judgment and order passed by the Tribunal. By referring to the pleadings and evidence, the learned counsel submits that the Tribunal was justified in holding the driver of the auto-rickshaw also liable for the accident alongwith driver of the truck/tanker. It is pointed out that the testimony of respondent No.1 is not relevant to decide the negligence on the part of the driver of the offending vehicles, for the sole reason that the respondent No.1 was not the witness to the incident. It is submitted that in absence of witness to the incident examined in the case, the Tribunal has rightly based its decision on the circumstantial evidence. It is pointed out that as per the case pleaded, the deceased was travelling in the auto-

rickshaw alongwith co-passengers and the auto-rickshaw driver hit the water tanker from behind and consequent death of deceased passenger.

4. As per the FIR lodged by respondent No.9, i.e. owner and driver of the auto-rickshaw and insured with appellant, at the time of accident, he was proceeding with the auto-rickshaw with passengers from Pokharni towards Shingnapur. When he was proceeding towards Shingnapur Phata, one tractor came from the opposite direction. In order to give side to that tractor, he took his auto-rickshaw to left side of the road so as to provide passage to tractor. When he took his auto-rickshaw to his left side to give passage to the tractor, the driver of the water tanker was taking his vehicle in reverse direction without proper care and caution of the vehicles coming from his rear side and gave dash to the auto-rickshaw, which resulted into accident and consequent death of deceased husband of respondent No.1. The deceased who fell down from the auto-rickshaw sustained fatal injuries. He was taken to the Government Hospital where he succumbed to injuries.

5. The learned counsel for respondent No.8 (original respondent No.2) invited attention to the Spot Panchanama Exh.41 and submitted that as per the facts recorded in the Panchanama and more particularly, the sketch of the spot of incident drawn after the incident indicate that the water tanker was standing to the extreme left side of the road. By referring to the overall facts of the case and the manner in which the accident occurred the learned counsel submit that the Tribunal was fully justified in drawing an inference that the auto-rickshaw driver was also negligent in driving his auto-rickshaw and

failed to take care of the vehicles ahead of him. It is submitted that the accident had occurred in a day time while giving side to the tractor coming from the opposite direction. The auto-rickshaw driver was expected to take due care and caution of the vehicles ahead of him. It was expected on his part to have noticed the water tanker to avert the impact, even if it is assume that the driver of the water tanker was taking the water tanker in reverse direction. In this background, the learned counsel submits that the reasons and findings recorded by the Tribunal cannot be termed as based upon surmises and conjectures. It is submitted that the order passed by the Tribunal is based upon due appreciation of the rival pleadings and evidence and cannot be termed as perverse to call for interference in exercise of appellate jurisdiction.

6. In order to appreciate the submissions advanced, I have carefully perused the record and proceedings of the Tribunal. On due appreciation of rival pleadings and evidence on record, I am of the view that the judgment and order passed by the trial court and more particularly, the reasons and findings recorded by the trial court, to hold the driver of both the vehicles responsible for accident and making apportionment in the ratio of 60:40, cannot be termed as perverse.

7. The respondent No.1. i.e. original respondent No.1 is the only witness examined in the case. Although, respondent No.1 has deposed that accident was caused due to sole negligence on the part of the driver of the water tanker, her testimony is not relevant to decide the negligence for the sole reason that she had not witnessed the incident. In absence of any witness to the incident examined in the

case, the tribunal was fully justified to base its judgment on the basis of circumstantial evidence.

8. The circumstantial evidence on record make out the case to hold that the driver of auto-rickshaw was also negligent in driving the auto-rickshaw. As per the FIR lodged by the driver of auto-rickshaw, at the relevant time of the accident, he was proceeding with 4 passengers in auto-rickshaw from Pokharni to Parbhani. From Pokharni, he came to Singnapur Phata. When he reached near Singnapur Phata, one water tanker was ahead of him. One tractor came from opposite direction. In order to give side to tractor, the driver of auto-rickshaw took his auto-rickshaw to the left side of the road. When he took his auto-rickshaw to the left side of the road, the driver of the water tanker took his tanker in a reverse direction without taking care of vehicle coming from his rear side, which resulted into dash between the auto-rickshaw and the water tanker. On receiving dash, the deceased fell down from the auto-rickshaw and sustained injuries which resulted into his death. Thus, the fact is not in dispute that except the tractor, the auto-rickshaw and the water tanker were in the same direction. The fact is also not in dispute that the water tanker was parked to the extreme left side of the road. The fact is also not in dispute that the auto-rickshaw dashed to rear portion of the water tanker. The incident occurred in a day time, i.e. about 3.00 p.m. As per the sketch map at Exh.41, the incident had occurred at about 200 to 250 feet away from Singnapur Phata, that too, to the extreme west side of the Gangakhed-Parbhani road. The road from Gangakhed to Parbhani runs in south-north direction. In the sketch map, the Singnapur Phata is shown to the east side of Gangakhed-Parbhani road and the tanker is shown to be

standing by the western side edge of Gangakhed-Parbhani road i.e. beyond the western side edge of the tar road. The actual spot of incident is shown to be located at some distance away from the water tanker and that too on the tar road. The width of tar road is shown to be 24 feet with 5 feet kaccha road on each side of tar road. Thus, considering the overall facts of the case, the spot panchanama and the sketch map, it can be safely inferred that, the auto-rickshaw and the tractor could have safely passed from the 24 feet wide tar road if they were proceeding in opposite direction. In that view, there was no reason for the auto-rickshaw driver to take his vehicle to his extreme left for giving passage to the tractor coming from opposite direction. Since the incident occurred in broad day light and there was no issue of visibility, there was no reason for auto-rickshaw to dash the water tanker from behind. Looking to the width of the road and the fact that the tanker was to the left side of the road, the driver of the auto-rickshaw could have averted the accident, even assuming that the driver of the water tanker was taking his vehicle in a reverse direction without proper care and caution. The circumstances on record clearly indicate that the driver of the auto-rickshaw was also driving his vehicle in a negligent manner and without proper care and caution of the other vehicles on the road. Therefore, the view taken by the Tribunal can be said to be a possible view in the matter and the findings recorded by the Tribunal cannot be termed as perverse so as to call for interference in exercise of appellate jurisdiction.

9. In view of above, the inference drawn by the Tribunal that auto-rickshaw driver was also negligent in driving the auto-rickshaw and contributed to the cause of incident and apportioned the liability in

the ratio of 60 : 40, cannot be said to be perverse and contrary to the evidence on record. In that view, the judgment and order passed by the tribunal calls for no interference in exercise of the appellate jurisdiction.

10. In the result, the appeal deserves to be dismissed. Accordingly, the appeal is dismissed with no orders as to costs.

[V.L. ACHLIYA]
JUDGE.

grt/-