

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,

BENCH AT AURANGABAD

FIRST APPEAL NO. 918 OF 2007

National Insurance Company, Limited,
having it's Head Office & Registered
Office at 3, Middleton Street, Kolkata
and a Divisional Office at Hazari Chamber,
Station Road, Aurangabad.

APPELLANT

(Original Respondent No. 3)

VERSUS

- 1) Smt. Urmilabai w/o Pulchand Munde,
Age; 37 years; Occupation; Household,
R/o Kanherwadi, Taluka. Parlivaijnath,
District; Beed.
- 2) Shri Sanjay Phulchand Munde,
Age; 22 years, Occupation; Agriculture,
R/o Kanherwadi, Taluka; Parlivaijnath,
District; Beed.
- 3) Shri Jivraj Phulchand Munde,
Age; 19 years, R/o Kanherwadi,
Since deceased. (Original Petitioner Nos. 1 to 3)
- 4) Deelip Narayan More,
Age; Major, Occupation; Driver,
Resident; Chanai, Taluka. Ambejogai,
District- Beed. (Original Respondent No. 1)
- 5) Harikishan s/o Shankarlal Tapde,
Age; Major, Occupation; Business,
Residence; Parijat Colony, Ambejogai,
District – Beed.

RESPONDENTS

(Original Respondent No. 2)

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Shri P.P. Bafna, Advocate for Appellant
Shri Sachin Deshmukh, Advocate for Respondent No 5
Shri Anand P. Bhandar & Shri G.V. Ghuge for Respondent
Nos. 1 & 2
Mr. M.B.Kolpe, advocate for respondent no.4 absent

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FIRST APPEAL NO. 829 OF 2007

National Insurance Company Limited,
having it's Head Office & Registered Office
at 3, Middleton Street, Kolkata and
a Divisional Office at Hazari Chamber,
Station Road, Aurangabad.

APPELLANT

(Original Respondent No. 3)

VERSUS

- 1) Smt. Bhagabai w/o of Manikrao Munde,
Age; 55 years, Occupation; Household,
R/o Kanherwadi, Taluka. Parlivaijnath
District – Beed.
- 2) Laxmibai w/o Atmaram Munde,
Age; 27 years, Occupation; Household,
R/o Kanherwadi, Taluka; Parlivaijnath,
District – Beed.
- 3) Savitabai w/o Atmaram Munde,
Age; 24 years, Occupation; Household,
R/o Kanherwadi, Taluka. Parlivaijnath,
District – Beed.
- 4) Kum. Shivkanya d/o Atmaram Munde,
Age; 9 years, Occupation; Student,
Under Guardian of her mother Laxmibai w/o
Atmaram Mundhe, (Respondent No. 2)
- 5) Rajabhau s/o Atmaram Munde,
Age; 8 years, Occupation; Minor, Student,
Under Guardian of his mother
Savitabai w/o Atmaram Munde
respondent no.3

- 6) Balaji s/o Atmaram Munde,
Age; 7 years, Occupation; Student,
Under Guardian of his mother
Laxmibai w/o Atmaram Mundhe
Respondent No. 2
- 7) Krishna s/o Atmaram Munde,
Age; 6 years, Occupation; Student,
Under Guardian of his mother
Savitabai w/o Atmaram Munde
respondent no.3
- 8) Tai d/o Atmaram Munde,
Age; 4 years, Occupation; Student,
Under Guardian of his mother
Savitabai w/o Atmaram Munde
respondent no.3 (Original Claimants Nos. 1 to 8)
- 9) Deelip Narayan More,
Age; Major, Occupation; Driver,
R/o Chanai, Taluka. Ambejogai,
District- Beed. (Original Respondent No. 1)
- 10) Harikishan s/o Shankarlal Tapde,
Age; Major, Occupation; Business,
R/o Parijat Colony, Ambejogai,
District – Beed. **RESPONDENTS**
(Original Respondent No. 2)

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Shri P.P. Bafna, Advocate for Appellant
Shri Anand Bhandari for Respondent Nos. 1 to 8
Shri M.B. Kolpe, Advocate for Respondent No. 9
Shri Sachin Deshmukh, Advocate for Respondent No 10
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CORAM : SUNIL K. KOTWAL, J.

Date of Reserving Judgment : 23.8.2018.

Date of Pronouncing Judgment : 29.8.2018.

J U D G M E N T :

These two appeals are filed by the National Insurance Company against the award passed by the Member, Motor Accident Claims Tribunal, Ambajogai. First Appeal No. 829 of 2007 is directed against the judgment and award passed in MACP No. 62 of 2001 awarding compensation of Rs. 2,92,000/- to the original claimants with interest thereon at the rate of 7.5 % p.a. from the date of petition till the realization of entire amount and Respondent Nos. 1 to 8 are the original claimants, respondent No. 9 is the driver and respondent No. 10 is the owner of offending vehicle involved in the motor vehicles accident.. First Appeal No. 918 of 2007 is directed against the judgment and award passed in M.A.C.P. No. 61 of 2001 awarding compensation of Rs. 3,01,000/- inclusive of no fault liability amount. Respondent Nos. 1 to 3 are the original claimants, respondent No. 4 is the driver and respondent No. 5 is the owner of offending vehicle involved in the motor vehicles accident.

2. Brief facts in between the parties are that, on 1.5.2000 when deceased Atmaram Mundhe and one Fulchand Mundhe were traveling by motorcycle by Parali to Gangakhed on Ammajogai road, the offending truck bearing No. MTB-7410, which was coming from opposite direction of

the road, dashed against the said motorcycle. In that accident, Atmaram Mundhe and Fulchand Mundhe succumbed to the injuries sustained in the accident. Therefore, a Motor Accident claim was filed by the claimants against the driver, owner and the appellant Insurance Company. The Tribunal has awarded compensation of Rs. 3,01,000/- and Rs. 2,92,000/- to the claimants in the respective appeals, which is challenged in the present appeal.

3. Heard strenuous arguments submitted by Shri P.P. Bafna , learned counsel for appellant, Shri A.P. Bhandari, learned counsel for respondent nos. 1 to 8 and Shri Sushil Deshmukh, learned counsel for respondent No. 10.

4. The learned counsel for appellant assailed the judgment and award passed by the learned Member of the Motor Accident Claims Tribunal, Ambajogai, District Beed on two grounds. His first objection is that at the time of accident there was head on collision in between the offending truck and the motor cycle, therefore, there was

contributory or composite negligence on the part of deceased. He claims that for these reasons there shall be only 50% liability to pay the compensation on the part of the Insurance Company. His next objection is that as the driver of the offending vehicle was holding driving license for driving 'light motor vehicle' and as the offending truck is the heavy motor vehicle as mentioned in the registration certificate (Exh. 38), there was breach of conditions of policy of insurance and therefore the Insurance Company shall be absolved from every liability to indemnify the owner of the vehicle. He placed reliance on the judgment Apex Court in the case of "**Bijoy Kumar Dugar Vs Bidya Dhar Dutta and Others**" [(2006) 3 SSC 242].

5. In reply, learned counsel for respondent nos. 1 to 8 submits that from the FIR and documents placed on record, it emerges that the accident occurred due to rash and negligent driving by the driver of the offending truck. In the alternate, his submission is that, the Insurance Company did not obtain permission under section 170 (b) of Motor Vehicles Act. After careful examination of record and

proceeding of the Tribunal, it emerges that by passing order below Exh. 47, the Tribunal has granted permission to the Insurance Company to take defences available to the owner of the vehicle. Therefore, certainly the Insurance Company can take defences available to the owner regarding the contributory negligence on the part of the deceased. The defences will not be restricted only to the extent of Section 149 (2) of the Motor Vehicles Act.

6. However, so far as the defence of contributory negligence of the deceased is concerned, it must be noted that in the written statement (Exh. 21), the Insurance Company nowhere pleaded regarding the contributory negligence on the part of deceased at the time of occurrence of the accident. It is needless to say that without such pleadings the Insurance Company cannot raise defence of contributory negligence for the first time before the Tribunal. Otherwise also, after going through the evidence of claimant Savita Mundhe (AW-1), it emerges that, in her cross-examination the Insurance Company could not bring on record any admission regarding the contributory negligence on the part of the deceased. On the

other hand, copy of FIR (Exh. 34) clearly indicates that the above motor vehicle accident occurred due to negligent driving by the driver of the offending truck who was driving truck at high speed. The FIR shows that initially truck gave dash to one bicycle of Dashrath Butte and thereafter, gave dash to the motor cycle of the deceased which was coming from the opposite direction of the road. Even the spot panchanama of the scene of accident (Exh. 35) clearly shows that, the motor cycle was lying on the side strip, by the side of the Tar road. The truck was standing on the opposite side of the road. Thus, otherwise also, evidence placed on record nowhere indicates that there was contributory negligence on the part of the deceased. I hold that the first objection raised by the learned counsel for the appellant can be safely dispelled.

7. Now the question before me is, whether at the time of accident the driver of the offending vehicle was holding "invalid" driving license, because, his license was to drive light motor vehicle. The question arises as to whether the offending truck falls within the category of 'light motor vehicle' under the provisions of the Motor Vehicles Act.

1988. Under Section 2 (16) of the Motor Vehicles Act, 1988, the "heavy goods vehicle" means any goods carriage the gross vehicle weight of which, or a tractor or a road roller the unladen weight of either of which, exceeds '12,000 kilograms'. Under Section 2 (21) "light motor vehicle" means a transport vehicle or omnibus the gross vehicle weight of either of which or a motor car or tractor or road roller the unladen weight of any of which, does not exceed '7500 kilograms'. Thus, if the unladen weight of offending truck is more than 7500 kilograms, only then it falls in the category of 'heavy goods vehicle'. However, R.C. Book (Exh. 40) of offending truck shows that the unladen weight of offending truck was '5120 kilograms'. Thus, even within the meaning of Section 2 (21) of the Motor Vehicles Act, the offending truck falls within the category of "Light Motor Vehicle".

8. Undisputedly the driver of the offending truck was holding driving license (Exh. 37) to drive light motor vehicle. Thus, obviously, the driver of the offending truck was holding "valid driving license" to drive the truck. Therefore, there was no breach of conditions of policy of the

Insurance Company on the part of the owner of the offending vehicle. In the circumstances, I hold that the liability to pay compensation was rightly fastened against the Insurance Company including the owner and driver of the offending vehicle. The insurance Company cannot avoid its responsibility to indemnify the owner of the offending vehicle. Thus, even the second objection raised by the Insurance Company holds no water.

9. Regarding the quantum of compensation, the learned counsel for both the parties fairly concede that reasonable compensation has been awarded by the learned Tribunal. In the circumstances, I am fully satisfied that these appeals being devoid of merits deserve to be dismissed with costs. Hence following order :

ORDER

First Appeal No. 918 of 2007 and First Appeal No. 829 of 2007 are dismissed with costs.

(SUNIL K. KOTWAL)
JUDGE