IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

909 FIRST APPEAL NO. 3085 OF 2008
WITH
CA/11076/2018 IN FA/3085/2008

. Divisional Manager,
United India Insurance Company Ltd.,
Divisional Office,
Janata Shopping Centre,
Navi Peth, Solapur.

Through its authorised signatory
and Divisional Manager,
United India Insurance Company Limited,
5/5/76, Vinayakrao Patil Chowk,
Osmanpura, Aurangabad. ..Appellant
(Ori. Respondent No.2)

Versus

1. Bhaskar S/o. Ambaji Ghuge
Age: 59 years, Occu.: Agriculture,
R/o. Andoor, Taluka: Tuljapur,
District: Osmanabad. ..Respondent
(Original Claimant)

2. Vitthal S/o. Dharmaji More
Age: Major, Occu.: Transport,
R/o. Pangaon, Taluka: Barshi,
District: Solapur. ..Respondent
(Orig. Respondent No.1)

3 Maharashtra Rajya Marg Parivahan
Mahamandal, Vahatuk Bhavan,
Mumbai – Through Divisional
Controller, M.S.R.T.C., Osmanabad. ..Respondent
(Orig. Respondent No.3)

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Advocate for Appellant : Shri V.R.Mundada
Advocate for Respondent No.1 : Shri Manoj Shinde h/f.
Shri A.B.Tele
Advocate for Respondent No.3 : Shri A.B.Dhongade

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CORAM : P.R.BORA, J.

DATE: 23rd October, 2018

ORAL JUDGMENT :-

1. The Insurance Company has filed the present appeal against the Judgment and award passed by the Motor Accident Claims Tribunal at Osmanabad, in Motor Accident Claim Petition No.276 of 2002 decided on 22.05.2008.

2. Present respondent No.1 had filed the aforesaid claim petition claiming compensation for the injuries caused to him in a vehicular accident happened on 14.07.2002. It was the case of respondent No.1 (who is hereinafter referred to as 'the claimant') that when he was travelling by S.T.Bus bearing registration No.MH-12/AQ-8946 from Barshi to Solapur, the said Bus was dashed by a Goods Truck bearing registration No.MH-13/G-1192 and in the accident so happened, he was severely injured and also incurred permanent disablement because of the injuries caused to him. The learned Tribunal after having considered the evidence brought before it, has held the claimant entitled for compensation of Rs.2,20,062/- inclusive of no fault liability amount, but had held only the owner and the insurer of the Truck liable to pay the amount of compensation. Aggrieved by the Judgment so passed, the Insurance Company has preferred

the present appeal.

3. Shri V.R.Mundada, learned Counsel appearing for the appellant Insurance Company criticized the impugned Judgment stating that the Tribunal has recorded apparently a wrong conclusion that the accident happened because of sole negligence of the driver of the Truck. The learned Counsel submitted that a specific plea was raised by the appellant Insurance Company in its written statement filed before the Tribunal that there was no negligence on the part of the driver of the Truck and alleged accident had happened because of sole negligence on the part of the driver of the S.T.Bus. The learned Counsel submitted that in fact, without driver of the S.T. Bus impleaded as the respondent in the claim petition, the said petition could not have been entertained by the learned Tribunal and must have been dismissed for non-joinder of necessary party. The learned Counsel further submitted that even on merits, considering the evidence on record, it can be reasonably inferred that in occurrence of the accident, no such conclusion could have been recorded that there was no negligence on the part of the driver of the S.T. Bus. In the circumstances, according to the learned Counsel, the entire liability could not have been fastened only on the owner and insurer of the Truck. For the

aforesaid reasons, the learned Counsel prayed for setting aside the impugned Judgment and award and in the alternative prayed for remand of the matter with a direction to decide the issue of negligence afresh.

4. Shri Manoj Shinde, learned Counsel appearing for the claimant resisted the submissions made by learned Counsel Shri Mundada. The learned Counsel submitted that the Tribunal has passed a well reasoned order and no interference is called for in the impugned Judgment and award. The learned Counsel further submitted that even if it is held that the accident had occurred because of the composite negligence of the drivers of both the vehicles involved in the alleged accident, the appellant Insurance Company could not have and cannot escape from the liability to pay the amount of compensation to the claimant. In the circumstances, according to the learned Counsel, the appeal filed by the Insurance Company is merit-less and therefore, prayed for dismissal of the appeal.

5. Shri A.B.Dhongade, learned Counsel appearing for the respondent No.3 i.e. Maharashtra State Road Transport Corporation (MSRTC) supported the impugned Judgment and award. The learned Counsel submitted that the appellant

Insurance Company admittedly did not adduce any evidence to substantiate its plea that the accident had happened because of sole negligence of driver of the S.T. Bus. In the circumstances, according to the learned Counsel, the Tribunal has not committed any error in holding the driver of the Truck solely responsible for causing the alleged accident.

6. I have given due consideration to the submissions made by the learned Counsel appearing for the respective parties. I have also perused the impugned Judgment. It is not in dispute that the claimant was travelling by the S.T.Bus. It is, therefore, evident that the claimant was a 'third party' vis-a-vis the owner and insurer of the offending truck. From the discussion made by the Tribunal and from the evidence on record, it is revealed that the accident happened because the Bus and Truck collided with each other. It is the contention of the appellant Insurance Company that the Tribunal should have attributed negligence on the part of both the vehicles. I am, however, not convinced with the submission so made. If this was the case of the appellant Insurance Company, it must have adduced positive evidence on its behalf in order to substantiate the plea raised by it in its written statement. Admittedly, the appellant did not adduce any oral or documentary evidence on record. From the discussion

made by the Tribunal, it is revealed that in relation to the accident in question, the Police has prosecuted only the driver of the Truck and the driver of the S.T.Bus has not been prosecuted. Thus, primary evidence was against the Truck driver and if the Insurance Company was of the opinion that there was no negligence on the part of the driver of the Truck, the rebuttal evidence or positive evidence to substantiate plea raised by it, must have adduced by the appellant Insurance Company. In absence of such evidence, the learned Tribunal on the basis of evidence brought before it, has recorded a finding holding the driver of the Truck solely negligent in occurrence of the alleged accident. It does not appear to me that any error has been committed by the Tribunal.

7. After having considered the entire material on record, it is difficult to agree with the submission made by Shri V.R.Mundada, learned Counsel appearing for the appellant Insurance Company that in occurrence of the alleged accident there was absolutely no negligence on the part of the driver of the offending Truck insured with the appellant Insurance Company. At the most, it could have been held by the Tribunal that in occurrence of the alleged accident, the drivers of both the vehicles involved in the alleged accident were responsible. Thus, from the claimant's

point of view, it would have been the case of composite negligence instead of sole negligence of the driver of the offending Truck. In that contingency also the appellant Insurance Company could not have been exonerated from its liability to indemnify the insured and should have been held jointly and severally responsible to pay the amount of compensation alongwith another tortfeasor i.e. driver and owner of the S.T.Bus. As held by Hon'ble Apex Court in the case of ***T.O.Anthony Vs. Karvarnan and others [2008 (5) Mh.L.J. 7]***, in the case of composite negligence, each wrongdoer is jointly and severally liable to the claimants for the payment of the entire damages and the legal heirs of the deceased have the choice of proceeding against all or any of them. As has been further held by the Hon'ble Apex Court, in such case, the injured or the legal heirs of the deceased need not establish the extent of responsibility for each wrongdoer separately nor is it necessary for the Tribunal to determine the extent of liability of each wrongdoer separately.

8. For the reasons stated above, it does not appear to me that any case is made out by the appellant Insurance Company so as to cause interference in the impugned Judgment and award. The appeal being devoid of merit deserves to be dismissed and is accordingly dismissed. Pending civil application stands disposed

of.

9. The claimant is permitted to withdraw the amount of compensation, if any, deposited by the appellant Insurance Company in this Court, if already not withdrawn.

10. The solvent surety or undertaking given by the claimant while withdrawing the deposited amount on earlier occasion shall stand discharged.

(**P.R.BORA**)
JUDGE

SPT