

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

First Appeal No. 02757 of 2017

District : Aurangabad

M/s. Shriram General Insurance
Company Limited,
Through the Branch Manager,
2nd Floor, Ashoka Hall,
Opp. Sun & Sand Hotel,
Bund Garden Road, Pune.

.. Appellant
(Original
respondent
no.02)

Through its Authorized Signatory/
Manager,
10003-E-8, EPIP, RICO Industrial
Area, Sitapura,
Jaipur - 303 202 (Rajasthan)

versus

1. Chandrakala Atmaram Mohite,
Age : 55 years,
Occupation : Household,
R/o. Row House No.20,
Suyash Darshan Vihar,
Deolai Chowk,
Satara Parisar,
In front of Beed Bypass Road,
Aurangabad.
2. Atmaram Shamrao Mohite,
Age : 63 years,
Occupation : Nil,
R/o. As above.
3. Pallavi d/o. Atmaram Mohite,
Age : 33 years,
Occupation : Education,
R/o. As above.
4. Rushikesh s/o. Atmaram Mohite,
Age : 26 years,
Occupation : Education,

R/o. As above.

5. Shamsundar Arun Rode,
Age : 30 years,
Occupation : Driver & Owner,
R/o. Dhekari,
Taluka Tuljapur,
District Jalna.

.. Respondents
(No.01 to 04 -
Original
claimants.
No.05 to 07 -
Original
respondents
no.01, 03 & 04)

6. Hemlata Kantilal Thole,
Age : Major,
Occupation : Business,
R/o. Bhendala,
Taluka Gangapur,
District Aurangabad.

7. Branch Manager,
United India Insurance
Company Limited,
New Osmanpura,
Aurangabad.

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Mr. S.G. Chapalgaonkar, Advocate, for the appellant.

*Mr. A.N. Nagargoje, Advocate, for respondents
no.01 to 04.*

Mr. B.R. Jaybhay, Advocate, for respondent no.05.

*Respondent no.06 exempted as per Court's order
dated 11-07-2017.*

Mr. S.S. Rathi, Advocate, for respondent no.07.

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WITH

Cross Objection Stamp No. 10801 of 2019
(In First Appeal No.02757 of 2017)

District : Aurangabad

1. Chandrakala Atmaram Mohite,
Age : 56 years,

Occupation : Household,
R/o. Row House No.20,
Suyash Darshan Vihar,
Deolai Chowk, Satara Parisar,
In front of Beed Bypass Road,
Aurangabad.

2. Atmaram Shamrao Mohite,
Age : 64 years,
Occupation : Nil,
R/o. As above.

3. Pallavi d/o. Atmaram Mohite,
Age : 34 years,
Occupation : Education,
R/o. As above.

.. Appellants
(Original
claimants)

4. Rushikesh s/o. Atmaram Mohite,
Age : 27 years,
Occupation : Education,
R/o. As above.

versus

1. M/s. Shriram General Insurance
Company Ltd.,
Through the Branch Manager,
2nd Floor, Ashoka Hall,
Opp. Sun & Sand Hotel,
Bund Garden Road, Pune.

Through its Authorized Signatory/
Manager,
10003-E-8, EPIP,
RICO Industrial Area,
Sitapura, Jaipur - 303 202
(Rajasthan).

2. Shamsundar Arun Rode,
Age : 31 years,
Occupation : Driver & Owner,
R/o. Dhekari,
Taluka Tuljapur,
Dist. Jalna.

3. Hemlata Kantilal Thole,
Age : Major,
Occupation : Business,

R/o. Bhendala,
Taluka Gangapur,
Dist. Aurangabad.

4. Branch Manager,
United India Insurance .. Respondents
Company Ltd.,
New Osmanpura, Aurangabad.

.....

Mr. A.N. Nagargoje, Advocate, for the appellants.

*Mr. S.G. Chapalgaonkar, Advocate, for
respondent no.01.*

Mr. B.R. Jaybhay, Advocate, for respondent no.02.

Mr. S.S. Rath, Advocate, for respondent no.04.

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CORAM : SMT. VIBHA KANKANWADI, J.

**Date of reserving
the judgment : 16th July 2019**

**Date of pronouncing
the judgment : 26th September 2019**

JUDGMENT :

01. First Appeal No. 2757 of 2017 has been filed by original respondent no.02 - Insurance Company, challenging the judgment and award passed by the learned Member of the Motor Accident Claims Tribunal, Aurangabad, in M.A.C.P. No. 15 of 2011, on 02-11-2015, thereby holding the Insurance Company liable to pay the compensation joint and severally; whereas cross objection has been filed by the original claimants seeking enhancement in compensation.

02. It is required to be seen as to what were the facts before the Tribunal. The claimants no.01 and 02 are the parents of one Maheshchandra Atmaram Mohite. Claimants no.03 and 04 are the brother and sister of deceased Maheshchandra. They had filed the said application under Section 166 of the Motor Vehicles Act, 1988 for getting compensation on account of accidental death of Maheshchandra. Maheshchandra was proceeding from Beed to Aurangabad by Indica Car bearing no. MH-20/AA-3981 on 12-08-2010. It is stated, that the car reached at Mouje Nipani Shivar at about 04.15 a.m. At that time, one truck bearing no. MH-04/P-8680 came from opposite direction in high speed and in negligent manner. The said truck collided with the car. Maheshchandra was the occupant of the car. The driver of the car as well as Maheshchandra expired on the spot. They were shifted to Government Medical College Hospital at Aurangabad and then *post mortem* was conducted. It is stated, that the offence has been registered with Chikalthana Police Station, Aurangabad, against the driver of the Indica car. It has been contended that the deceased was 26 years old person serving as Senior Engineer in Tata Teleservices Ltd., M.I.D.C., Waluj, Aurangabad. He was getting salary of Rs. 40,754/- per month and annual income was Rs. 4,89,047/-. The claimants had claimed compensation of Rs. 99,00,000/- against all the respondents.

Respondent no.01 is the owner of the truck and the said truck was insured with respondent no.02 on the date of the accident. Respondent no.03 is the owner of car and respondent no.04 is the insurer of the car. *[Parties are referred as per their nomenclature before the Tribunal.]*

03. Respondents no.01 and 02 have filed their respective written statements and denied that the said accident had taken place due to the negligence on the part of respondent no.01 who was driving the truck at the relevant time. It was stated that the car driver was rash and negligent. The car had come from opposite direction and then collided with the truck. He contended that he was not at all responsible for the accident. The Insurance Company contended that the driver of said car was not holding valid and effective driving license to drive the car. He alone was held responsible for the accident by the police and offence has been registered against him. The Insurance Company has denied age, income and occupation of the deceased.

04. Respondents no.03 and 04, owner and insurer of Indica car, have given their separate written statements. They have denied that there was any fault on the part of driver of Indica car. They have come with a case that the accident had occurred due to the sole negligence on the part of truck driver.

The Insurance Company of the car has also taken defence that the car driver was not holding valid and effective license to drive the car on that day.

05. Taking into consideration the rival contentions, issues were framed. Only the claimants have led documentary as well as oral evidence. Taking into consideration the evidence on record, the learned Tribunal has come to the conclusion that Maheshchandra expired in vehicular accident. It was held that both the vehicles are equally liable to pay compensation to the claimants. The learned Tribunal has awarded amount of Rs. 60,78,530/- as compensation together with interest at the rate of 9 % per annum. As aforesaid, the Insurance Company of the truck has preferred the appeal and original claimants have filed cross objections for enhancement in the compensation.

06. Heard learned Advocate Mr. S.G. Chapalgaonkar for the appellant. Heard learned Advocate Mr. A.N. Nagargoje for respondents no.01 to 04. Heard learned Advocate Mr. B.R. Jaybhay for respondent no.05. Heard learned Advocate Mr. S.S. Rathi for respondent no.07. Respondent no.06 was exempted as per the order passed by this Court on 11-07-2017. Taking into consideration the submissions made as well as the law point involved, following points arise for determination. Findings and reasons

for the same are as follows :-

(I) Whether the Tribunal was justified in holding both the vehicles negligent equally and then holding all the respondents to pay compensation jointly and severally to the claimants ?

(II) Whether the compensation granted to the claimants needs enhancement ? If yes, what should be the appropriate amount ?

07. It has been vehemently submitted on behalf of the appellant - Insurance Company, that in order to support their claim, the claimants have examined CW 01 Chandrakala - mother of the deceased only. She is admittedly not the eye witness. The learned Tribunal had exhibited the police papers which included certified copy of the first information report, spot *panchanama*, *post mortem* report, inquest *panchanama* and accident information report. It was the indication that even the claimants who had produced those documents intended to rely on those documents. None of the respondents had taken any objection for exhibiting those documents. Under such circumstance, when those documents were exhibited, they ought to have been read by the Tribunal, as it is. The certified copy of the FIR Exhibit 31 would show that criminal case was lodged against the driver of the Indica car. The spot *panchanama* Exhibit 34

would also give a clear picture that the Indica car had gone to its wrong side before colluding with the truck. In spite of this evidence, the learned Tribunal had wrongly arrived at a conclusion that the truck driver had contributed to the negligence and in fact, it is a case of composite negligence. Reliance has been placed on the decision in *Oriental Insurance Company Ltd. Vs. Premlata Shukla & others* [(2007) 13 SCC 476], wherein it has been observed thus :-

"12. In Narbada Devi Gupta Vs. Birendra Kumar Jaiswal [(2003) 8 SCC 745] whereupon reliance has been placed, this Court held that contents of a document are not automatically proved only because the same is marked as an exhibit. There is no dispute with regard to the said legal proposition.

13. However, the factum of an accident could also be proved from the first information report. It is also to be noted that once a part of the contents of the document is admitted in evidence, the party bringing the same on record cannot be permitted to turn round and contend that the other contents contained in the rest part thereof had not been proved. Both the parties have relied thereupon. It was marked as an exhibit as both the parties intended to rely upon them.

14. Once a part of it is relied upon by both the parties, the learned Tribunal cannot be said to have committed any illegality in relying upon the other part, irrespective of the contents of the document having been proved or not. If the contents have been proved, the question of reliance thereupon only upon a part thereof and not upon the rest, on the technical ground that the same had not been proved in accordance with law, would not arise.

15. A party objecting to the admissibility of a document must raise its objection at the appropriate time. If the objection is not raised and the document is allowed to be marked and that too at the instance of a party which had proved the same and where for consent of the other party has been obtained, the former in our opinion cannot be permitted to run round and raise a contention that the contents of the documents had not been proved and, thus, should not be relied upon."

08. It is further submitted on behalf of the appellant, that when the claimants have not led any evidence in order to show the alleged collusion between police and the truck driver or police and respondent no.01; the Tribunal ought not to have observed that since the report was lodged by the truck driver, he could not have given statement against his own interest. The first information report has been lodged after due enquiry by the police officer and therefore, holding the respondents no.01 and 02 for payment of compensation by the learned Tribunal was erroneous. It has been further submitted that the appellant has no intention to challenge the quantum but the challenge is to the extent of holding the respondents no.01 and 02 liable to pay compensation equally with respondents no.03 and 04. He, therefore, prayed for allowing the appeal.

09. Per contra, learned Advocate appearing for respondent no.07, Insurance Company of the Indica

car, submitted that the respondent no.07 is supporting the reasons given by the learned Tribunal. It was but natural for the driver of the truck to make allegations against the Indica car driver. The Indica car driver had also expired in the same accident. Further, the accident had taken place at about 4.15 a.m. Therefore, there was least possibility of any eye witness. Therefore, taking into consideration the contents of the FIR showing that there was head on collision, it has been rightly held that the drivers of both the vehicles had equally contributed to the accident. Reliance has been placed on the decision in Jiju Kuruvila & others Vs. Kunjujamma Mohan & others [AIR 2013 SC 2293], wherein it has been held thus :-

" The mere position of the vehicles after accident, as shown in the Scene Mahazar, cannot give a substantial proof as to the rash and negligent driving on the part of one or the other. When two vehicles coming from opposite directions collide, the position of the vehicles and its directions etc. depends on number of factors like speed of vehicles, intensity of collision, reason for collision, place at which one vehicle hit the other, etc. From the scene of the accident, one may suggest or presume the manner in which the accident is caused, but in absence of any direct or corroborative evidence, no conclusion can be drawn as to whether there was negligence on the part of the driver. In absence of such direct or corroborative evidence, the Court cannot give any specific finding about negligence on the part of any individual."

Based upon the said ratio, it was submitted that the

contents of the spot *panchanama* though shows position of the vehicles, the spot of impact has not been stated. The respondent no.01 or 02 did not examine the driver of the truck intentionally though he can be said to be the only person alive who had witnessed the accident and therefore, to his extent, adverse inference has been rightly drawn. Respondents no.01 and 02 were equally liable to pay compensation to the claimants.

10. Learned Advocate appearing for respondents no.01 to 04 i.e. original claimants supported the reasons given by the Tribunal as well as the submissions on behalf of respondent no.07 for holding the truck driver negligent to the extent of 50 %. It was further submitted on behalf of the original claimants, that the learned Tribunal erred in deducting half of the salary towards personal expenditure. Monthly salary of the deceased was Rs.58,370/-. However, by deducting half, the dependency of the claimants has been considered. In fact, only 1/5th ought to have been deducted towards personal expenditure taking into consideration the number of family members. The deceased was unmarried and therefore, his personal expenditure was very less. He therefore, prayed for enhancement of the compensation.

11. **Point no.01** : The claimants had examined

mother of the deceased to support their claim. Though she has stated about the manner in which the accident had taken place, yet, it can be seen that she was admittedly not present at the spot when the accident took place. Claimants have relied on the police papers to support their contention. However, the contents of the pleadings i.e. the petition itself would show that they have not made any averment as to why only the Indica car driver was held negligent by police. There is no mention in the petition or thereafter in the affidavit in chief by CW 01 Chandrakala, that in view of the fact that report regarding accident was given by truck driver and the situation at the spot is different, they do not want to rely on the police papers. As stated in *Oriental Insurance Company's case (supra)*, wherein reference is made to the decision in *Narbada Devi Gupta Vs. Birendra Kumar Jaiswal* [(2003) 8 SCC 745], that contents of a document are not automatically proved only because it is marked as exhibit. The initial burden to prove the manner of accident and negligence is always on the claimants. Therefore, proper and cogent evidence ought to have been adduced by the claimants in this case. Though the provisions of Evidence Act are not strictly applicable to M.A.C.T. and the Tribunal while following summary procedure is required to consider the claim of the claimants on the basis of preponderance of probabilities; yet, the Tribunal cannot forget basic principles of establishing the

liability which is inclusive of the point of negligence. Unless negligence is proved, the respondent being tortfeasor cannot be made liable to pay compensation.

12. As regards the evidence in the form of police papers is concerned, in *Oriental Insurance Company Ltd. Vs. Sangita Dattatraya Jamdade & others* [2006 ACJ 971], this Court has held that the certified copies of FIR, *panchanama* and medical papers prepared by public servants in discharge of their public duty are admissible in evidence. However, the Division Bench of this Court at Goa Bench in *Pukh Raj Bumb Vs. Jagannath Achut Naik & others* [First Appeal No. 32 of 2013, decided on 11-07-2013] has held that mere production of police papers and exhibiting those documents does not dispense the proof of contents of those documents. The Division Bench of this Court went further and observed that merely on the basis of certified copies of FIR, spot *panchanama* and other documents, the claimants cannot prove their case. Therefore, it can be concluded that though police papers are required to be exhibited and the provisions of Evidence Act are not strictly applicable, yet, that does not dispenses the claimants from proving the manner in which the accident had taken place and the point of negligence. If the claimants want to agitate negligence and rashness in respect of a particular party, then mere production of those documents will not absolve them,

unless the situation on the basis of spot *panchanama* allows the Tribunal to draw the principles of *res ipsa loquitur*.

13. In the present case, the police papers have been produced. They are produced by the claimants and it appears that when they were exhibited, no objection was raised by the respondents. An impression is created that both the parties before the Tribunal would like to rely on those documents. Under such circumstance, those documents ought to have been read completely by the Tribunal. As stated in the *Oriental Insurance Company's case (supra)*, Tribunal cannot take some part of those police papers and by leaving the other part, would draw some different inference which was not even alleged by the claimants. In this case, claimants have not come with a case that there was a collusion between driver of the truck and police when he lodged the report. Here, in this case, though the report was given by the truck driver, it has not been treated as FIR. PSI Prabhu Thakre attached to Chikalathana Police Station, made enquiry in a sense, that he had taken note of the report lodged by the truck driver, had taken statements of witnesses other than the said driver and after executing spot *panchanama*, had come to the conclusion that the accident took place due to the sole negligence on the part of Indica car driver. No doubt, his conclusion was not binding on the

Tribunal, but that was one of the piece of evidence which was against the claimants and they had not led any evidence to counter the inference which could be drawn from the FIR.

14. The spot *panchanama* Exhibit 32 would clearly show that the Indica car was going from east to west but then by leaving its left side, it had gone to the wrong side before giving dash. The width of the tar road is 23 feet and it was having side margins. It will not be out of place to mention here, that the spot was shown by the truck driver; however, both the vehicles were at the said place. There were tyre marks of the Indica car slanting towards its right side. Therefore, the contents of the *panchanama* would indicate that Indica car driver was alone responsible for the accident. The ratio laid down in *Jiju Kuruvila's case (supra)* cannot be disputed. But in this case, it is not only the position of the vehicle but the other circumstances which are indicated in the spot *panchanama* prompt invoking of principle of *res ipsa loquitur* against the Indica car driver.

15. At the cost of repetition, it can be said that the entire evidence of CW 01 Chandrakala would give a picture that she had no intention to blame police for the contents of the police papers Exhibits 31 and 32. Even after knowing the contents of those documents, no steps were ever taken by the claimants

by lodging FIR or otherwise against the truck driver. Therefore, the observation by the learned Tribunal, that as the evidence has not been led by the respondents, including of not examining the truck driver, the Tribunal had no alternative but to rely on the testimony of the claimant, are not correct. As regards FIR and spot *panchanama*, it can be said that they are hardly throwing any light on the point of negligence. Mere use of the words '*head on collusion*' will not allow the Tribunal to infer that both the vehicles are equally negligent. Though that was the head on collusion, but where both the vehicles had impact against each other, is important. Said head on collusion can be on the left side of the road or right side also or even in the middle. Under such circumstance, the Tribunal was not justified in holding the truck driver equally negligent and holding respondent no.01, the owner of the truck and respondent no.02, insurer of the truck, liable to pay compensation equally with respondents no.03 and 04. The claimants ought to have examined other eye witnesses to support their contention. Names of two eye witnesses are appearing in the FIR. The learned Tribunal erred in discarding part of the police papers and accepting part only in favour of the claimants. Hence, the Point no.01 is answered in the negative.

16. The learned Tribunal ought to have held that

only the car driver was negligent and therefore, ought to have saddled the compensation on respondents no.03 and 04. It will not be out of place to mention here, that respondents no.03 and 04 have not filed any appeal. Respondent no.04 has not led any evidence to prove breach of terms of policy or any such point has not been submitted so as to exonerate it. Hence, the award deserves to be modified to that extent by dismissing the petition as against respondents no.01 and 02.

17. **Point no.02** : The claimants in their cross examination have prayed for enhancement. As aforesaid, they are contending that the Tribunal was not justified in deducting half of the salary of the deceased towards personal expenditure. However, it is to be noted that the deceased was a bachelor and therefore, in view of the decision in *Sarla Verma & others Vs. Delhi Transport Corporation & another* [(2009) 6 SCC 121] as well as in *National Insurance Company Limited Vs. Pranay Sethi & others* [AIR 2017 SC 5157], half of the amount of the income of a bachelor is required to be deducted towards personal expenditure; so also, multiplier will have to be used as per the guidelines used in those authorities and therefore, when those guidelines have been followed by the Tribunal, it cannot be said that the Tribunal has erred in computing the amount of compensation. The cross objections are devoid of any merit and therefore,

they deserve to be dismissed.

18. Hence, the following order :-

(a) The appeal is hereby allowed.

(b) The judgment and award passed in M.A.C.P. No. 15 of 2011 by learned Member of the Motor Accident Claims Tribunal, Aurangabad, on 02-11-2015, is hereby set aside to the extent of holding the respondents no.01 and 02 therein liable to pay the amount of compensation jointly and severally together with respondents no.03 and 04.

(c) The said petition stands dismissed as against respondents no.01 and 02 therein.

(d) The cross objections filed by the original claimants are hereby dismissed.

(e) Amount deposited by the Insurance Company be refunded to it.

(f) Amount under Section 140 of the Motor Vehicles Act, 1988 deposited, if any, by original respondent no.01 and / or original respondent no.02, be recovered by them from the claimants.

(g) There shall be no order as to costs.

(Smt. Vibha Kankanwadi)

JUDGE