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

**FIRST APPEAL NO.2142 OF 2018**

New India Assurance Company Limited,
Through : The Branch Manager,
Near Shivaji Chowk,
Osmanabad, Dist. Osmanabad

New India Assurance Company Limited,
Through it's Authorized Signatory/
Senior Divisional Manager/
In charge Legal Hub,
Mahesh Compound,
Adalat Road, Aurangabad = **APPELLANTS**
**(Orig.Resp.No.4)**

**VERSUS**

1. Shobha W/o Arun Undare
Age 43 yrs., Occ.: Household

2. Amarjeet S/o Arun Undare
Age 23 yrs., Occ.: Education

3. Ashish S/o Arun Undare
Age 22 yrs., Occ.: Education

4. Amruta D/o Arun Undare
Age 22 yrs., Occ.: Education

All R/o. Rui, Tq Washi,
Dist.Osmanabad

5. Mr.N.S.Sahimoorthy S/o P. Natesan,
Age Major, Occ.: Business,
R/o 156/A, Kolathukadu Privu Kadu,
Sankari West (PO)
Sankari Salem (Tamilnadu)

6. Royal Sunderam Alliance
Insurance Company Ltd.
8/H 1 Mangalam Building,
4-Roads, Salem-636009.

7. Sanjay Aru Bhore,

Age Major, Occ.: Business,
R/o F.No.6, Pushkar Building,
Adinath Nagar, Garkheda,
Dist. Aurangabad **= RESPONDENTS**
(Respdt. Nos. 1 to 4-Orig. Claimants Respdt. Nos. 5 to 7-Orig.Respdt.Nos. 1 to 3)

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Shri M.R.Deshmukh, Adv. for Appellants;
Shri S.B.Choudhari Adv. for Resp. Nos.1 to 4;
Shri A.S.Deshpande & S.S. Wagh Advs for Resp.No. 6;

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WITH

**FIRST APPEAL NO.643 OF 2019**

Royal Sundaram Alliance
Insurance Co. Ltd.
Subramaniam Building II Floor,
No.1. Club House Road,
Annasalai, Chennai- 600 002.
Through its Authorized Officer. = APPELLANT
(orig.Resp.No.2)

**VERSUS**

1. Shobha W/o Arun Undare
Age 43 yrs., Occ.: Household,
R/o Rui, Tq. Washi
Dist. Osmanabad

2. Amarjeet S/o Arun Undare
Age 23 yrs., Occ.: Education
R/o as above.

3. Ashish S/o Arun Undare
Age 22 yrs., Occ.: Education
R/o As above.

4. Amruta D/o Arun Undare
Age 21 yrs., Occ.: Education
R/o As above = RESP.NO.1 TO 4
(Original Claimants)

5. Mr.N.S.Sahaimoorthy S/o P. Natesan,
Age Major, Occ.: Business,
R/o 156/A, Kolathukadu Privu Kadu,
Sankari West (PO)
Sankari Salem (Tamilnadu) = RESP.NO.5.
(Orig. Resp. No.1)

6. Sanjay S/o Arun Bhore
Age Major, Occ.: Business,
R/o Flat No. 6, Pushkar Building,
Adinath Nagar, Garkheda,
Dist. Aurangabad = RESP.NO.6.
(Orig. Resp. No.3)

7. The New India Assurance Co. Ltd,
Through Branch Manager,
The New India Assurance Co Ltd
Near Shivaji Chowk, Osmanabad = RESP.NO.7.
(Orig.Resp. NO.4)

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Shri A.S.Deshpande & S.S.Wagh, Advs. for Appellant;
Shri S.B. Choudhari Adv. for Resp. Nos.1 to 4;
Shri Mohit Deshmukh Adv.for Resp. No.7.

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**CORAM : P.R.BORA, J.**
**DATE : 26th February, 2019**

**ORAL JUDGMENT**

1. With the consent of learned counsel appearing for the parties, heard finally at admission stage.

2. Both these appeals are arising out of the Judgment and Award passed in MACP No.78/2014 decided by the Motor Accident Claims Tribunal at Bhoom (hereinafter referred to as the Tribunal) on 27.11.2017. The learned Tribunal has recorded a

finding holding both the offending vehicles equally responsible in occurrence of the alleged accident and has, therefore, held the driver, owner and insurer, of each of the said vehicle, jointly and severally responsible to pay the amount of compensation to the claimants in the said claim petition. Aggrieved by, both the insurance companies have preferred the present appeals.

3. In First Appeal No.2142/2018 filed by New India Assurance Co. Ltd., it is the contention of the said insurance company that in another claim petition bearing MACP No.954/2011, the learned Tribunal, which has decided the said claim petition, has held the proportion of negligence to the extent of 30% on part of the driver of the vehicle insured with the New India insurance company and 70% negligence has been attributed to driver of the vehicle which was insured with Royal Sundaram Alliance insurance company. The learned counsel submitted that the said judgment was brought to the notice of the Tribunal which decided the present claim petition; however, for wrong reasons, the tribunal has ignored the said judgment

and has recorded an inconsistent finding thereby holding the drivers of both the vehicles responsible in equal proportion for occurrence of the alleged accident. The learned counsel, in the circumstances, prayed for modification of the Award and to determine the proportion of negligence on part of driver of the vehicles insured with the appellant insurance company in accordance with the decision rendered in MACP No.954/2011.

4. Shri Deshpande, learned counsel appearing for Appellant - Royal Sundaram insurance company in FA No.643/2019, submitted that having regard to the evidence on record, in fact, the entire liability must have been cast on driver of the vehicle insured with the New India Assurance company and no liability was liable to be fixed on the appellant Royal Sundaram insurance company. The learned counsel invited my attention to para 17 of the impugned judgment and submitted that even after recording a clear finding and having described the position of the vehicles on the spot of occurrence, the Tribunal has erroneously held the negligence on part of driver of the vehicle insured with the

appellant Royal Sundaram insurance company in equal proportion. The learned counsel, therefore, submitted for setting aside the impugned judgment and award so far as it casts responsibility to pay 50% of the amount of compensation to the claimants.

5. I have given due consideration to the submissions made by the learned counsel appearing for the respective parties. I have perused the impugned judgment and the evidence on record. The accident which gave rise for filing of the MACP No. 78/2014 had occurred on 12.9.2011. As is revealing from the record, MACP No.954/2011 was also arising out of the same accident and it was filed by the legal heirs of the deceased car driver involved in the alleged accident. It is not in dispute that two vehicles were involved in the alleged accident, a truck bearing registration No.TN-52/A-6888 and Indica Car bearing registration No. MH-20/BC-9823. It is not in dispute that the truck was insured with Royal Sundaram Alliance insurance company whereas the Car was insured with New India Assurance insurance company.

6. In MACP No.954/2011, the Tribunal which decided the said petition, has determined the negligence interse the truck and the car in the proportion of 70:30. The said claim petition was admittedly decided earlier to MACP No.78/2014. Both the insurance companies, i.e. New India insurance company and Royal Sundaram insurance company were parties to the said claim petition. The fact alleged by the New India insurance company that Royal Sundaram insurance company has acquiesced the Award passed in MACP No.954/2011 and has satisfied the said Award in its entirety to the extent of its share, is not disputed by the said insurance company.

7. In fact and circumstances as above, the question arises whether it was open for Royal Sundaram insurance company to take a plea that there was no negligence on part of driver of the truck insured with it or that it was not to the extent of 70%, as has been held in the judgment rendered in MACP No.954/2011. The answer is obviously “No”. By acquiescing the Award passed in MACP No.954/2011, Royal Sundaram insurance

company has accepted the findings recorded in the decision rendered in the said claim petition. It was, therefore, not open for the said insurance company to raise a plea as noted herein above to the effect that there was no negligence on part of driver of the Truck insured with it or that the negligence on part of truck driver was not 70% but less than that.

8. The material on record reveals that a copy of the judgment in the case of MACP No. 954/2011 was placed on record in MACP No.78/2014. In that view of the matter, the learned Tribunal, in fact, should not have entertained the plea raised on behalf of the Royal Sundaram insurance company that the alleged accident had happened because of the sole negligence of driver of the Indica Car and not because of any negligence on part of driver of the truck insured with it. As noted herein above, by satisfying the Award passed in MACP no.954/2011, the Royal Sundaram insurance company had in a way accepted the finding recorded in the judgment delivered in the said claim petition. The learned Tribunal has committed a

gross error in entertaining and considering such objection. The tribunal has further committed a greater mistake in recording an inconsistent finding on the same issue of negligence which had attained finality. In the circumstances, the finding recorded by the learned Tribunal holding the negligence on part of driver of the truck and driver of the Indica car in equal proportion, is apparently unsustainable.

9. I reiterate that in so far as the issue of negligence is concerned, the finding recorded by the Tribunal in the judgment in the case of of MACP No.954/2011 had attained finality, wherein the negligence attributed on part of driver of the truck is to the extent of 70% and the negligence on the part of driver of the Indica car is held to the extent of 30%. The learned Tribunal in MACP No.78/2014 must have recorded the same finding.

10. For the reasons stated above, I have no hesitation in holding that the Tribunal has committed an error in recording an inconsistent finding thereby holding the negligence on part of

the drivers of both the vehicles involved in the alleged accident in equal proportion. As noted herein above, in so far as the issue of negligence is concerned, the finding recorded in MACP No.954/2011 has attained finality. As such in MACP No.78/2014 also the negligence has to be determined in the same proportion. It is accordingly held that in occurrence of the alleged accident, the negligence on the part of driver of the truck was to the extent of 70% whereas the negligence on the part of driver of the Indica car was to the extent of 30%.

11. In so far as quantum of compensation is concerned, no dispute has been raised by either of the insurance companies. The Tribunal has awarded the total compensation of Rs.41,56,384/- inclusive of the amount of NFL compensation. It is brought to my notice that New India Assurance company has deposited 50% of the said amount in the present appeal in this court and this court has permitted the claimants to withdraw 50% of the said amount and accordingly the same has been withdrawn by the claimants. Today only, the Royal Sundaram

insurance company has deposited 50% amount of compensation in terms of the impugned Award.

12. In view of the fact that in the present appeals, this court has determined the negligence interse the driver of the truck and driver of the Indica car in the proportion of 70:30, 20% amount deposited in excess by New India Assurance company, will have to be refunded to the said insurance company and the Royal Sundaram insurance company has to be directed to deposit 20% of the said amount so as to fulfill its share of 70% in the total amount of compensation. In so far as the claimants are concerned, they have already withdrawn 50% of the amount deposited by the New India Assurance company, which is equivalent to 25% of the total amount of compensation. The claimants would be thus entitled to withdraw the balance 5% amount falling to the share of New India Assurance company from the amount deposited by the said insurance company in this court. Needless to state that the amount deposited in excess by the New India Assurance company shall be liable to be refunded to it. The Royal Sundaram insurance

company has deposited 50% amount of compensation. The entire said amount can be permitted to be withdrawn by the claimants in terms of the Award. The Royal Sundaram insurance company has to deposit the remaining 20% amount of its share in this court or before the Executing Court.

13. For the reasons recorded above, following order is passed, -

ORDER

(i) First Appeal No.643/2019 is dismissed. The amount deposited by the appellant insurance company in the said appeal is permitted to be withdrawn by the claimants with interest accrued thereon, if any, in terms of the award passed in MACP No.78/2014;

(ii) First Appeal No.2142/2018 is allowed in the following terms, -

a. In occurrence of the alleged accident the negligence interse driver of the offending truck and driver of the Indica car, is determined in the proportion of 70:30, meaning thereby that the owner and insurer of the offending truck are held liable to pay to the claimants 70% of the total amount of compensation, as has been determined by the Tribunal, whereas the owner and insurer of the Indica car are held liable to pay 30% of the said amount of compensation. The amount of compensation shall carry interest at the rate of 8% p.a. from the date of application till its realization;

b. From out of the amount deposited by the New India Assurance company in the present appeal, deducting 50% of the said amount already withdrawn by the claimants, they are permitted to withdraw more 5% of the said deposited amount with interest, if any, accrued thereon. The balance amount be refunded to the appellant – New India Assurance company with interest, if any, accrued thereon.

c. Respondent No.6 – Royal Sundaram insurance company shall pay to the claimants remaining 20% of the total amount of compensation falling to its share with interest thereon @ 8% p.a. From the date of filing of the claim petition till its realization, in addition to 50% amount, which has been already deposited by the said insurance company in this court.

d. Award be drawn accordingly.

e. Pending civil application,if any, stands disposed of.

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

bdv/