IN THE HIGH COURT OF JUDICATURE AT BOMBAY BENCH AT AURANGABAD

FIRST APPEAL NO. 1651 OF 2015 WITH CIVIL APPLICATION 7597 OF 2015

Bajaj Allianz General Insurance
Company Limited, through its
Branch Manager/Authorised
Signatory, 2nd Floor, LIC Building,
Adalat Road, Aurangabad. **Appellant.**

Versus

1. Balu @ Sakharam Sopanrao Gavhane
Age : 29 years, occu.: private service
R/o Pegar-gavan, Talukan and
District Parbnahi.

2. Sherkhan s/o Sattar Khan
Age : major, occu.: business
R/o Barkat Nagar, Parli Vaijinath,
District Beed.

3. Dattarao Vaijinath Chavan
Age : major, occu.: business
R/o Wazur, Taluka Manwat,
District Parbhani. **Respondents**.

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Mr. S.G. Chapalgaonkar, Advocate for the Appellant.
Mr. S.S. Deshmukh, Advocate for respondent No.1.
Mr. V.S. Salve, Advocate for respondent No.2.

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CORAM : SUNIL K.KOTWAL,J.

Judgment reserved on : 18 February 2019.

Judgment pronounced on : 22 February 2019.

JUDGMENT.

1. This appeal is directed by Bajaj Allianz General Insurance Company Limited against the judgment and award passed by Motor Accident Claim Tribunal (hereinafter referred to as the "Tribunal"), Parbhani in Motor Accident Claim Petition No. 354/2009, holding the then respondent Nos.1 to 3 jointly and severally liable to pay the compensation of Rs.7,14,200/- to the claimant.

2. In original proceeding before the Tribunal, respondent No.1 is the owner of offending truck bearing registration No.MH-41-G-5029. Respondent No.2 is the owner of auto-rickshaw bearing registration number MH-22-H-2643 and respondent No.3 is the insurer of the said auto-rickshaw. Hereinafter the parties are referred to in accordance with their status in original proceeding before the Tribunal.

3. Undisputedly, both the vehicles where involved in the accident dated 06.02.2009 in which the claimant sustained injuries resulting into permanent disability.

4. Heard Mr. S.G. Chapalgaonkar, learned Counsel for the appellant / Insurance Company, Mr. S.S. Deshmukh, learned

Counsel for claimant and Mr. V.S. Salve, learned Counsel for the owner of the truck.

5. Learned Counsel for the Insurance Company submits that the offending truck was an uninsured vehicle. He has drawn my attention towards the finding of the Tribunal that the accident occurred due to rash and negligent driving by the driver of the offending truck. According to learned Counsel for the Insurance Company, when the motor vehicular accident resulting into injuries to the claimant occurred due to rash and negligent driving by the driver of offending truck, neither the owner of auto-rickshaw nor its insurer can be held responsible and liable to pay compensation to the claimant. He submits that the Insurance Company of the auto-rickshaw, in any case, is not liable to indemnify the owner of the truck or to pay compensation to the claimant and thereafter recover it from owner of the truck, as there is no privity of contract in between respondent No.3-Insurance Company and respondent No.1-owner of the truck.

6. Learned Counsel for the appellant / Insurance Company placed reliance on the case of **“New India Assurance Co. Ltd. Vs. Bismillah Bal and others” [AIR 2009 SC**

(Supp.) 2289], in which the Apex Court ruled that, when there was no negligence by driver of the jeep, only because the truck involved in the accident was not insured, the insurer of jeep cannot be made liable to pay the compensation.

7. Learned Counsel for the claimant submits that no written statement was filed by respondent No.2/owner of auto-rickshaw and as it is the case of composite negligence by driver of the truck and driver of auto-rickshaw, the claimant has right to recover the compensation amount from the owner of both vehicles, and therefore, respondent No.3 being Insurance Company of the auto-rickshaw, is bound to indemnify respondent No.2 i.e. the owner of auto-rickshaw. However, he could not explain as to how respondent No.3 Insurer of the auto-rickshaw is liable to pay compensation to the claimant on behalf of respondent No.1/owner of the truck.

8. In the case at hand, quantum of compensation is not disputed by the Insurance Company, as submitted by learned Counsel for the Insurance Company. Therefore, only point for consideration is, whether respondent Nos.1 to 3 are jointly and severally liable to pay compensation to the claimant?

9. Undisputedly, the offending truck was not insured with respondent No.3 – Insurance Company of auto-rickshaw. There is no privity of contract in between respondent No. 1/owner of truck and respondent No.3/Insurance Company. Therefore, in any case, for the liability of respondent No.1 to pay compensation to the claimant, respondent No.3 Insurance Company cannot be compelled to indemnify the respondent No.1.

10. To ascertain whether the Tribunal held that the accident occurred as a result of composite negligence of the driver of offending truck and driver of auto-rickshaw, para-13 of the judgment delivered by Tribunal is relevant. The concluding observations of the Tribunal are as follows :-

> *"Therefore, it is clear that the accident took place due to involvement of the vehicle i.e. auto rickshaw bearing No.MH-22H-2643 and truck bearing No. MH-41/G-5029 and truck driver was driving the truck in rash and negligent manner".*

In view of these concluding observations of the Tribunal, it becomes clear that it was not the case of composite negligence of truck driver and auto-rickshaw driver, but the accident occurred due to exclusive rash and negligent driving by the driver of offending truck. Therefore, respondent No.2-owner of the auto-rickshaw and respondent No.3 Insurer of the auto-rickshaw are not liable to pay any compensation to the claimant. Respondent No.1 being registered owner of the offending truck, is solely liable to pay the entire compensation to the claimant.

11. Though the learned Counsel for the claimant placed reliance on the case of **"Minu Rout Vs. Satya Pradyumna Mohapatra" [AIR 2013 SC (Supp) 62]**, the ratio of this Authority is not at all applicable in the case at hand for the reason that the case in hand is not the case of contributory negligence of the driver of rickshaw involved in the accident. In the case before the Supreme Court the question of determination was, whether the accident in between truck and car occurred as a result of contributory negligence on the part of deceased driver of car. Thus, it is suffice to say that this Authority is of no help to the claimant to prove that respondent No.3 Insurance Company is responsible to indemnify the owner of the truck. Even the ratio of the case of **"T.O. Anthony Vs. Karvaran & ors" [2008 (3) ALL MR 902]** is not applicable in the case at hand as the composite negligence of truck driver and auto-rickshaw driver is not established.

12. Therefore, in view of the above discussion, as the accident occurred only due to negligence of driver of offending truck, only respondent No.1/owner of the truck is liable to pay the entire compensation to the claimant. In the result, this appeal deserves to be allowed and the award passed by the learned Tribunal needs to be modified to exonerate the owner and Insurer of the auto-rickshaw involved in the accident from all liabilities. Accordingly First Appeal No.1651 of 2015 is allowed. The award passed by Motor Accident Claims Tribunal, Parbhani in M.A.C.P. No.354/2009 is modified as under :-

(i) M.A.C.P. No.354/2009 is partly allowed.

(ii) Respondent No.1 Sherkhan Sattarkhan do pay compensation of Rs.7,14,200/- inclusive of no fault liability amount to the claimant with interest thereon at the rate of Rs.6% per annum from the date of Petition till realisation of the entire amount.

(iii) On depositing the compensation amount, an amount of Rs. 2,00,000/- (Rupees Two Lakh) should be deposited in the name of claimant in any Nationalized Bank for the period of three years and rest of the amount be paid to the claimant by account payee cheque.

(iv) No order as to costs.

(v) Award be drawn up accordingly.

13. If the compensation amount is deposited in this Court, the same be refunded to the appellant / Insurance Company. If any part of the compensation amount is already withdrawn by the claimant, the appellant is entitled to recover it from the owner of the truck namely Sherkhan Sattarkhan by filing appropriate proceeding before the Executing Court.

14. Parties to bear their respective costs of the appeal. Civil Application is disposed of accordingly.

(SUNIL K. KOTWAL)
JUDGE

vdd/