

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

FIRST APPEAL NO. 554 OF 2013

United India Insurance Company Ltd.,
Jalna Road, Aurangabad
Through its Divisional Office,
Divisional Manager,
Aurangabad

APPELLANT
(Orig. Resp. No.3)

-VERSUS-

1. Ushabai W/o Machindra Karad
Age : 25 years, Occ : Household,
R/o Pirchiwadi, Tq. Kaij,
Dist. Beed.
2. Kum. Rajshree D/o Machindra Karad
Age : 7 years,
3. Chi. Ganesh S/o Machindra Karad
Age : 5 years,

Both Minors, u/g of real mother
Respondent No.1.
4. Bhaskar S/o Keshav Karad
Age : 75 years, Occ : Agri.,
R/o Pirachiwadi, Tq. Kaij,
Dist. Beed.
5. Sou. Sudamatibai W/o Bhaskar Karad
Age : 65 years, Occ : Household,
R/o As above.
6. Shri Lalaji Tukaram Jadhav
Age : Major, Occ : Business,
R/o Maharashtra Housing
Society Board Colony,
Nagar Road, Beed,
Tq. & Dist. Beed.

7. Bajirao S/o Venkat Karpne
 Age : Major, Occ : Driver,
 R/o Jawalban
 Tq. Kaij, Dist. Beed
 (Deleted)

RESPONDENTS

(Resp. Nos.1 to 4 original
 petitioners and R.Nos.5 and
 6- Orig. Respondents)

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Mr.S.V. Kulkarni, Advocate for the Appellant.
 Mr.Suhas R. Sirsath, Advocate for respondent
 nos.1 to 5
 Mr.A.A. Mishra, Advocate for respondent no.6.

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WITH

FIRST APPEAL NO. 555 OF 2013

United India Insurance Company Ltd.,
 Jalna Road, Aurangabad
 Through its Divisional Office,
 Divisional Manager, Aurangabad

APPELLANT

(Orig. Resp. No.3)

-VERSUS-

1. Padminibai W/o Shahadeo Thombre
 Age : 30 years, Occ : Household,
 R/o Dahiphal (Wadmauli),
 Tq. Kaij, Dist. Beed.
2. Ashok S/o Shahadeo Thombre
 Age : 10 years,
3. Tulsabai D/o Shahadeo Thombre
 Age : 8 years,
4. Laxman S/o Shahadeo Thombre
 Age : 7 years,
 Nos.2 to 4 minors, u/g of real mother
 Respondent No.1 Padminibai W/o
 Shahadeo Thombre

5. Shri Lalaji Tukaram Jadhav
 Age : Major, Occ : Business,
 R/o Maharashtra Housing
 Society Board Colony,
 Nagar Road, Beed,
 Tq. & Dist. Beed.

6. Bajirao S/o Venkat Karpe
 Age : Major, Occ : Driver,
 R/o Jawalban
 Tq. Kaij, Dist. Beed
 (Deleted)

RESPONDENTS

(Resp.Nos.1 to 4-original
 petitioners and R.Nos.5 and
 6- Orig. Respondents)

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Mr.S.V. Kulkarni, Advocate for the Appellant.
 Mr.Suhas R. Sirsath, Advocate for respondent
 nos.1 to 4

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CORAM : V.L. ACHLIYA, J.
DATED : 19.05.2020.

JUDGMENT:-

. Being aggrieved and dissatisfied
 with the judgments and awards dated
 21.08.2009 passed by the Member, Motor
 Accident Claims Tribunal/District Judge-3,
 Beed in M.A.C.P. Nos.27/2008 and 28/2008, the
 appellant (original respondent no.3)-
 insurance company has preferred these
 appeals.

2. Heard the learned counsel for the appellant and the counsel representing the respondents-original claimants. Respondent-owner of vehicle though served absent. Perused the Record and Proceedings.

3. For the sake of convenience, the parties to appeals are referred as they are referred in the impugned judgments and awards passed by the Tribunal in respective Claim Petitions.

4. Both these appeals are heard and decided together as they are arising out of same accident and challenge raised therein is identical.

5. The claimants in the respective Petitions have filed application under section 166 of the Motor Vehicles Act, 1988

(hereinafter referred to as "the M.V. Act"), seeking compensation on account of accidental death of deceased Machindra Bhaskar Karad and Shahadeo Pandharinath Thombre.

6. In brief, the claimants have approached with a case that on 03.12.2007, deceased Machindra Bhaskar Karad and Shahadeo Pandharinath Thombre were proceeding from Chausala towards Beed on motorcycle bearing registration no.MH-23/5533, which was driven by deceased Machindra. Deceased Shahadeo claimed to be riding the motorcycle as a pillion rider. While they were proceeding from Chausala towards Beed, the truck bearing registration No.MH-23/B-1389 also proceeding in same direction and same was ahead of motorcycle. The driver of said truck suddenly applied the break. Due to this reason the motorcycle on which deceased persons were proceeding got dashed to said truck from its

rear side and sustained serious injuries. They succumbed to injuries.

7. On account of accidental death of Machindra, the claimants (respondent nos.1 to 5 in First Appeal No.554/2013) preferred application under section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the M.V. Act") seeking compensation of Rs.6,00,000/-. They have claimed that deceased Machindra was 32 years of age. He was doing business of fixing iron clips to the hoofs of bullocks and also doing labour work. The claimants have claimed that the deceased was earning Rs.10,000/- to Rs.12,000/- per month. He was sole bread earner in their family. They have claimed that accident was occurred due to sole negligence on the part of driver of said truck.

8. The legal heirs of deceased Shahdeo Thombre i.e. the claimants in M.A.C.P. No.28/2008 filed application under section 166 of the M.V. Act seeking compensation of Rs.5,00,000/-. They have claimed that deceased Shahdeo was 35 years of age. He was doing job of cutting sugar cane and earning Rs.6,000/- per month. Beside said work, the deceased was doing the business of fixing iron clips to hoofs of bullocks and earning Rs.300/- per day from said business. The claimants have claimed that deceased was sole bread earner in their family and they were wholly dependent upon the income of the deceased. They claimed that the accident was occurred due to sole negligence on the part of the driver of truck bearing registration no.MH-23/1389.

9. The respondent no.1 - owner of offending vehicle i.e. truck bearing no.

MH-23/B-1389 resisted the Petitions by filing written statement. He denied the case as put-forth by the claimants in respective claim Petitions. He has specifically denied the case put-forth by the claimants that the accident was resulted due to sole negligence on the part of driver of the offending truck. He has denied the case of claimants that the accident was occurred due to sudden application of break by the driver of truck and consequential death of deceased persons. Respondent no.1 has specifically pleaded that at the time of accident the truck in question was in stationary condition and parked on left side of road. According to respondent no.1 the motorcyclist were driving the motorcycle in most rash and negligent manner. They hit the stationary truck from behind. In short, the respondent no.1 has denied the liability to pay the compensation with contention that the accident was solely

occurred due to rash and negligent driving on the part of the motorcyclist.

10. The appellant-respondent no.3 – insurance company resisted the claim Petitions filed by respective claimants with contention that there was no fault on the part of driver of the truck in causing the accident. Respondent no.3 has denied the story put-forth by the claimants attributing negligence to the driver of truck. According to respondent no.3, the accident was occurred due to sole negligence on the part of the motorcyclist and urged to dismiss the Petitions.

11. On due consideration of rival pleadings and evidence adduced in the case, the Tribunal has partly allowed the Claim Petition No.27/2008 and awarded compensation of Rs.4,17,500/- (inclusive of no fault

liability) with interest @ 6% p.a. from the date of petition till realization of the amount, making the respondent nos.1 and 3 jointly and severally liable to pay the compensation. Similarly, the Tribunal has allowed the Claim Petition No.28/2008 and awarded the compensation of Rs.3,93,500/- (inclusive of no fault liability) with interest @ 6% p.a. from the date of petition till realization of the amount, making the respondent nos.1 and 3 jointly and severally liable to pay the compensation. Being aggrieved, the appellant (original respondent no.3)-insurance company has preferred these appeals.

12. In brief, it is the contention of the learned counsel for the appellant – insurance company that the Tribunal has erred in awarding the compensation against the respondent nos.1 and 3. It is contended that

the evidence on record is more than sufficient to prove that the accident was occurred due to sole negligence on the part of motorcyclist. It is submitted that the Tribunal has not assessed the evidence in its proper prospective. The testimony of driver of truck examined in the case not considered in proper prospective. The Tribunal has failed to consider that the motorcyclist has hit the truck from behind. The position depicted in the panchanama more than sufficient to show that there was much space available for motorcyclist to easily pass from the road. It is contended that the accident was occurred due to sole act of negligence on the part of motorcyclist and therefore claimants are not entitle for any compensation. In alternative learned counsel submit that the Tribunal should have apportioned the liability amongst two vehicles as motorcyclist have primarily

responsible for the accident.

13. On the other hand, the learned counsel for the respondents supported the judgment and award passed by the Tribunal. It is contended that the Tribunal has thoroughly considered the oral as well as documentary evidence adduced in the case. It is contended that the reasons and findings recorded are quite consistent with evidence on record and judgment and award passed by the Tribunal calls for no interference in exercise of appellate jurisdiction of this Court.

14. I have carefully considered the submissions advanced in the light of rival pleadings and evidence adduced in the case. So also perused the reasons and findings recorded by the Tribunal.

15. In order to prove their case, the

claimant no.1 in respective Petitions have stepped into witness box and deposed as per their respective case. Although the witness examined on the part of claimants in respective Petitions have deposed about the negligence on the part of the driver of the truck but they have accepted in cross-examination that they were not present on the spot of accident nor they had seen as to how the accident has taken place. In that view, the testimony of both the witnesses examined by the claimants are of no significance and value in deciding the aspect of negligence on the part of driver of truck.

16. In order to prove the negligence on the part of driver of truck, the claimants have relied upon the documentary evidence in the form of first information report and spot panchanama. The copy of first information report produced in respective petitions spell

out that the driver of the truck was charge-sheeted for committing offence under sections 279, 304-A of the Indian Penal Code registered against him vide C.R.No.149/2007 with Police Station Neknoor, Dist. Beed. The accident claimed to be occurred on 03.12.2007 in the evening. In the first information report, it is categorically mentioned that the accident was occurred as the driver of truck bearing registration no.MH-23/B-1389 suddenly applied break. Before applying break, he has not taken precautionary steps or given any indication so as to give signal to person coming behind the truck to avoid impact. Due to this reason, the motorcyclist coming behind the truck rammed into truck, which resulted in to death of both the persons riding on motorcycle. The spot panchanama depict the position as found at the time of accident. It reflects that the truck was abandoned by the driver of truck

after the accident. The driver of the truck fled away from spot of accident. The accident occurred on National Highway No.211. In the spot panchanama truck in question shown to be standing on the main road. The truck shown to be standing on tar road at a distance of 4 Ft. away from mid of the road towards western side of the road. Motorcyclist shown to be lying on the back side of the truck. Both the vehicles were proceeding in same direction. The spot panchanama rules out that truck was stopped on the mid of road due to any breaks down. So also the spot panchanama spell out that no precautionary measures were taken on the part of the driver of truck to avoid the accident i.e. to put up guard stones to avoid impact. In that view, the case of the claimants that the accident was occurred due to sudden application of break on the part of driver of offending truck appears to be more probable and convincing.

17. On behalf of the respondents, the respondents have examined Bajirao Venkat Karpe, who claimed to be the person driving the truck at the alleged time of accident. He has testified before the Court as per Exhibit-49. He has stated in his affidavit by way of examination of chief that after loading the sand in the truck he was proceeding towards Beed. At the time of accident truck was lying in stationary condition and parked to left side of road. The motorcyclist was driving the motorcycle in an excessive and unmanageable speed. Motorcyclist could not control motorcycle and gave dash to standing truck. But the testimony of driver of truck finds no support from spot panchanama. The spot panchanama clearly indicate that the truck was found standing on main road. It was found to be standing at a distance of 4 Ft from the mid

of road. Since the road in question being National Highway if the truck would have been lying parked by the left side of the main road, the motorcyclist could have easily passed by the side of truck. In that view, the testimony of driver of the truck cannot be relied.

18. The Tribunal has minutely analyzed the oral and documentary evidence adduced in the case. The reasons recorded by the Tribunal on the issue of negligence reads as under :-

"17. As against evidence of petitioner, respondent no.3 examined D.W.1 Bajirao Venkat Karpe, who was the driver of the offending truck. He has stated in his affidavit vide Ex.49 that on 3-12-2007, he was driving offending truck. The truck was loaded with sand and he was proceeding to Beed from Jeba Pimpri. He parked the truck by the left side of road near Vangaon Phata. At that time,

motorcyclist had come in rash and negligent manner from back side of truck and gave dash to his truck from back side.

D.W.1 has admitted the facts during the course of his cross examination that place of accident was on Chousala to Manjarsumba road. D.W.1 has denied suggestion that he had over took his truck from motorcycle and left side of his truck and mud guard dashed to the motorcycle. He has also denied suggestion that his truck dashed to motorcycle.

18. Turning to documentary evidence, certified copy of F.I.R. is at Ex.31. It shows that one Shrimant Tonde lodged report with Neknoor Police Station. On the basis of that complaint, P.S.O. Neknoor police station registered crime no.149/2007 U/sec.279, 304A of I.P.C. against offending truck driver. It is further reflected from F.I.R. that on 3-12-2007, complainant and Rajendra Hange had gone to Chousala for their personal work. They met to deceased and

motorcyclist. They were returning from Chousala to Dahiphal Wadmaoli by their respective motorcycles. When motorcyclist and deceased came near Wangaon Phata, at that time, driver of offending truck, all of sudden applied brakes. Thereby motorcyclist and deceased had sustained severe injuries due to hit of offending truck.

Spot panchanama Ex.32 revealed that, spot of accident was on National Highway No.211, Beed to Solapur, near Mile Stone No.152. Said highway leads south to north. Offending truck stood facing to north, at the distance of 4 feet from road divider (white strip) towards western side. Front wheel of truck from driver side were on tar road. Motorcycle bearing No.MH-23-5533 was lying from back side of offending truck, at the distance of 4 feet from divider of road, towards western side. Offending truck and motorcycle, both were proceeding from Chousala to Beed i.e. south to north.

19. It emerges from above

evidence that, D.W.1 driver of the offending truck has not stated in his evidence that for what purpose, he parked his truck, on the spot.

ii) It is evident from spot panchanama that offending truck was parked on the road, at the distance of 4 feet from road divider (white strip) towards western side. It is not expected from offending truck driver that he has parked the truck in above position and that too on the national highway, without any reason.

iii) Therefore, above fact and situation shows that, all of sudden, offending truck driver applied brake, as a result motorcyclist received dash of the offending truck.

iv) Motorcyclist was driving motorcycle by their left side of road and offending truck was ahead, therefore, truck was visible to motorcyclist. Further, it was day time.

v) That there was no evidence that there was any mechanical defect in the truck, due to which D.W.1 parked his truck. Therefore, defence taken by the respondent no.1 and 3 that motorcyclist contributed the accident, carries no force.

vi) On the basis of F.I.R. lodged by the complainant Shrimant Tonde, crime no.149/2007 has been registered against offending truck driver.

vii) It has come on record, that after accident, offending truck driver fled away from spot. Therefore, when it is defence of respondents no.1 and 3 that truck was in standing position and motorcyclist gave dash from back side of truck, then question arises, why the offending truck driver fled away from the spot after accident ?

viii) Further, offending truck driver has not lodged complaint against the motorcyclist.

20. Hence, taking into consideration

the above facts and circumstances, I hold that, deceased met with accident and died, due to rash and negligent driving of offending truck driver and motorcyclist had not contributed in accident. Therefore, the argument advanced by the learned advocate for the respondents no. 1 and 3 is far from convincing and I found much force in the argument of learned advocate for petitioners. Therefore, I hold that petitioners have proved issue no.1 while respondents no.1 and 3 have failed to prove issue no.2. Hence, I answer issue no.1 in the affirmative and issue no.2 in the negative."

19. Thus the reasons and findings recorded by the Tribunal as regards sole negligence on the part of driver of the truck in causing the accident are quite consistent with the oral and documentary evidence on record. No case has been made out to interfere with the reasons and findings recorded by the Tribunal on the issue of

negligence on the part of driver of truck in causing accident. The position depicted in the spot panchanama rules out the motorcyclist gave dash to the stationary truck parked by the side of road. The case put-forth by the claimants that the accident was occurred due to sudden application of break on the part of driver of truck appears to be more probable and convincing. In absence of any perversity in the findings recorded by the Tribunal on the point of negligence, the reasons and findings recorded by the Tribunal needs to be upheld. In that view, the appeals preferred by the appellant are devoid of merit and liable to be dismissed. Accordingly, the appeals are dismissed with no orders as to costs. Parties to bear respective costs.

(V.L. ACHLIYA)
JUDGE

sga/-