

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

FIRST APPEAL NO.4092 OF 2017

The National Insurance Company Ltd.,
Through its Divisional Manager,
Divisional Officer at Hazari Chamber,
Railway Station Road, Aurangabad ..Appellant

Vs.

Arun Soma Patil,
Age : 53 years, Occ. Nil,
r/o. Near Marathi Girls School,
At Post-Thorgavahan,
Tq.Raver, Dist. Jalgaon ..Respondents
and anr.

Mr.A.V.Patil, Advocate h/f. Mr.Mr.S.P.Chapalgaonkar, Advocate for
appellant

Mr.S.R.Patil, Advocate for respondent no.1

AND

**CIVIL APPLICATION NO.9775 OF 2021
IN FIRST APPEAL NO.4092 OF 2017**

Arun Soma Patil,
Age : 53 years, Occ. Nil,
r/o. Near Marathi Girls School,
At Post-Thorgavahan,
Tq.Raver, Dist. Jalgaon ..Applicant

Vs.

The National Insurance Company Ltd.,
Through its Divisional Manager,
Divisional Officer at Hazari Chamber,
Railway Station Road, Aurangabad ..Respondents
and anr.

Mr.S.R.Patil, Advocate for applicant

Mr.A.V.Patil, Advocate h/f. Mr.Mr.S.P.Chapalgaonkar, Advocate
respondent no.1

CORAM : R.G. AVACHAT, J.

DATE : SEPTEMBER 29, 2021

ORDER :-

The appellant-insurance company is challenging the judgment and award dated 28.11.2012 passed by the Motor Accident Claims Tribunal, Jalgaon ("the Tribunal", for short) in Motor Accident Claim Petition No.651 of 2004.

2. Heard learned counsel appearing for the parties.

3. It is a case of accident between S.T. bus bearing registration No.MH-20-D-6128 and truck bearing registration No.MP-09-KB-0584. The accident took place at Chouka Ghat on Aurangabad-Jalgaon road. The bus driver and some of the passengers in the bus suffered injuries. The bus driver filed claim petition for compensation. The Tribunal allowed the petition awarding compensation of of Rs.3,30,600/- with interest at the rate of 7.5% per annum, from the date of registration of the petition to the date of realisation thereof.

4. Heard learned counsel appearing for the parties.

5. Mr.A.V.Patil, learned counsel appearing for the appellant-insurance company, would submit that it was a case of head on collision between the two heavy vehicles. The Tribunal, therefore, ought to have held it to be a case of contributory negligence in equal proportion. Learned counsel took me through the relevant evidence in the matter and ultimately, urged for allowing the appeal, holding it to be a case of contributory negligence.

6. Mr.S.R.Patil, learned counsel appearing for respondent no.1, would, on the other hand, support the impugned award.

7. The accident took place between the truck and S.T. bus in Chouka Ghat. The bus driver immediately reported the accident at the concerned police station. On due investigation, the truck driver was proceeded against by filing charge-sheet. The scene of accident panchnama is not of any assistance to

the appellant-insurance company, since it appears therefrom that the S.T. bus was at extreme east of the road which runs North-South, while the truck was found fallen in the roadside ditch onto west. In proof of its claim that it is a case of contributory negligence, no evidence has been let in. The Tribunal was, therefore, justified in observing it to be a case of exclusive negligence/rashness on the part of the truck driver. In this factual backdrop, no interference is called for with the impugned award.

8. In the result, the appeal fails. The same is dismissed.

9. The amount in deposit with this Court be paid to the respondents/claimants with interest accrued thereon. The Civil Application stands disposed of.

[R.G. AVACHAT, J.]