

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

**FIRST APPEAL NO.2098 OF 2010
WITH
CIVIL APPLICATION NO.10021 OF 2008
AND
CIVIL APPLICATION NO.10022 OF 2008**

United India Assurance Company Ltd.,
through its Divisional Manager,
Osmnanpura, Aurangabad

..Appellant

Vs.

1. Arvind s/o. Bhaskarrao Deshpande,
Age : 46 years, Occ. Legal Practitioner,
r/o. Yeshwant Nagar, Nanded,
Through next friend
Bhaskarrao Santokrao Deshpande,
Age : 75 years, Occ. Nil,
r/o. Yeshwant Nagar, Nanded
2. Sardar Awatarsingh s/o. Jogendersingh
since deceased through L.Rs.
 - 2A) Smt. Mehatabkaur w/o. Jogendersingh
Age : 70 years, Occ. Nil,
 - 2B) Smt. Jaswantkaur w/o. Awatarsingh
Age : 41 years, Occ. Household,
 - 2C) S. Jitendarsingh Awatarsingh,
Age : 24 years, Occ. Education,
 - 2D) S. Satbeersingh s/o. Awatarsingh,
Age : 20 years, Occ. Education,
 - 2E) Shitalkaur d/o. Awatarsingh,
Age : 21 years, Occ. Education,

Nos.2A to 2E r/o. Vinayaknagar
in front of B.Ed. College,
Hingoli Road, Nanded

3. Maharashtra State Road Transport
Corporation, through its Divisional
Controller, Parbhani,
Tq. and Dist. Parbhani ..Respondents

Mr.S.G.Chapalgaonkar, Advocate for appellant-insurance company
Mr.M.K.Deshpande, Advocate for respondent no.1
Mr.M.K.Goyanka, Advocate for respondent no.2

CORAM : R.G. AVACHAT, J.
DATE : AUGUST 26, 2021

JUDGMENT :-

The challenge in this appeal is to the judgment and award dated 29.03.2008 passed by Motor Accident Claims Tribunal (M.A.C.T.), Nanded, in Motor Accident Claim Petition (M.A.C.P.) No.768 of 2002. The appellant – insurance company was respondent no.2 in M.A.C.P. Vide impugned judgment and award, the appellant – insurance company and legal representatives of original respondent no.1 have been directed to pay jointly and severally the petitioner (claimant) in M.A.C.P., compensation amount of Rs.8,75,208/- along with interest at the rate of 7.5% per month thereon from the date of registration of M.A.C.P. i.e. 17.12.2002 to the date of realisation of the amount.

2. The M.A.C.P. came to be dismissed against respondent no.3 – M.S.R.T.C.

FACTS :-

3. The respondent/claimant was traveling in a car bearing registration no.BLB-5888 from Nanded to Jalna on 23.08.2002. The car was being driven by respondent no.1C, one of the sons of the car owner (original respondent no.1). While the car was proceeding along Jintur road, S.T. bus, bearing registration no.MH-20-D-2635, came from opposite side. A head-on collision is said to have happened between the two vehicles. As a result, the claimant suffered multiple injuries. He, therefore, preferred M.A.C.P. against the car owner, insurance company and M.S.R.T.C. On appreciating evidence in the matter, the M.A.C.T. passed the impugned award, as stated above.

4. Heard Mr.S.G.Chapalgaonkar, learned counsel for the appellant-insurance company, Mr.M.K.Deshpande, learned counsel for respondent no.1, Mr.M.K.Goyanka, learned counsel for respondent no.2.

5. Mr.S.G.Chapalgaonkar, learned counsel for the appellant – insurance company, would submit that the claimant being victim of the accident, was an eye witness. He has specifically pleaded that the accident took place due to negligence on the part of the drivers of both the vehicles. The police authorities filed charge-sheet against the bus driver. Considering the pleadings and evidence of the claimant, findings ought to have been recorded holding it to be a case of composite negligence of drivers of both vehicles and liability ought to have been apportioned accordingly. The Tribunal has erred in holding the car driver to be solely responsible for the accident. He would further submit that when there was eye witness account of the accident, the M.A.C.T. ought not to have resorted to the principle of *res ipsa loquitor*. PW 3 – Gyandev, bus driver, gave self-serving evidence. He was bound to depose accordingly. Since it was a case of head-on collision, the M.A.C.T. ought to have presumed both the vehicles' drivers to be equally responsible for the accident. Learned counsel would further submit that the claimant was one of the inmates of the car. It could not be termed to be a third party within the meaning of Section 147 of the Motor Vehicles Act. The insurer of the private vehicle is not under statutory obligation to cover the

risk of such passenger. Learned counsel, therefore, urged for allowing the appeal.

6. Learned counsel for the M.S.R.T.C. took me through the reasons given by the M.A.C.T. for dismissal of the petition against it.

7. Admittedly, the petitioner was traveling in the car having insurance cover granted by the appellant-insurance company. The policy of insurance was in the nature of comprehensive/package policy. In the case of **National Insurance Company Limited Vs. Balakrishnan and anr., (2013)1 SCC 731**, it has been observed as under:-

" Motor Vehicles Act, 1988 – Ss. 146, 147(1) and 166 – Owner or gratuitous passenger travelling in motor vehicle meeting with accident – Liability of insurer – Managing Director travelling in company – owned vehicle – Vehicle insured by company – Insurer liable to pay compensation in case of "comprehensive/package policy" but not in case of "Act policy" – Circulars of statutory regulatory authority (presently IRDA) dt. 16-11-2009 and 3-12-2009 taken into consideration – However, whether policy in question in instant case describing itself to be "comprehensive policy" was really a "package policy", was to be determined by interpretation of entire policy – Matter remitted to Tribunal to determine the said issue, and grant relief based on said determination – Insurance Act, 1938 – S. 64-UC – Constitution of India – Art. 141 – Precedential status when matter pending reference to larger Bench."

8. In view of the above, learned counsel for the appellant-insurance company did not seriously press the ground of having no liability to pay compensation to the claimant for want of insurance cover.

NEGLIGENCE :

9. Admittedly, the accident took place between the two vehicles i.e. car bearing registration no.BLB-5888 and S.T. bus bearing registration no. MH-20-D-2635. True, the claimant has pleaded it to be a case of negligence on the part of drivers of both the vehicles. He gave his evidence on the same lines. As against both vehicles, the claimant may be termed to be independent witness. It is also true that the S.T. bus driver, PW 3 - Gyandev, gave his evidence attributing rashness and negligence exclusively on the part of the car driver. It is true that the bus driver has every reason to give self-serving evidence and lodge F.I.R. The M.A.C.T. has rightly appreciated the evidence in the matter. It observed :-

"36. DW-3 Gyandev Wamanrao Aghav at Exhibit-138 has deposed that on 23.8.2002 he was working as a driver on ST Bus No. MH-20/D-2635. It was bound to go to village Dudhgaon from Jintur. When the Bus came in the vicinity of MIDC Jintur (Jintur-Aundha) road, one red colour Car bearing No. BLB-5888 was seen coming from

opposite side (Aundha-Jintur road) in high speed and, therefore, he slow down the speed of Bus and took the Bus at left side by applying brakes and stopped it. At the same time, the said Car gave dash to the Bus from front right side and thereby the accident occurred. He has deposed that, the driver of the Car was driving it rashly and negligently and that too in high speed. He has deposed that he has tried to avoid the accident but the driver of the Car has not.

37. In the cross-examination taken by Advocate Shri M.G. Badalgaonkar for petitioner, this witness has stated that he was able to see the vehicles coming from opposite direction. He has denied that he was driving the Bus rashly and negligently. He has denied that the accident was head on collision.

38. In the cross-examination taken by respondent No. 2, this witness has stated that, in case accident occurs, the driver of the Bus has to report to police. He has stated that there was no damage to front side of the Bus. He has stated that, he has lodged the report of the accident vide Exhibit-72 in Police Station Jintur.

40. He has stated that there was no reference that he has taken Bus to the left side and stopped it, in report Exhibit-72. He has stated this fact for the first time before the Tribunal. He has denied that he did not stop the bus.

41. Petitioner in his cross-examination taken by respondent No. 2 has stated that,

"It is true that there is head on collision of Car and ST Bus. There is error of judgment of Car driver and Bus was coming from opposite side in high speed."

Placing reliance on version of petitioner, learned Advocate Shri V.M.Deshmukh argued that both the drivers of respective vehicles were driving rashly and negligently and, therefore, they are responsible for causing the accident. He further submitted that DW-Gyandev Aghav has not stated in the report Exhibit-70 that he stopped the Bus. On the contrary he stated in the report that the Car gave dash to Bus from front side. Thus, according to him, both the drivers of vehicles should be held responsible. The Tribunal did not agree with his submission for the following reasons.

(a) DW-Gyandev Aghav in the report Exhibit-70 has not stated that he took the Bus to the extreme left of the road by applying brake and stopped it. In this connection, it is necessary to see the sketch Map and diagram of both the vehicles from spot panchanama Exhibit-73. Perusal of the same is showing that the Car was proceeding from Aundha to Jintur and the Bus was proceeding from Jintur to Aundha. It further shows that the Bus was taken to extreme left side of the road and some portion of it is shown on the metal road. It further shows that there was ample empty road for passing the Car from its left side. But the diagram shows that the Car has come on extreme left side of the Bus and dashed it. The sketch Map and the diagram of the vehicle as shown in Exhibit-73 is not challenged by respondent No. 2. Thus, though DW-Gyandev Aghav has not stated about taking the Bus at extreme left side by applying the brake and stopping it, in his report Exhibit-72, it will not be fatal because while making the report he must be under mental pressure and, therefore, he has not mentioned the same in the report. Considering from this angle, it cannot be said that whatever DW-Gyandev Aghav deposed about taking the Bus

on its extreme left side and stopping it by applying the brake, is after thought.

(b) Spot panchanama Exhibit-73 speaks that panchas noticed marks of brake to the extent of 8 ft by back side of ST Bus and to the extent of 3 ft from front left side of the tyre. It further shows that the Car in question was entered in the bumper of ST Bus. The spot panchanama Exhibit-73 clearly speaks that the driver of the Bus must have taken due care and caution to avoid the accident. On the contrary, it shows that the engine of the Car entered in the bumper of Bus, from which it is clear that the driver of the Car was driving it in high speed, rashly and negligently. Spot panchanama is supporting to the evidence of DW-Gyandev Aghav and there is no reason to disbelieve his evidence.

(c) On reading spot panchanama Exhibit-73 and evidence of DW-Gyandev Aghav, it is observed that though the accident appears to be head on collision of Car and ST Bus, total negligence is found on the part of Car driver. Thus, the driver of the Bus cannot be held responsible for causing the accident."

10. I have considered the submissions of learned counsel for the appellant – insurance company in the light of the evidence in the matter to find them to be unacceptable. The M.A.C.T. has appreciated the evidence in right perspectives. The reasons given by the Tribunal are self-speaking to hold the car driver exclusively responsible for the accident. I find no reason to interfere therewith.

11. In the result, the appeal fails. The same is dismissed. Pending Civil Applications stand disposed of.

12. The amount of compensation in deposit with this Court, if any, be paid to the respondent/claimant along with the interest accrued thereon, immediately.

[R.G. AVACHAT, J.]

KBP