

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

**CIVIL APPLICATION NO. 8740 OF 2021
IN
FIRST APPEAL (ST) NO. 9127 OF 2020**

Saritabai Balu Sonawane and Others

..APPLICANTS

VERSUS

Shriram General Insurance Co. Ltd.
Through Branch Manager, Dhule
and Others

..RESPONDENTS

....

Mr. P.C. Mayure, Advocate for applicants

Mr. V.N. Upadhye, Advocate for respondent no.1

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CORAM : R.G. AVACHAT, J.

DATED : 22nd OCTOBER, 2021

PER COURT :

1. Heard.

2. It is a case of head on collision between two trucks. The driver of one of the trucks passed away. The tribunal found it to be a case of contributory negligence in equal proportion. Legal representatives of the deceased truck driver have not filed any appeal. As such, it is accepted as the case of contributory negligence in equal proportion.

3. Learned counsel for the appellant – insurance company would submit that it was in fact a case of exclusive negligence on the part of the deceased. He took this Court to paragraph no.30 of the impugned judgment.

4. Close reading of the impugned judgment indicates that the tribunal simply relied on the spot panchanama to draw a conclusion of it to be a case of contributory negligence in equal proportion, whereas it has come on record in investigation report submitted on behalf of the insurance company itself that tyre of one of the wheels of the offending vehicle had burst. Negligence may be attributed to the truck owner for using worn out tyre. Be that as it may, the appeal is to be heard on merits. The tribunal ought not to have taken exercise of considering the aspect of negligence on the basis of *res ipsa loquitur* only.

5. In the fitness of things, 75% of the amount in deposit be paid to the applicants as against usual undertaking to the satisfaction of the Registrar (Judicial) of this Court. Balance 25% amount be invested in fixed deposit with any of the nationalised bank, pending the appeal. Civil application stands disposed of accordingly.

(R.G. AVACHAT, J.)

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