

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

FIRST APPEAL NO.1589 OF 2004

1. M/s. New India Assurance Company Ltd.
having its registered and head office at 87,
M.G.Road, New India Assurance Building,
Fort, Mumbai – 400 001,
branch office at Door No.5-11-41/2
Near Old Bus Stand, Nirmal,
Dist. Adilabadi (A.P.)
2. M/s. New India Assurance Company Ltd.
having its registered and head office at 87,
M.G.Road, New India Assurance Building,
Fort, Mumbai – 400 001 and branch at
Nanded

Both the appellants through Divisional
Office Dr. Rajendra Prasad Road,
Ajay Engg. Compound,
Aurangabad-431 005
through its Sr. Divisional Manager
Dr.Shrikant Baliram Aney, 51 years

..Appellants

Vs.

1. Smt. Sudha w/o. Uttamrao Bhawre,
Age : 35 years, Occ. Household work,
2. Nilesh s/o. Uttamrao Bhawre,
Age : 14 years, Occ. Student
3. Nikhil s/o. Uttamrao Bhawre,
Age : 10 years, Occ. Student,
4. Kum Neha d/o. Uttamrao Bhawre,
Age : 7 years, Occ. Student,

Resp Nos.2 to 4 are minors u/g. of
Resp No.1. All r/o. Jamgamwadi,
Nanded

5. Gopalrao s/o. Fakirrao Bhawre,
Age : 78 years, Occ. Pensioner
6. Smt. Radhabai w/o. Gopalrao Bhawre,
Age : 66 years, Occ. Household work,
Resp No.5 and 6, r/o. Subhashnagar,
Kinwat, Tq. Nanded
7. Akshay s/o. Parveenkumar Bhananiwal,
Age : Major, Transporter, r/o. H.No.1-5-84
Adarshnagar, Dist. Adilabad (A.P.)
Appeal dismissed against Resp.No.7
vide Court's order dated 02.09.2008 ..Respondents

Mr. V.N.Upadhye, Advocate for appellants
Mrs.A.N.Ansari, AGP for respondent nos.1 to 4

CORAM : R.G. AVACHAT, J.
DATE : OCTOBER 12, 2021

JUDGMENT :-

This appeal is filed by insurance company taking exception to the judgment and award dated 16.09.2004 passed by the Motor Accident Claims Tribunal, Nanded ("the Tribunal", for short) in Motor Accident Claim Petition No.612 of 2000.

2. Under the impugned award, the driver, owner and insurer (appellant) of the truck-tanker involved in the accident have been directed to pay jointly and severally a sum of Rs.12,00,000/- as compensation with interest at the rate of 9% per annum, on

account of death occurred in an accident involving Ambassador car bearing registration No.MH-26-B-168 and truck-tanker bearing registration no.AP-1-T-5501. The appeal has basically been filed taking exception to the Tribunal not accepting the appellant – insurance company's defence of it being a case of contributory negligence of the drivers of both the vehicles.

3. The facts, giving rise to the present appeal, are as under:-

Ambassador car was on its way to Parbhani on 12.07.2000. The truck-tanker was coming from opposite side. The truck-tanker has, allegedly, dashed against Ambassador car. As a result, the car driver – Ramesh died on the spot. Two other persons in the car suffered multiple injuries. One Shri. Uttamrao Bhawre, Dy. Engineer, M.S.E.B., was one of them. He too passed away. His legal representatives, therefore, preferred the claim petition for compensation. The Tribunal, after having appreciated the evidence in the matter, held it to be a case of exclusively rash and/or negligence on the part of the driver of the truck-tanker.

4. Heard learned counsel appearing for the parties.

5. Mr.V.N.Upadhye, learned counsel for the appellant-insurance company, would submit that it was a head on collision between the two vehicles. He took me through the averments in the FIR and the scene of accident panchnama. Learned counsel also read out the contents of paragraph 9 of the impugned judgment. According to learned counsel, this Court is expected to decide the issue of contributory negligence independently. He, therefore, urged for holding it to be a case of contributory negligence, at least, of equal proportion.

6. Mrs.A.N.Ansari, learned counsel for the claimants, would, on the other hand, support the impugned judgment and award.

7. Admittedly, the accident involving Ambassador car and truck-tanker took place on Parbhani-Nanded road on 12.07.2000. The FIR has been lodged by one of the inmates of Ambassador car involved in the accident. It has been averred in the FIR that the truck-tanker driven in high speed gave forceful dash to the car. As such, the averments in the FIR put entire blame on the driver of the truck-tanker. The scene of accident panchnama (Exh.70) does indicate that the right side headlight of the truck-tanker was

damaged. Its front right side tyre was burst. Dash was so forceful that the car changed its direction. The Tribunal, in paragraph 11 of its judgment, observed that after the accident, the truck-tanker gone to extreme north side and the car towards southern. As impact of the accident, the face of the car turned West side. The truck tanker was on wrong side and after giving dash, the truck tanker was stopped on northern side.

8. On reappreciation of the evidence in the case, this Court does not find any reason to interfere with the conclusion arrived at by the Tribunal, holding it to be a case of exclusively negligence on the part of driver of the truck-tanker. In the result, the appeal fails. The same is dismissed.

9. The amount in deposit, if any, with this Court or the Tribunal, be paid to the claimants with interest accrued thereon.

[R.G. AVACHAT, J.]

KBP