

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

942 WRIT PETITION NO.14335 OF 2019

SHAMRAO BABURAO DIKLE
VERSUS
RAJENDRA ROOPCHAND MALPANI AND OTHERS

.....
Advocate for Petitioner : Mr. S. R. Sapkal
Advocate for Respondent No.1 : Mr. Akshay Kulkarni h/f Ms. Anjali Bajpai
Dube
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CORAM : V. K. JADHAV, J.
DATED : 13th JANUARY, 2021

PER COURT:-

1. I have heard learned counsel for the petitioner at length. I find no substance in this writ petition.
2. The petitioner is original claimant. His own vehicle-car got damaged in the accident. It has been alleged that one another vehicle-tractor is involved in the accident and there was head on collision between the tractor and the car. Thus, the petitioner-claimant has preferred M.A.C.P. No. 130 of 1996 for damages of his car against the owner of the tractor, driver of the tractor and its insurer so also the insurer of his own car.
3. The Learned Chairman of the M.A.C.T. Osmanabad has partly allowed the M.A.C.P. No. 130 of 1996 and thereby held that the petitioner-original claimant is entitled to the damages of Rs.2,50,000/- with interest @ 7.5% p.a. from the date of the claim

petition till the realization and further directed that the respondent Nos. 1 to 3 shall pay half of the amount of damages whereas the respondent No.4 (insurer of the car) shall pay remaining half of the amount of damages. It is further directed that respondent No.3 (insurer of the tractor) shall be entitled to recover from respondent No.1-insured (insured of the car) the amount required to be paid by it to the petitioner-claimant.

4. Being aggrieved by the same, the insurer of the car viz. Oriental Insurance Company Limited, has preferred first appeal No. 1541 of 2007. The Tribunal has recorded the finding of the contributory negligence and thereby held that the drivers of both the vehicles are equally responsible for the accident. In view of the same, this court in the said appeal has observed that so far as the claim on account of damages caused to the car is concerned, the respondent-original claimant (petitioner herein) is not entitled to claim the compensation to the extent of his contribution in the accident. In the result, this Court has partly allowed the appeal and dismissed the M.A.C.P. No. 130 of 1996 as against respondent No.4 herein Oriental Insurance Company Limited (insurer of petitioner's car).

5. Being aggrieved by the same judgment and award passed by the Tribunal, respondent No.1 in the claim petition (owner of the tractor) has preferred first appeal No. 329 of 2007 in this court to the extent of permitting the insurer of the tractor to recover the amount

from him. By judgment and order dated 18.7.2017 in first appeal No. 329 of 2007, this Court has partly allowed the said appeal and thereby quashed and set aside the said judgment and award to the extent that respondent No.3 insurer shall be entitled to recover the compensation amount from respondent No.1-insurer i.e. National Insurance Company Limited.

6. In view of the same, the claimant is entitled for the compensation to the extent of 50% as determined by the Tribunal. The learned Judge of the executing court has rightly appreciated the same and accordingly disposed of the execution petition. I find no substance in the submissions made on behalf of the claimant/owner of the car that he is entitled for the entire compensation as determined by the Tribunal. There is no substance in this writ petition. Hence, I proceed to pass the following order:-

O R D E R

Writ petition is hereby dismissed. No costs.

(V. K. JADHAV, J.)

rlj/