

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

FIRST APPEAL NO.3421 OF 2015 WITH
CIVIL APPLICATION NO.16672 OF 2015

New India Insurance Company Ltd.,
Divisional Office, Jalgaon
Through its Divisional Manager/
Authorised Signatory,
Divisional Office No.1, Adalat Road,
Aurangabad

... APPELLANT

VERSUS

- 1) Surekha Balu Tayade,
Age 45 years, Occu. Household
- 2) Hemangi Balu Tayade,
Age 19 years, Occu. Education
- 3) Mayur Balu Tayade Naik,
Age 18 years, Occu. Education

Nos.1 to 3 R/o Padalse,
Taluka Bhusawal, Dist. Jalgaon
- 4) Vijay Chudaman Sapkale,
Age 48 years, Occu. Driver,
R/o Bhusawal, Dist. Jalgaon
- 5) M/s B.N. Agrawal,
Age 58 years, Occu. Tankeriness,
R/o Bhusawal, Dist. Jalgaon
- 6) Dnyaneshwar Hari Waghode,
Age 48 years, Occu. Service,
R/o Padalse, Taluka Bhusawal,
District Jalgaon
- 7) Gopabai Ukhardu Tayade,
Age 73 years, Occu. Household,
R/o Padalse, Taluka Bhusawal,
District Jalgaon

- 8) Ukhardu Khandu Tayade,
Age major, occu. Nil,
R/o Padalse, Taluka Bhusawal,
District Jalgaon ... **RESPONDENTS**

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Shri S.G. Chapalgaonkar, Advocate for appellant
Shri V.Y. patil, Advocate for respondents No.1 to 3 & 7
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CORAM : R. G. AVACHAT, J.

Date of reserving judgment : 13th October, 2021

Date of pronouncing judgment : 6th December, 2021

J U D G M E N T :

This is Insurance Company's appeal, taking exception to the judgment and award dated 27/7/2015, passed by Chairman, Motor Accident Claims Tribunal (MACT), Jalgaon in Motor Accident Claim Petition (MACP) No.232/2007, granting compensation of Rs.13,23,136/- on account of death in vehicular accident. The challenge is mainly on the ground of non-involvement of the vehicle, stationary tanker insured with the appellant Insurance Company. Since the quantum of compensation is not in dispute, the averments in the petition, evidence and findings in that regard are not adverted to.

2. Heard. Shri Chapalgaonkar, learned counsel for the appellant – Insurance Company would submit that, the

deceased was proceeding from Anjale to Padalse on motorcycle bearing No.MH-19-AF-9436 as a pillion rider. The motorcycle was being ridden by respondent No.6 herein in a rash and negligent manner. As a result thereof, the motorcycle bumped against a stone on the road. The motorcycle skidded close to the stationary tanker No.MWD-6588. Both the deceased and respondent No.6 fell off the motorcycle. The deceased succumbed to the injuries suffered in the accident. The learned counsel meant to say that, the stationary tanker was in no way involved in the accident in question. It has, therefore, no liability to pay any compensation. He relied on the Apex Court judgment in case of **New India Assurance Company Limited Vs. Bismillah Bai and others**, [(2009) 5 SCC 112]. He would also submit that, the police papers of the accident have been placed on record by the claimants themselves. The documents, therefore, need to be read in their entirety. He, therefore, urged for allowing the appeal.

3. Learned counsel for the respondents – claimants, on the other hand, supported the impugned judgment and award.

4. There can be no two views over what has been submitted by learned counsel for the appellant Insurance Company that the liability on the owner of the vehicle and its insurer cannot be saddled without there being proof of its involvement in the accident much less rash or negligence on the part of its driver. The facts of the present case are, however, other way round. The report of the accident (Exh.55) was lodged with the concerned Police Station within hours of the accident. It was lodged by none other than the motorcycle rider (respondent No.6). It has been specifically averred in the accident report (Exh.55) that both the deceased and respondent No.6 were proceeding from Anjale to Padalse on a motorcycle. It was 10.00 p.m. The motorcycle negotiated a turn for proceeding towards Padalse, Taluka Yawal, District Jalgaon. The tanker was stationary on the road. There were some stones around. The motorcycle first hit one of the stones. The motorcycle thereby got jumped off and hit against the stationary tanker and thereafter both the deceased and respondent No.6 fell off the motorcycle. The deceased suffered multiple injuries and died on the spot.

5. The veracity of the averments in the F.I.R. appears

to have not been taken exception to. The police papers indicate that the tanker was parked on the road unattended. Neither the indicator nor the tail lamp was kept glowing to ensure attention of the traffickers to presence of the truck on the road. This is sheer negligence on the part of tanker driver. The Tribunal has, therefore, rightly saddled the owner of the tanker, its driver and appellant Insurance Company with liability to pay compensation. No interference is, therefore, warranted with the impugned award. The appeal fails. It is dismissed. Consequently, Civil Application stands disposed of.

(R. G. AVACHAT)
JUDGE

fmp/-