

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

FIRST APPEAL NO. 1455 OF 2004

Sandip s/o Murlidhar Deshpande, ... Appellants
Age 30 years, Occu: Business
R/o Kharda, Tq. Jamkhed, Dist. Ahmednagar

VERSUS

1. Smt. Rukhmini Pandurang Sabale,
Age 36 years, Occu: Household
2. Mahadeo Pandurang Sabale,
Age 17 years, Occu: Education
3. Kashibai Pandurang Sabale
Age 14 years, Occu: Education
4. Janabai Pandurang Sabale
Age 13 years, Occu: Education.
5. Pingal Pandurang Sabale
Age 11 years, Occu: Education
6. Reshma Pandurang Sable
Age 8 years, Occu: Nil
7. Gorakh Hari Sabale
Age 35 years, Occu: Agri.
8. Gita Gorakh Sabale
Age 55 years, Occu: Household work
9. The New India Assurance Co. Ltd. ... Respondents.
Sharda Centre, 2nd Floor,
Behind Na Stop, Karve Road,
Pune 411 004
Through Manager,
abbot Building, Near Ashoka Hotel,
Zendigate, Ahmednagar.

Mr. C. K. Shinde, Advocate for the appellant
Mr. K.S. Bhore, Advocate for respondent Nos. 1 to 6
Mr. D. P. Deshpande, Advocate for respondent No.9

CORAM : S. G. DIGE, J.

DATE : 13.09.2022

JUDGMENT :

1. Being aggrieved and dissatisfied with the judgment dated 12th April, 2004 passed by the Motor Accidents Claims Tribunal, Ahmednagar (for short, 'the Tribunal) in M.A.C.P No.843 of 1999, the appellant/original respondent No.1 preferred this appeal.

2. On 31st December, 1996, the deceased Pandurang Sabale was traveling in a Jeep Reg. No. Mh-16/-488 from Tintraj Devgaon to Kharda. The Jeep was being driven and owned by the appellant. Due to rash and negligent driving and in an attempt to overtake S.T. Bus, the appellant failed to control the speed of the jeep resulting in causing the accident. In the said accident, the deceased Pandurang Sable sustained grievous injuries and succumbed to those injuries. Crime was registered against the appellant. Respondent Nos. 1 to 8 filed claim petition before the Tribunal for getting compensation. The Tribunal has partly allowed the claim petition against the appellant. The said judgment is under challenge in this appeal.

3. It is the contention of the learned counsel for the appellant that the passengers in the vehicle were not fare paying passengers but they were relatives of the appellant. The vehicle was insured with

respondent No.9- Insurance Company. So, the liability of paying compensation should have been fastened on respondent No.9 but it is fastened on the appellant without any reasonable ground. Hence requested to allow the appeal.

4. It is the contention of the learned counsel for the respondents that after the accident, the appellant himself had informed the police about the accident and report was lodged with the police. In the FIR (Exh.35), it is stated that on the date of accident, the appellant was carrying 7 to 8 fare paying passengers in the jeep. All passengers were unknown to him. It shows that the appellant was plying the jeep on hire and reward basis. Hence, requested to dismiss the appeal.

5. I have heard all the learned counsel. Perused the judgment and order passed by the Tribunal.

6. Insurance policy of the offending jeep is at Exh.56. It shows that sitting capacity of the jeep, including driver, was $9+1=10$. There were limitations on the use of the vehicle as mentioned in the said policy. In the policy, it is mentioned that it does not cover use of the vehicle for hire and reward or for organized racing, pace-making, reliability trials etc. So, as per the terms and conditions of the policy, the vehicle was not to be used for the purpose of carrying passengers on hire or reward. At the time of accident, the appellant was driving the offending jeep and he himself gave report of the accident to the police. In the said report (Exh.35), the appellant has admitted that he

was carrying 7 to 8 fare paying passengers in the jeep. They were unknown to him. In the evidence, the appellant has examined himself at Exh. 48. In his evidence, he has stated that the passengers in the jeep were his family members. In my view, the stand taken by the appellant at the time of evidence is after thought as, immediately after the accident, the appellant had given information of the accident to the police. In the said information report, he had specifically stated that the passengers in the jeep were fare paying passengers. Hence, the appeal is devoid of merit.

7. In view of above, I pass the following order:

O R D E R

The first appeal is dismissed. No order as to costs.

(S. G. DIGE, J.)

JPChavan