

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

FIRST APPEAL NO.622 OF 2004

New India Assurance Co. Ltd.
Branch Office, Jalna
Through its Authorized Signatory
Sr.Div.Manager, Aurangabad.

.. APPELLANT
[Orig. Resp. No.2]

VERSUS

1] Laxmibai w/o. Prakash Rathod,
Age 29 yrs. Occ. Household
R/o. Yedlapur, Tq. Partur,
Dist. Jalna.

2] Nitin Prakash Rathod

3] Akash Prakash Rathod

Resp. Nos.2 & 3 minors u/g. of
Claimant no.1, real mother Laxmibai

4] Devichand Manja Rathod,
Age 70 yrs, Occ. Nil
R/o. as above.

5] Khirabai Devichand Rathod,
Age 65 yrs. Occ. Household
R/o. as above.

6] Sk. Bilal Sk. Razzak,
Age 40 yrs. Occ. Business,
R/o. Lonar, Dist. Buldhana.

.. RESPONDENTS

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Mr.Dhananjay Deshpande, Advocate for the appellant
Mr.J.C.Badve, Advocate for respondent nos. 1 to 5
Mr.P.C.Mayure, Advocate for respondent no.6

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CORAM : S.G.DIGE, J.

DATE : 28.09.2022

P.C. :

Being aggrieved and dissatisfied by the judgment and award passed by the Motor Accident Claims Tribunal, Jalna, the appellant – Insurance company original respondent preferred this appeal on the ground of sole negligence of the deceased.

Brief facts of the case are as under :

2] On 31st October, 2000, deceased Prakash was riding on a Rajdoot motorcycle at about 8.00 p.m. He dashed to stationery truck bearing MH-28-B-5318. It was a night time. Indicators of the truck were off and it was made stationery on the road in a such way that no space was left on the road to pass on the vehicle coming from the backside or coming from the opposite side. The motor cycle was dashed on the rear side of the same truck. In the said accident, both riders on the motorcycles fell down and died. Offence was registered against the deceased Prakash Motorcycle rider. The Tribunal has considered 50%

contributory negligence of the deceased and awarded compensation on that basis. The said judgment and order is under challenge on the ground that the accident was occurred due to sole negligence of the deceased.

3] It is the contention of the learned counsel for the appellant that deceased Prakash was sole responsible for the accident. He was riding motorcycle in a high speed and after giving dash from backside of the truck, both riders on the motorcycle died. It shows that severity of the speed of the motorcycle. The learned counsel further submits that indicators were put on of the truck and all the precautionary measures were taken when the truck was stationed on the road. In spite of that, the deceased dashed to the truck. The truck was not on the road but it was on the side of the road. The spot panchnama shows that there is sole negligence of the deceased. The Tribunal has considered 50% contributory negligence of the deceased but it should have been sole negligence of the deceased, hence, requested to allow the appeal.

4] It is the contention of the learned counsel for respondent nos.1 to 5 that the truck was stationed on the road. Road was narrow. It was a night time. No lights were available to visualize. It was rural area. The light of the motorcycle was not so powerful to see beyond 5 feet or 10 feet. The speed of motorcycle was in a normal speed. The deceased could not have expected that some vehicle is standing on the road. There was no indicators put on the stationery vehicle nor any obstruction material was kept behind the truck to show that some vehicle is stationed ahead. As no signs or no indicators were put on the offending vehicle, the deceased hit truck from backside. The deceased was going from the left side of the road and the truck was parked on the left side of the road, hence, the deceased could not notice it as it was without any indicator and proper measures, hence, hit the truck from backside. Both motorcycle riders and pillion rider hit the truck and they caused injury to head. Due to which they died. It does not mean that the motorcycle was in a high speed. The Tribunal has considered all the facts and fastened 50%

contributory negligence on the deceased also. To prove that the indicators were on and proper precautionary measures were taken by the truck driver, no witness is examined by the Insurance company. The judgment and order passed by the Tribunal is legal and valid.

5] I have heard learned counsel for the appellant, learned counsel for respondent nos.1 to 5 and learned counsel for respondent no.6. Perused the judgment and order passed by the Tribunal. It is the contention of the learned counsel for the appellant that there was sole negligence of the deceased in the said accident. Admittedly, the accident is occurred around 8.00 p.m. The spot panchnama shows that two wheels of the truck were on tier road. Though in spot panchnama driver of the truck stated that he had put on indicators of the truck, but it is hard to believe indicators were put on. Had the indicators were put on the said truck, then the deceased would not have dashed to the truck from the backside. The provisions of the Motor Vehicle Act (For short, "the M.V. Act") states about

precautions to be taken when the vehicle is to be stationed. It appears that those precautions were not taken by the driver of the truck. The Tribunal has rightly held that there was 50% contributory negligence of the deceased and 50% of the truck driver, I do not find any infirmity in it. Hence, I pass the following order :

ORDER

- i] Appeal is dismissed.
- ii] No as to costs.
- iii] Respondent nos.1 to 5 are permitted to withdraw the amount deposited, if any, along with interest accrued thereon, if already not withdrawn.

**[S.G.DIGE]
JUDGE**

DDC