

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

FIRST APPEAL NO. 1326 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] Mankarnabai Namdeo Pawar,
Age 25 yrs, Occ. Househodl
R/o. Yedlapur, Tq. Partur,
Dist. Jalna.

2] Suresh Namdeo Pawar,
Age 7 yrs. U/G. of Resp.No.1

3] Abasaheb Umaji Pawar
Age 67 yrs., Occ. Nil
R/o. As above.

4] Chaturabai w/o. Abasaheb Pawar,
Age 62 yrs., Occ. Household,
R/o. As above.

5] 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 4
Mr.P.C.Mayure, Advocate for respondent no.5

...
CORAM : S.G.DIGE, J.
DATE : 28.09.2022

P.C. :

1] 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.

Brief facts of the case are as under :

2] On 31st October, 2000, the deceased Namdeo was traveling [as a pillion rider] on a motor cycle driven by one Prakash Rathod. The motorcycle was in high speed, Prakash could not control his motor cycle. 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 such A 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 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, who was riding the motorcycle, on which deceased Namdeo, who was pillion rider, was sole responsible for the accident. Deceased Prakash was riding motorcycle in a high speed and after giving dash from backside of the truck, both riders on the motorcycle died. It shows the speed of the motorcycle was high. The learned counsel further submits that indicators of the truck were on, 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 4 that the truck was stationed on the road. Road was narrow. It was a night time. No lights were available on street. It was rural area. The light of the motorcycle was not so powerful to see beyond 5 feet or 10 feet. The motorcycle was in a normal speed. Deceased Prakash could not have expected that some vehicle is parked on the road. No indicators were 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. Both motorcycle rider and pillion rider hit the truck and injury caused to their 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 all learned counsel. 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 [Exh.36] that two wheels of the truck were on tar road. The Driver of the truck has not stepped into witness box to prove that indicators and parking light of the truck was in on condition. Moreover, had the indicators were put in on condition, then deceased Prakash would not have dashed to the truck from the backside. Rule 109 of the Central Motor Vehicles Rules, 1989 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 4 are permitted to withdraw the amount deposited, if any, along with interest accrued thereon, if already not withdrawn.

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

DDC