

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

FIRST APPEAL NO. 1765 OF 2011

The New India Assurance Company Ltd.,
D. O. No.1, Adalat Road, Aurangabad,
through its Divisional Manager (Legal Hub);
Shri Sanjeev s/o Ramrao Gayasamudre,
age: 50 years, Occ: Service,
R/o Aurangabad.

Appellant

Versus

01 Smt. Ushabai w/o Mohan Munjal,
age: 34 years, Occ: Nil,
R/o At Post Hirapur, Tq. Georai,
District Beed.

02 Saurabh s/o Mohan Munjal,
age: 14 years, Occ: Student,
u/g of mother Smt. Ushabai w/o
Mohan Munjal, R/o At & Post
Hirapur, Tq. Georai,
District Beed.

03 Rushikesh s/o Mohan Munjal,
age: 10 years, Occ: Student,
u/g of mother Smt. Ushabai w/o
Mohan Munjal, R/o At & Post:
Hirapur, Tq. Georai, District
Beed.

04 Smt. Sarubai w/o Dadarao Munjal,
age: 66 years, Occ: Nil,
R/o At & Post Hirapur,
Tq. Georai, District Beed.

Respondents
(Ori. Claimants)

05 Sunder s/o Shrirang Indure,
age: 50 years, Occ: Business,
R/o Dagadi, Shahajanpur,
Tq. & District Beed.

06 Shriram s/o Sakharam Ghorad,

age: 38 years, Occ: Driver,
R/o Dagadi, Shahajanpur,
Tq. & District Beed.

Respondents
(Ori. Respondents No.2
& 3)

Mr. M. M. Ambhore, advocate for the Appellant.
Mr. J. N. Singh, advocate for Respondents No.1 to 4.

CORAM : SANDIPKUMAR C. MORE, J.

RESERVED ON: : 12th August, 2022.
PRONOUNCED ON: 22nd August, 2022.

JUDGMENT :

1 The appellant-Insurance Company, who is original Respondent No.1 in MACP No. 145 of 2009, has preferred this appeal challenging the award dated 15.10.2010, in the aforesaid Claim Petition, passed by the learned Motor Accident Claims Tribunal, Beed (herein after referred to as 'the learned Tribunal') mainly on the grounds that the aspect of contributory negligence was not considered by the learned Tribunal and despite the driver of the offending truck i.e. present Respondent No.6 was not having valid licence, the Insurance Company was held liable for paying the compensation without giving right to recover the same from the owner of the offending vehicle.

2 Brief facts, giving rise to the appeal, are as under:

Present Respondents No.1 to 4, who are the original claimants, had filed aforesaid Claim Petition contending that on 24.02.2009, deceased Mohan Munjal i.e. husband of Respondent No.1 was going on his motorcycle bearing Registration No. MH-23-D-6022 from Padalsingi to Georai. However, when he reached near Rajgadh Dhaba on the said road, he collided with one Goods truck standing on the middle of the road loaded with sugarcane. According to the claimants, present Respondent No.6 i.e. driver of the said truck had negligently kept standing the said truck in the middle of the road without any indicators or side-lights in on condition and also no signs such as stone and tree branches were kept around the truck. The deceased, due to the aforesaid negligent act of Respondent No.6 driver, could not sight the said truck as it was almost midnight i.e. 11.40 p.m. and collided with the said truck, sustained injuries and succumbed to those injuries.

3 The learned Tribunal, on the basis of the evidence on record and in the light of the pleadings, held the appellant-Insurance Company as well as present Respondents No.5 & 6, who are respectively owner and driver of the said truck, jointly and severally liable to pay compensation of Rs.6,00,000/-, including

the compensation payable under Section 140 of the Motor Vehicles Act, 1988, to the present Respondents No.1 to 4 along with interest @ 9% p.a. from the date of the petition till its realisation. Hence, this appeal.

4 The learned Counsel for the appellant-Insurance Company as well as Respondents No. 1 to 4, who are the original claimants, have filed written notes of arguments in support of their rival contentions.

5 The learned Counsel for the appellant-Insurance Company submits that the deceased had in fact gave dash to the stationary truck from backside and, therefore, he was also negligent in the occurrence of the said accident. However, the learned Tribunal completely ignored the aspect of contributory negligence. He also pointed out that the driver of the offending truck was having licence to drive only Light Motor Vehicles (LMV) and was not at all eligible to drive Heavy Goods vehicles like the offending truck and, therefore, there was fundamental breach of the policy conditions, which could have exonerated the appellant-Insurance Company. It is also submitted by the learned Counsel for the appellant-Insurance Company that according to the driver

and owner of the truck involved in the accident, the truck was moving in slow speed by its appropriate left side of the road and still the deceased gave dash to the said truck from behind and thus contributed 100% in causing the accident.

6 The learned Counsel for the appellant-Insurance Company placed heavy reliance on the judgment of the Hon'ble Apex Court, in the case of **Raj Rani & others Vs. Oriental Insurance Company & others**, reported in (2009) 13 SCC 654.

7 On the contrary, learned Counsel for Respondents No.1 to 4- original claimants supported the judgment of the learned Tribunal and prayed for dismissal of the appeal.

8 With the able assistance of learned Counsel for respective parties, this Court has gone through the entire record and proceedings of the learned Tribunal along with the judgment and award, in the light of rival contentions.

9 It is not disputed that the accident had taken place during the night time i.e. at 11.40 p.m. on the fateful day. Though it is claimed by Respondents No. 5 & 6, who are the owner and

driver of the truck, that the truck was moving in slow speed, but the appellant-Insurance Company itself had taken a defence that the truck was stationary at the time of the incident. The additional written statement filed by the appellant-Insurance Company before the learned Tribunal clearly indicates that there was an averment that the offending truck was stationary on the road to the half left side. As such, now the appellant-Insurance Company cannot claim that the deceased was 100% negligent in the occurrence of the accident as the truck was slowly moving from its appropriate left side.

10 On going through the record especially from the First Information Report and spot *panchanama*, it is evident that the truck was loaded with sugarcane and was parked in the middle of the road without keeping its indicators or side-lights on. It is also evident that no other signs such as tree branches or stones were kept around the said truck. As such, these facts definitely show the negligence of Respondent No.6 driver only. Further, an offence has also been registered against Respondent No.6 on completion of investigation. It is significant to note that the accident had taken place almost in the midnight and, therefore, it was quite possible that the deceased could not have sighted the said truck due to

darkness. Thus, negligence on the part of Respondent No.6 driver is apparent from the record.

11 The learned Counsel for the appellant-Insurance Company heavily relied upon the judgment of the Hon'ble Apex Court in the case of **Raja Rani** (*supra*). Admittedly, the Hon'ble Apex Court has observed that the deceased dashing his vehicle against a stationary truck which allegedly had not put on the lights and hence, some amount of negligence, on the part of the deceased could not be ruled out. With these observations, the Hon'ble Apex Court has held contributory negligence of the truck driver as well as the deceased in the ratio of 50 : 50. It has been observed by the Hon'ble Apex Court, in paragraphs no.17 and 19, as follows:

“17 So far as the issue of “contributory negligence” is concerned, we may notice that the Tribunal has deducted 1/3rd from the total compensation on the ground that deceased had contributed to the accident. The same, we find, has been upheld by the High Court. This Court in *Usha Rajkhowa v. Paramount Industries*, (2009) 14 SCC 71, discussed the issue of contributory negligence noticing, *inter alia*, earlier decisions on the same topic. It was held that: (SCC p. 75, para 20)

“20 The question of contributory negligence on the part of the driver in case of collision was considered by this Court in

Pramodkumar Rasikbhai Jhaveri v. Karmasey Kunvargi Tak.(2002) 6 SCC 455. That was also a case of collision between a car and a truck. It was observed in SCC p. 458, para 8:

“8.... The question of contributory negligence arises when there has been some act or omission on the claimant’s part, which has materially contributed to the damage caused, and is of such a nature that it may properly be described as “negligence”. Negligence ordinarily means breach of a legal duty to care, but when used in the expression “contributory negligence” it does not mean breach of any duty. It only means the failure by a person to use reasonable care for the safety of either himself or his property, so that he becomes blameworthy in part as an “author of his own wrong”.

“19 In this case, the truck was stationary. Some amount of negligence on the part of the deceased cannot be ruled out. Hence in the instant case, we find that there was contributory negligence on the part of the deceased and accordingly the claimant was entitled to only 50% of the total amount of loss of dependency.”

However, though such observation is there in the aforesaid judgment, but in the instant matter, the learned Tribunal has not come to the conclusion that there was contributory negligence on the part of the deceased, as held in the aforesaid citation. Moreover, all the circumstances, leading to the

occurrence of the accident, indicate negligence on the part of Respondent No.6 – truck driver only and, therefore, the aforesaid observation in respect of contributory negligence in the ratio of 50 : 50 is not applicable and helpful in the instant case. As such, this Court discards the submission of the learned Counsel for the appellant-Insurance Company to that effect. Even otherwise also, the appellant – Insurance Company has not examined the driver of the truck to prove that there was some negligence on the part of the deceased.

12 The learned Counsel for the appellant-Insurance Company has also strongly submitted that Respondent No.6, who was the driver of the truck involved in the accident was not having valid driving licence and, therefore, there was breach of policy conditions which could have invited an order of pay and recover. Admittedly, the record shows that Respondent No.6 i.e. the truck driver was holding licence to drive only Light Motor Vehicles (LMV) and he was not permitted to drive Heavy Motor Vehicles or Goods vehicles under that licence. However, it is extremely important to note that as per the appellant-Insurance Company itself, the truck was stationary being parked on the middle of the road at the time of accident and it was not in motion. In view of the same, the

aspect that Respondent No.6 driver was not having proper driving licence to drive Goods Vehicles or Heavy Motor Vehicles hardly matters. As such, I am not in agreement with such submission of the learned Counsel for the appellant-Insurance Company.

13 There is no dispute about the mode of calculation to arrive at the quantum of compensation by the learned Tribunal and, therefore, considering the limited grounds raising challenge to the impugned award, as mentioned above, I am of the opinion that there is no necessity to interfere with the impugned judgment and award of the learned Tribunal.

14 In the result, appeal being devoid of merits, stands dismissed.

(SANDIPKUMAR C. MORE)
JUDGE

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