

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

FIRST APPEAL NO.1579 OF 2004

The New India Assurance Company Ltd.,
having it's Head and Registered Office at
New India Assurance Building, 87, M.G. Marg,
Fort, Mumbai, Branch Office Dhule
Divisional Office at Aurangabad. ..Appellant..

Versus

1. Sakhubai Devram Dhobi,
age 55 yrs, Occ. Household,
R/o Mukti, Tq. & Dist. Dhule,
2. Hiranman Devram Dhobi,
age 19 yrs, Occ. Mukti,
Tq. & Dist. Dhule.
3. Prasad Khatamalu Ifak Aayala,
age major, Occ. Truck Driver,
R/o H.No.7/5117, Vairgad,
A.P.
4. Sk. Mujahid Shaikh Hamidh,
age major, Truck owner,
R/o Gudivadavari, State Eluru.
5. Oriental Insurance Company Ltd.,
Through It's Branch Manager,
Dhule.
(Claim is already disposed of against
Respondent nos.3 to 5.)
6. Ramesh Chhagan Thorat,
age major, Occ. Driver,
R/o Near Water Tank, Parola Road,
Dhule.
7. Vinod Ramesh Thorat,
age major, Occ. Business, R/o
Near Water Tank, Parola Road,
Dhule. ..Respondents...

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Mr. S.V. Kulkarni, Advocate for appellant.

Mr. Anudeep D. Sonar Advocate for respondent Nos.1 & 2.

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CORAM : S.G. CHAPALGAONKAR, J.

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RESERVED ON : 17th JULY, 2023.

PRONOUNCED ON : 26th JULY, 2023.

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JUDGMENT :-

1. The appellant/original respondent no.6-Insurance Company impugns the judgment and award dated 9.8.2004 passed by the Motor Accident Claims Tribunal, Dhule in MACP No.480 of 1997 by this appeal filed under section 173 of the Motor Vehicles Act. The respondent nos.1 and 2 herein (original claimants) had approached the Tribunal at Dhule under section 166 of the Motor Vehicles Act, raising claim for compensation from the owner and insurer of the vehicles involved in an accident dated 20.3.1997 in which their son namely Manik Devram lost his life. Contention of the claimants is that, deceased was traveling in Jeep bearing registration no.MH-18/A-801 from Dhule towards Mukti. At that time a truck bearing registration No.AP-37/T-1225 gave dash to the jeep from rear side. Resultantly, the deceased had suffered fatal injuries.

2. It appears that during pendency of the claim petition, the claimants settled the claim by accepting Rs.38,000/- from original respondent nos.1 to 3 i.e. owner, driver and insurer of the truck. The claim was prosecuted against the original respondent nos.4 to 6 i.e. owner, driver and insurer of the jeep. The appellant is the insurer of the

jeep. The Tribunal had framed the issues and recorded evidence of the parties. Finally, conclusion is drawn that it was a case of composite negligence of drivers of both the vehicles. The liability of respondent nos.4 to 6 is fixed to the extent of 40%. The claimants were held entitled for total compensation of Rs.2.00 Lakhs and based on the 40% liability of the owner, driver and insurer of the jeep, the direction to pay Rs.80,000/- alongwith interest @ 9% p.a. has been given to them under the impugned award dated 9.8.2004. The appellant/insurer of the jeep assails the aforesaid award in this appeal.

3. Mr. S.V. Kulkarni, learned advocate appearing for the appellant in his endeavor to assail the award submits that once the claimants had settled the claim in Lok-Adalat with the respondent nos.1 to 3, the claim against the original respondent nos.4 to 6 could not have been entertained. He would submit that the Tribunal has not properly decided the issue of negligence. The evidence on record demonstrates that the truck driver was sole responsible for the accident. He would further submit that there is no logic in fixing 40% liability against the appellant.

4. Mr. Anudip Sonar, learned advocate appearing for the respondent nos.1 and 2 would submit that the deceased was the occupant of the jeep. The Tribunal based on the evidence tendered into service apportioned the liability to pay the compensation in the ratio of 40% - 60% between the original respondent nos.1 to 3 and 4 to 6. He submits that meager compensation is awarded, hence, urged to dismiss the appeal.

5. Having considered the submissions advanced by the learned advocates appearing for the respective parties and after going through the record, it can be gathered that there is no dispute that the deceased lost his life in accident involving both the vehicles i.e. truck and jeep. In such scenario, the claim shall be governed by the principles of composite negligence. In fact, it was the choice of the claimants to prosecute the remedy under either of the joint tort-feasors. However, they had added owner, driver and insurer of both the vehicles involved in the accident. They entered into compromise with original respondent nos.1 to 3 and received the compensation of Rs.38,000/- probably because the respondent nos.4 to 6 were not inclined to offer any compensation. Be that as it may, the Tribunal apportioned the liability between the joint tort-feasor and fixed 40% of liability against the respondent nos.4 to 6 and consequently directed them to pay Rs.80,000/- out of total assessed compensation of Rs.2.00 Lakhs.

6. On overall view of the matter, it appears that the Tribunal has taken pragmatic approach and awarded the compensation. Once, the entitlement of the claimants is approved and liability of the respondents is determined in case of composite negligence, the challenge regarding inter-se liability would not germane for consideration in this appeal, especially when the claimants have received the compensation from original respondent nos.1 to 3 by way of Lok Adalat settlement and the claim against them is settled down. One more aspect prohibits this Court from interfering the challenge is there is specific note in the appeal-memo that the claim petition is already disposed off against respondent nos.3 to 5.

In that view of the matter, the issue of apportionment of interest liability cannot be gone into. Hence, nothing survives for consideration in this appeal. Hence, the appeal is dismissed. Pending civil application, if any, also stands disposed off. The amount, if any, deposited by the appellant, be disbursed to the claimants.

[S. G. CHAPALGAONKAR]
JUDGE

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aaa/-