

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

FIRST APPEAL NO.1968 OF 2012

The New India Assurance Co. Ltd.
Through its Divisional Manager,
Adalat Road, Aurangabad
Through its Authorised Signatory,
Sr. Div. Manager, Legal Hub.
Aurangabad D.O. Aurangabad

... Appellant
[Orig. Resp. No.3]

Versus

1. Omprakash s/o Rampratap Dusad
Age: 62 years, Occu: Business
R/o Shrikrishna Apartment, Behind
Darling Hotel, Aurangabad

... Orig. Claimant

2. Mohd. Altaf Mohd. Noor
Age: 43 years, Occu: Driver,
R/o: Sanjay Nagar, Juna Jalna,
Jalna Dist. Jalna
Driver of Truck MH 21 – 6510

3. Suresh Jugalkishore Upadyay
Age: 48 yrs, Occu: Service,
R/o New Mondha, Jalna,
Dist. Jalna

4. Suresh Bhimrao Deshmukh
Age: 45 years, Occu: Business,
R/o Ganpati Galli, Jalna,
Dist. Jalna
Owner of Car Mh 02-L-622

... Respondents
Orig. Claimant & Resp. Nos.1, 2 & 4

...

Mr. Dhananjay P. Deshpande, Advocate for the Appellant
Mr. P. K. Lakhotiya, Advocate for Respondent No.1

...

CORAM : S. G. CHAPALGAONKAR, J.

RESERVED ON : 24.02.2023

PRONOUNCED ON : 08.03.2023

JUDGMENT:

1. The present appeal impugns the judgment and award dated 25.07.2016, passed by the Motor Accident Claims Tribunal, Aurangabad in Motor Accident Claim Petition (MACP) No.19/2006. The appellant is original respondent no.3/Insurer of the truck registration No.MH-21-6510.

2. Learned advocate Mr. Deshpande appearing for the appellant would submit that the accident took place on 03.03.2005 at about 4:00 pm near Shekta Toll Naka on Aurangabad to Jalna road. The Insured truck was proceeding from Aurangabad towards Jalna. The Maroti car registration No.MH02-L-622 was following the Truck. The driver of the car could not control his vehicle and rammed on the rear side of the truck. FIR was registered against the car driver. The claimant, passenger in car suffered injuries because of rash and negligent driving of the car. However, the claimant unnecessarily added the owner and insurer of the truck as a party to his claim petition. He would submit that the Tribunal wrongly decided the issue of negligence while holding that both the vehicle drivers were equally responsible in the cause of accident. He would submit that the claim petition ought to have been dismissed against owner, driver and insurer of the truck and the award, if any, ought to have passed against the owner of the car. He would submit that since the claim is filed under Section 166 of the Motor Vehicles Act, 1988 [hereinafter referred to as 'the Act' for short] in absence of the negligence on the part of the truck driver, no liability ought to have been fastened against the owner and insurer of the truck.

3 Learned advocate Mr. Deshpande would rely upon the judgment in the case of **Pushpabai Purshottam Udeshi Vs. Ranjit Ginning and Pressing Company** reported in **1997 (2) SCC 745** to contend that the pleading and proof of negligence is *sine qua non* for fixing the liability in the claim filed under Section 166 of the Act. He relies on the judgment of the Supreme Court of India in the matter of **Oriental Insurance Co. Ltd vs Premlata**

Shukla reported in **(2007) 13 SCC 476** to contend that once the FIR is admitted in the evidence, the contents of the same will have to be read as a whole. The reading of FIR in piecemeal is not permissible. He has also relied upon the judgment in the case of **Nishan Singh & Others Vs. Oriental Insurance Company** reported in **(2018) 6 SCC 765** to contend that it is a duty of following vehicle to maintain a safe distance from the vehicle proceeding ahead. If there is a breach of such rule, the negligence of the following vehicle driver will have to be assumed particularly, in light of Section 118 of the Act.

4. Learned advocate Mr. P. K. Lakhotiya appearing for respondent no.1/original claimant supports the judgment & award passed by the Tribunal. He would submit that the Tribunal has recorded the findings on appreciation of evidence. The claimant himself is an eye witness of accident and he has given true and correct version of the accident in his evidence. The claimant was occupant of the car hence the case would be governed by the principle of composite negligence. The Tribunal has rightly applied the law in the facts of the case and passed just and proper award.

5. Having considered the submissions advanced by the learned advocate appearing for the respective parties, this Court finds that the spot of accident is near a Toll Naka. The truck insured with the appellant was proceeding towards the Toll Naka. The spot panchnama shows that there is a speed breaker just before the Toll Naka. The truck driver suddenly applied the brakes. The car driver could not control his vehicle and rammed on the rear portion of the truck. The claimant was occupant of the car who suffered injuries in the said accident. A FIR has been lodged by PSI, Shri. Baburao Wakodkar on the basis of the information received by him. The Tribunal has rightly concluded that the FIR has been lodged on hearsay evidence. The contents of the FIR cannot be taken as gospel truth.

6. The purpose of FIR is only to set criminal law in motion or initiate investigation. Although the contents of FIR are relevant in lodging motor accident claim, the contents cannot be accepted as gospel truth particularly, when the informant is not an eye witness. The reliance of the claimant on the FIR at Exhibit-53 is only for the purpose of bringing on record the fact of accident. Therefore, though claimant himself filed the FIR on record, he cannot be precluded from disputing the contents thereof. The claimant himself deposed before the Tribunal and narrated the incident based on his ocular evidence. He has proved contribution of Truck Driver in cause of accident. Pertinently, the appellant/insurer has not made any attempt to examine the first informant to prove the contents thereof, nor has examined the truck driver to controvert the narration given by the claimant. The insurer has withheld the best possible evidence.

7. In that view of the matter, the Tribunal has rightly recorded the findings of composite negligence on the part of both the vehicle drivers. This Court has no reason to discard such findings which are based on appreciation of evidence. No perversity in the findings recorded by Tribunal brought to the notice of this Court. No interference is required in the view taken by the Tribunal. The reliance placed by the learned advocate Mr. Deshpande on the judgment of the Supreme Court in the matter of Nishan Singh & Others (*Supra*) is not relevant in the facts and circumstances of the case governed by principles of composite negligence. Similarly, there cannot be dispute regarding preposition of law laid down by the Supreme Court of India in the matters of Pushpabai Purshottam Udeshi (*Supra*) and Oriental Insurance Co. Ltd (*Supra*). However, in view of finding of composite negligence recorded in the present case, it has no application.

8. During the course of argument, it has been brought to the notice of this Court that respondent no.4 has already paid the compensation of his share to the claimant and appeal is only in relation to the liability fixed against the appellant jointly with original respondent nos.1 & 2.

9. In light of the above observations, the appeal is devoid of merits and the same is liable to be dismissed with costs. Hence, I pass the following order :

ORDER

- (i) The appeal is dismissed with costs.
- (ii) The respondent/claimant is at liberty to withdraw the amount deposited by appellant/insurer.

(S. G. CHAPALGAONKAR, J.)

Sameer