

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION**

FIRST APPEAL NO. 536 OF 2023

United India Insurance Company Ltd.)
Having its office at Stadium House, Veer)
Nariman Road, Churchgate, Mumbai -)
400 020)....Appellant

Versus

1. Roopraj Gendu Parihar)
Aged: 48 years, father of the deceased)

2. Pushpabai Roopraj Parihar)
Aged: 42 years, mother of the deceased)

All residing at Kashiram Building)
Compound, Near Gopaji Heavy Lifters,)
P Dmello Road, Mumbai 400 009.)

3. Mr. G. Ramesh Babu)
10/31-1 Gaoutam Nagar, Gaddiannaram)
Dilkush Nagar, Hyderabad, Andhra Pradesh)
Pin- 35)...Orig. Opposite
Party.
....Respondents

**WITH
FIRST APPEAL NO. 1246 OF 2018**

United India Insurance Company Ltd.)
Having its office at Stadium House, Veer)
Nariman Road, Churchgate, Mumbai -)
400 020)....Appellant

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Versus

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| 1. Saluddin Moh. Hanif Shaikh |) |
| Aged: 45 years, father of the deceased |) |
| 2. Jafartunbinisa Salauddin Shaikh |) |
| Aged: 40 years, mother of the deceased |) |
| 3. Gayasuddin Salauddin Shaikh |) |
| Aged: 10 years, brother of the deceased |) |
| Through his father, Respondent No.1 |) |
| All residing at Flat No. 102, Building No. |) |
| 13, Kavit Premjyot complex, Ghatkopar |) |
| Mankhurd Link Road, govandi, Mumbai |) |
| 400 043 |) |
| 4. Mr. G. Ramesh Babu |) |
| 1-/31 – 1 Gaoutam Nagar, Gaddiannaram |) |
| Dilkush Nagar, Hyderabad, Andhra Pradesh |) |
| Pin – 35 |)....Original |
| | Opposite Party |
| | Respondents |

Smt. Varsha Chavan for the Appellant in both Appeal.
 Mr. Tejpal S. Ingale for the Respondent No.1 & 2 in both Appeal.

CORAM : SHIVKUMAR DIGE, J.**DATE : 22nd DECEMBER, 2023.****Oral Judgment. :**

- Both these appeals are preferred by Appellant / Insurance Company against judgment and order passed by Motor Accident

Claims Tribunal, Mumbai (for short “the Tribunal”). The issues involved in these appeals are same i.e. negligence of the deceased hence, I am deciding it by this common judgment.

2. It is claimants’ case that on 25th June 2007 at around 5:30 a.m. the deceased Nitesh Roopraj Parihar along with co-worker – deceased Sarfuddin Shaikh had slept below motor trailer No.AP-29-T-6759. At relevant time, the driver of the motor trailer negligently started the said trailer without checking, if any one was below the trailer. As a result, the said trailer passed over the deceased and Sarfuddin Shaikh, resulting in their death. An offence was registered against the driver of offending trailer.

4. It is contention of learned counsel for the Appellant that, the accident occurred due to negligence of both the deceased as they had slept below trailer. The driver of offending vehicle was not aware about it, as usual he started his trailer and it ran over both the deceased but, the Tribunal has considered that accident occurred due to sole negligence of the driver of offending trailer, which is not proper. Hence, requested to allow the Appeal.

5. It is contention of learned counsel for the Respondents/Claimants that both deceased had accompanied the

driver of offending vehicle. The offending trailer was going from Mumbai to Khamman, Andhra Pradesh, they were with driver of offending trailer since beginning. On the day of accident, due to rain and repair work both the deceased had slept below the trailer, the driver of trailer was aware about it. In morning without seeing these two persons, negligently the driver of offending trailer had started the truck resulting in trailer passing over them. It was duty of the driver of offending trailer that when he did not see these two persons who had accompanied him from Mumbai in the said trailer, to check their presence, before starting the trailer but without doing that he started the trailer, which was loaded with heavy crane. Learned counsel further submitted that to prove the negligence of deceased, driver of offending trailer did not enter in to the witness box. The judgment and order passed by the Tribunal is legal and valid and no interference is required in it.

The learned counsel for the Respondents/Claimants in companion appeal adopted the arguments of learned counsel for the Respondents/Claimants in First Appeal No.536 of 2023.

6. I have heard all learned counsel. Perused judgment and order passed by the Tribunal.

7. To prove their case, the father of deceased Sarfuddin in Appeal No.1246 of 2018 has been examined at Exhibit 16. He has stated that his son was crane operator, he was going to Hyderabad from Mumbai as crane operator with loaded crane in offending trailer. On 24th June 2007 at about 12:00 hours, the driver of the trailer had parked the said trailer in front of S.K. Jani Tyres repairing shop for some repairing work. After it was parked, some people slept in cabin of the said trailer and deceased and other co-worker slept below the said trailer. The driver of the said trailer was well aware about this fact. On 25th June, 2007 in morning at about 5:30 a.m, the driver of the said trailer started the said trailer in rash and negligent manner and caused injuries to the persons sleeping below the said trailer and passed over the deceased and co-worker, resulting in their death. In cross-examination, this witness admitted that he has not seen the accident.

8. The claimants examined PW-2 Bharat Kadam to support the evidence of PW-1. PW-2 Bharat Kadam has stated that deceased Sarfuddin Shaikh was working as crane operator. To prove their case in Appeal No. 536 of 2023, the Claimants have examined father of deceased, Roopraj Parihar. He has stated that his son Nitesh was

working as crane operator. He has stated the same facts stated by father of Sarfuddin. From the evidence of these witnesses, it appears that both the deceased were crane operators and they were going with the driver of offending vehicle. When both the deceased were with trailer from Mumbai, as a prudence, the driver of trailer should have checked the presence of both the deceased before starting the offending vehicle, as they were accompanying him from Mumbai and accident happened near Khamman in Andhra Pradesh. It proves that, the accident occurred due to sole negligence of driver of offending vehicle. It has come in the evidence of witnesses that driver of offending vehicle was aware that both the deceased had slept below the trailer. This fact is not rebutted by the Appellant by producing evidence on record. The driver of offending vehicle did not step into witness box to prove the negligence of deceased or to prove that he was not aware that both the deceased had slept under the trailer. In my view, it was obligatory on the driver of offending vehicle to check the presence of both the deceased before starting the journey as they were with him, since beginning. It has come on record that due to rain, some people had slept in the cabin of offending vehicle, whereas both the deceased had slept below the vehicle and driver of offending

vehicle was aware of it. Had both the deceased been strangers and had they slept below the offending vehicle without anyone knowing it, the case would have been different but in present case, both the deceased were travelling in offending vehicle, as crane operator. They had slept below the offending vehicle as a part of arrangement, as it was raining. I do not see merit in contention of learned counsel for the Appellant that there was no negligence of driver of offending vehicle.

9. In view of above, I pass following order.

ORDER

- i. Both appeals are dismissed. No order as to costs.
 - ii. The Claimants in both appeals are permitted to withdraw the deposited amount along with accrued interest thereon.
 - iii. The statutory amount be transmitted to the Tribunal along with accrued interest thereon. The parties are at liberty to withdraw it, as per Rule.
10. All pending applications, if any, stand disposed off.

(SHIVKUMAR DIGE, J.)