

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 1617 OF 2016

National Insurance Co. Ltd.)	
Kasturi Building, Veer Nariman Road,)	
Mumbai 400021.)	
Through its Mumbai Regional Office-II,)	
5th Floor, Sterling Cinema Building,)	Appellant
Murzban Street, For, Mumbai –400 001.)	(Ori.Opponent No.2)

Versus

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| 1. Prabhavati Jairam Bhuvad) | |
| Aged 62 years, widow of the) | |
| deceased residing at 32/5/9, Adarsh) | |
| Chandikadevi Rahiwasi Sangh,) | |
| Kalewadi, G. D. Ambekar Marg,) | |
| Parel, Mumbai – 400 012.) | |
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| 2. Usha Jairam Bhuvad) | |
| Aged 42 years, Daughter of the) | |
| deceased residing at 32/5/9, Adarsh) | |
| Chandikadevi Rahiwasi Sangh,) | |
| Kalewadi, G. D. Ambekar Marg,) | |
| Parel, Mumbai – 400 012.) | |
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| 3. Anand Jairam Bhuvad, Age 38) | |
| years, son of the deceased residing) | |
| at 32/5/9, Adarsh Chandikadevi) | |
| Rahiwasi Sangh, Kalewadi,) | |
| G. D. Ambekar Marg,) | |
| Parel, Mumbai – 400 012.) | |

4. Amit Jairam Bhuvad, Age 28)
years, son of the deceased residing)
at 32/5/9, Adarsh Chandikadevi)
Rahiwasi Sangh, Kalewadi,)
G. D. Ambekar Marg,)Respondent Nos.1 to 4
Parel, Mumbai – 400 012.)(Orig. Applicant Nos.1 to 4)
5. Shadab Shaukat Ali, Room No.)
21, 176, Zakaria Masjid Street 3rd)
Floor, Mumbai 400 009.) ...Respondent No.5
(Org. Opponent No.1)

Mr. P. A. Narayanan, Advocates for the Appellant.
Mr. S. R. Gupta, Advocate for the Respondents.

CORAM : S. G. DIGE, J.

DATE : 23rd FEBRUARY 2023.

Judgment :

1. The issue involved in this appeal is contributory negligence of the deceased.
2. It is contention of learned counsel for the appellant-Insurance Company that the accident had occurred when the deceased was walking on the road and the offending tempo dashed him. Learned counsel further submits that deceased was walking on road without taking proper care and caution, there was contributory

negligence of the deceased in the said accident but this fact is not considered by the Tribunal and requested to allow the appeal.

3. It is contention of learned counsel for the respondents that the deceased was walking on the left side of the road. At that time, the offending vehicle came from behind and knocked him down. It shows that there was sole negligence of the driver of the offending vehicle. The Tribunal has considered the evidence on record and on that basis, the Tribunal has held that the accident had occurred due to sole negligence of the driver of the offending vehicle, which is proper and no interference is required in it.

4. I have heard both learned counsel, perused the judgment and order passed by the Tribunal.

5. The incident occurred on 25th October 2012 at about 3.30 pm when the deceased was walking towards Sewree Naka. At that time, a tempo bearing registration No. MH-01-LA-3614 (for short "the offending tempo") came from backside of the deceased and dashed him. As a result, the deceased sustained grievous injuries and died in the hospital while taking treatment. FIR was filed

against the driver of the offending tempo. The copies of the FIR, spot panchanama, inquest panchanama, cause of death certificate and copy of insurance police are at Exhibits "22 to 26". It has come on record that at the time of the accident, the deceased was walking on the left side of the road and from backside, the driver of the offending tempo gave him a dash. It establishes that the accident had occurred due to sole negligence of the driver of offending tempo. Moreover to prove negligence of the deceased, the appellants have not examined the driver of the offending tempo or any other person. The FIR is lodged against the driver of the offending tempo. The dash given to the deceased from the backside when he was walking on the road, it proves that there was sole negligence of the driver of the offending tempo.

6. In view of the above, the appeal is devoid of merit and I pass following order :

1. The appeal is dismissed. No order as to cost.
2. The claimants are permitted to withdraw the amount deposited by the appellant along with accrued interest thereon.

3. The statutory amount along with accrued interest thereon be transmitted to the Tribunal. The parties are at liberty to withdraw it as per Rule.
7. Pending applications, if any, stand dismissed.

(S. G. DIGE, J.)