

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

**FIRST APPEAL NO.1495 OF 2016
WITH
INTERIM APPLICATION NO.2038 OF 2023
IN
FIRST APPEAL NO.1495 OF 2016**

The Branch Manager,
Bharati AXA General Insurance
Co. Ltd.
Millennium Star Building, 3rd
floor, Office No.309, 310 and
311, Near Ruby Hall Clinic,
Dhole Patil Road, Pune-411 001
through Mr. Ashwin Kumar
Gawai-Manager Legal

...Appellant

Versus

1. Dattatraya Balshiram Ukride
R/a Dingore, Tal-Junnar
District:-Pune

2. MRC Transulations Private
Limited, 11, Milestone, Nagar
Road, Wagholi, Pune-412 207.

...Respondents

**WITH
FIRST APPEAL NO.1491 OF 2016
WITH
INTERIM APPLICATION NO.2033 OF 2023
IN
FIRST APPEAL NO.1491 OF 2016**

The Branch Manager,
Bharati AXA General Insurance
Co. Ltd.
Millennium Star Building, 3rd
floor, Office No.309, 310 and
311, Near Ruby Hall Clinic,
Dhole Patil Road, Pune-411 001

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through Mr. Ashwin Kumar
Gawai-Manager Legal

...Appellant

Versus

1. Sandip Baban Mandlik,
Government contractor
R/at-Dingore, Tal-Junnar,
District-Pune

2. MRC Transulations Private
Limited, 11, Milestone, Nagar
Road, Wagholi, Pune-412 207.

...Respondents

**WITH
FIRST APPEAL NO.1492 OF 2016
WITH
INTERIM APPLICATION NO.2034 OF 2023
IN
FIRST APPEAL NO.1492 OF 2016**

The Branch Manager,
Bharati AXA General Insurance
Co. Ltd.
Millennium Star Building, 3rd
floor, Office No.309, 310 and
311, Near Ruby Hall Clinic,
Dhole Patil Road, Pune-411 001
through Mr. Ashwin Kumar
Gawai-Manager Legal

...Appellant

Versus

1. Kashinath Dashrath Lohote
R/at-Dingore, Tal-Junnar,
District-Pune

2. MRC Transulations Private
Limited, 11, Milestone, Nagar
Road, Wagholi, Pune-412 207.

...Respondents

**WITH
FIRST APPEAL NO.1494 OF 2016**

**WITH
INTERIM APPLICATION NO.2036 OF 2023
IN
FIRST APPEAL NO.1494 OF 2016**

The Branch Manager,
Bharati AXA General Insurance
Co. Ltd.
Millennium Star Building, 3rd
floor, Office No.309, 310 and
311, Near Ruby Hall Clinic,
Dhole Patil Road, Pune-411 001
through Mr. Ashwin Kumar
Gawai-Manager Legal

...Appellant

Versus

1. Smt. Sharda Anil Ukirde
2. Rohan Anil Ukirde
3. Tanvi Dattatray Ukirde
4. Sushila Rajram Ukirde
5. Rajaram Jijaba Ukirde
For Applicant No.2 legal
guardian Applicant No.1 and for
the Applicant No.3 Dattatray
Rajaram Ukirde is legal guardian.
All R/at-Dingore, Taluka-Junnar,
District-Pune.

6. MRC Transulations Private
Limited, 11, Milestone, Nagar
Road, Wagholi, Pune-412 207.

...Respondents

**WITH
FIRST APPEAL NO.1493 OF 2016
WITH
INTERIM APPLICATION NO.2035 OF 2023
IN
FIRST APPEAL NO.1493 OF 2016**

The Branch Manager,
Bharati AXA General Insurance
Co. Ltd.

Millennium Star Building, 3rd
floor, Office No.309, 310 and
311, Near Ruby Hall Clinic,
Dhole Patil Road, Pune-411 001
through Mr. Ashwin Kumar
Gawai-Manager Legal

...Appellant

Versus

1. Ranjan Satubhau Sherkar
R/at Dingore, Taluka-Junnar,
District-Pune

2. MRC Transulations Private
Limited, 11, Milestone, Nagar
Road, Wagholi, Pune-412 207.

...Respondents

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Mr. Nikhil Mehta i/b. M/s. KMC Legal Venture for the Appellant.
Mr. Rahul M. Kashid i/b. Mr. Rohit S. Gangawane for Respondent
Nos.1 to 5.

CORAM: SHIVKUMAR DIGE, J.

DATE : 11th DECEMBER, 2023.

P.C.:-

1. The issues involved in these five appeals are same. These appeals are against the judgment and order passed by Motor Accident Claims Tribunal, Pune, (for short 'the Tribunal'). Hence, I am deciding these appeals by this common judgment.

2. It is the contention of the learned counsel for the Appellant-Insurance Company that due to accident the insured vehicle was stationed on the middle of the road. The driver of the

Maruti Zen car gave dash to the said stationed vehicle from back side. The offence was registered against the driver of Maruti Zen car. His car was in high speed. Hence, he could not control speed of car and gave dash to stationed trailer. The accident occurred due to negligence of driver of Maruti Zen car but this fact has not been considered by the Tribunal and has fixed liability on the Appellant - Insurance Company. Hence, requested to allow the appeal.

3. It is the contention of learned counsel for the Respondents-claimants that the accident occurred at 1.00 a.m. in the midnight. No parking lights of the stationed trailer were put on. There were no signs to show that the said trailer was stationed in the middle of the road. It was the duty of the driver of the trailer to put reflectors or parking light on. Learned counsel further submitted that to prove the negligence of driver of Maruti Zen Car, the Investigating Officer of the said crime was not examined by the Appellant. No witness was examined to prove that parking lights were put on. The Tribunal has considered all the aspects and on that basis order is passed. No interference is required in it.

4. I have heard both the learned counsel. Perused the

judgment and order passed by the Tribunal.

5. To prove its case the Appellant -Insurance Company has examined the driver of the offending vehicle-Arvind Dinesh Pande at Exhibit 52. He has stated that on 05/1/2011 the trailer had met with an accident. One truck had dashed to the trailer. The cabin of the trailer was fully damaged. In the morning he informed his Company about the accident. He had put the parking lights of the trailer in on condition so the people travelling on that road come to know about parking of vehicle and on the back side of the trailer he had put the branches of the tree and further guarded the trailer with stones on backside of the trailer. He further stated that the space was available at the left side of the trailer to the other vehicles for passing. The accident took place on 07/01/2011 at 1.00 a.m. in the midnight due to the negligence of the driver of the Maruti Zen car. In cross-examination this witness admitted that the accident occurred at 2.00 a.m. in the midnight. He had gone to the police station. The police recorded his statement. He stated to the police while recording his statement that he had put the parking lights of the trailer in on condition so as to know the people. At the backside of the trailer he

had put the branches of the tree and further guarded the trailer with stones. He could not assign any reason as to why police had not recorded it in his statement.

6. From the evidence of this witness it appears that he had stated to the police about putting on parking lights but it was not mentioned in his statement. Moreover, while dealing with this issue the Tribunal has observed that in spot panchanama it is not mentioned that parking lights of the trailer were in on condition and reflector was not there. In my view as per the decision of this Court in ***Mohini Mohanrao Salunke vs. Ramdas Hanumant Jadhav, [2022] O Supreme (Bom) 1679*** it was the duty of the driver of the trailer to put on the parking lights of the stationed vehicle. Rule 109 of the Central Motor Vehicles Rules, 1989 reads thus:-

[109. Parking light :

[[Every construction equipment vehicle, combine harvester and motor vehicle] and every motor vehicle other than motor cycles and three wheeled invalid carriages shall be provided with one white or amber parking light on each side in the front. In addition to the front lights, two red parking lights one on each side in the rear shall be provided. The front and rear parking lights shall remain lit even when the vehicle is kept stationary on the road:

Provided that these rear lamps can be the same as the rear lamps referred to in rule 105 sub-rule (2):

[Provided also that construction equipment vehicles [and combined harvesters], which are installed with food light lamps or sport lights at the front, rear or side of the vehicle for their off-highway or construction operations, shall have separate control for such lamps or lights and these shall be permanently switched off when the vehicle is travelling on the road.]

This rule states that, front and rear parking lights shall remain lit when the vehicle is kept stationary on the road.

7. In the present case though the driver of the offending trailer has stated that he had put the parking lights of the offending trailer in on condition but police papers filed on record are not supporting his contention. Moreover, the Appellant has not examined the investigating officer of the said crime to prove the said fact.

8. In view of above, I pass following order:-

ORDER

- (i) All appeals are dismissed. No order as to costs.
- (ii) The Claimants are permitted to withdraw the

deposited amount alongwith accrued interest thereon.

- (iii) The statutory amount be transmitted to the Tribunal alongwith accrued interest thereon. The parties are at liberty to withdraw it as per rule.

9. All pending interim/civil application(s), if any stand (s) disposed of.

(SHIVKUMAR DIGE, J.)