

Shailaja

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.590 OF 2020**

The New India Assurance Co. Ltd.] Through its Divisional Manager] Having their office at Legal Cell,] 3rd Floor, Above Nehru Memorial] Hall, Camp, District: Pune] Also at 41-B, 4th Floor, Maker Tower-E,] Opp World Trade Center, Cuffe Parade,] Mumbai - 005.]	Appellant (Orig. Opp. Party No.2)
Vs.	
1. Sangeeta Rajendra Tupe] Age: 45 years, Occ: Household] 2. Shri Akshay Rajendra Tupe] (deleted as per exh. 40)] 3. Kumari Priyanka Rajendra Tupe] Age: 23 years, Occ: Education,] 4. Master Omkar Rajendra Tupe] Age- 18, Occ: Education, now major] 5. Smt. Savitribai Bapurao Tupe] (Deleted as per exh. 40)] All R/o. Building No.5, Room No.3.] Chavan Nagar Police Line, Baner Road]] District - Pune.] 6. Shri Suresh Baburo Shelke] Age: Adult, Occ: Business,] R/At - B-204, Nil Udyan, Sanjay] Co-operative Housing Society,] Sector 3E, Plot No.19, Kalamboli,] Tal. Panvel, District - Raigad 410 206]	Respondents

Mr. Rajesh Kanojia a/w Ms. Riddhi Chavan i/b Res Juris, for Appellant.

Ms. Vaishali Jagdale, for Respondents No.1, 3 and 4.

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CORAM : PRITHVIRAJ K. CHAVAN, J.
DATE : 20th February, 2023.

JUDGMENT:

1. This appeal takes an exception to an Award passed by the Member, Motor Accident Claim Tribunal, Pune in M.A.C.P No.66 of 2013, by which the Member awarded compensation of Rs.25,60,390/- against the owner and appellant (insurer) of the offending vehicle in favour of the respondents-claimants.

2. Facts in brief are as follows:

3. Deceased Rajendra Tupe (hereinafter referred to as "Rajendra"), a 45 year old government employee was on his way from Pune to Mumbai on a motorcycle bearing registration No. MH/12/ED/2679 on the fateful day of 25th July, 2012 when his motorcycle, around midnight, dashed to the rear side of the offending truck bearing registration No. MH/43/3/1951 which was stationary in the midst of Pune Mumbai highway near village Kamshet. He died instantaneously due to the impact.

4. An offence came to be registered with *Vadgaon Maval* Police Station vide Crime No.114 of 2012 under sections 279, 337, 338, 304-A of the Indian Penal Code and 184 of the Motor Vehicles Act against the deceased Rajendra.

5. Respondent No.1 is the widow of deceased Rajendra while respondents No.3 and 4 are daughter and son. Respondent No.6 is the owner of the offending truck. Respondent No.6- is the owner of the offending vehicle who was proceeded ex-parte.

6. Admittedly, the offending truck was insured with the appellant. The appellant, in its written statement, denied all the allegations in the petition filed by the claimants-respondents before the Motor Accident Claim Tribunal including age of deceased Rajendra, income and other averments. Contention of the respondents-claimants before the Motor Accident Claims Tribunal was that the offending truck was parked on the road unattended. There were no tail lamps illuminated. No precautionary measures were taken by the Driver of the offending truck to warn the passers by about the offending truck being stationary in the midst of the road.

7. Respondent No.1-widow of the deceased adduced evidence before the Tribunal. There was no evidence adduced by the appellants. The respondents-claimants, apart from oral evidence, placed on record copies of the First Information Report (Exhibit 27), complaint (Exhibit 28), spot *panchanama* (Exhibit 29), inquest *panchanama* (Exhibit 30), Advance cause of death certificate (Exhibit 31), Form Comp AA (Exhibit 32), Registration Certificate of offending Truck (Exhibit 33), Insurance Policy Schedule - cum-insurance (Exhibit 34), salary certificate of deceased - Rajendra (Exhibit 38) and Driving licence of deceased Rajendra (Exhibit 39).

8. Undisputedly, deceased died involving the offending truck on 25th July, 2022 in the midnight when the offending truck which was admittedly owned by the respondent No.6 was stationary on the midst of the road.

9. At the outset, learned Counsel for the appellant submitted that due to mechanical break down, the offending truck was stationary in the midst of the road and, it was the deceased who was rash and negligent while driving his motorcycle on the highway who dashed to the rear side of the offending truck and succumbed to the

injury/injuries.

10. Learned Counsel would invite my attention to the fact that the First Information Report came to be registered against the deceased and even the final report was filed against him. He would argue that the deceased could have noticed the truck in the headlight of the motorcycle and could have avoided the accident. He was solely responsible for his accidental death. The Counsel would further submit that though the offending truck was stationary, however, it was parked on the left side of the road leaving 24 meters of space in right side. The deceased had sufficient space approximately 25 meters from the divider to proceed further.

11. It is pertinent to note that the Tribunal held that it is a case of contributory negligence of 75% and 25%, meaning thereby, the driver of the offending truck was negligent to the extent of 75% and that the deceased was of 25%, and accordingly, awarded compensation to the claimants.

12. I have carefully gone through the evidence adduced on record. Merely because an offence came to be registered against the

deceased by the Investigating Agency indicating that he was solely responsible for the accident due to the rash and negligent driving is not sufficient. It cannot be lost sight of the fact that major portion of negligence can be attributed to the driver of the offending truck and not to the deceased. I say so for the reasons to follow.

13. The first and foremost thing is that it was midnight. Secondly, the offending truck was parked in the midst of the main road i.e Pune Mumbai highway and not on the kaccha road. Thirdly, it is apparent from the spot *panchanama* that the offending truck was parked in such a way that there was 12 feet road on the left side and 24 feet road towards right side i.e towards divider side. It necessarily means that the offending truck was neither parked on the extreme right or extreme left side. There was no clear access to the passers by. The next most important aspect is that tail lamps were not switched on. Parking lights were also not functioning.

14. The learned Member has, therefore, rightly referred Rule 234 of the Maharashtra Motor Vehicles Rules, 1989 which is reproduced below;

"234. Use of lamps when vehicle at rest:

(1) If within the limits of any Municipal Corporation, municipality or cantonment, a motor vehicle is at rest within the hours during which lights are required, at the left-hand side of any road or street or elsewhere in any duly appointed parking place, it shall not be necessary for the motor vehicle to exhibit any light save as may be required generally or specially by the Commissioner of Police, in Greater Bombay, and elsewhere by the District Magistrate.

(2) Outside the limits of any Municipal Corporation, municipality or cantonment, if a motor vehicle is at rest within the hours during which lights are required in such a position as not to cause danger or undue inconvenience to other users of the road, it shall not be necessary for the motor vehicle to display any lights".

15. Keeping the offending vehicle stationary in the midst of the road definitely causes danger to the other users of the road. It seems that the driver of the offending truck had not displayed anything in order to make the passers by aware about the said vehicle. Interestingly, the appellant had not made any attempt to adduce any independent evidence in support of his contention that the deceased could have proceeded further either from the left or right side of the offending truck. Principles of *Res Ipsa Loquitur* would indeed be applicable in the present set of facts. There is also no evidence to substantiate alleged mechanical break down of the offending truck.

16. Of course, to some extent, it can be said that the deceased Rajendra too was negligent or careless in driving his motorcycle cautiously while on the highway and, therefore, the Tribunal had rightly held him responsible to the extent of 25% in respect of contributory negligence. Negligence does not always mean absolute carelessness but want of such a degree of care as required in particular circumstances and that no absolute standard can be fixed by which negligence or lack of which can be measured in a given case.

17. As such, I do not find any reason to interfere with the impugned judgment and award passed by the Member, M.A.C.T. Pune, while awarding compensation to the respondents-claimants. The appeal is devoid of merits and, therefore, stands dismissed.

18. The appeal stands disposed of.

[PRITHVIRAJ K. CHAVAN, J.]