



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 819 OF 2015
WITH
CIVIL APPLICATION NO. 3509 OF 2015
IN
FIRST APPEAL NO. 819 OF 2015

M/s National Insurance Co. Ltd.,
having its registered and Head Office at 3
Mediation Street, Kolkata- 700 079,
Divisional Officer Baliram Peth Jalgaon
and Division Office at Hazari Chambers,
Station Road, Aurangabad, 431 005

...APPELLANT
[Orig. 2nd respondent]

VERSUS

1. Faridabee Hussain Khan Pathan
Age- 42 years, Occ. Household.
2. Shahisata Parveen Hussain Khan Pathan
Age- 24 years, Occ. Education.
3. Aasema Parveen Hussain Khan Pathan
Age- 22 years, Occ. Education.
4. Majaharkhan Hussain Khan Pathan
Age-20 years, Occ. Education,
All R/o Plot No. 8, Gat No. 57/1/1,
Bhaskar Housing Society,
Behind Shivcolony, Jalgaon.

...Orig. Claimants

5. Smt. Prajakta Murli Nayar
Age- 37 years, Occ. Business
R/o. Plot No. 10, Shripad Apartment,
New Osmanpura, Aurangabad. **...Orig. Respondent No. 1**

Mr. V.N. Upadhye, Advocate for appellant
Mr. Vinod Patil, Advocate for respondents No. 1 to 4

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[CORAM : NITIN B. SURYAWANSHI, J.]

RESERVED ON: 23rd JULY, 2024

PRONOUNCED ON: 9th AUGUST, 2024

ORDER :

1. This appeal filed by Insurance Company, under section 173 of Motor Vehicles Act, 1988, challenges judgment and award passed by Motor Accident Claims Tribunal, Jalgaon, in M.A.C.P. No. 280 of 2008.

2. On 26.04.2007 Hussain Khan (deceased) was driving Government jeep MH-19-C-607 and was going from Jalgaon to Aurangabad. When the jeep reached within the limit of village Polad, at that time Indica car No. MH-20-AH-3370 was going towards Aurangabad. There was head on collision between two vehicles. Both the vehicles were badly damaged. Hussain Khan suffered serious injuries and during the course of medical treatment he expired on 04.05.2007. Hence, claimants filed claim petition against owner (Respondent No. 5 herein) and insurer of Indica car. The Tribunal partly allowed the claim and directed owner and insurer of Indica car to jointly and severally pay compensation of Rs. 12,84,500/- to the claimants. Insurance Company is aggrieved by the said award.

3. Heard learned advocate for insurance company and learned advocate for claimants. Though served, none appears for

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respondent No. 5. Perused the record.

4. Learned advocate for insurance company fairly submits that insurance company is not aggrieved by the quantum of compensation. The Tribunal ought to have held that there was contributory negligence on the part of driver of jeep. According to him, in fact material on record indicates that due to negligence of deceased the accident has taken place. The Tribunal has recorded findings based on surmises and presumptions.

5. Learned advocate for claimants supported the impugned judgment and award.

6. Perusal of record indicates that the Tribunal has recorded a finding that factum of accident is not in dispute. The accident has taken place on curve of the road. FIR lodged alleges that driver of Indica car after crossing the curve went to the wrong side and hit the jeep which was on its correct side. The Tribunal has observed that while preparing spot panchnama and drawing sketch the investigating officer has committed a mistake, however, still considering the position of both the vehicles on the spot, Tribunal has observed that driver of Indica car was rash and negligent as Indica car had come on the wrong

side and collided with the jeep. Considering the police papers, no fault can be found with the finding recorded by the Tribunal.

7. There is no substance in the argument of insurance company that since the jeep was going on the slope, it must be in high speed and since Indica car was ascending the slope, it must be presumed to be in slow speed, as the same is contrary to the actual happening of the accident and position recorded in spot panchnama.

8. On the basis of material placed on record, Tribunal has recorded a finding of fact that accident occurred due to rash and negligent driving of Indica car and has rightly held the owner and insurer of Indica car to pay compensation jointly and severally. There is no jurisdictional error or error of law committed by the Tribunal while passing the impugned judgment and award. No case is made out by insurance company to interfere in the same. First Appeal being devoid of merit is dismissed.

9. In view of disposal of first appeal, Civil Application No. 3509 of 2015 stands disposed of.

[NITIN B. SURYAWANSHI, J.]

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