

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

FIRST APPEAL NO. 120 OF 2011

United India Insurance Co. Ltd.)

A. Govt. Company having, its Pune)

Regional Office at Bharati Vidyapeeth)

Bhavan, Shastri Marg, Navi Peth,)

Pune- 411 030)

....Appellant

(Orig. Opp. No.4)

Versus

1. Manisha Ujjwal Shroff.)

2. Tanvi Ujjwal Shroff.)

3. Yash Ujjawal Shroff.)

4. Navneetlal Purshottam Shroff.)

5. Hemlata Purshottam Shroff)

Respondent Nos.2 and 3 being)

Minors through Respondent No.1)

Their mother natural guardian)

All residing at 375/1, Amar Villa,)

9th Road, Chembur, Mumbai.)

6. Gunwant G. Shroff) F.A. dismissed as

Residing at 19/5, Kavita Kunj) per Reg. J-II order

3rd Road, TPS IV, Off Turner Road) dated 01.10.2014

Bandra (W), Mumbai 400 050.) against Res. No.6

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7. The New India Assurance Co. Ltd.)
 Having its Pune Regional Office)
 At Sharada Centre, Second Floor)
 Off. Karve Road, Pune 411 004)
 And head Office at New India)
 Assurance Bldg. M. G. Road,)
 Fort Mumbai 400 001.)
8. Kothari Towing Services) F.A. dismissed as
 Shop No.3, Opp. Moham Mill) per Reg. J-II order
 Compound, G. B. Road,) dated 01.10.2014
 Thane 400 062.) against Res. No.8.
Respondents

Mr. K. N. Kandekar, Advocate for the Appellant.
 Ms. Tejas S. kapre i/b Mr. Jayprakash S. Kapre, Advocate for the
 Respondent Nos.1 to 5.
 Mr. S. M. Dange, Advocate for the Respondent No.7.

CORAM : SHIVKUMAR DIGE, J.

DATE : 14th MARCH, 2024.

Oral Judgment. :

1. The issue involved in this appeal is contributory negligence of 50% fixed on the driver of crane, which was insured with

appellant/insurance company.

2. It is contention of learned counsel for the Appellant/Insurance Company that the crane which was parked on the left side of express way. The said crane was dashed by the offending car from backside. The accident occurred due to sole negligence of the driver of offending car but this fact is not considered by the tribunal and has fixed 50% contributory negligence on driver of offending car and 50% contributory negligence on driver of crane, which is erroneous. He relied on *National Insurance Company Limited Vs. Chamundeswari & Ors.. C.A. @ SLP (c) No.4705 OF 2019*. Hence, requested to allow the Appeal.

3. It is contention of learned counsel for the Respondents/Claimants that the crane was parked on express way. No parking lights or indicators were put on after parking it on express way. There is prohibition to park any vehicle on the express way. In spite of that crane was parked on express way without any signal and parking lights. The driver of offending car was not aware that crane was parked on the express way hence, he gave dash from backside. Learned counsel further submitted that the driver of

offending crane did not step into witness box to prove the negligence of driver of offending car. Learned counsel further submitted that the tribunal has awarded consortium amount on lower side, it be awarded and requested to dismiss the Appeal.

4. Learned counsel for the Respondent No.7/Insurance Company submitted that appropriate order be passed.

5. I have heard all learned counsel. Perused judgment and order passed by the Motor Accident Claims Tribunal, Mumbai (for short “the Tribunal”).

6. It is claimant’s case that on 12th October, 2002 deceased was travelling from Mumbai to Pune along with his family members in a car bearing registration No. MTY – 8023. At about 11:30 a.m. the car dashed the broke down vehicle bearing registration No. MH-04-B-8051 from behind, resulting into the death of Ujjwal Shroff. In the said accident, other occupants of the car sustained injuries. The crane was parked on the left side of the road, there was prohibition of parking of the vehicle on express way. The deceased was occupant of the said car. The offence was registered against the driver of offending crane. To prove the negligence of the crane driver, the claimants have examined claimant no.1 Manisha Shroff, she has

stated that she was travelling with her husband Ujjwal and children in offending car. Their car dashed to the broke down vehicle from behind resulting into the death of Ujwal. The car driver was travelling car in high speed without any control. He went out of a middle lane and hit to the crane, which was parked on left side. The crane driver was negligent in parking the vehicle on express way despite large number of boards prohibiting parking on highway and accident was caused due to composite negligence of drivers of both the vehicles.

7. In cross-examination, she has admitted that width of the road was about 50 feet. The crane was parked on the left side of the tar road. The motor car was in the middle of lane. She noticed that the crane was stationary. She saw the crane from distances of 50 feet. The crane was on the extreme left side of the road. The speed of the car was 30km per hour. The Respondents have not examined any witness in support of their defense. While dealing with the issue of negligence the Tribunal has observed that the spot panchanama shows that the crane was parked on the express way. It was on tar road. The car was in high speed, the car initially gave dash to the

one pole and then to the stationary crane. It was duty of the car driver to drive the car in such a speed that he could have controlled it. The driver of stationary crane also played the material role in offering the negligence. On express highway, there are number of boards to warn to not park the vehicle on the road. The crane driver was negligent in parking the vehicle in an uncared condition. There was no indication of parking of the said crane for incoming vehicles and users of the road. There was no reflects on the crane. There was no parking lights, stones, bushes or branches around the crane to show that vehicle was parked.

8. Considering the evidence on record, the Tribunal has fixed 50% contributory negligence on crane driver and 50% contributory negligence on offending car, I do not find infirmity in it.

9. Admittedly, the crane was parked on express highway. Though, it was parked on left side of the road, it was parked without any signal, no parking lights or indicators were put on. In my view, when any vehicle is stationed on the road as per the provisions of Central Vehicles Rules, it is obligation on the driver of said vehicle to put on parking lights or indicators of said crane.

“ Section 15 in the Rules of the Road Regulations, 1989:

15. Parking of the vehicle:-

(1) Every driver of a motor vehicle parking on any road shall park in such a way that it does not cause or is not likely to cause danger, obstruction or undue inconvenience to other road users and the manner of parking is indicated by any sign board or markings on the road side, he shall park his vehicle in such manner.

(2) A driver of a motor vehicle shall not park his vehicle:

- (i) at or near a road crossing, a bend, top of a hill or a humpbacked bridge;
- (ii) on a foot-path;
- (iii) near a traffic light or pedestrian crossing;
- (iv) in a main road or one carrying fast traffic;
- (v) opposite another parked vehicle or as obstruction to other vehicle;
- (vi) alongside another parked vehicle;
- (vii) on roads or at places or roads where there is a continuous white line with or without a broken line;
- (viii) near a bus stop, school or hospital entrance or blocking a traffic sign or entrance to a premises or a fire hydrant;
- (ix) on the wrong side of the road;
- (x) where parking is prohibited;
- (xi) away from the edge of the footpath.”

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“Regulation 28 of the Motor Vehicles (Driving) Regulation:
Vehicle breakdown:

In case a vehicle with more than two wheels has broken down at a place where it can be recognised in time as a stationary obstacle,-

(i). the hazard warning lights of the vehicle shall be switched on immediately;

(ii). on highways and major roads with fast speed, reflective traffic warning triangles shall be placed at a distance of fifty meters behind the broken-down vehicle; and In present case, it shows that the driver of the said Truck has clearly violated all the rules and regulations of the Central Motor Vehicle Rules, Motor Vehicle Rules and the Rules of the Road and Regulation, 1989, and Regulations made under the Act.”

.....

“When any vehicle is stationed on the road at night time, as per Rule 109 of the Central Motor Vehicles Rules, 1989, proper precautions are necessary to be taken. It 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 sports 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.]”

These rules states that front and rear parking lights shall remain lit, when the vehicle is kept stationary on the road. In the present case, the crane was stationed on the road but, no parking lights and indicator were on. As per the Central Vehicle Rules, reflective traffic warning triangles shall be placed at a distance of fifty meters behind the broken-down vehicle. In the present case, no such triangles were kept, it shows that the driver of said truck has clearly violated the rules and regulations of the Central Vehicles Rules. Moreover, the driver of the crane did not step into witness box, to prove that, he had taken proper precautions when crane was parked on express highway, which was prohibited to be parked. I do not see merit in the contention that 50% contributory negligence

fixed on the crane driver by the Tribunal is erroneous.

10. The tribunal has awarded consortium amount on lower side. As per view of Hon'ble apex Court in the case of ***Magma General Insurance Company vs. Nanu Ram (2018 SCC 1546)***, each claimant is entitled to Rs.48,000/- for consortium amount and Rs.18,000/- for loss of estate and Rs.18,000/- for funeral expenses. There are five claimants, total of it comes to Rs.2,76,000/-. The claimants are entitled for this amount. The 50% of it comes to Rs.1,38,000/-, the claimants are entitled for this amount.

11. I have gone through the case laws cited by the learned counsel for the appellant, the facts of cited case and present case are different hence, not applicable to this case.

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

ORDER

- i. Appeal is dismissed.
- ii. The claimants are permitted to withdraw the deposited amount along with accrued interest thereon.
- iii. The claimants are entitled for enhanced amount of

Rs.1,38,000/- @ 7.5% interest from 1st November, 2017 till realisation of the amount.

- iv The appellant/insurance company shall deposit enhanced amount along with accrued interest thereon, within six weeks after receipt of the order.
 - v. The claimants are permitted to withdraw the deposited amount along with accrued interest thereon.
 - vi. The statutory amount be transmitted to the tribunal along with accrued interest thereon. The parties are at liberty to withdraw it, as per Rule.
 - vii. The Claimant shall pay deficit Court fees on enhanced amount.
13. All pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)