

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 1306 OF 2010

	The Oriental Insurance Company Ltd. Having office at Udyog Bhavan, Bhigvan, Baramati, District : Pune.	...	Appellant (Orig. Opp.No.3)
	Versus		
1	Chandrakant Bhimaji Linge, Age 50 years, Occu. Nil., Resident of 402, Shimpi Ali, Near Vitthal Temple, Hadapsar, Pune -28.	...	Original Claimant
2	Husein Maktum Nadaf, Age Adult, Occ : Business, Resident of : Near Sasendo Company, Saki Naka, Pavai Zopadpatti, Mumbai.	...	Original Driver of Truck
3	Sharif Isamuddin Momin, Age : Adult, Occ. Business, Resident of : Palsadeo, Tal. Indapur, District : Pune.	...	Owner of truck Respondents

Ms. Anita A. Agarwal, Advocate for the Appellant.

Mr. Ravindra S. Pachundkar, Advocate for Respondent No.1/claimant.

CORAM : SHIVKUMAR DIGE, J.

DATE : 21st FEBRUARY, 2024.

Oral Judgment :

1. The issue involved in this appeal is accident occurred due to negligence of the claimant.

2. It is contention of learned counsel for the appellant/Insurance Company that the accident occurred due to contributory negligence of the

driver of the Matador (i.e. “the claimant”) as due to burst of the tyre, the Matador was stopped suddenly on the road and the driver of the offending truck, which was behind the said Matador, gave dash to the Matador. The accident occurred due to negligence of the claimant but this fact is not considered by the Tribunal and has fixed sole responsibility on the driver of the truck, which is erroneous. Hence, requested to allow the appeal.

3. It is contention of learned counsel for the respondent No.1/claimant that the offence was registered against the driver of the offending truck. Moreover, the driver of the offending truck did not enter into the witness box to prove the negligence of the claimant. The order passed by the Tribunal is legal and valid. No interference is required in it.

4. I have heard both learned counsel, perused the judgment and order passed by Motor Accident Claims Tribunal, Pune (for short “the Tribunal”).

5. It is claimant’s case that he was doing transport and decoration business. On 16th September 2007, he was transporting one iron pipe to Shevalwadi by mini Matador bearing No. MH-12-CH-9312 by Pune-Solapur Road. A truck bearing No.MH-42-b-7943 came in an excessive speed, in rash and negligent manner and gave dash to the Matador as the driver of the offending truck could not control his speed. Due to dash, the Matador toppled on the road and the claimant suffered severe injuries.

6. To prove the negligence of the driver of the offending truck, the claimant examined himself. He has stated that the Matador was dashed by the offending truck, which was in excessive speed. The said dash was given from backside, therefore, the Matador toppled down. In cross-examination, he has denied the suggestion that the front tyre of the mini Matador bursted and, therefore, it was toppled down. While dealing with the issue of negligence, the Tribunal has observed that the police papers produced on record shows the negligence of the driver of the offending truck. I do not find infirmity in it. In my view, the driver of the offending truck did not enter into the witness box to prove the negligence of the claimant. Without any evidence on record, this Court cannot accept the contributory negligence of the claimant.

7. Considering the above reasons, the appeal is devoid of merit and I pass the following order :

ORDER

1. The appeal is dismissed. No order as to cost.
 2. The claimant is permitted to withdraw the deposited amount along with accrued interest thereon.
 3. The statutory amount be transmitted to the Tribunal along with accrued interest thereon. The parties are at liberty to withdraw it as per Rule.
8. Pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)