

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

FIRST APPEAL NO.726 OF 2008

The Oriental Insurance Co. Ltd.	}	
Divisional Office, Merchand Chamber,	}	
Above Babubhai Collection, Shalimar,	}	
Nashik	}	Appellant

Versus

1. Smt. Sitabai @ Sarubai Popat Karanjule	}	
Age-52, Occ : Household	}	
2. Lata Ramdas Karanjule	}	
Age-23, Occ : Household	}	
3. Vijay Ramdas Karanjule	}	
Age-4 Occ : Nil	}	
4. Kum.Monika Ramdas Karanjule	}	
Age-2, Occ: Nil	}	
Respondent No.2 for herself and guardian	}	
mother for Respondent Nos.3 and 4.	}	
All R/at Kadam mala, Jai Bhavani Road,	}	
Nashik Road, Nashik.	}	
5. Keru Murlidhar Wagh	}	
Age – 25, Occ : Driver	}	
R/o. Morwadi, Nashik	}	
6. Vimalbhai Murlidhar Sanap	}	
Age-Major Occ: Business	}	
7. Isho Johnson K.T. Isho	}	
Age – 43 Occ : Business	}	
8. The New India Assurance Co. Ltd.	}	
Divisional Office,	}	
NDCC Bank, Old Agra Road, Nashik	}	

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9. Junerbeg Iqbal Beg	}	(Respondent
Age- Major, Occ : Business	}	Nos.1 to 4 are the
R/o Lakhamipur, Tal : Sangamner	}	Original
District-Ahmednagar	}	Applicant Nos.1
10. Ratan Shriram Sanap	}	to 4 and the
Age-Major, Occ : Business	}	Respondent
R/o. Morwadi, Nashik	}	Nos.4,5,6,7,8,9
	}	and 10 are the
	}	Original
	}	Opponent
	}	Nos.1,2,4,5,6 and
	}	7 respectively)
	}	Respondents

Mr.Saumen Vidyarthi a/w Ms.Ishita Bhole, Mr.Mohit Turakhia
i/b Mr.Saumen Vidyarthi, for the Appellant.
Ms.Kalpna Trivedi, for Respondent No.8.

CORAM : SHIVKUMAR DIGE, J.

DATE : 18th JANUARY 2024

ORAL JUDGMENT :-

. The issue involved in this Appeal is accident occurred due to negligence of the deceased.

2. It is contention of the learned counsel for the Appellant-Insurance Company that, the accident occurred due to sole negligence of the deceased. Due to dash given by the Ambassador car deceased fallen on the road and he was dashed

by offending truck. There was no negligence of the driver of the offending truck, but this fact is not considered by the Tribunal and has fixed 75 % negligence on the driver of the offending truck, which is not proper. Hence, requested to allow the Appeal.

3. It is contention of the learned counsel for the Respondent No.8-Insurance Company that, the judgment and order passed by the Tribunal is proper and no interference is required in it.

4. Though the Respondents-Claimants are served, none present for the Respondent's-Claimant's. The Appeal is of the year 2008. Hence, I am deciding it on merit.

5. I have heard both learned counsel's. Perused judgment and order passed by the Motor Accident Claims Tribunal ('The Tribunal' for short), Nashik.

6. It is Claimant's case that, on 6th March 1997, deceased Ramdas Karanjule was coming towards his house from Dwarka Kathe Mala, Nashik on Bajaj motorcycle bearing No.MH-15/h-3651 his friend. Baldas Fernandes was a pillion rider. They were going by Nashik-Pune road. At about 6.15 p.m. in front of

Dargah of Upnagar, near divider, the Ambassador Car bearing No.MMH-8129, which was ahead of the motorcycle of the deceased suddenly took right turn and gave dash to motorcycle of the deceased. Due to dash given by Ambassador car, deceased Ramdas as well as his friend Fernandes had fallen on road. At relevant time a Truck bearing No.MTS-3126 was going from Nashik Road to Nashik, it was in high speed, truck driver couldn't control speed. The Truck passed over Ramdas and motorcycle. The Ramdas died on the spot. The offence was registered against the driver of the truck.

7. It is contention of the learned counsel for the Appellant that, it has come in evidence of Ambassador car driver that accident occurred due to sole negligence of the deceased as he was trying to go ahead of his car, when it was stopped on the road and in that attempt he fell on the road. The learned counsel further submitted that in cross-examination the Pillion rider on motorcycle of the deceased has stated that, there was no fault of the driver of the truck in the said accident, but this fact is not considered by the Tribunal.

8. While dealing with the issue of the negligence, the Tribunal has observed that the contents of FIR Exhibit-84, shows that when Ambassador car was taking turn, M-80 vehicle had dashed on it, therefore deceased Ramdas and his friend Baldas fell on the road. At that time offending truck was coming from Nashik Road side and it had passed over Ramdas. Considering the evidence on record the Tribunal has considered 75% negligence of driver of offending truck and 25% negligence of the deceased. I do not find infirmity in it.

9. In my view, mere sole admission given by the witness in cross-examination cannot be a ground to exonerate negligent act of the offending truck driver. As admittedly, offence was registered against the truck driver. Moreover, to prove the negligence of the deceased the truck driver did not step into witness box. The truck driver was driving the truck in city but it appears from record that, truck was in high speed, hence he could not control the speed of truck when deceased had fallen on the road. Considering the evidence on record, I do not see merit in the contention that, there was no negligence of the truck driver in

the said accident. The Appeal is devoid of merit and I pass following order.

ORDER

- (i) The Appeal is dismissed. No order as to cost.
- (ii) The Respondent's-Claimant's are permitted to withdraw amount deposited by the Appellant-Insurance Company along with accrued interest thereon.
- (iii) The statutory amount alongwith interest be transferred to the Tribunal. The parties are at liberty to withdraw it, as per rule.
- (iv) All pending Civil and Interim Applications are disposed of.

(SHIVKUMAR DIGE, J.)