IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISDICTION

FIRST APPEAL NO. 1128 OF 2013

The Oriental Insurance Co. Ltd.,
25/27, Asaf Ali Road,
New Delhi-110 002. ..Appellant

versus

1 Renuka Amit Nikaljay

2 Romit Amit Nikhaljay

3 Rajendra Ramchandra Nikaljay
All residing at : Flat No.207,
Minal Apartments, Off. Saki Vihar Road,
Near L.T. Powai, Andheri (E),
Mumbai – 400 072.

4 Vikas Khosla,
S/o. Vinod Khosla,
Residing at : 2/219,
T.P.Nagar, Agra U.P.

5 M/s. Great Lakes Chemicals (Europe) India,
Ninal – B Wing IV, 207,
2nd Floor, Opp. Saki Vihar,
Andheri (E), Mumbai.

6 The National Insurance Co. Ltd.,
Mercantile Bank Chamber,
Iind Floor, Veer Nariman Road,
Fort, Mumbai -400 023. ...Respondents

WITH
FIRST APPEAL NO. 1129 OF 2013

National Insurance Co. Ltd.
Mercantile Bank Chamber, 11 floor,
Veer Nariman Road, Fort, ..Appellant
Mumbai – 400 23.

versus

1 Renuka Amit Nikaljay, ..Respondent No.1
Wife of the deceased (Original Applicant No.1)

2 Romit Amit Nikhaljay ..Respondent No.2

	Minor son of the deceased	(Original Applicant No.2)
3	~~Rajendra Ramchandra Nikaljay~~ ~~Father of the deceased.~~ (Name of Respondent No.3 deleted as per Hon'ble Court's order dated 24.2.2020) Respondent Nos.1 to 3 are all residing at : Flat No.207, Minal Apartments, Off. Saki Vihar Road, Near L.T. Powai, Andheri (E), Mumbai – 400 072.	..Respondent No.3 (Original Applicant No.3)
4	Vikas Khosla, S/o. Vinod Khosla, Residing at : 2/219, T.P.Nagar, Agra U.P.	….Respondent No.4 (Ori.Opposite Party No.1)
5	The Oriental Insurance Co. Ltd., 25/27, Asaf Ali Road, New Delhi-110 002.	….Respondent No.5 (Ori.Opposite Party No.2)
6	M/s. Great Lakes Chemicals (Europe) India, Ninal – B Wing IV, 207, 2nd Floor, Opp. Saki Vihar, Andheri (E), Mumbai.	….Respondent No.6 (Ori.Opposite Party No.3)

WITH
FIRST APPEAL NO. 1130 OF 2013

1	Renuka Amit Nikaljay, Widow	
2	Romit Amit Nikhaljay Son of the deceased	
3	~~Rajendra Ramchandra Nikaljay~~ ~~Father of the deceased.~~ (Name of Respondent No.3 deleted as per Hon'ble Court's order dated 24.2.2020) Respondent Nos.1 to 3 are all residing at : Flat No.207, Minal Apartments, Off. Saki Vihar Road, Near L.T. Powai, Andheri (E), Mumbai – 400 072.	..(Orig. Claimants) ...Appellants

Versus

1 Vikas Khosla,

S/o. Vinod Khosla,
Residing at : 2/219,
T.P.Nagar, Agra U.P.

2 The Oriental Insurance Co. Ltd.,
25/27, Asaf Ali Road,
New Delhi-110 002.

3 M/s. Great Lakes Chemicals (Europe) India,
Ninal – B Wing IV, 207,
2nd Floor, Opp. Saki Vihar,
Andheri (E), Mumbai.

4 The National Insurance Co. Ltd.,
Mercantile Bank Chamber,
Iind Floor, Veer Nariman Road,
Fort, Mumbai -400 023. ...Respondents

Ms. Poonam Mital, Advocate for the Appellant in FA/1128/2013 and for Respondent No. 5 in FA/1129 of 2013 and for Respondent No. 2 in FA/1130/2013.

Mr. Sanjay Krishnan, i/by Ms. Harshada Rane, Advocate for the Appellant in FA/1129/2013 and for Respondent No. 6 in FA/1128/2013 and For Respondent No. 4 in FA/1130/2013.

Mr. A. M. Gokhale, Advocate for the Appellant In FA/1130/2013 and for Respondent No. 1 to 3 in FA/1128/2013 & FA/1129/2013.

CORAM : SHIVKUMAR DIGE, J.
DATE : 17th JANUARY, 2024

ORAL JUDGMENT. :

1. These appeals are preferred against the judgment and order passed by Motor Accident Claims Tribunal, Mumbai (for short "the Tribunal").

2. As these appeals are against the same judgment and order, I am deciding it by this common judgment.

3. It is claimants' case that on 28th February 2004, deceased Amit along with claimant Nos.1 and 2 were proceeding from Mumbai towards Mehtakhedi, M.P. in Tata Safari bearing No. MH-12-IA-8658 by Mumbai-Agra Road. The deceased was driving the said Tata Safari by observing traffic rules and regulations and by the left side of the road at normal speed. When they reached near village – Sangavi, at the relevant time, one truck bearing No. MP-06-E-2307 came from opposite side in high and excessive speed and came towards wrong side and gave severe dash to the Tata Safari. Due to the said dash, deceased died on the spot, whereas claimant Nos.1 and 2 got injured in the said accident.

4. It is the contention of appellant- Oriental Insurance Company, insurer of the offending truck in Appeal No. 1128 of 2013 that the said accident occurred due to the sole negligence of the deceased as the deceased drove the Tata Safari in high and excessive speed. He had completed around 300 kilometres in 1 ½ hours. It shows that Tata Safari was in high and excessive speed and the accident occurred due to sole negligence of the deceased. The Tribunal has observed this fact but has fixed 50% contributory negligence on offending truck driver, which is not proper. Hence, requested to allow the appeal.

5. It is contention of learned counsel for National Insurance Company Limited, insurer of Tata Safari in First Appeal No.1129 of 2013 that the accident occurred due to sole negligence of the driver of the offending truck as the said truck came on wrong side of the road in high

and excessive speed and gave dash to Tata Safari, but the Tribunal has wrongly fixed 50% contributory negligence on deceased, which is not proper. Hence, requested to allow the appeal .

6. It is the contention of learned counsel for the claimants that while awarding compensation, the Tribunal has not awarded future prospects and consortium amount is awarded on lower side, it be awarded.

7. I have heard all learned counsel, perused the judgment and order passed by the Tribunal.

8. To prove the negligence of the driver of the offending truck, the claimants have examined claimant No.1- Renuka Nikaljay. She has stated that on 28th February 2004, she, her son, deceased and others were proceeding from Mumbai towards Mehtakhedi, M.P. in Tata Safari. Her husband was driving the said Tata Safari by the left side of the road at normal speed. When they reached near the accident spot, at the relevant time, the offending truck came from opposite side in high and excessive speed and came on the wrong side and gave severe dash to the Tata Safari. Due to the said dash, her husband died on the spot.

9. While dealing with the issue of negligence, the Tribunal has observed that Tata Safari was driven by the deceased in high and excessive speed and completed 300 kilometers in 1 ½ hours. There was head-on collision between two vehicles i.e. Tata Safari and truck. The recitals of spot-panchanama clearly shows that the deceased was not

careful while driving his vehicle and there was head-on collision of both vehicles, therefore, the drivers of both vehicles should be held responsible for contributory negligence for the accident. I am unable to understand the observations of the Tribunal in fixing 50% contributory negligence on deceased as it has come on record that the offending truck came on wrong side of the road and gave dash to the Tata Safari which was driven by the deceased. Moreover, after investigation, the police registered offence against the driver of the offending truck. In my view, the spot-panchanama at Exhibit-20 shows that the driver of the offending truck came on wrong side of the road and the truck had given dash to the Tata Safari. Moreover to prove the negligence of the deceased, the driver of the offending truck did not enter into witness box but this fact is not considered by the Tribunal. The Tribunal has observed that the deceased had completed around 300 kilometers within 1 ½ hour. This observation is without any reasonable ground as it is like aeroplane speed covering 300 kilometers in 1 ½ hours. It is highly unlikely that on the road in city like Mumbai, a vehicle can run at the speed of 300 kilometers in 1 ½ hours. But this fact is not considered by the Tribunal and, by figment of imagination, the Tribunal has come to wrong conclusion that deceased had covered 300 kilometers in 1 ½ hour. Hence, I am setting aside contributory negligence of the deceased and hold that accident occurred due to sole negligence of the truck driver.

10. It is contention of learned Counsel for the appellant in First

Appeal No. 1129 of 2013 that the Insurance Company has deposited the entire award amount along with accrued interest thereon and, out of deposited amount, some amount is withdrawn by the claimants. The appellant in First Appeal No. 1128 of 2013 has not deposited total award amount along with accrued interest thereon. But, they have deposited some part of the amount out of the total amount. The claimants have withdrawn some amount from the total deposited amount.

11. In view of above, I pass following order :

O R D E R

1. The First Appeal No. 1128 of 2013 is dismissed.
2. The First Appeal No. 1129 of 2013 is allowed.
3. The First Appeal No. 1130 of 2013 is allowed.
4. The appellant in Fist Appeal No. 1129 of 2013 is permitted to withdraw the amount deposited by them along with accrued interest there on. If out of the deposited amount, any amount is withdrawn by the claimants, the appellant-Insurance Company is permitted to withdraw this amount from the amount along with interest deposited by the appellant in appeal No.1128 of 2013.
5. The claimants are permitted to withdraw balance amount along with accrued interest thereon from the amount deposited by the Appellant-Insurance Company in First Appeal No. 1128 of 2013.

6. The statutory amount be transmitted to the Tribunal along with accrued interest thereon. The parties are at liberty to withdraw it as per Rule.

12. All pending applications stand disposed off.

(SHIVKUMAR DIGE, J.)