



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

FIRST APPEAL NO.343 OF 2022

APPELLANT : **The Cholamandalam Gen. Insu. Co. Ltd.**
(Ori. Res. No.2)
On R. A. Through Branch Manager, Plot No.17,
Prayag Enclave, 1st floor near Sanman
Lawn Bajaj Nagar Nagpur.

..VERSUS..

RESPONDENTS : 1 **Santhanam s/o Govindarasu,**
(Ori. Pet. No.1 to 3)
On R.A. Aged 55 Yrs, Occu. Labour

2 **Backiyan w/o Santhanam,**
R/o. 42, Occu- Nil

3 **Prema Santhanam,**
Aged – 37 yrs, Occu- Nil

All R/o. 42, South ST, Kodavasal, Tq.
Paruthiyur, Thiruvavarur, Paruthiyur,
Tamil Nadu.

(Ori. Res. No.1)
On R.A. 4 **J. K. Transport Corporation,**
R/o. Bhandara Road, Kapsi, District
Nagpur.

5 **Muthulakshmi Kumar,**
Aged about 34 yrs, Occu- Nil, R/o.
83C, Natarajan West Street, Tq.
Mannargudi, Thiruvavarur, Tamil Nadu.

WITH

FIRST APPEAL NO.345 OF 2022

APPELLANT : **The Cholamandalam Gen. Insu. Co. Ltd.**
(Ori. Res. No.2)
On R.A.

Through Branch Manager, Plot No.17,
Prayag Enclave, 1st floor near Sanman
Lawn Bajaj Nagar, Nagpur.

..VERSUS..

RESPONDENTS

(Ori. Pet. No.1 to 3)
On R.A.

- 1 **Punita Wd/o Rakesh Verma,**
Aged 39 Yrs., Occu. Household
- 2 **Aman Rakesh Verma,**
Aged-18 yrs, Occu- Student
- 3 **Ashtha D/o Rakesh Verma,**
Aged-17 yrs, Occu- Student

Respt no 3 being minor,
Through Natural guardian Mother.

Rept no 1. R/o. Gram Amepur, P.O.
Bansgaon, Tah-Buranpur, Dist-
Azamgad (U.P).
- 4 **J. K. Transport Corporation,**
R/o 214, Transport nagar, Bhandara
road, Wardhaman nagar, Nagpur

(Ori Res No 1)
On R.A.

Amendment as per order
dt.10.11.2022.

WITH

FIRST APPEAL NO.342 OF 2022

APPELLANT

(Ori. Res. No.2)
On R.A.

The Divisional Manager,
The Cholanmandalam MS General
Insurance Co. Ltd. Plot No.17, Prayag
Enclave, 1st floor near Sanman Lawn
Shankar Nagar, Nagpur.

..VERSUS..

RESPONDENTS

(Ori. Pet. No.1)
On R.A.

- 1 **Smt. Asha Wd/o Vitthalrao Bhondave,**
Aged 68 Yrs, Occu- Household, R/o.
Malegaon Theka, Tah- Arvi, Dist-

Wardha.

(Ori Res No 1)
On R.A.

- 2 **J. K. Transport Corporation,**
Aged-major, Occu-Not known, Plot no
214, Transport Nagar, Bhandara Road,
Kapsi, Dist – Nagpur

WITH

FIRST APPEAL NO.344 OF 2022

APPELLANT
(Ori. Res. No.2)
On R.A.

**The Choramandalam General
Insurance Co.,**
Through Branch Manager, Plot No.17,
Prayag Enclave, 1st floor near Sanman
Lawn Bajaj Nagar, Nagpur.

..VERSUS..

RESPONDENTS
(Ori. Pet. No.1 to 3)
On R.A.

- 1 **Anjali Wd/o Anil Bargat,**
Aged 46 Yrs, Occu. Household
- 2 **Nikita D/o Anil Bargat,**
Aged – 20 yrs, Occu- Student
- 3 **Atharva S/o Anil Bargat,**
Aged – 15 yrs, Occu- Student

Respt no 3 being minor, Through
Natural guardian Mother. Respt. no.1.
R/o. Flat no 203, Nilgagan Apartment
Ingole Nagar, Hudkeshwar Road,
Nagpur.

(Ori. Res. No.1)
On R.A.

- 4 **J. K. Transport Corporation,**
R/o. Bhandara Road, Kapsi, Tah &
District Nagpur.

First Appeal No.343 of 2022

Ms M. Naik, Advocate for Appellant.

Ms U. A. Bhattad, Advocate for Respondent Nos.1 to 4.

First Appeal No.345 of 2022

Ms M. Naik, Advocate for Appellant.

Ms U. A. Bhattad, Advocate for Respondent Nos.1 to 3.

First Appeal No.342 of 2022

Ms M. Naik, Advocate for Appellant.

Ms K. Raut, Advocate for Respondent No.1.

First Appeal No.344 of 2022

Ms M. Naik, Advocate for Appellant.

Ms U. A. Bhattad, Advocate for Respondent Nos.1 to 3.

CORAM : M. W. CHANDWANI, J.

DATED : 18th SEPTEMBER, 2024.

ORAL JUDGMENT

1. Heard learned counsels appearing for the respective parties in all appeals.

2. **Admit.**

3. These four appeals are arising out of the impugned awards passed by the Motor Accident Claims Tribunal, Nagpur, thereby granting compensation on account of death of the persons who died in the same accident. The issues involved in these appeals and contentions of the respective parties are one and the same, therefore, these appeals are disposed of by this

common judgment.

4. On the unfortunate day i.e. on 28.04.2016, deceased Shubham Vitthalrao Bhondave, a driver of Maruti Van having registration No.MH-31-CS-4150, was carrying the employees of Shilpa Steel and Power Ltd., MIDC, Butibori in his vehicle towards MIDC Area, Butibori. When the said Maruti Van reached near MIDC Industrial Area, Butibori, District Nagpur, one truck/trailer having registration No.CG-04-G-6444 (hereinafter referred to as “the offending truck”) was parked on the road without putting any indicator or signal. Therefore, the driver of the Maruti Van could not see the offending truck in the dark at night and gave a dash to the offending truck from the back side. In the said accident, two of the employees died on the spot, whereas one other employee and the driver of the Maruti Van got seriously injured. Thereafter, the said employee and the driver of the Maruti Van succumbed to the injuries during treatment. Thus, three employees of Shilpa Steel and Power Ltd., MIDC, Butibori including the driver of the Maruti

Van died in the said accident. The dependents of these four deceased persons filed independent claim petitions before the Tribunal against the offending truck. The Tribunal by different awards granted compensation on account of death of the earning members of their family directing the appellant insurer of the offending truck to pay compensation to the claimants. These four different awards have been challenged in these appeals by the Insurance Company.

5. The main contention raised by learned counsel appearing for the appellant is that the Tribunal has wrongly held that the driver of the offending truck was negligent. According to her, a dash was given by the driver of the Maruti Van to the offending truck from the back side. This itself goes to show that the deceased, driver of the Maruti Van, was at fault. According to her, just because the offence is registered against the driver of the offending truck, the Tribunal fastened the entire liability on the truck owner and on the appellant. The second point which has been raised in these appeals is that

two vehicles were involved in the accident, however, the owner of the Maruti Van has not been made a party to any of the claim petitions. According to the learned counsel for the appellant, the Tribunal ought to have at least considered contributory negligence of the owner of the Maruti Van and could have directed the owner of the Maruti Van to contribute in the compensation, but the Tribunal ignored this factual aspect and wrongly directed the appellant insurer to pay the entire compensation to the dependents of the deceased persons, who died in the fatal accident.

6. The contention of the learned counsel for the appellant is opposed by the respective counsels appearing for the claimants. According to them, the case is not of contributory negligence, but of composite negligence. They submit that the appellant did not bother to bring any witness to show that the accident occurred due to negligence of the driver of the Maruti Van. Therefore, they submit that the appeals are devoid of merit. Hence, they sought rejection of the appeals.

7. Having heard the respective counsels appearing for the parties, I have gone through the record. Perusal of the police papers goes to show that the driver of the offending truck has been prosecuted for the offences punishable under Sections 304-A, 279 and 335 of the Indian Penal Code, 1860 and under the provisions of the Motor Vehicles Act, 1988. First Information Report reveals that the offending truck was parked on the road without there being any reflector. It is a matter of record that the accident occurred on 28.04.2016 at about 11:30 in the night on the highway, therefore, it was the responsibility of the truck driver to keep the indicator/reflector of the truck on before halting it on the road, but that was not done.

8. I do not find any substance in the argument of the learned counsel for the appellant that the road was a four lane road, therefore, there is ample space for the driver of the Maruti Van to drive the said Van from the side of the lane of the offending truck. Perusal of the papers goes to show that the accident occurred just because the driver of the Maruti Van

could not notice the offending truck that was halting on the road because no indicator of the truck was on. Had the driver of the Maruti Van noticed the offending truck, he would have changed his lane. Thus, I do not find any error in the impugned awards of the Tribunal holding the driver of the offending truck negligent.

9. Turning to the submission of composite and contributory negligence as alleged by the counsel for the appellant, as I have already concurred with the findings of the Tribunal that the accident occurred just because of the negligence of the truck driver, therefore, there is no question of going into the aspect of contributory or composite negligence.

10. Be that as it may, the law is settled in this regard that in case of composite negligence, the claimants of the deceased particularly, who were occupant of Maruti Van (except driver), have a choice to recover the compensation from either the owner or the insurer of the vehicle, since they are jointly and

severally liable to pay the compensation to the claimant. A reference can be made to the case of *Khenyei vs New India Assurance Co. Ltd. and others, 2015 A.C. 66 (SC) (FB)*, wherein the Hon'ble Supreme Court in para 18 of the decision has held as under :

“18. What emerges from the aforesaid discussion is as follows:

(i) In the case of composite negligence, plaintiff/claimant is entitled to sue both or any one of the joint tort-feasors and to recover the entire compensation as liability of joint tort-feasors is joint and several.

(ii) In the case of composite negligence, apportionment of compensation between two tort-feasors vis-a-vis the plaintiff/claimant is not permissible. He can recover at his option whole damages from any of them.

(iii) In case all the joint tort-feasors have been impleaded and evidence is sufficient, it is open to the Court/Tribunal to determine inter se extent of composite negligence of the drivers. However, determination of the extent of negligence between the joint tort-feasors is only for the purpose of their inter se liability so that one may recover the sum from the other after making whole of payment to the plaintiff/claimant to the extent it has satisfied the liability of the other. In case both of them have been impleaded and the apportionment/extent of their negligence has been determined by the Court/Tribunal, in main case one joint tort-feasor can recover the amount from the other in the execution proceedings.

(iv) It would not be appropriate for the Court/Tribunal to determine the extent of composite negligence of the drivers of two vehicles in the absence of impleadment of other joint tort-feasors. In such a case, impleaded joint

tort-feasor should be left, in case he so desires, to sue the other joint tort-feasor in independent proceedings after passing of the decree or award."

Subsequently, also the Hon'ble Supreme Court, in para 6 of *T. O. Anthony vs. Karvarnan and others, (2008) 3 SCC 748*, has held as under :

"6. 'Composite negligence' refers to the negligence on the part of two or more persons. Where a person is injured as a result of negligence on the part of two or more wrongdoers, it is said that the person was injured on account of the composite negligence of those wrongdoers. In such a case, each wrongdoer is jointly and severally liable to the injured for payment of the entire damages and the injured person has the choice of proceeding against all or any of them. In such a case, the injured need not establish the extent of responsibility of each wrongdoer separately, nor is it necessary for the court to determine the extent of liability of each wrongdoer separately. On the other hand where a person suffers injury, partly due to the negligence on the part of another person or persons, and partly as a result of his own negligence, then the negligence on the part of the injured which contributed to the accident is referred to as his contributory negligence. Where the injured is guilty of some negligence, his claim for damages is not defeated merely by reason of the negligence on his part but the damages recoverable by him in respect of the injuries stand reduced in proportion to his contributory negligence."

11. The principle of composite negligence laid down in the case of *Khenyei* (supra) and *T. O. Anthony* (supra), will not

be applicable to the case of the deceased driver, since he was driving the Maruti Van. However, in view of the fact that it was the driver of the offending truck, who was negligent, there is no question of contributory negligence on the part of the deceased driver of the Maruti Van. There is no force in this point. The appeals are devoid of merits. Hence, the appeals are **dismissed**.

(M. W. CHANDWANI, J.)