**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**FIRST APPEAL NO. 746 OF 2011
WITH
CIVIL APPLICATION NO. 5025 OF 2011**

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| United India Insurance Company Ltd.,<br>Through its Divisional Manager,<br>Seven Hills, Jalna Road, Aurangabad. | .. | Appellant<br>[original Res. No.4] |

Versus

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| 1) | Sandu s/o. Tukaram Jadhav<br>Age. 46 years, Occ. Service &<br>Vegetable Wholesale Merchant,<br>R/o. Anva,Taluka Bhokardhan,<br>District Jalna. | .. | Respondents<br>[Resp.No.1 - ori.claimant,<br>Res.2 to 4 - Ori. Res.No. 1 to 3] |
| 2) | Balaji s/o. Nivrutti Khandebharad<br>Age. Major, Occ. Driver & Owner,<br>R/o. Kumbhari, Taluka Devalgaonraja,<br>District Buldhana. | | |
| 3) | The New India Assurance Company<br>Through its Senior Divisional Manager,<br>Division Office, Adalat Road, Aurangabad. | | |
| 4) | Santosh s/o. Kondiba Sapkal<br>Age. Major, Occ. Owner,<br>R/o. Anva, Taluka Bhokardan,<br>District Jalna. | | |

**WITH**

**FIRST APPEAL NO. 2186 OF 2012**
**WITH**
**CIVIL APPLICATION NO. 7588 OF 2011**

The New India Assurance Co. Ltd.
Through its Div. Manager. Div. Office,
Adalat Road, Aurangabad
Through its authorised signatory,
Mr. Sanjiv s/o. Ramrao Gaisamudre
Age. 51 yrs., Occ. Service, Sr.Div. Manager,
New India Assurance Co. Ltd., R/o. Aurangabad. .. Appellant [ori.res. No.2]

Versus

1) Sandu s/o. Tukaram Jadhav
Age.47 years, Occ.Service & Merchant
R/o. Anva,Taluka Bhokardhan,
District Jalna. .. Respondents [Resp.No.1 - & Resp.1,2 &4]

2) Balaji s/o. Nivrutti Khandebharad
Age. 48, Occ. Driver/Owner,
R/o. Kumbhari, Taluka Devalgaonraja,
District Buldhana.

3) Santosh s/o. Kondiba Sapkal
Age. 51, Occ. Owner,
R/o. Anva, Taluka Bhokardan,
District Jalna.

4) United India Insurance Co. Ltd.,
Through its Sr. Div. Manager,
Div. Office, Osmanpura Circle,
Aurangabad.

Mr. A.G. Kanade, Advocate for appellant in FA No.746/2011 (through VC)
Mr.D.P. Deshpande, Advocate for appellant in FA No.2186/2012 (through VC).
Mr. S.K.Shirse h/f. Mr. P.F. Patni, Advocate for respondent No.1.
Mr. L.S. Shaikh h/f. Mr. V.P. Golewar, Advocate for respondent No.2.
Mr. Shubham K. Shinde h/f. Mr. R.V. Gore, Advocate for respondent No.3.

**CORAM : KISHORE C. SANT, J.**
**RESERVED ON : 14.07.2025**
**PRONOUNCED ON : 29.09.2025**

**JUDGMENT :-**

01. These appeals are filed by the Insurance Companies challenging a judgment and award passed by the learned Motor Accident Claims Tribunal, Aurangabad, in MACP No. 727 of 2007. By way of the impugned judgment and award, the learned Member of the Tribunal has allowed claim petition filed by present respondent No.1 directing the insurance company to pay Rs. 9,06,800/- towards compensation including 'no fault liability' with interest @ 10% p.a. from the date of application. Along with allied directions, it was further directed that if the amount is not deposited within one month from the date of the order, the amount will carry interest @ 12% p.a.

02. Facts giving rise in short are that the claimant was travelling in his Tata 407 truck bearing No. MH-21-5492. While returning from Akola near Dargadwadi Shivar on Devalgaonraja to Chikhali road, suddenly Tata Truck No. MH-21-6423 gave dash to their vehicle. Said vehicle was driven by respondent – Balaji. In First Appeal No. 746 of

2011 respondent No.1 is original claimant, respondent No.2 is original respondent No.1 – owner of other vehicle, respondent No.3 is original respondent No.2, respondent No.4 is original respondent No.3. After the accident, the claimant was removed from the vehicle by police and was admitted to the hospital at Primary Health Center, Devalgaonraja. From there, he was shifted to Civil Hospital at Jalna. Thereafter, he was shifted to Vargantvar Hospital, Aurangabad. He was there for 12 days. In the accident he suffered 100% loss of earning capacity. The claimant, therefore, filed claim petition in Aurangabad. The claimant claimed Rs. 10 lakhs towards compensation. It is his case that he was earning Rs. 2 lakhs per year from doing the business of sale of vegetable.

03. The learned Tribunal held that the driver of truck No. MH-21-6423 i.e. driven by respondent No.1 and the claimant suffered grievous injuries. It is held that the driver of second vehicle was rash and negligent. It is further held that the claimant is entitled to receive compensation. So far as loss of earning capacity is concerned, the learned Tribunal held that the claimant would be entitled to receive compensation. The learned Tribunal held that the disability suffered by the claimant is to the extent of 90%. It is held that the annual income of the claimant is Rs. 54,000/- and considering the age, multiplier of 13 is

applied. In addition to that Rs. 2,75,000/- is awarded towards medical expenses and granted total amount of Rs. 9,06,800/-.

04. It is case of the insurance company that the accident took place between two vehicle. The respondent-claimant was travelling in vehicle bearing No. MH-21-5419. The claimant was also negligent and therefore the liability would come on the insurance company of the vehicle of the claimant. In the first vehicle the claimant was travelling as gratuitous passenger. In view of that risk is not covered for breach of condition and therefore the appellant is not liable to pay compensation. The Tribunal has wrongly granted the amount as jointly and severally. On merits he submits that the Doctor who gave certificate of disability is not the Doctor who treated the patient and therefore evidence of such Doctor ought to have been discarded. The age of the claimant is shown to be 60 – 65 years on the medical papers. Therefore, multiplier of 13 is wrongly applied.

05. First Appeal No. 2186 of 2012 is filed by the New India Assurance Co. Ltd., the insurer of truck bearing No. MH-21-5492. Learned Advocate Mr. Deshpande for the appellant argued that from the evidence of the claimant and especially from the cross-examination, it is

seen that he was sitting at the rear side of the vehicle and therefore could not see the accident. A criminal complaint was filed only against owner of the vehicle bearing No. MH-21-5492. With the help of judgment of the Hon'ble Supreme Court in the case of **Oriental Insurance Co. Ltd. Vs. Premlata Shukla and Ors., (2007) 13 SCC 476**, he submits that no liability would come on the New India Assurance Co. Ltd. Not a single person from vehicle No. MH-21-6423 is examined by the claimant. If the entire FIR is seen, it is clear that it is the owner of vehicle No. MH-21-5492 is liable. He also relied upon judgment in the case of **Lachoo Ram and Ors. Vs. Himachal Road Transport Corporation, (2014) 13 SCC 254**. He thus submits that liability at the most, would be on the vehicle in which the claimant was travelling. There is no fault of vehicle No. MH-21-6423 proved. No medical bills are produced. He submits that in no case the liability would come on the New India Assurance Co. Ltd.

06. Learned Advocate Mr. Shirse h/f. Mr. P.F.Patni for original claimant vehemently submits that this is clearly a case of composite negligence. The claimant was not driving the vehicle. He relied upon cross of the claimant to submit that so far as age is concerned, there is no suggestion about the age of the claimant and about disability suffered by him. He has denied the suggestion about negligence on the part of

the vehicle in which the claimant was travelling. The learned Judge has rightly considered all the factors. The deceased is suffering from paraplegia and for that now there is no treatment available. 90% disability suffered by the claimant is of permanent nature. He thus submits that learned Tribunal has rightly passed the order and opposes the appeal.

07. Heard learned Advocates for the parties. The claimant has examined three witnesses in support of his case. He examined himself as PW-1, PW-2 is Punjaji Pandurang Sonavane a shop-owner of pesticides shop. PW-3 is Dr. Jaiswal, who issued certificate of disability. He proved injury certificate showing disability, FIR, Medical Bills, Salary Certificate etc. The respondents have not produced any evidence as such. Neither they have examined any witness.

08. PW-1 in his evidence has stated that he along with three other persons were travelling in MH-21-5492. They met with an accident with vehicle No. MH-21-6423. On the date of accident, he received injuries. He was taken to hospital. He spent an amount of Rs. 2,75,000/- for hospitalization, medication etc. He thus prays compensation of Rs. 35,75,000/-. He proved insurance policy etc. In

the cross by New India Assurance Co., it has come on record that he was sitting at the rear side of the vehicle. It was not fault of the truck driver in which he was travelling. It is the driver of another vehicle, who was responsible for the accident. Except suggestion, there is nothing in the cross-examination. In the cross by respondent - United India Insurance Co. it is taken that three persons were travelling in tempo including driver. There was no goods in the tempo and it was empty.

09. PW-2 Punjaji Sonawane stated that he knows the claimant, who was working in his shop. He used to pay salary of Rs. 4500/- per month. He proved salary certificate Exh.60. He also stated that from the date of the accident, complainant has not come to the shop.

10. PW-3 Parmeshwar Jaiswal, an Orthopedic Surgeon, stated that the claimant sustained 90% disability and there is no possibility of any improvement in the condition of patient. He proved Exh.62. In the cross-examination by respondent No.2, it is only asked that the claimant has not taken any treatment from him. He has not taken any x-ray. It has come in the cross that he verified the x-ray of the patient. By the other insurance company he was not cross-examined and the cross by respondent No.2 was adopted.

11. In the case of **Andhra Pradesh State Road Transport Corporation and Anr. Vs. K. Hemlatha and Ors., (2008) 6 SCC 767**, the Hon'ble Apex Court was considering the case of contributory negligence and computation of amount of compensation. It is held that composite negligence is a negligence on the part of two or more persons. Injury to a person is result of negligence on the part of such wrong doers. In such case, it is called as composite negligence and held that in such case, all persons are jointly and severally liable for payment to the injured of the entire damages. In such case, it is injured who has a choice to proceed against all or any of them. It is not for the claimant to prove the accident and liability of each wrong-doer separately.

12. Reliance is placed upon judgment in the case of **T.O. Anthony Vs. Karvarnan and Ors., (2008) 3 SCC 748**. In the said case, the accident was head-on collision of bus of Kerala State Transport Corporation with a private bus, in which the appellant received a facture. The Hon'ble Supreme Court in that case held that the accident occurred due to contributory and composite negligence of bus drivers of both the vehicles. The liability was fasten to 50% each and deducted 50% of the amount for appellant's negligence. The Hon'ble Apex Court did not

disturb the finding regarding negligence and enhanced compensation. It is held that the composite negligence and contributory negligence are not one and same. Composite negligence is when a person receives injury where two or more other persons are involved. Contributory negligence is the negligence where claimant himself is also liable for the accident. It is only in the cases where the claimant himself is found to be responsible is a case of contributory negligence.

13. So far as judgment in the case of **Khenyei Vs. New India Assurance Co. Ltd. & Ors., (2015) 9 SCC 273** is concerned, the Hon'ble Supreme Court held that the claimant is entitled to sue any of the tortfeasor or all of them for recovery of compensation. He need not prove or establish the liability of each of them separately and he can sue any one of them or all of them.

14. In the case of **Premlata Shukla (supra)** it is held that the document once proved needs to be read in its entirety. Only some portion of the document cannot be relied upon by ignoring any provision. There is no dispute about the same.

15. In the case of **Lachoo Ram (supra)**, the Hon'ble Supreme

Court dealt with the appeals filed by the claimants aggrieved by the judgment and order by the High Court reversing the finding given by the Motor Accident Claims Tribunal and set aside the award to some extent. It is held that mere involvement of the bus in the accident cannot make owner liable to pay compensation unless it is established on record by producing material that the accident is caused by rash and negligent act of the driver. In that case the bus was standing at the red light and after starting from traffic signal, it stopped almost 100 -150 yards away from Gurudwara. It is held that the bus could not have started in high speed. The accident occurred admittedly on narrow road. It was brought on record that the bus driver had not given signal to the motorcyclist to overtake it. In that case the witness could not see the actual incident. The motor cyclist on an attempt to overtake the bus had crushed. The witness only heard sound of crush. In that case, it was not a case that driver did not take any sudden turn for proceeding forward from traffic signal that he moved the bus right side in sudden manner.

16. In the present case, it has already come on record that the claimant was not driving the vehicle. He was sitting at the rear side. Thus, there is no question of contributory negligence. Present case is thus a clear case of composite negligence. This Court does not find any

reason calling for interference at the hands of this Court. Consequently, both the first appeals stand dismissed with no order as to costs.

17. In view of dismissal of the first appeals, connected civil applications do not survive and are accordingly disposed off.

**[KISHORE C. SANT, J.]**

snk/2025/Sep25/fa746.11