

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1950 OF 2007

The Oriental Insurance Co. Ltd.
Mumbai Regional Office No. II,
7th Floor, Oriental House, 7, J.T.Road,
Mumbai – 400 020

... Appellant

Versus

- 1 Madhukar Sadashiv Mali
Aged 37 years, Occu. Nil
R/o. Ped, Tal. Tasgaon, Dist. Sangli
- 2 Ganesh Containers Movers Syndicate
At Address, 202/3/4, Great Eastern Chamber, New
Mumbai, Belapur, Dist. Thane
- 3 Sukhdevsing Harbansing Jat
Aged 37 years, Occu. Driver,
Resident of 202/3/4, Great Eastern Chamber, New
Mumbai, Belapur, Dist. Thane
(Appeal stand dismissed against R.Nos. 2 and 3 vide
R.J.'s order dated 07.03.19.)

... Respondents

.....

Mr. Sachin Rajee, Advocate for the Appellant.

Mr. Mandar Limaye a/w. Mr. Vedant Bende, Advocate for Respondent No.1

CORAM : SHIVKUMAR DIGE, J.

DATED : 24th JUNE, 2025.

ORAL JUDGMENT :

1. The issues involved in this appeal are, accident occurred due to negligence of the deceased and compensation is awarded on higher side.
2. It is contention of learned counsel for the appellant/Insurance

Company that the respondent No.1/claimant was driving bus and while driving bus, he gave dash to the offending truck. Due to dash he sustained injury. The accident occurred due to negligence of the respondent No.1, but the Tribunal has not considered this fact and has held that the accident occurred due to negligence of the driver of offending truck which is erroneous. Learned counsel further submitted that the Tribunal has awarded @12% interest on compensation amount which is on higher side, hence requested to allow the appeal.

3. It is contention of learned counsel for respondent No.1/ claimant that the accident occurred due to sole negligence of the driver of offending truck as he gave dash to the bus of respondent No.1/claimant. The offence was registered against the driver of offending truck. He did not step into the witness box to prove the negligence of respondent No.1. The Tribunal has passed well reasoned order, no interference is required in it and requested to dismiss the appeal.

4. I have heard both the learned counsel. Perused the Judgment and Order passed by the Motor Accident Claims Tribunal, Sangli (for short “**the Tribunal**”). It is claimant’s case that on 13.04.1999 at 8.30 p.m., he was driving luxury bus from Mumbai towards Miraj. At that time, when said bus came within the jurisdiction of Kamothe near Panvel, one Trailer bearing No. MH-04-F-1135 came from opposite side in rash and negligent

manner and gave dash to the bus. It is alleged that the said truck crossed the road divider came on wrong side of the road and gave dash to the bus.

5. To prove the negligence of truck driver, the respondent No.1/claimant has examined himself. The FIR was lodged against the driver of offending truck. While deciding the issue of negligence, the Tribunal has observed that accident occurred due to negligence of driver of offending truck. I do not find infirmity in it. In my view, the police papers produced on record shows that the accident occurred due to negligence of driver of offending truck as he crossed the road divider, went on wrong side of the road and gave dash to the bus. Moreover, driver of the offending truck did not step into the witness box to prove the negligence of respondent No.1. Hence, I do not find merit in the contention that accident occurred due to negligence of the respondent No.1. While awarding compensation, the Tribunal has awarded interest @12% p.a. In my view, it is on higher side, hence I am considering it @9% p.a. In view of above, I pass following order:

ORDER

- i. The appeal is dismissed.
- ii. The respondent No.1 /claimant is permitted to withdraw the compensation amount awarded by the Tribunal @9% p.a. from the date of filing claim

petition till realisation of amount.

- iii. The appellant/Insurance company is permitted to withdraw the excess 3% interest from deposited amount.
- iv. Statutory amount be transmitted to the Tribunal. The parties are at liberty to withdraw it as per the Rules.
- v. All pending applications, if any, stand disposed of.
- vi. R & P be sent back to the Tribunal.

SONALI
SATISH
KILAJE

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by SONALI
SATISH KILAJE
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(SHIVKUMAR DIGE, J.)