IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

FIRST APPEAL NO.295 OF 2018

Reliance General Insurance Company
Limited, Mumbai.
Through its Branch Manager,
6th Floor Landmark Building,
Ramdaspeth, Nagpur. .. Appellant

..Versus..

1. Smt. Bebi wd/o Bhimrao Ade,
   Aged about 43 years,
   Occupation-House hold.

2. Pranay s/o Bhimrao Ade.
   Aged about 21 years,
   Occupation-Education.

3. Pavan s/o Bhimrao Ade,
   Aged about 19 years,
   Occupation-Education.

4. Smt. Anusaya wd/o Suryabhan Ade,
   Aged about 68 years,
   Occupation-Household Work,
   Resp. No.1 to 4, All R/o. Metikheda,
   Tah. Kalamb, Distt. Yavatmal.

5. Sanket Kumar s/o Hariprasad Chaurasiya,
   Aged 27 years, Occu-Driver,
   R/o. Ashok Nagar, Kokan Nagar, Chembur,
   Opposite Navjivan Society, Mahul Road,
   Mumbai, Tah. & Dist. Mumbai.

6. Hariprasad s/o R. Chaurasiya,
Aged Major, Occu-Business.
R/o. H. No.973, Samaidevi Road,
Turbhe Stor, Navi Mumbai.
Tah. & Distt. Mumbai. .. Respondents

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Shri Hitesh N. Verma, Advocate for Appellant.
Shri Vivek Awchat, Advocate for Respondent Nos.1 to 4.

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CORAM : PRAVIN S. PATIL, J.
RESERVED ON : 23.09.2025.
PRONOUNCED ON : 30.09.2025.

JUDGMENT

1. The Appellant-Insurance Company preferred the present appeal against the judgment and order passed by the learned Motor Accident Claims Tribunal, Yavatmal in Motor Accident Claim Petition No.176/2012.

2. It is the submission of the appellant that it is a case of contributory negligence and same is clear from the record. However, without considering the same, the learned Tribunal has granted the compensation, therefore, seeks indulgence of this court in the matter.

3. In the present appeal, on 5.7.2012 deceased Bhimrao Suryabhan Ade, while travelling Dindori to Nashik by S.T. Bus No.MH-40/8556, as a driver of a bus, which was carrying passengers, one truck bearing No.MH-43/Y-273 came from opposite direction in a very high and uncontrollable speed and thereby there was a head on collision to the S.T. Bus and the truck. As a result, the deceased was succumbed to death on the spot. Legal representatives of the deceased filed application for compensation of Rs.63,71,000/- for the accidental death of deceased Bhimrao Ade.

4. In the present case, the offence was registered vide Crime No.185/2012 against the respondent no.5 under Section 279, 337, 304-A, 338 and 427 of the Indian Penal Code and Section 184 of the Motor Vehicles Act.

5. The claimants, in support of their claim, entered into the witness box and established the fact that they being a legal heirs of deceased are entitled for the compensation. It is admitted fact that the claimants were not the eyewitness in the matter. Therefore, they have only stated about the entitlement

of compensation in the matter.

6. It is further pertinent to note that the appellant has examined the Conductor of the Bus which was involved in the accident, namely Vijay Gujar. According to his version, the offending truck came from opposite direction from wrong side towards the bus and gave violent dash. As such, only because of rash and negligent driving of the offending vehicle, the accident took place in the matter.

In cross-examination, it is stated that bus was going from Pimpalnare Fata towards Nashik. It was a National Highway. Near Sukhsagar Hotel which was the eastern side of the bus, truck came from opposite direction and there was a head on collision in the matter. As such, according to this witness, the bus driver was not at fault but only because of the driver of the offending vehicle, the accident was caused in the matter and ultimately the driver i.e. deceased caused injuries and succumbed to death. The third witness which was produced by the applicant was the Accountant of M.S.R.T.C. Kalvan. He has produced the relevant record about the salary and other benefits which deceased was entitled at the time of his death.

7. It is pertinent to note that before the claims Tribunal, though the insurance company was party and appeared in the matter did not entered into the witness box to establish the fact that the bus driver was equally responsible for the accident and due to his mistake to some extent the accident occurred in the matter.

8. In the background of above said factual position, the learned Tribunal decided the Claim Petition by its judgment and order dated 15.10.2016. Learned Tribunal recorded that apparently there was head on collision, but from evidence available on record, it is clear that truck was on wrong side and gave dash to the bus. According to Tribunal, there is no evidence recorded on behalf of insurance company or truck owner of the offending vehicle to establish on record that bus driver was equally responsible in the matter. Hence, learned Tribunal has awarded just compensation of Rs.27,05,000/- inclusive of the amount of no fault liability payable to the claimant.

9. In the background of above said factual position, the appellant approached to this court challenging the impugned order mainly on the ground that learned Tribunal failed to

appreciate the evidence available on record which established the fact that in view of a head on collision between the bus and the truck both are equally responsible. The accident took place at National Highway, wherein three vehicles at a time can move. Hence, considering this evidence, the learned Tribunal ought to have considered the deceased was also responsible for the accident. It is the submission of the appellant that it is a case of contributory negligence but the same is not considered by the learned Tribunal and therefore indulgence of this court is necessary in the matter.

10. In the background of challenge to the judgment of learned Tribunal, it will be relevant to refer the law laid down by Hon'ble Supreme Court of India in the case of ***National Insurance Company Limited .vs. Swaran Singh and others, reported in (2004) 3 SCC 297***. The Hon'ble Supreme Court has recorded its summary of finding in para 110 of the judgment as under :

> *110. The summary of our findings to the various issues as raised in these petitions are as follows:*
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> *(i) Chapter XI of the Motor Vehicles Act, 1988 providing compulsory insurance of vehicles against third-party risks is a social welfare legislation to extend relief by compensation to victims of accidents caused by use of motor vehicles. The provisions of*

compulsory insurance coverage of all vehicles are with this paramount object and the provisions of the Act have to be so interpreted as to effectuate the said object.

(ii) An insurer is entitled to raise a defence in a claim petition filed under Section 163-A or Section 166 of the Motor Vehicles Act, 1988, inter alia, in terms of Section 149(2)(a)(ii) of the said Act.

(iii) The breach of policy condition e.g. disqualification of the driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of section 149, has to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by a duly licensed driver or one who was not disqualified to drive at the relevant time.

(iv) Insurance companies, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish "breach" on the part of the owner of the vehicle; the burden of proof wherefor would be on them.

(v) The court cannot lay down any criteria as to how said burden would be discharged, inasmuch as the same would depend upon the facts and circumstances of each case.

(vi) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards the insured unless the said breach or

breaches on the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply "the rule of main purpose" and the concept of "fundamental breach" to allow defences available to the insurer under section 149(2) of the Act.

(vii) The question as to whether the owner has taken reasonable care to find out as to whether the driving licence produced by the driver (a fake one or otherwise), does not fulfil the requirements of law or not will have to be determined in each case.

(viii) If a vehicle at the time of accident was driven by a person having a learner's licence, the insurance companies would be liable to satisfy the decree.

(ix) The Claims Tribunal constituted under Section 165 read with Section 168 is empowered to adjudicate all claims in respect of the accidents involving death or of bodily injury or damage to property of third party arising in use of motor vehicle. The said power of the tribunal is not restricted to decide the claims inter se between claimant or claimants on one side and insured, insurer and driver on the other. In the course of adjudicating the claim for compensation and to decide the availability of defence or defences to the insurer, the Tribunal has necessarily the power and jurisdiction to decide disputes inter se between the insurer and the insured. The decision rendered on the claims and disputes inter se between the insurer and insured in the course of adjudication of claim for compensation by the claimants and the award made thereon is enforceable and executable in the same manner as provided in Section 174 of the Act for enforcement and execution of the award in favour of the claimants.

(x) Where on adjudication of the claim under the Act the Tribunal arrives at a conclusion that the insurer has satisfactorily proved its defence in accordance with the provisions of section 149(2) read with sub-section (7), as interpreted by this Court

above, the Tribunal can direct that the insurer is liable to be reimbursed by the insured for the compensation and other amounts which it has been compelled to pay to the third party under the award of the Tribunal. Such determination of claim by the Tribunal will be enforceable and the money found due to the insurer from the insured will be recoverable on a certificate issued by the Tribunal to the Collector in the same manner under Section 174 of the Act as arrears of land revenue. The certificate will be issued for the recovery as arrears of land revenue only if, as required by sub-section(3) of Section 168 of the Act the insured fails to deposit the amount awarded in favour of the insurer within thirty days from the date of announcement of the award by the Tribunal.

(xi) The provisions contained in sub-section (4) with proviso thereunder and sub-section (5) which are intended to cover specified contingencies mentioned therein to enable the insurer to recover the amount paid under the contract of insurance on behalf of the insured can be taken recourse to by the Tribunal and be extended to claims and defences of the insurer against insured by relegating them to the remedy before regular court in cases where on given facts and circumstances adjudication of their claims inter se might delay the adjudication of the claims of the victims.

11. It is further pertinent to note that Hon'ble Supreme Court in the case of ***Meera Devi and another .vs. Himachal Pradesh Road Transport Corporation and others, reported in (2014) 4 SCC 511*** recorded that to prove the contributory negligence there must be cogent evidence. The findings are recorded in this regard in Para 10 as under :

10. To prove the contributory negligence, there *must be cogent evidence. In the instant case, there is no specific evidence to prove that the accident has taken place due to rash and negligent driving of the deceased scooterist. In the absence of any cogent evidence to prove the plea of contributory negligence, the said doctrine of common law cannot be applied in the present case. We are, thus, of the view that the reasoning given by the High Court has no basis and the compensation awarded by the Tribunal was just and reasonable in the facts and circumstances of the case.*

12. The Hon'ble Supreme Court in the case of ***Mangla Ram .vs. Oriental Insurance Company Limited and others, reported in (2018) 5 SCC 656*** has held that in absence of conclusive proof it cannot be held that there is a contributory negligence. Accordingly, recorded its findings particularly recorded in para 33 as under :

33. In other words, we are inclined to hold that there is no title of evidence about the motorcycle being driven negligently by the appellant at the time of accident. The respondents did not produce any such evidence. That fact, therefore, cannot be assumed. Resultantly, the argument of the respondents that the appellant did not possess a valid motorcycle driving licence at the time of accident, will be of no significance. Thus, we hold that there is no legal evidence to answer the issue of contributory negligence against the appellant.

13. In the light of above said legal position, I have also gone through the copy of FIR and spot panchanama in the matter. It is clear from the said record that at the spot of

incident the police authority has recorded that there is a head on collision between the two vehicles, but the said documents if perused minutely shows that the driver of the bus was not prima facie responsible for the accident. The offending Truck was moving from wrong side, therefore, to establish the fact that there was a contributory negligence, it was necessary for the appellant-insurance company to place on record the cogent evidence to the effect that the deceased was equally responsible for the accident. Hence, in view of the law laid down by the Hon'ble Supreme Court of India that in absence of substantial proof available on record to reach the conclusion that Driver of Bus was equally negligent and due to his negligence accident was occurred, the view taken by learned claim Tribunal can not be held as illegal.

Hence, considering above said legal position and the facts of the matter, I find no merit in the present appeal. Hence, the present appeal is **dismissed.**

At the time of pronouncement of judgment, the learned counsel for the respondents states that Civil Application

No.1386/2023 for withdrawal of amount is pending. Accordingly same is allowed. The respondents are permitted to withdraw the compensation amount along with interest accrued thereon subject to the satisfaction of the Registrar (Judicial) of this Court.

(Pravin S. Patil, J.)

Gulande