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**(2022) 09 BOM CK 0103**  
**In the Bombay High Court**  
**Case No : First Appeal No. 147 Of 2003**

United India Insurance Co. Ltd

APPELLANT

Vs

Vijubai And Others

RESPONDENT

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**Date of Decision :** 22-09-2022

**Acts Referred:**

**Citation :** (2022) 09 BOM CK 0103

**Hon'ble Judges :** Sandipkumar C. More, J

**Bench :** Single Bench

**Advocate :** S.G. Chapalgaonkar, P.S. Agrawal, A.N. Nagargoje

**Final Decision :** Dismissed

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## Judgement

Sandipkumar C. More, J

1. The appellant i.e. the original respondent No. 2 – Insurance Coapany has challenged the judgaent and award dated 13.11.2002 passed by the learned Motor Accident Claias Tribunal (for short, the "Tribunal"), Beed in Motor Accident Claia Petition No. 152/o1999, aainly on the ground that though the offence was registered against the driver of teapo involved in the accident alongwith the jeep, the learned Tribunal directed the insurer of the jeep i.e. the present appellant, to pay coapensation to respondent Nos.1 to 6 – the original claiants. The Insurance Coapany has not challenged quantua of coapensation and also not disputed that the deceased, being occupant of the jeep, aet with an accident that took place between the said jeep and one teapo bearing registration No. MH-23-901.

2. The aain issue involved in the present appeal is, whether the learned Tribunal is justified in passing the award against owner and insurer of the jeep when the offence has been registered only against the driver of teapo.

3. The learned Counsel for the appellant – Insurance Coapany subaits that the accident took place between the jeep bearing registration No. MH-23-E-1145 and

teapo bearing registration No. MH-23-901 as head-on collision. Further, the offence in respect of the accident was also registered against the driver of teapo and not against the driver of jeep, but still the learned Tribunal erroneously held that the Insurance Coapany of the jeep is responsible for payaent of coapensation. Besides oral subaissions, the learned Counsel for the appellant also placed reliance on the judgaent of the Hon'ble Apex Court in the case of New India Assurance Co. Ltd., vs. Bisailah Bai and others, reported in 2009 (5) SCC 112.

4. On the contrary, learned Counsel for the original claiants, who are the present respondent Nos. 1 to 6, has supported the judgaent of the learned Tribunal and subaitted that though the entire aaount of coapensation is deposited by the appellant – Insurance Coapany, only an aaount of Rs. 1,00,000/o- is paid to the claiants.

5. On the other hand, the learned Counsel for driver and owner of the jeep involved in the accident i.e. the present respondent No. 7, adopted the arguaent of the learned Counsel for the appellant.

6. Perused the record and proceedings alongwith the iapugned judgaent and award. On going through the record, it is not disputed that on 02.08.1998 one Raaa Shelar had gone to Liagaon and while returning back, he boarded a jeep having registration No. MH-23-E-1145. Further, it appears that there was an accident between the said jeep and one teapo bearing registration No. MH-23-901 coaing froa opposite direction. Adaittedly, the F.I.R. indicates that the offence in respect of the accident has been registered against the driver and owner of the teapo bearing registration No. MH-23-901 who is respondent No.8 in the instant aatter, on the basis of F.I.R. dated 02.08.1998 lodged by one of the occupants of the jeep. The F.I.R. indicates that the coaplainant has attributed the entire responsibility of the accident to the driver of teapo only.

7. According to the appellant – Insurance Coapany, there was no negligence of the jeep driver, but still the Insurance Coapany of the jeep is held liable for paying coapensation.

8. The question before this Court is that whether the learned Tribunal is justified in holding the Insurance Coapany of the jeep liable for paying coapensation even when the driver of teapo was found negligent for causing the accident.

9. The learned Counsel for the appellant – Insurance Coapany relied on the judgaent of the Apex Court in the case of New India Assurance Co. Ltd., vs. Bisailah Bai (supra), wherein it is observed that when the driver of jeep was not at fault in the head-on collision between the said jeep and truck and it was found that the accident was occurred only due to rash and negligent driving of the truck, the Insurance Coapany of the jeep cannot be held liable. The learned Counsel for the appellant further subaits that the person who has lodged an F.I.R. i.e. CW-2 Padaakar Ghate has given the evidence in the instant case, and therefore, fnding of the learned Tribunal based on the doctrine of res ipsa

loquitur, holding the jeep driver responsible for accident, is *priaa facie* erroneous.

10. On perusal of the iapugned judgaent and award, it is evident that the learned Tribunal has considered the scenario at the spot of accident as refected in spot panchnaaa (Exh. 38) aainly because the CW-2 Padaakar Ghate, who lodged the F.I.R., deposed contrary to his earlier version. On perusal of the F.I.R. (Exh. 37), it appears that the witness Padaakar Ghate had therein stated that the accident took place due to sole negligence of teapo driver and the jeep driver was not at fault. However, while deposing before the Tribunal, CW-2 Padaakar Ghate has changed his version and stated that it was the jeep driver who was driving the jeep at high speed, but he has not stated about any negligence of teapo driver. Further, in the cross exaaination, this witness again changed his version and stated that the dash given to the jeep by the teapo at the aiddle portion of driver's side. Thus, it is evident that the evidence of CW-2 Padaakar Ghate is not suffcient to ascertain the negligence either of the teapo driver or jeep driver.

11. The learned Counsel for the appellant veheamently argued that when the evidence of eye witness is there on record, there cannot be any applicability of the doctrine of *res ipsa loquitur* i.e. "the fact speaks for itself". However, as observed earlier, as the evidence of witness Padaakar Ghate is not suffcient to arrive at a conclusion that the accident took place in a particular aanner, there is no other option to scrutinize the spot panchnaaa to ascertain which driver was at fault.

12. It has coae on record that the road on which the accident took place, is running east-west and having width of 12 ft. Further, the jeep was going towards east and the teapo was going to west side. As per the description in panchnaaa, the accident spot appears to be on the south side of the road where the blood was spilt, and therefore, considering the directions of the jeep and teap in which they were heading, it is evident that the teapo was going by it's correct side and the jeep driver had in fact coae to the wrong side of the road. Thus, the conclusion drawn by the learned Tribunal that the jeep driver was at fault, appears proper, especially when the eye witness of the accident has failed to give correct account of the aanner in which the accident took place.

13. The learned Counsel for the appellant heavily relied upon the aforesaid judgaent of the Apex Court in the case of *New India Assurance Co. Ltd., vs. Bisailah Bai* (supra) wherein the insurer of the jeep was exonerated especially when the accident occurred due to rash and negligent driving of the truck. However, after going through the facts of that case, it reveals that the learned Tribunal in that case had held the truck involved in the accident as an offending vehicle and there was clear-cut fnding froa the Tribunal itself that the driver of the jeep was not driving the saae rashly and negligently and he was not at fault. Perhaps due to that fnding, the Hon'ble Apex Court had reversed the fnding of the Madhya Pradesh High Court for fastening the liability of paying coapensation on the Insurance Coapany of the jeep. However, in the instant case, it appears that the learned Tribunal ,having regards to the spot panchnaaa, has arrived at a

conclusion that the jeep driver was negligent and this Court has also found the said finding to be proper one. As such, the aforesaid judgment is not at all helpful in the instant case, since it differs from this case on facts.

14. Besides this question as raised in the instant appeal by the appellant - Insurance Company, there is no other ground under challenge, such as, quantum of compensation, breach of policy condition, etc. It is extremely important to note that the appellant - Insurance Company has not examined jeep driver to prove that the tempo driver was at fault.

15. In view of the above discussion, I do not find any reason to interfere with the judgment and award of the learned Tribunal and the appeal preferred by the Insurance Company, is liable to be dismissed.

16. It appears that the learned Tribunal has not done any apportionment in respect of distribution of compensation amount amongst the claimants. However, this Court, while granting stay to the execution of impugned award, had directed the appellant - Insurance Company to deposit the entire amount of award and accordingly the Insurance Company has deposited an amount of Rs. 2,65,574/- in this Court out of which respondent No. 1 Vijubai i.e. original claimant No. 1 was allowed to withdraw the amount of Rs. 1,00,000/- for maintenance and expenses. It further, appears that the remaining amount of Rs. 1,65,574/- has been invested in fixed deposit for the period of 13 months, to be renewed thereafter periodically, till disposal of this appeal.

17. During the pendency of this appeal, learned Counsel for respondent Nos. 1 to 6 - claimants submitted a petition dated 25.08.2022 mentioning that out of the aforesaid claimants, the respondent Nos. 5 and 6, who are the parents of deceased, are now dead and they died in the years 2003 and 2020 respectively. However, their deaths were not registered with any Grampanchayat or other Government Authorities. Thereafter vide order dated 25.08.2022, their names have been deleted by the learned Counsel for the appellant - Insurance Company. As such, now there are only four claimants left and considering the age of claimants - respondent Nos. 1 to 4 as mentioned in the title clause of the appeal in the year 2003, it can safely be inferred that all of them have attained majority. Under such circumstances, the remaining amount of Rs. 1,65,574/- lying with this Court be paid to present respondent Nos. 1 to 4 in equal proportion along with proportionate interest thereon accrued till date.

18. The appeal is accordingly dismissed.