



## **JUDGMENT**

Learned counsel for appellant submits that as per order dated 28.01.2021, there was confinement of grounds in appeal and only challenge was with regard contributory negligence. Hence, notice to respondents no.6 and 7 would not be necessary.

2. Challenging order dated 12.11.2019 passed by II Addl. Senior Civil Judge & MACT, Kalaburagi, (for short 'tribunal'), in MVC no.269/2015 this appeal is filed.

3. It was submitted that as per claimant on 25.11.2014, Sadique Hussain was riding motorcycle bearing registration no.MH-13/AS-6612 on Solapur – Vijayapur road. Tractor bearing no.MH 13/BR-1486 attached with two trailers bearing registration no.MH-13/T-7019 and MH-13/T-7020 parked on road without any indicator or any other precautions that too during night. Rider of motorcycle was not able to notice same and dashed against tractor-trailer leading to his death. Claiming compensation, claim petition under Section 166 of MV Act was filed against owner and insurer of tractor respectively.



4. On service of notice and entering appearance, respondents opposed claim petition on all grounds. Tribunal framed issues and recorded evidence. Claimant no.1 was examined as PW.1 and got marked Exs.P.1 to P.25. On behalf of respondents RWs 1 to 3 were examined and Exs.R.1 to 6 were marked. On consideration tribunal held that accident had occurred due to rash and negligent parking of tractor- trailer on road and that claimants were entitled for compensation of Rs.8,74,000/- and also held respondents no.1 and 2 are liable to pay same.

5. It was submitted that since tractor-trailers were insured with different insurers, tribunal ought to have apportioned liability against insurer of trailer also. And merely on ground that tractor-trailers were parked on road, negligence cannot be apportioned against driver of tractor-trailer, unless there was specific proof that accident occurred despite deceased taking sufficient care and caution while riding. Hence no interference was called for.

6. Heard learned counsel, perused impugned judgment and award.



7. From above submission, and since only insurer is in appeal, point that would arise for consideration is:

"Whether finding of tribunal on contributory negligence and liability calls for interference?"

8. It is not in dispute that on 25.11.2014 accident occurred on Solapur – Vijayapur National Highway when tractor-trailers were parked on road. As per Regulation 15(1) of Road Regulation 1989, parking of motor vehicles on road without taking proper precautions is prohibited. Moreover, accident occurred on national highway, wherein vehicle ply in high speed. Such being case, without specific evidence regarding precautionary measures such as switching on of indicators, parking lights and placing barricades etc. by driver of tractor-trailer, tribunal would be justified in holding entire negligence against him and absolving negligence against rider of motorcycle. Even insofar as apportionment of liability, admittedly, trailers are towed by tractor and cannot move by themselves. While passing impugned award tribunal has taken note of said aspect and held insurer of tractor liable to pay entire compensation. Same would be in accordance with law. No good or sufficient reasons are made out to interfere with the impugned award.



9. Appeal is devoid of merits and is accordingly dismissed at stage of admission.

Amount in deposit is ordered to be transmitted to tribunal for payment. Insurer to deposit balance amount within six weeks.

Sd/-  
**JUDGE**