

MHTH010034662018



**Order below Exh.21 in M.A.C.P. No.246/2018**

Perused the application and say filed by the claimants on the application itself. Heard both sides.

2. Present application is filed by the opponent for dropping the claim or discharging the opponent from the claim petition. The opponent has contended that one Vikrant Arun Singh was driving the motor Car bearing No.MH-02-AL-2742. There were seven persons in the said vehicle. The Car was proceeding from Nashik towards Mumbai. The driver of the Car lost control over his vehicle and dashed to the divider. Thereafter, said vehicle landed on wrong side of the road and dashed to TMT Bus bearing No.MH-04-G-8002 which was proceeding from Mumbai to Nashik. There was divider of 5 – 6 ft. in width in between the roads at the spot of accident. After accident, F.I.R. came to be against Vikrant Arun Singh i.e. driver of the motor Car bearing No.MH-02-AL-2742. The driver of TMT Bus was not responsible for alleged accident. Accident took place due to entire negligence of driver of the motor Car bearing No.MH-02-AL-2742. Further the capacity of suit motor Car was of five occupants. But there were seven persons in it at the time of accident. Under these circumstances, the opponent prays to discharge it from claim petition or claim petition be dropped in toto.

3. The claimants have strongly objected the application. They have contended that there is no provision to discharge the opponent where the vehicle has been involved in the accident. The application is not maintainable at this juncture. Hence, application be rejected.

4. Perused record before the court. The deceased was occupant in the motor Car bearing No.MH-02-AL-2742. As per F.I.R., said motor Car dashed against the divider and went on opposite side road by crossing the divider and gave dash to the TMT Bus. Therefore, Narpoli police registered offence against the driver of said motor Car – Vikrant Arun Singh. The present application is filed when the matter was pending for hearing.

5. In Khenyei versus New India Assurance Co. Ltd. & Ors. decided by the Hon'ble Supreme Court of India in Civil Appeal No.4244 of 2015, the Hon'ble Apex Court has observed that in case of composite negligence, the claimant is entitled to sue both or any one of the joint tort feasons and to recover the entire compensation, as liability of joint tort feasons is jointly and severally. The apportionment of compensation between two tort feasons vis-a-vis the claimant is not permissible. He can recover at his option whole damages from any of them.

6. Considering above case law, present claim petition is maintainable. It is not just and proper to drop the petition or discharge the opponent. Hence, the order-

**ORDER**

1.	Application is rejected with costs.
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Thane  
Date : 29/11/2025

(Rupali V. Mohite)  
Member, M.A.C.T., Thane.