



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 78 OF 1999

The Administrator
City and Industrial
Development Corporation
Udyog Bhavan, Aurangabad

... Appellant
[Ori. Defendant]

VERSUS

1] Pradeep s/o Prabhakar Rao Kulkarni
Age: 34 yrs., Occ. Govt. Servant,
resident of Harsulkar Building,
Aurangpura, Aurangabad

2] Shaila w/o Prabhakar Rao Kulkarni
Age: 50 yrs., Occu. Household,
R/o. As above

... Respondents
[Ori. Plaintiffs]

....
Mr. A. S. Bajaj, Advocate for Appellant
None for Respondents

....

CORAM : Y. G. KHOBRAGADE, J.

DATE : 30th APRIL 2024

:: JUDGMENT ::

1. By the present Appeal under Section 100 of the Code of Civil Procedure, the Appellant/original Defendant is challenging the Judgment and Decree dated 10.08.1998 passed by the learned

Additional District Judge, Aurangabad in appeal bearing R.C.A. No. 146 of 1993 whereby the Judgment and decree dated 22.12.1989 passed by the learned Civil Judge Junior Division, Aurangabad in Suit bearing R.C.S. No.489 of 1986, came to be quashed and set aside and thereby allowed the Suit of present Respondent/original Plaintiff seeking direction to the present Appellant/original Defendant to pay the damages to the tune of Rs. 5,000/-.

2. Present Appellant is the original Defendant and present Respondent Nos. 1 and 2 are the original plaintiffs Nos. 1 and 2 in suit bearing R.C.S. No.489 of 1986. (For the sake of brevity, I would like to refer the parties to the present appeal in their original nomenclature).

3. On 25.02.1999, present Appeal was admitted on substantial questions of law as described in Ground Nos. VI & VII of the Appeal Memo which reads as under :

- (i) That the learned court below has committed an error, in holding that the Cidco, being the Government agency, is also bound to follow the circular at Exh.47.*
- (ii) That the learned court below has committed an error in equating the roads in the city with High-ways.*

4. The Plaintiffs have filed the suit and thereby prayed for compensation and damages to the tune of Rs. 5,000/- on the ground that on 29.11.1985 at about 7.00 p. m., he (Plaintiff No. 1) along with his mother (Plaintiff No. 2) through Ganesh Colony to HUDCO from T. V. Center on motorcycle. He was riding the motorcycle in moderate speed and the Plaintiff No. 2 was his pillion. Near CIDCO Bus Stop at N-11 junction, his motorcycle jumped from the speed-breaker which was constructed/erected by defendant CIDCO authority without specification and design. Due to said jump of motorcycle on speed breaker Plaintiff No. 2 fall down from the motorcycle and sustained head serious injury. Thereafter, the Plaintiff No. 2 was hospitalized in Hospital of Dr. Jhinjurde Patil and thereafter she was shifted to Government Medical College and Hospital, Aurangabad. According to the Plaintiffs, the Defendant authority has not put any sign board before the speed breaker. Therefore, the said accident occurred due to negligence on the part of the Defendant authority, hence they have prayed for compensation to the tune of Rs. 5,000/-.

5. The Defendant authority filed its Written Statement at Exh. 12 and thereby strongly resisted the claim of Plaintiffs.

According to the Defendant, the Plaintiff No. 1 himself was negligent while riding his motorcycle. The Defendant claimed that, the speed-breaker was constructed in standard size and at the relevant time no specific guidelines of State Government were in existence in respect of erection of speed-breakers. The Defendant denied occurrence of accident due to speed-breaker also denied about injury to Plaintiff No. 2. It is also denied by defendant that the Plaintiff No.2 had taken treatment from Dr. Jhinjurde Patil and from Government medical college and hospital, Aurangabad. Most of the allegations levelled by Plaintiffs were denied by the Defendant and hence the Defendant has prayed for dismissal of the suit.

6. On the basis of rival pleadings of both the sides, the learned trial Court framed the Issues at Exh.13.

7. In order to substantiate the claim, Plaintiff No. 1 examined himself at Exh.27 and examined PW-2 Pradeep, PW-3 Dr. Dilip Lomte and PW-4 Chandrakant. Beside oral evidence, the Plaintiffs have also proved Government Circular Exh.47 in respect of specifying rumbling strips for cautioning and specification for erection of speed breakers on National Highway and State Highway. The Defendant has examined Shri Kiran Waghmare at Exh.54.

8. After hearing both the sides, on 22.12.1989, the learned Joint Civil Judge, Jr., Division, Aurangabad has dismissed the suit of Plaintiffs. Being aggrieved by said Judgment and Decree, present Respondents/original Plaintiffs have preferred an appeal bearing R.C.A. No. 146 of 1993 before the first Appellate Court. After re-appreciation of evidence, on 10.08.1998, the learned first appellate Court has allowed the appeal of Plaintiffs and thereby quashed and set aside the Judgment and Decree dated 22.12.1989 passed by the learned Trial Court.

9. Heard Mr. A. S. Bajaj, the learned counsel for the appellant at length. He canvassed that the Administrator of the CIDCO/Defendant is not the legal authority, but he is appointed to acquire the office. Though, the plaintiff have amended the plaint and claimed only against CIDCO, the body authorised only for the purpose of development of Industrial area. Therefore, the original defendant is not the Government Agency. However, while passing the impugned Judgment and Decree, the learned first appellate Court has failed to appreciate the pleadings, oral as well as documentary evidence in prospective manner and recorded the perverse findings, hence, he has

prayed for quashing and setting aside of the impugned Judgment and Decree.

10. It is further canvassed that, the National Highways and State Highways being constructed in specific standard for smooth traffic, however, the roads constructed within limit of City are not that much wide in comparison of National and State Highways. Therefore, the guidelines for erection of speed-breaker on National and State Highways are not applicable to the roads which was constructed in the city area. However, the learned first appellant wrongly equated the roads in city with national and State Highways. Therefore, he has prayed for quashing and setting aside of impugned Judgment and Decree.

11. None appeared on behalf of the Respondents/original Plaintiffs though they are duly served.

12. In the case in hand short questions arises as under:

- (I) *Whether the provisions of Circular Exh. 47 issued by the State Government in respect of erection of Speed Beakers on State High-ways are applicable to the Roads in City constructed by the Defendant City and Industrial Development Corporation in short "CIDCO"?*
- (ii) *Whether the Defendant "CIDCO" is the State within the meaning of Article 12 of the Constitution of India?*

13. It is not in dispute that the CIDCO authority was formed on 17 March 1970 under the **Indian Companies Act of 1956**; its purpose at the time of its creation was to develop a satellite town for Mumbai, Maharashtra, and now functioning as New Town Development Authority (N.T.D.A.) and Special Planning Authority (S.P.A.) of Government of Maharashtra for development of new area of cities.

14. The aim and object of formation of “CIDCO” is to undertake all the development as works and recoup the cost of development from the sale proceeds of land and constructed property. The Defendant CIDCO set several broad objectives for itself and diverting it to the new town, by providing an urban alternative which will lure citizens wishing to relocate to a city of peace and comfort. The Defendant CIDCO plans to provide basic civic amenities to all and elevate the standard of living for people of all social and economic strata. Moreover, it wants to offer a healthy environment and energizing atmosphere in order to utilize human resources at their fullest potentials. The defendant being controlled by a board of directors appointed by the state government. Day-to-day management

is provided by the vice chairman and managing director supported by the team of joint managing directors, consist of chief administrator (New Towns), the heads of various departments and personnel from various technical and non-technical disciplines, including officers, engineers, and subordinate staff. The corporation is managed according to the Companies Act and the Memorandum of Articles of Association of the corporation. Decisions made through a democratic process including department-head meetings, committee meetings, board meetings, and general meetings. Annual reports on the working and affairs of the company, with audit reports, regularly laid before the houses of the state legislature. The Board of Directors of CIDCO meets at least once a month. Thus, the defendant is the Government agency and it is not a private agency. Therefore, the Defendant authority certainly falls within the ambit of Article 12 of the Constitution of India.

15. In the case of *Delhi Jal Board Vs. Raj Kumar; AIR 2006 DELHI 75*, similar case was dealt where compensation was claimed consequent to the death of a person riding a scooter while crossing a manhole improperly maintained. In cited case, the Delhi High Court held in Paragraph No. 39 that, there is a duty of the State to function

as a Welfare State and look after the welfare of all citizens. Therefore, the principle of strict liability applies to the defendant department who has to maintain the speed-breaker. However, the defendant authority failed to maintain the speed-breaker as per the specification, hence they are liable.

16. In the case of *Shripat Shankar Panchal Vs. Municipal Corporation for GR. Bombay; 2007 SCC Online Bom 682 : (2007) 6 Mah LJ 478*, wherein the son of plaintiff was fell in open manhole gutter and died due to drowning. In that circumstances, it has been held that the principle of Motor Accident Claims will be applied and granted compensation.

17. In the case of *Kewal Semlani Vs. Commissioner of Bombay and others*, decided on 27.04.2005, in Writ Petition (PIL) Nos. 3 with 259 of 2005, it has been observed in Para Nos. 6 to 14 as under:

“6. In the report it is mentioned that the roads of different categories and under different situations are designed for designated design speeds at which vehicles could travel with convenience and safety. At certain locations, such as approaches to manned and unmanned level crossings, sharp curves, congested/accident-prone locations, residential streets, etc. control of speed may become necessary to promote orderly traffic movement and improved safety. Speed breakers, where

permitted to be installed, provide visual, audible and tactile stimuli which alert drivers and cause them to slow down. These can have different heights, lengths, spacing, signs, etc. It is mentioned that no particular design was suitable for all the types of vehicles using the road.

7. *A speed breaker is a hump surface across the roadway having a rounded shape with width greater than the wheel base of most of the vehicles using the road. An ideally designed hump should satisfy the requirements viz. (i) there should be no damage to vehicles nor excessive discomfort to the drivers and passengers when passing at the preferred crossing speed, (ii) the hump should not give rise to excessive noise or cause harmful vibrations to the adjoining buildings or affect the other residents of the area, and (iii) above the design speed, a driver should suffer increasing level of discomfort (but without losing directional control and without any vehicle damage) depending on the extent through which design speed is exceeded.*

8. *It is mentioned that use of speed breakers was justified primarily under the following three categories, viz. (i) T-intersections of minor roads with rural trunk highways, characterised by relatively low traffic volumes on the minor road but very high average operating speed and poor sight distances. Such locations have a high record of fatal accidents and as such a speed breaker on the minor road is recommended; (ii) Intersections of minor roads with major roads, and mid-block sections in urban areas where it is desirable to bring down the speeds; and (iii) Selected local streets in residential areas, school, college or university campuses, hospitals, etc. Also in areas where traffic is observed to travel faster than the regulated or safe speed in the area.*

9. *The other places where the speed breakers may be used include :*

(i) Any situation where there is a consistent record of accidents primarily attributed to the speed of vehicles e.g.

When hazardous sections follow a long tangent approach;
(ii) approaches to temporary diversions;
(iii) approaches to weak or narrow bridges and culverts requiring speed restriction for safety;
(iv) on the minor arms of uncontrolled junctions and at railway level crossings;
(v) sharp curves with poor sight distances; and
(vi) places of ribbon development, where road passes through built-up areas and vehicles travelling at high speeds are a source of imminent danger to pedestrians.

10. After considering the entire recommendations, the Indian Roads Congress has suggested that speed breakers are formed basically by providing a rounded (of 17 meter radius) hump of 3.7 meter width and 0.10 meter height for the preferred Advisory crossing speed of 25 km/h for general traffic. It is mentioned that more humps be constructed at regular intervals depending on desired speed and acceleration/deceleration characteristics of vehicles and that the distance between one hump to another can vary from 100 to 120 meters center to center.

11. The pattern of placement of speed breakers depends upon the location and the type of treatment used. Some of the suggested locations have already been indicated in the preceding paragraphs. At 'T' intersections speed breakers should be installed on minor roads or perpendicular arms about 10 metres away from the inner edges of major roads. Proper sign boards and markings are required to be provided at such locations. On sharp curves, available sight distances guide the placement and number of speed breakers. For other situations the Engineer-in-Charge should use his ingenuity and judgment.

12. To check the tendencies of drivers to avoid speed breakers and using shoulders, the Indian Roads Congress recommended that the speed breakers should be extended through the entire width of shoulder supported on a proper

base. For undivided carriageways, speed breakers should invariably be extended over the entire carriageway width including shoulders.

13. On bridges, speed breakers should not be provided. However, where frequent accidents have been reported or the bridges are on curves or they are narrow, either approach must have two speed breakers each.

14. The Indian Roads Congress has also given specification for speed breakers. According to it, speed breakers are laid by first marking the location of hump on the pavement and marking indents in this area for proper bonding. Surface is then cleared for all dust and loose particles and a tack coat applied. Forms of requisite heights, shape and width are then placed, and hot premixed bituminous material is poured to the required depth and shape. Forms are then lifted and the surface finished to required shape and edges rounded by trowel. The premixed material should be well compacted before opening to traffic. Allowance should be made for compaction, and irregularities should be corrected using bituminous materials having fine aggregate or by scrapping, as necessary. The material is then allowed to cure before opening to traffic. The guidelines provided by the Indian Roads Congress have to be implemented strictly. Consequently we direct:

(i) That in the entire State of Maharashtra henceforth all the speed breakers constructed shall be in accordance with the specification indicated in the guidelines given by the Indian Roads Congress. All other speed breakers which are not in consonance with the guidelines shall be demolished and new speed breakers be constructed strictly in accordance with the guidelines and with the prior approval of the police.

(ii) The drivers shall be warned of the presence of the speed breakers by posting suitable advance warning signs.

(iii) Speed breakers should be painted with alternate black and white bands to give additional visual warning. For better night visibility, it is desirable that the markings are in luminous paint/luminous strips. Embedded cat-eyes can also be used to enhance night visibility.

(iv) The Director General of Police, Maharashtra State, to give instructions" to Police Commissioners and Superintendents of Police of urban and rural areas in the entire State so as to ensure that the speed breakers are not constructed without their permission and the speed breakers are to be constructed in consonance with the guidelines provided.

(v) The Director General of Police and concerned Municipal Commissioners/Councilors in charge of Municipal Corporations/Councils to ensure that the offending speed breakers are demolished and new speed breakers are constructed in consonance with the guidelines provided by the Indian Road Congress.

(vi) The National Highways Authority shall also abide by the guidelines provided for them by the Indian Roads Congress within the State of Maharashtra."

18. In the case of ***Kumudben Sureshchandra and Ors. Vs. Jamnagar Municipal Corp.; MANU/GJ/0194/1996***, Gujarat High Court in para Nos. 16 and 17 has observed as under:-

"16. Under Chapter XIV of the Bombay Provincial Municipal Corporations Act, 1949 (BPMC Act, for short), all streets within a city are public streets. Public street is defined in the BPMC Act and reading section 203 of the Act, it is very clear that the Municipal Corporation has to construct, maintain and improve the streets. The Municipal Corporation, therefore, was under an obligation to maintain the streets in such a way so as not to

cause any obstruction to the traffic, and to maintain safety. In the instant case, by erecting a speed breaker, which is not provided under any law, and that too unscientifically, the Corporation has done not only an unauthorised act, but negligent too, which has resulted in the death of the deceased.

17. Sub-section (5) of Section 75 of the Act provides that no person shall willfully remove, alter, deface or in any way tamper with any traffic signs placed or erected under this section. Sub-section (6) of the Section 75 of the Act provides that if any person accidentally causes damage to a traffic sign as renders it useless for the purpose for which it is placed or erected under this section, he shall report the circumstances of the occurrence to a police officer or at a police station as soon as possible, and in any case, within twenty four hours of the occurrence. The purpose of giving such information is that immediate curative action can be taken so as to ensure that no hindrance is caused to the drivers of vehicles in the absence of the traffic sign. In the instant case, the erection of the speed breaker itself was not permitted by any law; and to add to its gravity, no signboard is kept to indicate existence of such a speed breaker; no markings are painted on the speed breaker and no light is provided. These ought to have been provided so that the speed breaker is made visible. If painting on the speed breaker is defaced, it is the duty of the Corporation to see that the same is painted. Thus, the Corporation, by remaining negligent in providing adequate facility, has made itself liable for the accident. If there would have been sufficient light and markings and signboard indicating the speed breaker, then it could have been said that eventhough the speed breaker is erected unauthorisedly, due care is taken by the Corporation to caution the drivers of vehicles about existence of the speed breaker. Had this been done, the Corporation could have argued that their liability is much less than that of the driver. From the evidence it is clear that four persons were travelling on the moped for quite some time prior to reaching the spot

where the speed breaker is erected and nothing happened till then, and it is only because of the speed breaker that the accident occurred. If the driver would have been cautious enough while carrying four persons, and if he would have been in a slow speed, then the accident could have been avoided. It appears that because of the slope, the speed of the vehicle must have increased. That may be a factor to be taken into consideration and even it is admitted by Sureshchandra that he was driving the moped in speed. It was expected from him when he was riding with three others to be at a slow speed, especially while approaching declivous slope. Driver has overlooked this aspect and has approached further towards the slope which was declivous, responsible for increase in speed, and thus the driver too remained negligent. When we drew Mr. Shah's attention to the aforesaid provisions of the Act and to the facts, he could not submit that the driver of the moped was not at all negligent, more particularly when he was riding the moped in breach of the provisions of the Act, and, therefore, it can safely be said that Sureshchandra, the driver of the moped was also negligent in causing the accident. It is very clear that one who rides in contravention of duties imposed by a common law or statute would render the rider as a negligent rider."

19. In the case of ***N. D. M. C. Vs. Shri Chander Kishore Aggarwal – 2011 SCC Online Del 2381***, wherein it has been observed that the central Government may make rules under Section 110 read with Section 116 of the Motor Vehicles Act, 1988 for maintenance of motor vehicles which includes the provision for speed-breakers, signboard. The doctrine of “*res-ipsa loquitor*” has been rightly adverted to. This maxim proposes two elements, (I) the accident explains only one thing and that is that the accident could not

ordinarily occur unless the defendant had been negligent; and (ii) that the cause of mischief was at the material time exclusively under the control of management of the defendant. In the present case this rule of evidence has not been rebutted by the original defendants, it was for defendant to led evidence to prove that there were proper road signs indicating the presence of the speed breaker, but no such evidence was led to that effect.

20. In the case of ***J. P. Sanghi, Advocate Vs. State of M.P. and another; AIR 1985 MP 109***, the Division Bench of Madhya Pradesh High Court has observed in Para Nos. 8 to 12, as under:-

“8. It was also suggested that the highway itself has not been defined and therefore it could not be contended that the highway will not include road humps or speed breakers as they may have been erected. However, it was not disputed that in absence of any specification or any particular design of the road humps, road humps have been erected of various types and of different heights and at a number of places. It was, however, not disputed that road signals wherever road humps or speed breakers are erected to control speed should be erected as in fact that is what has been provided in the Motor Vehicles Act itself for checking the speed or limiting the maximum speed of the vehicle at a particular place and it is also not disputed that wherever any speed breaker or road hump is erected it is expected that signals clearly giving a warning to the driver in advance must be put up so that the road hump or the speed breaker instead of serving the purpose for which it is constructed may itself not endanger a vehicle or a person riding in a vehicle.

9. *Although a highway may not have been defined, but it could not be said that highway will mean not a plain road. Highway, in Shorter Oxford English Dictionary, has been explained to mean a public road open to all passengers, a high road; esp. a main or principal road; the ordinary or main route by land or water; any well beaten track. Therefore, it could not be doubted that highway means a plain road open to vehicular traffic.*

10. *As discussed above, it is clear that so far as we are concerned, there is no provision in either the Highway Act or the Motor Vehicles Act or in the Municipal Corporation Act providing for the construction of road humps or speed breakers. It is also clear that as it appears from the observations in Halsbury's Laws of England, there some regulations have been framed but unfortunately we have no regulations also. It was contended by learned Counsel for the parties that in the scheme of the Motor Vehicles Act Under Section 91 the power has been conferred on the State Government to frame rules and Sub-clauses (i) and (j) of this section bring this matter within the scope of Section 91 and it is open to the State Government to frame rules for road humps or speed breakers as and when they are thought necessary to achieve the purpose indicated in Sub-clause (i) or Section 91 of the Motor Vehicles Act and it was contended that this Court should issue direction to the State Government to frame rules.*

11. *It is also clear that Section 71 of the Motor Vehicles Act provides for speed limit in certain cases but the scheme of that section does not provide for creation of any road hump or speed breaker and it is not disputed that these speed breakers and road humps wherever they have been constructed either on the main roads in the town or on the national highway, they have been done under the executive authority for which there are some instructions to which reference has already been made from the Central Government but it was contended that in the absence of any rules and as there is no specific provision*

laying down the type of the road humps and design, height and other things, the speed breakers and road humps are being erected indiscriminately and without any system. On behalf of the Municipal Corporation a number of papers have been filed which indicate that as and when there was a road accident or a possibility thereof because of the public demand some of these road humps and speed breakers have been erected. There is also a reference to some committee which advised the Corporation to do it but none of these papers disclose that any thought has been given to the nature of road humps or speed breakers, their dimensions and other things and it is because of this that speed breakers and road humps of different varieties and different sizes have been erected at different places in the town and also elsewhere. For the petitioners it was seriously contended that apart from this kind of road humps and speed breakers wherever they have been constructed, proper road signals as is provided in the Motor Vehicles Act have also not been put up or have been put up in a manner in which they do not give a caution to the driver sufficiently in advance and as a result of which instead of securing the purpose, i.e. safety and security, it sometimes even endangers life and property. Learned Counsel appearing for the respondents frankly conceded that road signals as provided in the Motor Vehicles Act and rules have to be put up wherever speed limit is provided and if a road hump or a speed breaker is erected for purposes of checking the speed of the vehicle of signal to indicate it ought to be provided.

12. In view of the discussion above, therefore, the question that arises is about the directions which the petitioner seeks in this petition. So far as the direction about putting up of the road signals is concerned, there is hardly any controversy. It is, therefore, directed that wherever any speed limit for vehicle is fixed or some kind of road hump or speed breaker is erected appropriate road signals giving a clear indication all the time during day and night shall be put up, and it will also be kept in

view that the signals should be so put as will give a caution to the drivers of the vehicles that they have to pass through an area where there is restriction of speed and there is some kind of road hump or speed breaker.”

21. In the case of ***TMT Selvi Vs. State of Tamil Nadu & Ors; AIR 2010 (NOC) 255 (MAD.)***, it has been held that the sewerage board is liable to compensate for death of child who fell in the sewerage line left open due to the improper maintenance of the manhole by metro water supply and sewerage board.

22. I have gone through the evidence led by present Respondent/original Plaintiff. PW-2, Pradip Prabhakar Rao Kulkarni deposed at Exh.27 that, on 29.11.1985 at about 7.00 p. m., he was proceeding on his motorcycle towards HUDCO and his mother PW-2 was his pillion. The speed breaker newly constructed by the Defendant near city bus stop T. V. Centre, HUDCO without any signboard which could shown sign that be cautious there is speed breaker ahead. No streetlight was working there and therefore, he could not notice the existence of speed-breaker there, due to which his motorcycle was jumped and his mother (Plaintiff No.2) fell down from the motor cycle and sustained injuries to her forehead on left side. So also, his mother received abrasions on her body. One

Chandrakant Sonwane has helped him to take his mother to dispensary of Dr. Jhinjurde Patil who advised him to take his mother to Government Medical College and Hospital, Aurangabad. Subsequently, her mother was medically treated in Government Hospital.

23. It is not in dispute that the defendant CIDCO authority constructed the speed-breaker near bus stop T. V. centre and no any signboard was erected by CIDCO to give sign of caution about existence of speed breaker ahead. The evidence of DW-1 also does not suggests that any white strips were applied on the speed breaker and cautioned board was erected before the speed breaker.

24. As per the evidence of PW-4, the speed-breaker s constructed near T. V. center bus stop were of considerable height and without specification provided under the Government circular Exh.47 issued on 04.06.1982. As per Exh. 47 Circular, the Building and Construction Department of the State Government specified that, the speed-breakers should be of rumbling strips of 15 to 25 mm wide space and distance between two stripe must be of meter center to center. Therefore, it is abundant clear that the speed-breakers required to be constructed as per Government design and

specification. Since the Defendant "CIDCO" is the agency of State, therefore, Exh. 47 Circular issued by the State Government is binding upon the Defendant. However, the Defendant authority constructed the Speed-breaker near T.V. center Bus stop against the specification of Exh. 47 due to which the Plaintiff No. 2 has fell down from motorcycle and sustain injuries. Therefore, the tortious liability for negligence is upon the defendant authority.

25. On 10th August, 1998, the learned first appellate Court has passed the impugned Judgment and Decree holding that, as per the Government circular Exh.47, the Government has framed standard guidelines in respect of construction of speed breakers on National and State Highways. The defendant CIDCO, is admittedly a Government agency, therefore, the defendant cannot claim that the circular Exh.47 is not binding upon it. As per evidence of PW-4, the speed breakers constructed by the defendant authority near T.V. Centre bus stop is of considerable height and no signboards were fixed to indicate about existence of speed breakers ahead. Therefore, the speed breaker which was constructed by the defendant authority were not as per the specification, due to which accident occurred and the Plaintiff No. 2 has to sustained head injury, which was also

corroborated in evidence of Medical Officer PW-3, Dr. Dilip Lomte hence first Appellate court awarded the compensation to the tune of Rs.5,000/-. Under these facts and circumstance of the preset case as well as considering the law laid down in the above cited cases, findings recorded by the learned first appellate Court appears to be justifiable. Accordingly, I answer the question No.1 in affirmative that the defendant CIDCO being a Government agency is bound to follow the circular at Exh.47. In view of above discussions, present Second Appeal is hereby dismissed.

26. In view of dismissal of present appeal, Civil Application No.1073 of 1999 shall also stands disposed of.

27. No order as to costs.

[Y. G. KHOBRAGADE, J.]

SMS