

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

FIRST APPEAL NO.2051 OF 2013

Sau.Sunanda Soma Nikam,
Age 30 years, Occu. Service,
R/o 35-A, Krihna Kamal Housing
Society, Near Golibar Tekdi,
Jamanagiri road, Dhue 424 001

.. Appellant
(Original owner/defendant
No.2)

Versus

1. Madhukar Chintaman Jadhav,
Age 60 years, Occu. Agriculture,
 2. Sau. Nalini Madhukar Jadhav,
Age 50 years, Occu. Household
- Both r/o Nandale Budruk,
Taluka and District Dhule
3. Jaypalsing Darbarsing Jamadar,
Age Adult, Occu. Driver,
R/o Bhorkheda, Taluka Shirpur,
District Dhule

.. Respondents
(Respondents No.1 & 2
are original claimants
and respondent No.3
is the driver/original
defendant No.1)

Mr A.S. Savale, Advocate for appellant
Mr S.S. Patil, Advocate for respondents 1 and 2
Mr A.B. Girase, Advocate for respondent No.3

CORAM : N.W. SAMBRE, J.

DATE : 23rd June 2015

PER COURT

1. Mr Patil, learned Counsel for respondents No.1 and 2, in view of death of respondent No.1 submits that the appeal can be ordered to be abated against respondent No.1 and further can proceed against respondents No.2 and 3. In view of above, appeal stands abated

against respondent No.1.

2. The vehicle owner who is saddle with 80% of the compensation amount by the Motor Accident Claims Tribunal, Dhule in M.A.C.P. No.313/2006 by award dated 15th April 2013 has preferred present appeal.

3. The bone of contentions by the appellant is that the accident had occurred due to head on collusion. He would urge that the negligence of both the parties i.e. the appellant, who owns the jeep involved in accident and of one who was riding two wheeler was established before the Tribunal having regard to break marks. According to appellant, 80% amount of compensation saddled on the owner is not just and proper. Learned Counsel for the appellant would urge that the compensation as ordered is liable to be modified with a finding that the negligence of the appellant could be up to 50% only.

4. Mr Patil, learned Counsel for the respondents 1 and 2 while opposing the above referred submissions has invited attention of this Court to the observations made by the Tribunal in paragraph 12 of the award delivered by it so as to canvass that the appellant was unable to control his vehicle for 15 feet as he was required to apply the break of the vehicle having seen the vehicle coming from the opposite direction. According to him, the award is just and proper and does not call for any interference.

5. The finding of the contributory negligence recorded by the Tribunal is supported by the fact that the break marks up to 15 feet were noticed and as such, the appellant was held to be responsible to the extent of 80% for causing the accident in question. In my opinion, the observations of the Tribunal so as to place reliance upon the break marks for concluding that the appellant was responsible to the extent of 80% of the compensation is not just and proper.

6. However, it is required to be taken note of that in the case of contributory negligence, the spot panchnama should have been properly evaluated by the Tribunal, so as to find out location of both the vehicles. The Tribunal has noticed the location of four wheeler to be at the centre of the road, however, the location of two wheeler has not been established by the Tribunal which has resulted into the accident. In my opinion, therefore, it will be appropriate to infer that the application of breaks by the four wheeler which left break marks of tyres on the road to the extent of 15 feet would be a basis for concluding that the appellant was responsible to the extent of 80% negligence.

7. However, it is required to be taken note of the fact that the respondents-claimants cannot be left with the liability of sustaining 80% of the contributory negligence.

8. In the facts and circumstances of the case and particularly the observations made by the Tribunal, it will be appropriate to modify the

degree of negligence. In the facts and circumstances, it is held that the negligence of the appellant can be quantified to 65%. Award as such stands modified accordingly. Appeal stands partly allowed.

(N.W. SAMBRE, J.)

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