

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

FIRST APPEAL NO.: 557 OF 2004

1. Anna Appa Deokar,
Age: 24, Occ.: Jeep Driver,
R/o Pimprala, Tal. & Dist. Jalgaon.
2. Senior Geologist,
Ground Water Surveys &
Development Agency,
Behind Akashwani Bhuvan,
Sindhi Colony, Jalgaon.
3. The State of Maharashtra,
Through the Collector,
Jalgaon.

... **APPELLANTS**
(ORIG. OPPONENTS.)

VERSUS

Zakir Ali Shaukat Ali,
Age: 48 years, Occ.: Rickshaw Owner,
R/o Municipal House No.72,
Polen Peth, Jalgaon.

... **RESPONDENT**
(ORIG. APPLICANT)

Miss. R. P. Gour, AGP for the Appellants.
Mr. G. V. Wani, Advocate for the Respondent.

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CORAM:-
DATED:-

T. V. NALAWADE, J.
15th FEBRUARY, 2016.

JUDGMENT:

1. The appeal is filed by the Government, owner of

offending vehicle, against judgment and Award of Claim Petition No. 304 of 1994 which was pending before the Claims Tribunal, Jalgaon. Heard learned A.G.P.

2. The accident took place on 17th September, 1992 at 08.30 p.m. within local jurisdiction of City Police Station, Jalgaon. It is the case of claimant that he was a pedestrian and one jeep gave dash to him from back side. It is his case that he was present on correct side of the road but dash was given by jeep from back side and accident took place due to fault of jeep driver. It is alleged that the jeep driver did not stop the vehicle after giving him dash and some friends who were in his company helped him in shifting him to the hospital.

3. It is the case of claimant that report was given to the concerned police station and then it was realised that it was the jeep of Respondent State Government and it was being driven by Respondent No.1. It is contended that in the accident he sustained grievous injuries like fractures to both bones of left leg and even after the treatment he is not fully recovered. Under various heads he had claimed compensation of Rs.1,72,000/-.

4. Respondent No.1, driver of the offending vehicle filed written statement and denied that in the accident the vehicle of the Government was involved and he was on driver's seat. Other contentions were also denied. He took specific defence that on that day the vehicle was in the custody of office though he was employed as driver on the jeep.

5. The Respondent Nos.2 and 3, the registered owner, Government department and Government filed written statement and they also denied the involvement of the vehicle.

6. The claimant examined himself and he gave evidence that he was in the company of his friends and when he was pedestrian, the jeep of Respondent, Government gave dash to him from back side and the accident took place due to fault of Respondent No.1. He placed reliance on copies of police papers. Accident took place on 17th September, 1992 at about 08.30 p.m. and the Panchanama Exhibit-55 was prepared by police on 18th September, 1992. The Panchanama shows that there was blood on the spot of the accident and it was informed to police by the witness that

Jeep No.MAF-827 was involved in the accident. Copy of charge sheet is produced on the record and it shows that after making investigation police formed opinion that the aforesaid jeep was involved in the accident and the Respondent No.1 was driving the jeep at the relevant time.

7. Claimant examined one Devram Patil a police officer and has given evidence that when he heard about the accident he went to the spot and during investigation he found that the jeep of Respondent, government was involved in the accident. Copy of station diary is produced at Exhibit-77 and it also shows that on the day of the accident entry was made in the station diary on the basis of information received from the witnesses and the number of the jeep and its driver were mentioned in the station diary. One witness Shaikh Yusuf, the friend of the claimant has given evidence that he was in the company of the claimant and when the driver did not stop jeep after giving dash to the claimant he gave chase to the jeep and he noted the number. As against the aforesaid evidence, Respondent examined one Dhananjy, Store Keeper of Government department. He has tried to say that on that day the jeep was taken out for repair

work but it was deposited with the office at 18.30 p.m. He could not give explanation as to why on that day he was present in the office up to 06.30 p.m. Anand Deokar, Respondent No.1, driver of the jeep, has given evidence that he reached the vehicle to the office at 06.30 p.m. and accordingly entry was made by him in the log book. There was virtually no reason for the claimant to falsely implicate a jeep of Government Department. Further, after investigation police formed opinion that the jeep of Government Department was involved in the accident. This Court holds that on preponderance of probability the claimant proved that the jeep of Government Department mentioned above was involved in the accident and the accident took place due to fault of Respondent No.1. In the police papers there is a mention that grievous injury like fracture to the left leg was sustained by the claimant in the accident. The record of injuries and treatment is not disputed before the Tribunal. This record shows that there was compound fracture of both bones of left leg, lower 3rd and there were injuries on forehead and vertex. The record shows that claimant was required to spend around Rs.10,800/- for treatment and he was expected to spend around Rs.12,000/- more as one more operation was

to be performed. The record prepared by Government Hospital shows that due to aforesaid injuries there is permanent disability to the extent of 10% extent. The bills of medicines etc. are also produced.

8. The aforesaid unrebutted record of injury and treatment shows that claimant was required to spend more than Rs.10,800/- on treatment and he was required to spend on medicines also. As he was to undergo one more operation, certificate was given by doctor that there was need to spend more amount. The age of the claimant was 28 years at the relevant time. Even after notional income can be presumed which can be Rs.15,000/- per annum, after considering the extent of disability and its effect on the capacity to make income, much more compensation could have been granted. The amount of more than Rs.20,000/- was required to be spent on treatment and medicine and it can be said that the amount of only Rs.20,000/- is given under the heads of loss of future income and permanent disability. As meager amount of compensation is given, it is not possible to interfere in the decision of the Tribunal on the point of quantum of compensation also.

9. In the result, appeal stands dismissed.

(T. V. NALAWADE, J.)

Dated:15/02/2016.
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