

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

FIRST APPEAL NO. 367 OF 2010

Ganeshrao s/o Nivruttirao Waghmare

Age : 53 Yrs., Occ. Business,

R/o : Shastri Nagar, Parbhani

Tq. & Dist. Parbhani.

.... APPELLANT/

[ORI. PETITIONER]

V E R S U S

1. SANDEEP S/O Billuseth Nayyar

Age : 43 Yrs., Occ. Business,

R/o : Lalu Seth Chawal,

Behind Tahsildar Kacheri,

Daund, Tq. Daund, Dist. Pune.

2. The Branch Manager

New India Assurance Co. Ltd.

Parbhani.

.... RESPONDENTS/

[ORI. RESPONDENTS]

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Mr. S.K.Adikine, Advocate for Appellant.

Mr. A.G.Kanade, Advocate for R.No. 2.

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CORAM : T.V.NALAWADE, J.

DATE OF JUDGMENT : 17th FEBRUARY, 2016

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JUDGMENT :

1. The Appeal is filed by the original claimant of M.A.C.P. No. 50/2004 for getting enhancement of compensation. Learned counsels for both sides are heard.

2. The claim was filed for getting compensation in respect of damage caused to the vehicle of the claimant in the accident. Accident took place on 26/10/2003 and there was collision between the Truck of the claimant bearing No. MH-23-0885 and other vehicle of respondent No. 1 bearing No. MH-14-4056. The truck of respondent No. 1 was insured with the respondent No. 2. It is contended by the claimant that damage worth ₹ 1.5 Lakh was caused to his truck and he is entitled to get that compensation from the respondent.

3. The insurance company filed Written Statement and contested the matter. It was contended that the accident took place due to fault of the driver of the claimant. Ex-parte order was made as against the owner of the offending vehicle.

4. For proving the claim, claimant examined

himself and gave evidence as per the aforesaid contentions. He has given evidence that he had got prepared estimate in respect of the loss sustained and he spent amount on repairs of vehicle. He placed reliance on police papers. In the spot panchanama, there is mention that the claimant had sustained loss of ₹ 90,000/- due to the damage caused to his vehicle. The claimant produced other record like estimate prepared by the valuer and the valuer is examined. The assessment of damage was done by the valuer and according to the valuer, the claimant sustained loss of at least ₹ 96,650/-. The claimant has paid ₹ 3,000/- towards fees of the valuer. He produced estimate given by one work shop owner but the said person was not examined.

5. On the basis of aforesaid evidence, the Tribunal came to the conclusion that the claimant sustained loss of ₹ 90,000/-. The Tribunal has however held that the driver of the claimant was equally responsible for the accident and due to such contributory negligence only 50 % of the amount is given.

6. The evidence of the claimant shows that he has

no personal knowledge regarding the accident. He admits that it was virtually head on collision. The spot panchanama also shows that there was head on collision.

7. In view of the aforesaid admission and the record, it was necessary for the claimant to examine his driver and prove that there was fault of the driver of other vehicle and there was no fault of his driver. As no such evidence was given, the doctrine of '*res ipsa locutor*' can be used against the claimant. The Tribunal has not committed any error in holding that both the drivers were responsible for the accident and due to which entitlement is reduced by 50 %. This Court holds that there is no reason to interfere in the decision of the Tribunal.

8. In the result, First Appeal No. 367 of 2010 stands dismissed.

[T.V.NALAWADE, J.]