

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

FIRST APPEAL NO. 3002 OF 2013
WITH
CIVIL APPLICATION NO. 1244 OF 2014

Madhukar s/o. Deorao Ghadge

....Appellant.

Versus

Vishwas s/o. Abarao Pawar and Anr.

....Respondents.

Mr. R.F. Totala, Advocate for appellant.

Mr. V.B. Garud, Advocate for respondent No. 1.

CORAM : T.V. NALAWADE, J.

DATED : 6th January, 2016.

ORDER :

1. The appeal is filed to challenge the judgment and award of Claim Petition No. 305/2010 which was pending before the Claims Tribunal, Aurangabad. The claim petition filed by respondent No. 1 for compensation in respect of damage caused to his property is allowed by the Tribunal and the owner of offending vehicle has challenged the said decision. Both the sides are heard for final disposal at admission stage.

2. The accident in question took place on 22.3.2009 at about 9.00 to 10.00 a.m. in village Khatkheda, Tahsil Kannad, District Aurangabad. It is the case of claimant - Vishnu that he is

the owner of the house situated in the village and dash was given to this building by tractor bearing No. MH-20/C-2439. Trailer No. MH-20/F-8040 was attached to this tractor. It is contended that accident took place due to the fault of respondent - Sanjay, who was driving the tractor at the relevant time. The tractor was standing in the name of present appellant in R.T.O. record. It is the case of claimant that he sustained loss of Rs. 2,00,000/- due to damage caused to the building and so, he is entitled to get this amount.

3. The owner filed written statement and contested the matter. He denied everything. Alternatively, he contended that the wall to which damage was caused, was constructed on the property of Village Panchayat by making encroachment and so, the claimant is not entitled to get anything. He contended that panchanama subsequently drawn by the Village Panchayat shows that it was encroachment. He contended that there was no negligence on the part of driver of the tractor. He contended that the claimant was Police Patil of the village and he created false record to get the compensation.

4. Respondent No. 2, driver did not contest the matter. Issues were framed on the basis of aforesaid pleadings. The

claimant examined himself. He has no personal knowledge regarding the accident, but he gave evidence on the damage caused to his building and loss sustained by him. He had appointed one valuer to ascertain the loss and he has relied on police papers in which accident and damage is mentioned. The assessment extract in respect of this house is produced by the claimant. The architect, valuer who made assessment of the damage is examined and he has given evidence that the damage to the house was of Rs. 2,28,000/-. The report prepared by him is proved as Exh. 35.

5. One Ambadas Pawar, who was occupying the said premises has given evidence that on that day, the aforesaid tractor gave dash to this building and accident took place due to fault of driver of the tractor.

6. On the other hand, the owner examined one Rajendra Pawar to prove that the construction of the claimant was on the property of Village Panchayat and it was made by making encroachment. Another witness Nitesh Walvi is examined on the same point and the panchanama of encroachment prepared by the Village Panchayat is proved as Exh. 46. However, the panchanama was prepared on 12.8.2010

and it was made after making construction of the walls after the accident.

7. The police papers are exhibited by the Tribunal and they show that the accident took place on 22.3.2009 and the crime was registered on 7.4.2009. It is not disputed that original respondent No. 2, driver of respondent No. 1 was chargesheeted. The police mentioned in panchanama that there was damage of Rs. 1,00,000/- to the building of the claimant. In the panchanama, there is description of the damage caused to the building. There was damage caused to two walls and in the panchanama, it is mentioned that the loss was to the tune of Rs. 1.5 lakh.

8. The appellant did not examine the driver and there are aforesaid circumstances. The aforesaid unrebutted evidence is sufficient to prove that the tractor owned by the present appellant was involved in the accident, the tractor had left the road and had given dash to the building of original claimant. There is no reason to disbelieve the assessment of damage made by police in the panchanama. The Tribunal has refused to rely on the report of the valuer appointed by the claimant. As there is nothing in rebuttal on the extent of damage caused to

the building, it is not possible to interfere in the decision given on the quantum of compensation. The contention that the encroachment was made by claimant on the property of Village Panchayat is not acceptable as the record of encroachment was subsequently created. Thus, there is nothing on the basis of which the decision can be interfered with.

9. In the result, the appeal stands dismissed. Civil Application is disposed of.

[T.V. NALAWADE, J.]

ssc/