

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

**FIRST APPEAL NO. 424 OF 2001
WITH
FIRST APPEAL NO. 555 OF 2001**

The State of Maharashtra

... Appellant

Vs.

Anil J. Jagtap & Ors.

... Respondents

Mr. A.R. Patil, AGP for the appellant in both the matters.

Smt. A.R.S. Baxi, Advocate for respondent no. 6 in both the matters.

Mr. Mohan N. Dhamal, Advocate for respondent nos. 5(1) to 5(5) in both the matters.

CORAM: MRS.MRIDULA BHATKAR, J.

DATE: 7th January, 2016.

ORAL JUDGMENT:

In both the Appeals, the original claimants and opponents are same and as the vehicle involved in the accident is same, these Appeals are taken together and disposed of by a common order.

2. First Appeal No. 424 of 2001 is filed challenging the judgment and award dated 31st July, 1995 passed by the learned Member, Motor Accident Claims Tribunal, Solapur in M.A.C.P. No. 181 of 1991 thereby awarding compensation of Rs.44,800/- along with interest @12% p.a. against respondent nos. 1 and 4, i.e., Maharashtra State Electricity Board and Director of Insurance; and respondent nos. 2 and 3, i.e., owner of the jeep and insurance company were also directed to pay an amount of

Rs.19,200/- along with interest @ 12% p.a. Lilabai J. Jagtap died in a road accident.

3. First Appeal No. 555 of 2001 is filed challenging the judgment and award dated 31st July, 1995 passed by the learned Member, Motor Accident Claims Tribunal, Solapur in M.A.C.P. No. 180 of 1991. By the said judgment and award, the learned Member has allowed the Application and fixed the liability on respondent nos. 1 and 4, i.e., Maharashtra State Electricity Board and Director of Insurance, of Rs. 24,500/- with interest @ 12% for some period and further 15%. The learned Member also fixed the liability on respondent nos. 2 and 3, i.e., owner of the jeep and insurance company of Rs.10,500/- along with interest. Champabai Avaba Kamble died in a road accident.

4. Lilabai Jagtap and Champabai Kamble both were travelling in Jeep no. MH-11-4120 from Loni, District Satara to Pandharpur and respondent no. 2-Ganpat Kadam was driving the said jeep which was insured with respondent no. 3-Insurance Company. The said jeep collided on a goods truck bearing registration no. MTO-3821 owned by respondent no. 1/MSEB and which was insured with respondent no. 4/Director of Insurance, Mumbai.

5. Both the Appeals are filed by the State of Maharashtra at the instance of Director of Insurance. In the collusion, both Leelabai Jagtap and Champabai Kamble lost their life, so their children filed this claim for compensation. After notice, all the respondents appeared and defended the claim on the point of actual impact and negligence. The claimants tendered oral as well as documentary evidence. So also, the insurance company tendered the evidence. After considering the evidence of the claimants and the defence taken by the respondents, the learned Member of the Tribunal allowed the claim and saddled liability on respondent no. 1 and 4 to pay an amount of Rs.44,800 with interest @ 12% p.a. for some period and @15% for some period. It also held respondent nos. 2 and 3 responsible to pay Rs.19,200/- with interest, however, they have not challenged.

6. The point of determination is whether the compensation granted by the learned Member of the Tribunal is excessive and needs to be set aside.

7. The learned AGP for the appellant/State of Maharashtra has submitted that the learned Judge of the Tribunal has erred in considering the point of contributory negligence and wrongly held the truck driver responsible to the extent of 70% and driver of the jeep only 30%. There is

also an error committed while deducting the amount and fixing the quantum.

8. The learned counsel for the respondents/original claimants supported the judgment and award passed by the learned Member of the Tribunal.

9. I have perused the notes of evidence, judgment and the papers produced herein. The fact of accident and death of these two ladies in the said accident cannot be denied, that is established. The original claimant Anil Jagtap, son of deceased Leelabai, had entered the box and gave evidence on this point. The appellant have examined PW-1 Sanjay Kulkarni, who was working as a cleaner on offending truck no. MTO-3821. He obviously defended the driver of the truck and put complete blame on the driver of the jeep. However, the learned Member of the Tribunal has discussed in detail the evidence of Sanjay Kulkarni, considered panchnama Exhibit 5 filed in M.A.C.P. No. 179/1991. He has properly construed the occurrence of the accident on the basis of the contents in the panchnama and held that the truck was empty and was driving in high and excessive manner and that after the impact, it went off at the distance of 60 ft. away from the road and jeep flung in the field. In view of this, the percentage of

contributory negligence which is attributed as 70% to the driver of the truck and 30% to the driver of the jeep is found correct. The evidence of Vinod Jagtap on the point of quantum and loss of quantum is also properly considered. The amount of loss of estate, love is correctly given and so the award passed by the learned Member of the Tribunal is found just and adequate. Hence, no interference is required in the judgment passed by the learned Member of the Tribunal. Both the First Appeals are dismissed. Civil Application, if any, is also disposed of.

(MRIDULA BHATKAR, J.)