

Anand

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO.1051 OF 2016

IN

MOTOR ACCIDENT CLAIM PETITION NO.132 OF 2003

The State of Maharashtra (Through the Director of Social Welfare, Maharashtra State, Pune-3, Church Road, Pune.)	.Appellant (Original Opponent No.1)
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V/s.

- | | |
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| 1.Kum. Trupti Yashwant Chavan
Age:8 years, Occu:Education,
R/o.363, Jayasing Park, Kagal,
District - Kolhapur. | .Respondents
(Original
Claimant) |
| 2.Shri Vilas Maruti Kambale
Age:Major, Occu:Driver,
R/o.Gadmudshingi, Tal.Karvir,
District - Kolhapur. | .(Original
Opponent No.2) |

WITH

FIRST APPEAL NO.1053 OF 2016

IN

MOTOR ACCIDENT CLAIM PETITION NO.133 OF 2003

WITH

CIVIL APPLICATION NO.6781 OF 2007

(For Stay)

IN

FIRST APPEAL NO.1053 OF 2016

IN

MOTOR ACCIDENT CLAIM PETITION NO.133 OF 2003

The State of Maharashtra
(Through the Director of
Social Welfare, Maharashtra
State, Pune-3, Church Road,
Pune.)

.Appellant
(Original
Opponent No.1)

V/s.

1.Shri Yashwant Dhondiba Chavan
Age:53 years, Occu:Service,
R/o.363, Jayasing Park, Kagal,
District - Kolhapur.

.Respondents
(Original
Claimant)

2.Shri Vilas Maruti Kambale
Age:Major, Occu:Driver,
R/o.Gadmudshingi, Tal.Karvir,
District - Kolhapur.

.(Original
Opponent No.2)

Mr.Yogesh Dabke, Advocate, for the Appellant-
State in both matters
None for the Respondents

CORAM : M.S.SONAK, J.

DATE : 02.02.2017

ORAL JUDGMENT

. These two Appeals can be finally
disposed of by a common Judgment and Order.

2. On 16.01.2017, this Court made the
following order.

"1] On 1 August 2016, this Court had granted ad interim relief in terms of prayer clause (b) on the condition that the applicant/appellant deposits entire decretal amount in MACT, Kolhapur, before the returnable date. The record indicates that a report has been received from the Assistant Superintendent (Fin) District Court dated 10 November 2016 which states that the amount of compensation has not been deposited by the applicant in the MACT till the said date. In view of the aforesaid, the civil application no.6779 of 2007 seeking stay on the execution of the impugned award is hereby dismissed.

2] The appeal which has been admitted only in the year 2016, in fact relates to the year 2006. The accident in this case took place on 20 October 2002 and award of compensation was made on 2 May 2006.

3] Taking into consideration the aforesaid circumstances, place this appeal for final disposal on 2 February 2017 on Supplementary Board (HOB) subject to over night part-heard matter. By the said date, the appellant to supply the paper book or notes of evidence. The matter to be listed on 2 February 2017 S.B.(HOB) whether or not the paper book is supplied or notes of evidence is furnished."

3. Today, Mr.Dabke, learned AGP has made the following submissions in support of the Appeals.

(a) That there is no evidence on record to show that the Jeep which was alleged to be involved in the accident was a Government Jeep and in the absence of such evidence, no liability could have been fastened on the State Government;

(b) In any case, it is submitted that there is no material on record to establish that a driver of the Jeep was rash and negligent. In absence of any such material, there was no question of fastening any liability either upon the driver or the State jointly and severally;

(c) In F.A.No.1051 of 2016, the Claimant was a minor girl, eight years of age, who is alleged to have suffered some injuries. Since the victim girl suffered disability only to the extent of 14%, Award of Rs.85,850/- by way of compensation is excessive and warrants

interference;

(d) In F.A.No.1053 of 2016, which is instituted by the father of the victim girl in F.A.No.1051 of 2016, the father is alleged to have suffered disability to the extent of only 10%. In such circumstances, Award of compensation of Rs.63,350/- is excessive and warrants interference.

4. There is absolutely no merit in any of the submissions raised on behalf of the Appellant-State. In this case, the State as well as the driver, who were styled as Opponent Nos. 1 and 2 filed a Joint Written Statement, in which, they took the defence that the driver was driving the vehicle in moderate speed, observing traffic rules and it is the motor cyclist, with whom, the victim girl was riding pillion, who came in a high speed and in a negligent manner dashed against the Jeep in question. Further, in the defence, it was stated that on the date of

the accident Jeep was proceeding from Ichalkaranji in order to escort the Minister of Social Welfare. There was no defence that the Jeep did not belong to the State Government and therefore, the State Government was not liable. In fact, from the defence raised, it is evident that the Jeep belonged to the State Government and in the process of escorting the Minister for Social Welfare, was involved in the accident which has given rise to the Claim Petitions. There is no dispute about the registration number of the vehicle. There is also no dispute that FIR was lodged in the matter of the accident and even a Spot Panchanama was prepared. If the State Government was indeed serious in its contention that the Jeep involved in the accident did not belong to them, it was for them to produce cogent material on this aspect. In fact, it appears that no such defence was also raised in the statement of defence. For all these reasons, the first ground urged by

Mr.Dabke is liable to be rejected.

5. As noted earlier, the Claimants i.e. Respondent No.1 in both the Appeals were riding the motor cycle when the Jeep dashed against the motor cycle. The Respondent No.1 in F.A.No. 1053 of 2016, who was riding the motor cycle, is the father of Respondent No.1 in F.A.No. 1051 of 2016, who was then eight years old. The father stepped into witness box and deposed to the circumstances in which the accident took place and how he and his minor daughter suffered injuries as a result of the accident. In addition to this, the FIR and Spot Panchanama is also produced on record. There is material on record that the driver of the Jeep i.e. Opponent No.2 in the two Claim Petitions was prosecuted by the concerned police for the offences punishable under Sections 279, 337, 338, 427 of the Indian Penal Code and under Section 184 of the Motor Vehicles Act, 1988. In contrast, no

evidence, whether documentary or oral was produced on behalf of the Appellant. In particular, the Opponent No.2 i.e. the driver of the Jeep did not step into witness box to depose to the circumstances of the accident. The impugned Award states that the width of the road at the spot of the accident was 24 feet and the accident had taken place at the center of the road. There is evidence on record to establish that the Jeep was following the vehicle of the Minister of Social Welfare as an escort and was traveling at high speed. If the State or the driver of the Jeep were serious in their contention that it was the motor cycle rider who was negligent in the matter, then the least that was expected was that the driver of the Jeep steps into witness box and deposes to the circumstances of the accident. Upon cumulative consideration of all these circumstances, there is no merit in the second submission of Mr.Dabke.

6. On the aspect of quantum of compensation, it is correct that the disability suffered by the victim girl, who was eight years at the time of the accident is reported to be 14%. Towards such disability, however, only an amount of Rs.25,000/- has been awarded. An amount of Rs.50,847.81/- has been awarded towards the long and expensive treatment which the victim girl had to avail on account of the accident. In support of such amounts, the M.A.C.T., Kolhapur has relied upon several medical bills and hospitalization expenses. Besides, a total sum of Rs.10,000/- has been awarded towards pain sufferings, travel and allied expenses. All this is on a very conservative basis. There is absolutely nothing excessive in the quantum of compensation awarded. Accordingly, there is no merit in the third submission of Mr.Dabke which is hereby rejected.

7. Similarly, although it is true that the Claimant in F.A.No.1053 of 2016 is stated to have suffered permanent disability to the extent of only 10%, even the compensation awarded to him in respect of such disability is only Rs.25,000/-. An amount of Rs.28,354.30/- has been awarded towards medical expenses and hospitalization, for which documentary evidence by way of several medical bills and hospital records has been produced on record. In addition to this, compensation of hardly Rs.5,000/- towards pain and sufferings and another Rs.5,000/- towards travel and allied expenditure has been awarded. Such Award is neither excessive nor unreasonable.

8. In the aforesaid circumstances, both the Appeals fail and are hereby dismissed.

9. In view of disposal of the Appeals, the Civil Application for stay does not survive and

the same stands disposed of accordingly.

10. The amounts deposited by the Appellant before M.A.C.T., Kolhapur may be paid to the Respondents-Claimants as early as possible. Registry is directed to forward an authenticated copy of this order to the M.A.C.T., Kolhapur so that necessary notice can be issued to the Respondents-Claimants who have chosen not to appear in this Court and the amounts so deposited together with interest and costs can be paid to the Respondents-Claimants.

All concerned to act on the authenticated copy of this order.

(M.S.SONAK, J.)