

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

FIRST APPEAL NO. 971 OF 2004

Narayan S/o Sakharam Hirekar
Age : 50 years, Occ : Govt. Service,
R/o Vitkheda, Tq. & Dist. Aurangabad.

. **APPELLANT**

VERSUS

Sheshrao Laxman Gaikwad
Age : 40 years, Occ : Agri.,
R/o Naygavan Khandewadi,
Tq. Paithan, Dist. Aurangabad.

. **RESPONDENT**

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Advocate for Appellant : Mr.G.K. Chinchole h/f Mr.S.M. Vibhute
Advocate for respondent : Mr.B.V. Dhage

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CORAM : S.G.DIGE, J.
DATE : 03.08.2022

JUDGMENT :

The challenge in this appeal is to the judgment and award passed by the Member, Motor Accident Claims Tribunal, Aurangabad. The appellant is the original respondent.

2. Brief facts of the case are as under :-

On 5th November, 1999 at about 8.30 a.m. to 9.00 a.m. on Paithan to Aurangabad road near Georai Tanda, the accident took place. The claimant along with his bullocks

was walking by the side of the road, at that time Jeep bearing No.MH-04/Q-543 came from opposite side and dashed the claimant and his bullocks. The said Jeep was driven by the respondent. In the said accident, the claimant as well as bullocks were injured. After the accident, the claimant was admitted in the Government Hospital, Aurangabad and thereafter in Dr.Patwardhan Hospital. He sustained fracture injuries to his right leg. Crime was registered against the appellant. The respondent herein – original claimant filed Claim Petition for getting compensation before the Motor Accident Claims Tribunal, Aurangabad (for short, “the Tribunal). After considering the evidence and hearing both the parties, the Tribunal has granted compensation of Rs.17,250/- against the appellant. This order is under challenge.

3. It is the contention of the learned counsel for the appellant that the appellant is not owner of the offending Jeep. The specific plea was taken by the appellant before the Tribunal but this fact was not considered by the Tribunal.

4. It is the contention of the learned counsel for the respondent that the said plea was neither taken before the Tribunal by the appellant nor he examined himself to prove his case.

5. I have heard both the learned counsel. Perused the judgment and award passed by the Tribunal.

6. The issue regarding the ownership of Jeep has to be considered on the basis of the evidence led before the Tribunal. It appears from the record that the appellant has examined himself at Exhibit-59 as witness. In his evidence, he has stated that on 5th November, 1999, he was at Ambad on his duty and he is ready to produce documents to show that on that day he was present at Ambad on duty. The involved Jeep does not belong to him and he has no concern with this accident and also injuries caused to the claimant. In cross-examination, he admitted that the Police has filed criminal case against him.

7. From the evidence of this witness, it reveals that

appellant has taken two fold defence, on one side, the appellant is stating that he is not owner of offending Jeep and on other side the appellant stating that on the day of accident, he was on duty. It was burden on the appellant to prove these facts as the offence regarding the accident is registered against him. Though he had given evidence before the Tribunal, but he has not produced the documents in respect of defence taken by him. Mere oral evidence is not sufficient to consider the plea taken by the appellant. It proves that accident was occurred due to negligence of appellant.

8. In view of the above, I pass the following order :-

ORDER

1. The Appeal is dismissed.
2. No order as to costs.

**[S.G.DIGE]
JUDGE**