

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 650 OF 2003
WITH
CROSS OBJECTION (ST) NO. 21617 OF 2016

The Executive Engineer,
Tembhu Lift Irrigation Project,
Division No.II Ogalewadi, Tal. Karad,
District: Satara.
Wrongly described by the Original
Applicants in M.A.C.P. No. 377/2000.
As Executive Engineer, Irrigation
Department, Satara.

.... Appellant
Orig. Opp.
No.1.

Versus

1. Mahibub Ismail Mulani,
Age: 34 years, Occ: Cleaner
R/o. Venegaon, Taluka and District : Satara.
2. Anil Maruti Todkar,
Age: adult, Occ: Trade,
R/o. Venegaon, Taluka & District: Satara
3. The New India Assurance Co. Ltd, 497 A 22,
Parijat Complex Shivaji Circle, Powai Naka,
Satara.

.... Respondents
(Respondent
No.1 is
original
Applicant
and Res.
Nos.2 & 3
are Original
Opponents.

Digitally
signed by
SHANTANU
SHANKARSA
DHUDUM
Date:
2023.07.30
10:24:20
+0530

Mr. Vilas Tapkir, Advocate for the Appellant.

Mr. Sharad Bhosale i/b Mr. Dilip Bodake, Advocate for Respondent No.2.

CORAM : SHIVKUMAR DIGE, J.

DATE : 18th JULY, 2025.

JUDGMENT. :

1. This appeal is preferred by the Appellant- State against the judgment and order passed by the Motor Accident Claims Tribunal, Satara (for short, “the Tribunal”). The Respondent – Owner of the offending vehicle have also preferred cross objection against the same judgment and order. As Appeal and cross objection are against the same judgment and order, I am deciding it, by this common judgment.

2. It is contention of learned counsel for the Appellant – State that accident occurred due to sole negligence of the driver of offending tempo. However, the Tribunal has fixed 75% liability on jeep of the Appellant, which is erroneous. Hence, requested to allow the appeal and dismiss the cross objection.

3. It is contention of learned counsel for the Respondent - Owner of the offending tempo that, the accident occurred due to sole

negligence of the offending jeep, which gave dash to the tempo. The F.I.R. was lodged against the driver of offending jeep. He was charge sheeted, but Tribunal has fixed 25% negligence on driver of offending tempo, which is erroneous. Hence, requested to dismiss the appeal and allow the cross objection.

4. I have heard both learned counsel, perused judgment and order passed by the Tribunal.

5. It is prosecution's case that on 19th April, 1999, the Claimant was proceeding in tempo carrying household article from Venegaon to Satara. When the tempo reached near ST stand, one Jeep bearing registration No.MH-11/H-5528 came in fast speed. The driver of jeep drove jeep in rash and negligent manner and gave dash to the tempo by overtaking another vehicle. Due to said dash, the claimant suffered injuries. The offence was registered against the driver of jeep.

6. To prove the negligence of the driver of offending jeep, the claimant has been examined himself. He has stated that the accident occurred due to sole negligence of the driver of offending jeep. While dealing with the issue of negligence, the Tribunal has observed that there was head on collision between two vehicles. On that ground,

the Tribunal has fixed 75% negligence on driver of offending jeep and 25% negligence on driver of tempo. I am unable to understand the observations of the Tribunal, as driver of offending jeep did not step into witness box to prove the negligence of driver of tempo. Moreover, Claimant who witnessed the accident has stated that the accident occurred due to sole negligence of the driver of jeep. The F.I.R. was lodged against the driver of jeep. The Tribunal should have fixed 100% negligence on the driver of jeep. Hence, I am considering that the accident occurred due to sole negligence of the driver of offending jeep.

7. In view of above, I pass following order :

ORDER

- i. The Appeal No. 650 of 2003 is dismissed.
- ii. The Cross Objection (St.) No.21617 of 2016 is allowed.
- iii. The Claimant is entitled for 25% compensation amount @ 7.5% interest per annum from the date of filing claim petition, till realization of the amount.
- iv. The Appellant – State shall deposit the 25%

compensation amount along with accrued interest thereon, within four weeks after receipt of this order.

- v. The Claimant is permitted to withdraw the deposited amount along with accrued interest thereon.
 - vi. The Claimant shall pay deficit Court fees, if any, as per Rules.
 - vii. The statutory amount in Appeal No.650 of 2003 be transmitted to the Tribunal. The parties are at liberty to withdraw it, as per Rules.
 - viii. Record and Proceedings be sent back to the Tribunal.
8. All pending applications, if any, also stand disposed of.

(SHIVKUMAR DIGE, J.)