

MAHARASHTRA ADMINISTRATIVE TRIBUNAL,**NAGPUR BENCH, NAGPUR.****ORIGINAL APPLICATION NO.415/2007.**

Rambhau Shyamraoji Jondhale,
Aged about 50 years,
Occ-Service,
R/o Ashok Nagar, Shrikrishna Peth,
Amravati.

Applicant.

-Versus-

1. The State of Maharashtra,
Through its Secretary,
Urban Development Department,
Mantralaya, Mumbai-32.
2. The Dy. Director of Town Planning,
Amravati Division, Amravati.
3. The Assistant Director of Town Planning,
B.G. Market, Jalgaon.

Respondents.

Shri N.R. Saboo, Advocate for the applicant.
Shri P.N. Warjekar, P.O. for the respondents.

**Coram:- B. Majumdar, Vice-Chairman and
Justice M.N. Gilani, Member (J).**

Dated:- 9th October, 2015.

Order

Per:Member (J).

The applicant has challenged the decision of
the respondents to recover the amount of Rs. 55,601/- being

the 50% of total amount awarded towards compensation by Motor Accident Claims Tribunal, Bhandara.

2. On 13.3.2003, official car driven by the applicant met with an accident. One Rajaram, cyclist passing by the road had sustained injuries and succumbed to it. Offence under Section 279 and 304-A of I.P.C. was registered against the applicant in Police Station, Sakoli. In criminal case No.944/2003, arising out of the said offence, the applicant was acquitted by the Court of Judicial Magistrate, First Class, Sakoli. However, the learned Member, Motor Accident Claims Tribunal, Bhandara passed award directing the respondent Nos. 1 to 3 to pay jointly and severally a sum of Rs. 99,420/-. The applicant was respondent No.3 in the said claim petition.

3. The respondents relied upon the findings recorded by the learned Member, Motor Accident Claims Tribunal, Bhandara to the effect that because of rash and negligent driving of the vehicle, accident occurred. In para 3 of the reply, it is submitted that half of the awarded amount i.e. Rs. 51,875/- has been deposited by the respondents. It seems

that, subsequently the respondents deposited remaining half and now they want to recover the same from the applicant.

4. Operative order passed by the learned Member, Motor Accident Claims Tribunal, Bhandara is thus:

The respondent Nos. 1 and 3 do pay jointly and severally, a sum of Rs. 99,420/- to the claimants, each having equal share, with 5% p.a. interest thereon from the date of filing of the petition till realization of the same, in full+

5. What transpires from the above is, all the respondents were held liable jointly and severally. Since there were three claimants each was awarded compensation amount was apportioned in three equal shares. Therefore, the respondents are wrong in interpreting that 50% liability is to be shared by the applicant.

6. It is pertinent to note that in criminal case, the applicant was acquitted since the charge of driving the vehicle rashly and negligently could not be substantiated. The mishap occurred while the applicant was discharging his official duty. The respondent in the capacity of employer, has a vicarious responsibility to shoulder the liability, which arose while the

employee was discharging his official duty. The learned counsel for the applicant invited our attention to the stand taken by the respondents before the Motor Accident Claims Tribunal, Bhandara. In para 5 of the judgment, it was observed thus:

However, the contents which relate to the matter of record are not specifically replied. It is contended that on that day, the respondent no.3 was proceeding to Nagzira and from the opposite direction three persons were coming. He gave horn, but one cycle rider abruptly tried to cross the road, the cycle rider lost the balance, fell down and sustained the injuries. Actually, the car did not hit him. In sum, the respondents have refuted the claimant's case and prayed for dismissal of the petition. Therefore, the learned counsel for the applicant would contend that, it is not open for the respondents to say that the applicant was at fault and because of his negligence, accident occurred.

7. Normally, on the basis of award, fixing the liability jointly and severally on the employer and the employee, award is required to be satisfied by the employer. In a case of gross negligence only, the employer can proceed to recover his

damages from the employee. In the present case, the department had vouched for innocence of the applicant. Now, it cannot take contradictory stand and ask the applicant to shoulder 50% responsibility. It is not understandable as to why the respondent is asking the applicant to shoulder only 50% responsibility and not the whole. We, therefore, find no rationale in the decision of the respondents to recover 50% of the awarded amount from the applicant. While discharging the official duty, the employer indemnifies an employee towards any civil liability which would arise during course of performance of official duty. In that view of the matter, O.A. deserves to be allowed.

(i) O.A.is allowed.

(ii) Order directing recovery of amount of Rs.55,601/- is quashed and set aside.

(iii) There shall be no order as to costs.

(M.N.Gilani)
Member (J)

(B. Majumdar)
Vice-Chairman

