

**David Vs. Audhut and Others**

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**Court :** Mumbai Goa

**Decided On :** Jun-20-2014

**Judge :** A.R. Joshi

**Appeal No. :** First Appeal No. 22 of 2014

**Appellant :** David

**Respondent :** Audhut and Others

**Judgement :**

Oral Order:

1. This First Appeal is being disposed of finally at the stage of admission.
2. Heard rival arguments for sometime. This First Appeal challenges the Judgment and Award passed by the Presiding Officer, Motor Accidents Claim Tribunal, Mapusa dated 6/3/2013. By the said Judgment and Award the claim petition was dismissed with costs.
3. The claim for Rs.4,00,000/- was filed by the present appellant/claimant for the injuries sustained by him mainly on his legs and knees causing fractures and also injuries to his ribs caused in a motor vehicular accident while he was driving his Omni van bearing no.GA-01-Z-6879 and when it dashed with another vehicle a motor jeep bearing registration No.GA-01-S-4845 being driven by present respondent no.2 and insured with respondent no.3. The main issue as to whether

the claimant proved that the accident was due to rash and negligent driving on the part of respondent no.2 was answered in the negative by the learned member M.A.C.T. This is rightly so answered in the opinion of this Court for which the reasons are being given here under.

4. It is ascertained that the appellant/claimant examined himself alleging that the motor jeep being driven by respondent no.2 was in high and excessive speed and came from the opposite side and dashed on the vehicle causing the accident and caused injuries to him. In support of this contention, he also examined two witnesses, apparently his friends. They also deposed as to the alleged rash and negligent driving of the vehicle by respondent no.2. The factum of the accident is not disputed. The width of the road at the spot of the accident is 7.3 metres is required to be ascertained. Admittedly, the claimant was proceeding from Panaji to Vasco and the motor jeep driven by respondent no.2 was being driven from the opposite side. After the incident of accident apparently both the vehicles were on the same spot and the spot panchanama was drawn. The sketch of the spot showing the position of both the vehicles was produced before the member M.A.C.T and the sketch was also relied on by the claimant and in fact he filed it. The Police Inspector who drew the spot panchanama was examined by the respondent no.2. In fact, the position of the vehicles at the time of the accident is correctly depicted in the said sketch and this position weighed much with the learned member M.A.C.T and this position is also been conceded by the learned counsel for the appellant/claimant. This sketch specifically indicates that the claimant was driving his Omni van from the wrong side of the road while going from Panaji to Vasco. The said road is having width of 7.3 metres and is having a divider line painted in the middle.

Both the vehicles are shown towards the right side of the road and in fact also towards the right side of the central line. This clearly indicates that the claimant was on the wrong side of the track of the road while going towards Vasco. Moreover, in the said sketch it is specifically mentioned that there were brake marks of the Omni vehicle having a trail of 11.9 metres behind the vehicle. So far as the motor jeep driven by respondent no.1 the brake marks are 9.00 metres. So comparatively, the claimant was driving his vehicle in a high speed definitely on

the wrong side of the road. This fact can also be substantiated by the distance mentioned in the sketch and also mentioned in the evidence of the witnesses when the Omini van was at the distance of 1.80 metres from the right side border of the road and was about 3.70 metres from the left side of the road, while proceeding towards Vasco and the jeep is apparently in the front of the said Omni vehicle. As such, both the vehicles are on the right side of the dividing line when one faces towards Vasco while standing on the road. As mentioned earlier, this factual position weighed much with the learned member M.A.C.T and which lead him to come to the conclusion that there was no rash and negligent act on behalf of respondent no.2 while driving the vehicle but the accident occurred mainly for the rash and negligent driving of the Omni van from the wrong side of the road. In view of this factual position there is nothing to interfere with the impugned judgment and award and hence there is no merit in the claim petition and in that event it is not necessary to go in detail as to how much compensation could have been awarded to the claimant on proof of rash and negligent driving of respondent no.2. As such the First Appeal is dismissed and accordingly disposed with no order as to costs.

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