

**(2013) 08 BOM CK 0004**  
**In the Bombay High Court**  
**Case No : First Appeal No. 240 of 2008**

Sunil Dubey

APPELLANT

Vs

Jagadish S. Doddayanaver and Others

RESPONDENT

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**Date of Decision :** 02-08-2013

**Acts Referred:**

**Citation :** (2013) 5 ABR 727 : (2013) 6 ALLMR 664 : (2013) 5 BomCR 273

**Hon'ble Judges :** Chavan R.C., J

**Bench :** Single Bench

**Advocate :** Prasheen Lotlikar, for the Appellant; V. Timble, for the Respondent

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## Judgement

Chavan R.C., J.—This appeal by the claimant questions dismissal of his claim petition by the Presiding Officer of Motor Accident Claims Tribunal, South Goa, Margao. The appellant was travelling in a Rikshaw driven by respondent No. 1 on 23/6/2006 at about 6.30 a.m. The Rikshaw turned turtle. The appellant fell down and suffered severe injuries. He had to be admitted in the Hospital and had to spend a sum of Rs. 30,000/- towards medical expenses apart from other loss which he suffered. He, therefore, filed the petition claiming compensation of Rs. 2,50,000/-.

2. The petition was contested by the respondents. Learned Presiding Officer of the Tribunal framed the necessary issues. The parties led evidence in support of their respective contentions.

3. The appellant stated in his cross-examination that the vehicle in which he was travelling, was proceeding in a speed of 25 to 30 Kilometers per hour. Respondent No. 1, the driver, was driving the vehicle in a slow speed. Accident took place on account of oil spilled on the road. The vehicle slipped over the oil and turned turtle. The accident did not occur on account of any fault of respondent No. 1. Respondent No. 1 did not drive the vehicle in a fast speed. These admissions of saintly appellant led the Presiding Officer of the Motor Accident Claims Tribunal to dismiss the petition.

4. Learned Counsel for the appellant submitted that there is some mistake, since in the very next sentence in cross-examination, the appellant stated that it was not true that such an accident did not occur due to rash and negligent driving of respondent No. 1. If there was some mistake in recording the evidence, it could have been pointed out to the trial Court. In any case, the trial Court has considered not one but 4 to 5 sentences of the cross-examination which clearly ruled out any negligence on the part of the driver of the vehicle. The learned Counsel for the appellant submitted that had respondent No. 1 driver put on the headlight of the Rikshaw, he could have noticed that there was oil spilled and could have taken extra precaution to avoid the mishap. The accident occurred at 6.30 a.m. on 23/6/2006 i.e. two days after longest day. There would have been enough sunlight and necessity of headlight at 6.30 a.m. on 23/6/2006 cannot be visualised. In the face of categorical statement of the appellant that the accident did not occur on account of any fault of respondent No. 1, the Tribunal could not have passed any other order. There is no merit in the appeal. It is dismissed.