

Amrut

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 74 OF 2022

1. Mrs Rashmi Ramesh Naik,
53 years of age,
2. Miss Santoshi R. Naik,
25 years of age,
3. Mr. Rinkesh R. Naik,
22 years of age,
4. Mr Rishikesh R. Naik,
21 years of age,
All Residents of H. No. 70,
Bhaibhat, Kundaim,
Ponda, Goa.

... Appellants

Versus

1. Mr. Shrikant M. Yadav,
Son of Mr Maheshwari Prasad Yadav,
Major of age, Resident of Village Rastra,
P S - Murliganj Dist. Madhepura,
c/o Rakesh Kumar, Gurudwara Road,
Purnea, Bihar.

2. Mrs. Silvina Silveira,
Wife of Antonio Silveira,
Major of age, Resident of H. No. 289,
Vazem, Shiroda, Ponda, Goa.

3. M/s Bajaj Allianz General Insurance
Company Limited, Branch Office at 3C
& 3D Sesa Ghor 20, Patto, Panaji,
EDC Complex, Goa.

4. Mr. Sandesh R Devias
s/o Rangu Devias R/o Vangal, Kerim,
Ponda, Goa.
(since deceased through legal heirs his wife)
Mrs. Sunanda S Devias, Major of age,
Resident of c/o Rajesh Pandurang
Naik Gaunkar, H. No. 447, Kelbaiwada,
Tivrem, Marcel, Ponda, Goa.

5. Mr. Sandip Pandurang Naik,
Major of age, Resident of F-109, Altess,
Manor, Kerant, Caranzalem, Tiswadi, Goa. ... Respondents

Mr A. D. Bhobe, Ms A. Fernandes and Ms S. Shaikh, Advocates for
the Appellants.

Mr Amey Kakodkar and Mr Akshay Naik, Advocates for Respondent
No.3.

Mr T. Sequeira, Mr S. Sawant and Mr Shriram Polle, Advocates for
Respondent No.5.

WITH
FIRST APPEAL NO. 37 OF 2022

Mrs. Maria Salvador Fernandes
son of late Mr. Salvador Fernandes
74 years of age, Resident of
H. No. 349/1, Kharyabhat,
Adcolna, Banastarim, Ponda, Goa. ...Appellant

Versus

1. Mr. Shrikant Yadav,
Son of Mr. Maheshwari Prasad Yadav,
Major of age, Resident of Village Rastra,
P S - Murliganj Dist. Madhepura, Bihar.

2. Mrs. Silvina Silveira,
Wife of Antonio
Silveira, Major of age, Resident of

H. No. 289, Vazem, Shiroda,
Ponda, Goa.

3. M/s Bajaj Allianz General Insurance
Company Limited, Patto, Panaji, Goa.

4. Mr. Sandesh Rangu Devias
(since deceased through legal heirs his wife)

4a) Mrs. Sunanda Sandesh Naik,
Major of age, Resident of c/o Rajesh
Pandurang Naik Gaonkar,
H. No. 447, Kelbaiwada, Tivrem,
Marcel, Goa.

5. Mr. Sandip Pandurang Naik,
Major of age, Resident of F-109,
Altess, Manor, Kerant, Caranzalem,
Tiswadi, Goa.

6. Mr. Ramesh Somnath Naik,
(Since Deceased through legal heirs, his
wife)

6a. Mrs. Rashmi Ramesh Naik,
Major of age, Resident of
H. No. 1054, Dharzowada,
Kundaim, Ponda, Goa.

7. National Insurance Co. Ltd.,
Ponda Branch.

...Respondents

Mr A. D. Bhobe, Ms A. Fernandes and Ms S. Shaikh, Advocates
for the Appellant.

Mr Amey Kakodkar and Mr Akshay Naik, Advocates for
Respondent No.3.

Mr T. Sequeira, Mr S. Sawant and Mr Shriram Polle, Advocates for
Respondent No.5.

CORAM: M. S. SONAK, J.

Reserved on : 15th JUNE 2023

Pronounced on: 28th JUNE 2023

JUDGMENT

1. Heard Mr Bhobe, learned counsel for the Appellants in both these appeals. In both appeals, Mr Amey Kakodkar and Mr A. Naik appear for Respondent No.3-Insurance Company. Mr T. Sequeira, Mr S. Sawant and Mr S. Polle appear for Respondent No.5 in both appeals. Respondent Nos. 1, 2 and 4, though served neither present nor represented.

2. The learned counsel for the parties agree that both these appeals can be disposed of by a common judgment and order since the challenge in both the appeals is to the impugned judgments and awards dated 30.12.2021 in Claim Petition Nos. 67/2014 and 31/2014 arising from the same accident on 05.12.2012 at Manaswada, Kundaim, Ponda Goa, allegedly involving JCB bearing registration No. GA-05-B-8472. By the impugned judgments and awards, the Motor Accident Claims Tribunal at Ponda Goa (Tribunal) has dismissed the claim petitions by holding that the JCB was not involved in the accident. Hence, these two appeals.

3. First Appeal No.74 of 2022 arises out of Claim Petition No.67/2014 instituted by the dependants of late Ramesh Naik, who was riding a Hero Honda Motorcycle bearing registration No. GA-05-H-

1930. The dependants/claimants are Rashmi Naik (widow), Santoshi Naik (daughter), Rinkesh Naik (son) and Rishikesh Naik (son) of the deceased Ramesh Naik who was 45 years old at the time of the accident on 05.12.2012.

4. First Appeal No.37 of 2022 arises out of Claim Petition No.31/2014 instituted by the dependant mother of Joao Camilo Fernandes, who was riding pillion on an Eterno Scooter bearing No. GA-05-B-4805. His mother, Maria Salvador Fernandes, was the claimant and is the Appellant in First Appeal No.37 of 2022. Joao Camilo Fernandes was 28 years old at the unfortunate accident on 05.12.2012.

5. Incidentally, another Claim Petition No.96/2013 was instituted by the dependants of the deceased Sandesh Naik, who was also involved in the same accident on 05.12.2012 at Kundaim. Sandesh Naik was riding the Eterno scooter bearing registration No.GA-05-B-4805, on which Joao Camilo Fernandes was riding pillion. This Claim Petition No.96/2013 was allowed by the tribunal presided over by Ms Bela Naik, District Judge-2, holding that the JCB bearing Registration No. GA-05-B-8472 was involved in the accident due to the rashness and negligence of the JCB driver Shrikant Yadav. Neither the owner & driver nor insurer (Bajaj Allianz General Insurance Company Limited) of the JCB questioned this judgment and award dated 31.01.2020 in Claim Petition No.96/2013. Instead, the insurer settled the compensation awarded to the dependants of late Sandesh D. Naik.

6. Thus, regarding the same accident on 05.12.2012, the tribunal presided over by Ms Bela Naik has held that the accident occurred due to rash and negligent driving of Shrikant Yadav, the driver of JCB bearing registration No.GA-05-B-8472 and the tribunal presided over by Ms Kshama M. Joshi has held that the JCB bearing No.GA-05-B-8472 was not at all involved in such an accident.

7. As noted earlier, the Respondents to Claim Petition No. 96/2013, which includes the insurer of the JCB, Bajaj Allianz General Insurance Company Limited, which is Respondent No.3 in First Appeal No.37 of 2022 and 74 of 2022, never challenged tribunal's judgment and award dated 31.01.2020 in Claim Petition No.96/2013. Instead, this award was accepted by the Insurance Company, and even the compensation was paid in terms of the award. Therefore, the first question for determination in these appeals is whether the principle of issue estoppel would apply qua the owner, driver and the insurer and whether they would be precluded from urging that the JCB was never involved in the accident of 05.12.2012.

8. A similar issue arose in *National Insurance Co. Ltd. Vs Tulshidas Kerkar*, First Appeal No.93/2016, decided on 06.10.2022, and *Sayyed Nadaf Vs Vishnu Khodginkar*, First Appeal No. 57 of 2019, decided on 08.12.2022, in which it was held that the issue estoppel would bar the insurance company or vehicle owner/driver from contending that the vehicle in question was either not involved

in the accident or that the accident was not due to rashness and negligence of the vehicle driver.

9. In *Tulshidas Kerkar* (supra), the issue was about the involvement of a Tata tipper truck bearing registration No. GA-04-T-1769. The Insurance Company challenged the tribunal's award dated 30.10.2015 in Claim Petition No.56/2011 made by the Motor Accident Claims Tribunal, Mapusa, in a claim petition by the dependants of Kalpana Kerkar who was travelling in a minibus bearing registration No.GA-01-U-2603. The tribunal found a head-on collision between the Tata Tipper truck and the minibus due to the negligence of the Tata Tipper truck driver. In this accident, Kalpana Kerkar and minibus driver Doulat Rane expired.

10. The widow and minor children of Doulat Rane had instituted the Claim Petition No. 56/2011 before the tribunal. Based on the evidence of two eyewitnesses, the tribunal found that not only the Tata tipper truck was involved in the accident, but that accident occurred due to the rash and negligent driving of the Tata tipper truck driver. The insurance company that had insured the Tata tipper truck did not challenge the award in Claim Petition No.56/2011 instituted by the dependants of Doulat Rane. Accordingly, in First Appeal No. 93 of 2016, it was held that the principle of issue estoppel would apply. The insurer of the Tata tipper truck, i.e. National Insurance Company Ltd., could not be permitted to challenge the award in the claim petition instituted by dependants of Kalpana Kerkar, lest there would

be two contradictory awards on the same issue. This Court relied upon *Machindranath Kernath Kasar Vs D. S. Mylarappa & Ors*¹, and *Bajaj Allianz General Insurance Vs Shri Sharad Chandrakant Raikar & Anr.*² on the point of issue estoppel.

11. To the same effect is the decision of this Court in *Sayyed Nadaf* (supra). The tribunal in Claim Petition Nos.43/2013, 88/2013, 89/2013 and 90/2013 found Appellant Nadaf responsible for the accident in question. The Appellant did not challenge any of these awards but chose to challenge the award in Claim Petition No.118/2015, among other things, on the ground that he was not negligent. Applying the principle of issue estoppel and relying upon *Machindranath Kasar* (supra), *Santan Fernandes Vs Amjad Mujavaar and others* and *Karnataka Road State Transport Corporation Vs Smt. Fatima Shaikh and others*³, this Court held that *Nadaf* (supra) was estopped from challenging the decision regarding rashness and negligence.

12. Applying the above principles to the peculiar facts of the present case, the impugned awards to the extent they hold that the JCB was not even involved in the accident or that the accident did not occur due to rashness and negligence on the part of the JCB driver will have to be reversed. Incidentally, the Claim Petition No.96/2013 award was cited explicitly before the tribunal presided over by Ms Kshama Joshi.

¹ 2008 ACJ 1964 (SC)

² FA No.83/2010 decided on 09.06.2015

³ FA No.30/2015 decided on 19.08.2022

However, the Presiding Officer held that the award made by the coordinate bench was not binding upon her since the awards of the tribunals are not "*precedents*".

13. The above approach was not correct. The award of the coordinate bench was not cited before the tribunal as a "*precedent*". The award was cited in a plea of *res judicata* or issue estoppel. Therefore, The tribunal was not justified in brushing aside the award in Claim Petition No.96/13 and proceeding to make a contradictory award concerning the same accident.

14. Apart from the point of issue estoppel, the tribunal grossly erred in failing to appreciate the scope of proceedings before it and the approach to be adopted to determine rashness and negligence in such cases. From the perusal of the impugned awards, one would not be wrong to think that the learned Presiding Officer entertains an impression that the issue of rashness and negligence or the issue of involvement of a vehicle in the accident is to be proved beyond the reasonable doubt and not by the standard of preponderance of probabilities.

15. After recording an adverse finding on the issue of involvement of the JCB, the tribunal did not even bother to determine the compensation amount. Even this approach has been deprecated by the Hon'ble Supreme Court and this Court several times in several judgments.

16. In *Bimlesh & Ors. v. National India Assurance Co. Ltd.* - (2010) 8 SCC 591, in paragraph 9, the Hon'ble Supreme Court has held that the claim tribunal is required to dispose of all issues one way or the other in one go while deciding a claim petition. In *Agricultural Produce Marketing Committee, Bangalore v. State of Karnataka & Ors.* - 2022 SCC OnLine (SC) 342, the Hon'ble Supreme Court has held that the courts must avoid shortcuts and decide all issues that fall for their determination.

17. Even on the issue of rashness and negligence or on the issue of involvement of the JCB in the accident, the approach of the tribunal with respect is contrary to the law laid down by the Hon'ble Supreme Court in several decisions, including *Dulcina Fernandes & Ors. vs. Joaquim Xavier Cruz & Anr.* - (2013) 10 SCC 646, *Mangala Ram vs. Oriental Insurance Co. Ltd.* - (2018) 5 SCC 656, *Sunita And Others vs. Rajasthan State Road Transport Corporation And Others* - (2020) 13 SCC 486, *Anita Sharma and others vs. New India Assurance Company Limited and another* - (2021) 1 SCC 171, *Parmeshwari vs. Amir Chand & Ors.* - (2011) 11 SCC 635 and *Vimla Devi & Ors. vs. National Insurance Company Ltd.* - (2019) 2 SCC 186.

18. In the above cases, the Hon'ble Supreme Court had held that the approach of the Courts/Tribunals when dealing with such matters has to be sensitive enough to appreciate the turn of events on the spot or the hardship that the claimants usually face in tracing witnesses and

collecting information for an accident when they were themselves not present at the accident spot. Further, the Courts/Tribunals must be mindful that strict principles of evidence and standard of proof, like in a criminal trial, are inapplicable in MACT claim cases. The standard of proof in such matters is one of the preponderance of probabilities rather than proof beyond a reasonable doubt.

19. The Hon'ble Supreme Court has held that the Courts/Tribunals have to be mindful that the approach and role of Courts/Tribunals while examining evidence in accident claim cases ought not to be to find fault with the non-examination of some best eyewitnesses, as may happen in a criminal trial. Instead, the Courts/Tribunals should analyse the material placed on record by the parties to ascertain whether the claimant's version is more likely than not true. The Courts/Tribunals must take a holistic view bearing in mind that strict proof of an accident caused by a particular vehicle in a specific manner often cannot be adduced by the claimants. The Courts/Tribunals must also draw appropriate inferences from the failure of Respondents to properly cross-examine the witnesses of the claimants or confront them with their version despite the adequate opportunity. They must consider the legal effect of failing to cross-examine crucial witnesses on crucial issues.

20. In *Anita Sharma* (supra), the Hon'ble Supreme Court has reiterated that the standard of proof in accident claim cases is that of the preponderance of probabilities, not beyond a reasonable doubt. In

N. K. V. Bros. (P) Ltd. vs. M. Karumai Ammal & Others - AIR 1980 SC 1354, the Hon'ble Supreme Court noted that road accidents are one of the top killers in our country. Therefore, Accident Tribunals must take special care to see that innocent victims do not suffer and drivers and owners do not escape liability merely because of some doubt here or some obscurity there. Save in plain cases, culpability must be inferred from the circumstances where it is fairly reasonable. The Court should avoid succumbing to niceties, technicalities and mystic maybes. The Court emphasised this aspect because it was often distressed by transport operators getting away with it thanks to judicial laxity, even though the transport operators do not exercise sufficient disciplinary control over the drivers regarding careful driving.

21. In *Sunita & Ors. (supra)*, the Hon'ble Supreme Court held that the Tribunal had correctly accepted the claimant's contention about the Respondents not challenging the propriety of the FIR and the charge sheet before any authority. The only defence raised was that the FIR was based on wrong facts or was filed in connivance between the complainants and the police, against which the Respondents had complained to the superiors, but to no avail. The Hon'ble Supreme Court held that apart from this bald assertion, no evidence was produced before the Tribunal to prove this point. The Court held that the filing of the FIR was followed by the filing of the charge sheet, which reinforces the FIR allegations insofar as the accident's

occurrence and the driver's role in causing such an accident was concerned.

22. Suppose the impugned awards in the present case are perused. In that case, it is evident that the learned Presiding Officer has chosen not to go by the approach the Hon'ble Supreme Court laid down in evaluating oral and documentary evidence in Motor Accident Claim cases.

23. Though it was the case of the JCB owner and the driver that their JCB was not involved in the accident, most surprisingly, the JCB driver did not step into the witness box and depose to this alleged circumstance. The tribunal chose not to draw any adverse inference on account of the failure of the JCB driver to step into the witness box. This was a gross error. As noted earlier, the Hon'ble Supreme Court has held that the Courts should draw appropriate inferences even from the failure of the Respondents to cross-examine the claimants' witnesses properly. Here the JCB driver, who claims that the JCB was not even involved in the accident, chooses not to enter the witness box and say so on oath. Yet the tribunal downplays this crucial circumstance and declines to draw any adverse inference against the owner and driver of the JCB. Contrary to the approach mandated by the Hon'ble Supreme Court, the tribunal was bent upon finding faults with the eyewitnesses examined by the claimants. Over trivial issues, the evidence of eyewitnesses has been discarded, and no adverse

inference was drawn even though the JCB driver failed to examine himself after pleading an alibi.

24. Narayan Naik (AW2) deposed that on 05.12.2012, he was at the Manaswada bus stand talking to one of his friends and at 7.05 p.m., he noticed one yellow colour JCB proceeding at a fast speed from Kundaim to Panaji direction. He deposed that this JCB was bearing registration No. GA-05/B-8472. He deposed seeing this JCB dashing the Eterno motorcycle, which was proceeding in the same direction. He deposed about the Eterno motorcycle, in turn dashing against an oncoming Hero Honda Motorcycle. He deposed how the rider and the pillion rider of the Eterno motorcycle fell on the right side of the road if one proceeded to Panaji. He spoke about the rider of the Hero Honda motorcycle falling on the right side of the road if one proceeds to Panaji. He deposed that the JCB was in the middle of the road, and the injured were shifted to Goa Medical College, Bambolim, in a 108 Ambulance. He deposed how the JCB driver was trying to run away with the JCB and how he was ultimately stopped.

25. This witness filed a complaint dated 06.12.2012 about this incident, and in his deposition, AW2 identified his signature at point B. AW2 categorically deposed that the driver of the JCB caused the accident. He deposed that the rider and pillion of the Eterno motorcycle and the Hero Honda Motorcycle rider expired in the accident.

26. AW2 was cross-examined on behalf of the JCB driver Shrikant Yadav. The first suggestion was put to him was that AW2, in the criminal case against the JCB driver before the JMFC, Ponda had stated that the JCB fled away from the spot along with the JCB towards Panaji side. Now the AW2 was deposing that he and others managed to stop the JCB driver from fleeing away with the JCB. AW2 was asked which of his two versions was correct. To this, AW2 answered as follows:-

"I say that whatever I have deposed today is correct because the JCB was at a distance of about 60 mtrs. from the accident spot and we managed to stop him as he was trying to run away towards Panaji side."

27. Now the above suggestion on behalf of the JCB driver is significant. From the above suggestion, it is apparent that the JCB driver does not deny either his presence or the presence of the JCB at the site. AW2 withstood the cross-examination. Significantly, no suggestion was put to AW2 about the JCB not at all being involved in the accident. The evidence of AW2, coupled with the fact that the FIR and, ultimately, the charge sheet was filed against the JCB driver, was more than sufficient to establish the complicity of the JCB and JCB driver in the accident.

28. However, the tribunal disbelieved this witness only because in his cross-examination, he stated that as soon as he heard the sound of impact, he immediately turned and saw the JCB hitting the left side of

the rear portion of the scooter. He denied the suggestion that since he was standing on the left side of the road as one proceeded to Panaji, he could not see what happened on the right-hand side of the JCB. Based upon these answers, the tribunal deemed it appropriate to disbelieve this eyewitness and discard his evidence. With respect, such an approach on the part of the tribunal is contrary to the law laid down by the Hon'ble Supreme Court regards the evaluation of evidence in such matters.

29. AW2 was cross-examined on behalf of the JCB owner. The suggestions were put about a speed breaker at or near the accident side. Again, from this suggestion, it is clear that there was no confident denial of the involvement of the JCB in the accident. A suggestion was also put in that the JCB was being driven at the maximum speed of 20 km per hour. All these suggestions are sufficient to infer that the owner and the driver of the JCB were not serious with their versions and the JCB not being present at the site of the accident, or that the JCB not being involved in the accident.

30. Rahul Dhamsekar (AW3) was examined as a police investigating officer. He deposed that the JCB was not shown on the sketch/Exhibit 72 colly because the JCB driver, along with the JCB, ran away from the accident spot. He agreed that the criminal case of rashness and negligent driving was filed against the driver of the JCB. This witness denied that the owner of the JCB had filed any complaint against him regarding the quashing of FIR No.376/2012. He has stated that he has

received no notice of a writ petition filed to quash the FIR. The JCB owner did not personally address any notice or representation to this witness for implicating the JCB. AW3 withstood rigorous cross-examination. Even the Court recalled this witness and ultimately disbelieved this witness for no good reason.

31. Apart from examining eye witness Narayan Naik (AW2) and investigating officer Rahul Dhamsekar (AW3), the claimants examined other witnesses in the context of employment and earning of the deceased Ramesh Naik. That evidence will be considered later on while discussing the issue of the quantum of compensation. Further, the documentary evidence was also produced on behalf of the claimants comprising an accident information report, FIR, complaint of the eye witness, panchanama and sketch, autopsy report, driving licences, birth certificate, marriage certificate, income certificate etc. All these have been discarded by the tribunal for no good reason.

32. On behalf of the Respondents, Vijay Thomson (RW1) deposed that he was working at Procter and Gamble Company (P&G) near Polynova Industries Ltd., in Kundaim Industrial Estate. He deposed that on 05.12.2012 at about 6.55 p.m., he had seen the JCB bearing registration No.GA-05/B-8472, driven by Shrikant Yadav, proceeded towards Polynova Industries Ltd. via Procter and Gamble Company Road. He deposed that he needed JCB to clear the debris of construction work carried out by the company where he was working, and therefore, he stopped the JCB and asked the driver if the JCB was

available to clear the debris. He deposed that the driver told him to come to Polynova Industries Ltd. When he went to the factory gate at about 7.00 p.m., he saw the JCB driven by Shrikant Yadav taken inside the factory premises of Polynova Company.

33. In the cross-examination, RW1 claimed that he had not noticed any CCTV camera on the gate of Polynova Industries Ltd., and in the area at Procter and Gamble Company. He agreed that he had not seen any entry register when he met the Manager of the Industry. He denied the suggestion that he had not seen the JCB at or near the gate of Polynova Industries Ltd.

34. Vijesh Khandolkar (RW2) deposed that he was the partner of M/s Saidisha Packaging at Kundaim Industrial Estate, Kundaim Goa. He deposed that on 05.12.2012, they had services of M/s Suraksha Construction for digging and breaking and accordingly, a daily report dated 05.12.2012 was issued in the name of Suraksha Earthmovers for the work done by the JCB bearing registration No.GA-05/B-8472 from 4.15 to 6.30 p.m. After that, on 08.12.2012, a voucher payment for an amount of ₹2187/- was also issued. In his cross-examination, RW2 admitted that there are supervisors in M/s Saidisha Packaging, but he voluntarily stated that there were no supervisors when the JCB was doing the work. He admitted that the place of work is not mentioned in Exhibit 98. He denied that Exhibit 98 was a fabricated document.

35. Mahesh Naik, security supervisor of Polynova Industries Ltd. (RW4), was a star witness on behalf of the Respondents. He deposed that he saw the JCB entering the compound of the Polynova industry at Kundaim. He produced the inward and outward register to indicate that the JCB entered the factory compound through the second gate at 19.10 hours on 05.12.2012 and exited at 2.30 hours on 06.12.2012.

36. The actual inward and outward register shows overwriting in so far as the JCB number is concerned. The register shows that the ink at entry No.22 at Exhibit 115 differs. This question was posed to this star witness RW4. He admitted that there were corrections made at entry No.22 by using a whitener, and there was overwriting in the vehicle number. He also admitted that the ink at entry No.22 at Exhibit 115 differs. This evidence and the extract from the register were more than sufficient to disbelieve the Respondent's version. Yet the tribunal downplays even this crucial evidence of overwriting and manipulating the inward and outward register by using a whitener and changing the registration number of the JCB.

37. Thus upon holistic consideration of the evidence on record, the claimants succeeded in establishing that the JCB was involved in the accident and that the JCB driver was responsible for the accident. The testimony of the eyewitness AW1 and the investigating officer's testimony is sufficient to sustain such a conclusion. Besides, the FIR

was lodged against the JCB driver, and after investigation, even a charge sheet was filed against him for rash and negligent driving.

38. Apart from the bare statement that the FIR and the prosecution were incorrect, there is no record of the JCB owner or driver taking out any serious proceedings to question this FIR or this prosecution. Applying the law laid down by the Hon'ble Supreme Court in the abovementioned judgments, a case of rashness and negligence against the JCB driver was made out. As noted earlier, the test in such matters is that of the preponderance of probabilities and not proof beyond a reasonable doubt.

39. Therefore, the finding about non-involvement of the JCB or finding that the JCB driver was not rash and negligent recorded by the tribunal must be reversed and is hereby reversed. Apart from the point of issue estoppel, there is adequate evidence to establish by the test of preponderance of probabilities the involvement of the JCB and the rashness and negligence of the JCB driver, who did not even bother to step into the witness box and face cross-examination.

40. The next point to be considered is the quantum of compensation. In First Appeal No.74 of 2022, Rashmi Naik, widow of Ramesh Naik, examined herself. In addition, Sanjay Naik (AW4), Shantaram Naik (AW5), Nitin Prabhugaonkar (AW6), Vishwas Satarkar (AW7), Prakash Jalmi (AW8) were examined on behalf of the claimants.

41. Rashmi Naik, the widow/claimant, deposed that her husband Ramesh Naik, aged about 45 years at the time of the accident, was healthy with a good personality, cooperative and a veterinary expert providing artificial insemination to cattle and attending the sick cattle. She deposed how he was earning more than ₹20,000/- per month. She deposed how her husband was doing the self business of cattle farming and was used to earn income by selling the milk to farm society.

42. AW4 is the Secretary of Priol Gosavardhan Sahkari Dudh Vyavsayik Sanstha Maryadit, AW5 is the Chairman of Shri Navadurga Dudh Vyavsayik Sanstha Maryadit, Kundaim, AW6 is the Chairman of Tribhuvan Sahakari Dudh Vyavsayik Sanstha Maryadit, Mardol, AW7 is the Chairman of Shri Shantadurga Sahakari Dudh Uthapadak Vyavsayik Sanstha Maryadit, and AW8 is the Chairman of Devanand Vijaya Sahakari Dudh Vyavsayik Society, Kundaim. All these witnesses have deposed how Ramesh was skilled at providing artificial insemination to cattle's and also used to sell milk to their societies. They have deposed that they used to make payments to Ramesh. Based upon the evidence on record, it can be safely concluded that Ramesh was earning ₹400/- to ₹500/- per day or ₹15,000/- per month.

43. In terms of *National Insurance Company Limited Vs. Pranay Sethi and others*⁴, an addition of 25% is due towards future prospects. A deduction of 1/4th is due towards Ramesh's personal

4 (2017) 16 SCC 680

expenses. Ramesh's annual income after such a deduction would come to ₹1,68,750/-. Considering Ramesh's age, the appropriate multiplier would be 14. Thus the total compensation towards dependency would come to ₹23,62,500/-.

44. To the above amount, we must add ₹1,60,000/- towards the consortium. This is assessed at ₹40,000/- towards each of the dependents. Further, the compensation of ₹15,000/- is due towards funeral expenses and ₹15,000/- towards loss of estate. Thus, the total compensation works out to ₹25,52,500/-. This is against the compensation of ₹25,08,000/- claimed by the claimants. It is well settled that the Court or tribunal has to determine just compensation irrespective of what may have been claimed by the dependents. In this case, the compensation claimed by the dependents broadly corresponds to just compensation now determined.

45. Thus in First Appeal No.74 of 2022, the Claim Petition No.67/2014 is allowed. The Respondents are directed to jointly and severally pay the Appellants/claimants the compensation of ₹25,52,500/- together with interest at the rate of 8% per annum from the date of institution of the claim petition till the actual payment. The Respondent insurance company must deposit this amount in this Court within two months from today after giving due intimation to the learned counsel for the Appellants.

46. Upon deposit, the Appellants would be entitled to withdraw the said amount after furnishing identity and bank details. Registry to

ensure that the amount is directly transferred to the Appellants/claimants. The Appellants/claimants are awarded the above amount in equal proportion now that all of them have attained majority.

47. In First Appeal No. 37 of 2022, there is evidence that the deceased Joao Camilo Fernandes worked in Aditya Plastics. AW2 Damodar Malvankar, working with the deceased, has deposed in this matter. The claimant, i.e. Joao's mother and Damodar Malvankar, have deposed to the claimant earning ₹4,860/- per month. There is evidence about Joao Camilo Fernandes being 28 years old at the time of his unfortunate death in the accident.

48. Based on the above, the compensation will have to be determined. To the income of ₹4860/-, a 50% addition is due towards prospects. But the deduction of 50% will have to be made towards the personal expenses. Thus, Joao's monthly income can be taken at ₹3645/-, and the annual income would be ₹43,740/-. The multiplier in the present case would be 17, and the compensation towards dependency would be worked out to ₹7,43,580/-. To this, an amount of ₹40,000/- will have to be added towards consortium, ₹15,000/- towards funeral expenses, and ₹15,000/- towards loss of estate.

49. The total compensation would thus come to ₹8,13,580/-. This will have to be paid to the sole Appellant in First Appeal No.37 of 2022, together with interest at the rate of 8% per annum from the date of institution of the claim petition till the actual payment. The

Respondent insurance company must deposit this amount in this Court within two months from today after giving due intimation to the learned counsel for the Appellant.

50. Both these appeals are disposed of by making the following order:

(a) First Appeal No.74 of 2022 is allowed, and the Respondents^{No. 1, 2 and 3} are directed jointly and severally to pay compensation of ₹25,52,500/- together with interest at the rate of 8% per annum from the date of institution of the claim petition till the actual payment;

Corrections carried out as per order dt. 24/08/23 passed in M.C.A. Nos. 338 & 342 of 2023.

(b) First Appeal No.37 of 2022 is allowed, and the Respondents^{No. 1, 2 and 3} are directed jointly and severally to pay compensation of ₹8,13,580/- together with interest at the rate of 8% per annum from the date of institution of the claim petition till the actual payment;

Corrections carried out as per order dt. 24/08/23 passed in M.C.A. Nos. 338 & 342 of 2023.

(c) The Respondents, including in particular the Respondent Insurance Company, must deposit the above compensation amount together with interest in this Court within two months from today after giving due intimation to the learned counsel for the Appellant;

(d) Upon deposit, the Appellants will be entitled to withdraw the compensation amount and interest upon furnishing identity and bank details. Registry to ensure

that the amounts are directly transferred to the bank accounts of the Appellants.

- (e) In First Appeal No.74 of 2022, the compensation amount is apportioned equally amongst all claimants/Appellants.
- (f) In the peculiar facts of the present case, the JCB owner shall pay the costs of ₹25,000/- to the Appellants in both appeals. Such costs are to be deposited in this Court within two months from today. The Goa State, Legal Services Authority, must pursue and recover such costs from the JCB owner Silvina Silveira. Once the costs are recovered, the same should be paid to the Appellants.

M. S. SONAK, J.

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