

Amrut

IN THE HIGH COURT OF BOMBAY AT GOA
FIRST APPEAL NO. 38 OF 2023

Akash Choudhary
Son of Anil Choudhary,
Age 27 years, Business,
Presently residing at Flat No.602,
Rivera Palms, Arpora Bardez Goa,
Permanent resident of 1641 Sec 7 U.E.
Karnal (Haryana).

..... Appellant

Versus

1 Mr Suman Bagari,
Son of Devaiah Bagari,
Age 23 years,
R/o 20-316, Goutham Nagar,
Malkajgiri, Hyderabad,
Ranga Reddy,
(Rider of Honda Activa bearing Registration
No. GA-03-N-5264)

2 Kuber Gupta
Son of Jaganath Gupta,
Age 45 years (tentative age),
Resident of H.No.4/256,
Near Vengurlekar House,
Porba Waddo, Calangute, Bardez Goa.
(owner of Honda Active bearing
Registration No.GA-03-N-5264)

3 Bajaj Allianz General Insurance Company
Limited,
Through its Manager,
Having registered office at G. E. Plaza,
Airport Road, Yarwada,
Pune Maharashtra 411006

.....Respondents

Mr Jagannath J. Mulgaonkar, Ms Asmita Tirodkar (Through V.C.) and Ms Shweta Parulekar, Advocates for the Appellant.

Mr Ashish Swar, Advocate for Respondent No.1.

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

CORAM: M. S. SONAK, J.

DATE: 21st MARCH 2024

ORAL JUDGMENT

1. Heard Mr Mulgaonkar, who appears with Ms S. Parulekar for the Appellant, Mr A. Swar for the first Respondent (driver) and Mr A. Kakodkar appears with Ms Swetalata for Respondent No.3. The second Respondent (owner) though served neither present nor represented.
2. The Appellant (claimant), husband of the deceased Antra, who died in a vehicular accident on 03.07.2017, appeals the judgment and award dated 24.04.2023, dismissing his Claim Petition No.79/2018 on the ground of inability to prove that the accident was caused due to rash and negligence of the first Respondent.
3. In this appeal, the following points arise for determination:
 - (A) Was the accident in which the Appellant's wife died on account of rashness and negligence of the first respondent?
 - (B) If so, what would be the just compensation payable to the Appellant?

(C) Is any case of contributory negligence or a case to make a ‘pay and recover’ order made out by the Respondents?

4. Before addressing the above points for determination, it becomes necessary to note that after answering the question of rashness and negligence against the claimant, the Tribunal did not even bother to answer the other issues of the quantum of compensation. This was despite the Hon’ble Supreme Court’s decisions and this Court’s repeatedly urging the Tribunal to decide all issues and avoid taking shortcuts. In this case, the decision of this Court in ***Neha Nilesh Arlekar and others Vs S. D. Rocky and others***¹, in which this position was reiterated, was specifically cited before the Tribunal. However, after noting this decision in Para 35 of the impugned award, the Tribunal did not bother to answer the issue of compensation or determine the compensation amount which would have otherwise become due and payable to the claimant. This is most unfortunate.

5. Recently, in the case of ***Oswald Caldeira Vs Devandra Naik and others***² deprecating a similar approach, this Court was constrained to observe the following in Paras 3 to 9 as follows:-

“3. However, after recording this finding, the Tribunal did not bother to record any finding on other issues, particularly on the quantum of compensation. In

¹ 2022 SCC OnLine Bom 409

² FA No.46 of 2023 decided on 12.02.2024

doing so, the Tribunal acted in breach of several rulings of the Hon'ble Supreme Court, and this Court requiring the Courts and Tribunals to avoid shortcuts and decide all issues that fall for determination.

4. In **Bimlesh v. New India Assurance Company Limited**³ in paragraphs 7, 8 & 9, the Hon'ble Supreme Court has held that the Tribunal has to follow the summary procedure subject to any rules that may be made in this behalf. The Civil Procedure Code, 1908, is not strictly applicable to the proceedings before the Claims Tribunal except to the extent provided in Section 169 (2) of the MV Act and the Rules made thereunder. The whole object of the summary procedure is to ensure that the Claim Petition is heard and decided expeditiously by the Claims Tribunal. In paragraph 9, the Hon'ble Supreme Court has held that the Claims Tribunal must dispose of all issues one way or the other while deciding the claim petition.

5. Therefore, the Tribunals should not dispose of the Claim Petitions based on some preliminary issue, usually raised by the Insurance Company about maintainability or otherwise. So also, even after holding that rashness and negligence are not proven, the Tribunals should not neglect to decide on other issues, including the issue of the quantum of compensation. The Hon'ble Supreme Court has held that since all the issues (points for determination) are required to be considered by the Claims Tribunal together in the light of the evidence that may be led in by the parties and not piecemeal, often matters are required to be remanded. Accordingly, in *Bimlesh*

³ (2010) 8 SCC 591

(supra), the matter had to be remanded because not all issues were decided in one go.

6. Recently, even in the *Agricultural Produce Marketing Committee, Bangalore v. The State of Karnataka*⁴, the Hon'ble Supreme Court has reiterated that the Courts must avoid shortcuts and decide all issues that fall for their determination.

7. This court in *Santolina Josephina Sebastao Fernandes v. Inacio Xavier Fernandes*⁵, *Narcivha Chari v. Joao Faria* (First Appeal No. 34 Of 2017, decided on 04.03.2022), *Benidita Jose Oliveiro v. Naven Costancio Cardozo*⁶, *Sarita Agarwal v. Felecia Coelho* (First Appeal No. 59 of 2017, decided on 29.04.2022), *Franky Carvalho alias Neves Franky Carvalho v. Raju Jaswant Singh* (First Appeal No. 109 of 2017 decided on 01.07.2022), amongst others, has made it clear that the Tribunal is bound to decide all issues before it, that the law mandates that no shortcuts are adopted by avoiding the determination of some issue for the sake of convenience.

8. Yet it is seen that the Tribunal has adopted a shortcut and did not decide upon the other issues, such as the quantum of compensation; Mr Ramaiya submits that this was even though some of this Court's judgments were cited in this matter.

9. The Principal District Judges of the North and South Goa districts are now requested to circulate this judgment to the tribunals so there is no repetition.”

⁴ (2022) SCC OnLine SC 342

⁵ (2023) SCC OnLine Bom 44

⁶ (2022) SCC OnLine Bom 819

6. Since, in this particular case, the decision in *Neha Arlekar* (supra) was already cited before the Tribunal, the Presiding Officer cannot claim any ignorance of either the said decision or the decisions of the Hon'ble Supreme Court in *Bimlesh* (supra) referred to therein. Therefore, it is extremely unfortunate that the Tribunal, despite the decisions of this Court and the Hon'ble Supreme Court, avoided answering the issue of compensation virtually in defiance of directions given therein.

7. Be that as it may, the Tribunal, in this case, has also acted with perversity in answering the issue of rashness and negligence against the claimant or holding that the claimant failed to establish that the accident, in this case, occurred on account of rash and negligent driving of Honda Activa bearing No. GA-03-N-5264 by the first Respondent in a rash and negligent manner.

8. In recording its findings on the issue of rashness and negligence, the Tribunal has again ignored the principles laid down in *Neha Arlekar* (supra), which was specifically cited before the Tribunal and the decisions of the Hon'ble Supreme Court in the cases of *Anita Sharma & Ors. V/s. New India Assurance Company Limited & Anr.* (2021) 1 SCC 171), *Parmeshwari V/s. Amir Chand & Ors.* (2011) 11 SCC 635), *Sunita & Ors. V/s. Rajasthan State Road Transport Corporation & Ors.* (2020 (13) SCC 486), *Mangla Ram V/s. Oriental Insurance Company Ltd. &*

Ors. (2018) 5 SCC 656) and *Dulcina Fernandes & Ors. V/s. Joaquim Xavier Cruz & Anr.* (2013) 10 SCC 646) referred to therein.

9. In all the aforesaid cases, the Hon'ble Supreme Court has 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 cognizant 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.

10. In *Sunita & Ors. (supra)*, the Hon'ble Supreme Court has held that it is well settled that in motor accident claims cases, once the foundational fact, namely, the actual occurrence of the accident, has been established, then the Tribunal's role would be to calculate the quantum of just compensation if the accident had taken place because of the negligence of the driver of a motor vehicle and, while doing so, the Tribunal would not be strictly bound by the pleadings of the parties. Notably, while deciding cases arising out of motor vehicle accidents, the standard of proof to be borne in mind must be of a preponderance of probability and not the strict standard of proof beyond all reasonable doubt, which is followed in criminal cases.

11. The observations of the Hon'ble Supreme Court in *Anita* (supra) are also apposite and pertinent to this case; the Court observed that it is commonplace for most people to be hesitant about being involved in legal proceedings, and they, therefore, do not volunteer to become witnesses. In *Parmeshwari* (supra), the Hon'ble Supreme Court was constrained to repeat its observation that the total approach of the High Court, unfortunately, was not sensitised enough to appreciate the plight of the victim.

12. The evidence on record in this matter will have to be evaluated by considering the aforementioned perspectives and principles. Since the Tribunal failed to notice these decisions or apply them to the facts emerging from the record, the evidence must be reassessed.

13. In the present case, there is no dispute that an accident occurred on 03.07.2017 at 20.20 hours near Fat Fish Restaurant, Agarwaddo, Calangute, Bardez Goa. In this accident, there is no dispute about the involvement of the Honda Activa Scooter bearing No. GA-03-AE-5925 (which Antra was riding) and Honda Activa bearing No. GA-03-N-5264 belonging to the second Respondent and insured with the third Respondent. There is also no dispute that the police authorities lodged an F.I.R. against the first Respondent alleging rash and negligent driving on the wrong side, thereby committing offenses under Sections 279, 304-A and 337 of IPC. There is also no dispute that upon conclusion of investigations, a charge sheet has been filed before the Judicial Magistrate

First Class, Mapusa, against the first Respondent, again, alleging the commission of offences under Sections 279, 304-A and 337 of IPC.

14. The claimant, Antra's husband, was not present at the accident site. In his deposition, the claimant produced documents like the panchanama, a sketch of the accident site, etc. But the third Respondent-Insurance Company examined Rushikesh Patil, PSI of the concerned Police Station. Mr Rushikesh Patil (RW1) deposed that his investigation revealed that the first Respondent - Suman Bagari, was driving the offending bike. He deposed about the filing of F.I.R. and the charge sheet. He deposed that his investigation revealed that the first Respondent was riding the bike on the wrong side on a "*one-way road*". He categorically deposed that, as per his investigation, the vehicle which Respondent No.1 was riding went on the wrong lane and dashed against Antra's vehicle. He also deposed that he had recorded the statements of witnesses. As per his investigation, the first Respondent rode the bike in a rash and negligent manner, causing the accident in which Antra succumbed.

15. The Tribunal has completely ignored and misappreciated the evidence of Rushikesh Patil (RW1). Besides, the Tribunal evaluated the evidence on record by completely ignoring the principles laid down by this Court and the Hon'ble Supreme Court in such matters. The entire approach of the Tribunal was to somehow or the other pick some holes in the material produced on record by the parties and conclude, with respect,

that the claimant did not prove the rashness and negligence. For this, the Tribunal proceeded on the premises that there were no eyewitnesses to the accident, and the claimant was burdened with the entire burden of proving rashness and negligence. The Tribunal, without saying as much, proceeded on the basis that the claimant has to prove his case on the issue of rashness and negligence beyond reasonable doubt when it is well settled that the standard of proof in such matters is that preponderance of probabilities.

16. The Tribunal failed to appreciate that the first Respondent (RW2) deposed in this matter after the Insurance Company summoned him. The first Respondent's testimony makes extremely interesting reading. This witness claimed he was not riding the Aactiva Scooter involved in the accident but was only a pillion rider. RW2 claimed that his friend Anil Codadu was riding the Aactiva scooter at the time of the accident.

17. The first Respondent filed his written statement responding to the averments in the claim petition. In Para 7 of his written statement, the first Respondent stated that he was not the owner of the Aactiva scooter bearing No.GA-03-N-5264, and he "*deny his involvement in the alleged accident and hence there is no cause of action against this respondent*". Apart from the above omnibus and obviously false plea, the first Respondent did not even bother to plead that he was riding a pillion or that his friend Anil Codadu was actually riding the bike when the accident occurred.

18. The tribunal failed to appreciate the well-settled principle that no amount of evidence which is not backed by pleadings can ordinarily be considered. If the first Respondent was serious about his claim of not riding the bike at the time of the accident or that it was his friend Anil Codadu who was riding the bike when the accident occurred, then it was incumbent on him to have pleaded so. The fact that this was not pleaded renders the first Respondent's version extremely doubtful. It suggests that the first Respondent has no qualms about raising false defences or making false statements before the Court of Law.

19. Since the first Respondent (RW2) admitted that he was riding the pillion on the bike bearing No.GA-03-N-5264 at the time of the accident, RW2 was an eyewitness. The Tribunal was, therefore, not right in proceeding on the basis that there were no eyewitnesses to the accident.

20. In his examination in chief, RW2 deposed as follows: -

"I say that one girl was riding the scooter and I do not know the number of the scooter or make of the scooter nor the name of the girl nor from which direction she was coming. I say that the vehicle on which I was pillion was driven at a slow speed. I say that the speed was 30 km per hour. I say that I do not remember the number of the vehicle on which I was pillion.

It is true that the accident occurred due to rash and negligent driving of the opposite vehicle which was driven

by the girl. I do not know the exact place where the accident occurred.”

21. RW2, in his cross, admitted that he was aware of the written statement filed by him and that he had not mentioned anywhere in the written statement that his friend Anil Codadu was riding the scooter. Then, after having admitted to the chief, RW2 claimed that he was unaware of the F.I.R. registered against him or that the charge sheet was being filed against him. Later on, RW2, however, admitted to having read the F.I.R. and the charge sheet that was enclosed along with the claim petition.

22. RW2 admitted having filed no complaint against the police for registering any false F.I.R. against him. Strangely, after contending that he was riding a pillion at the time of the accident, RW2 deposed that he did not know when or where the accident occurred. He also claimed that he did not know the road on which the accident occurred was one-way.

23. RW2's deposition about his friend Anil Codadu riding an offending bike at a slow speed of about 30 km per hour inspires no confidence. As noted earlier, RW2 does not appear to have any qualms about either raising false defence or deposing falsely on oath. When it comes to answering any inconvenient questions, RW2 claims memory loss. Regarding the specific query about riding a scooter on a one-way road on the wrong side, RW2 claimed that he did not know anything about this. RW2 admits that the F.I.R. and the charge sheet have been filed against him. He also admits that

he never filed a complaint against the police objecting to the registration of any false F.I.R. against him.

24. In such circumstances, the Tribunal's finding that the claimant did not prove the rashness and negligence is incorrect and warrants interference. In recording these erroneous findings, the Tribunal has applied the standard of proof beyond reasonable doubt and openly defied the principles laid down by the Hon'ble Supreme Court to evaluate evidence in such matters. As noted earlier, this was despite the fact that the decision in *Neha Arlekar* (supra) was cited before the Tribunal.

25. Accordingly, based upon the evaluation of oral as well as documentary evidence on record, I have no hesitation in holding that the claimant has proved, by the test of preponderance of probabilities, that the accident occurred due to rash and negligence of the first Respondent who was at the time of the accident, riding the offending bike bearing No.GA-03-N-5264. Accordingly, this issue of rashness and negligence must be answered favouring the Appellant and against the Respondents.

26. On the issue of the quantum of compensation, Mr Mulgaonkar submitted that Antra was managing the business of a hotel in Goa and earning ₹57,884/- per month. For this, he relied on the testimony of the claimant (AW1) and Gulshan Gaba, Chartered Accountant (AW2).

27. Mr Kakodkar, learned counsel for the Insurance Company, submitted that there was no evidence supporting the claimant that Antra was managing a hotel and earning ₹57,884/- per month. He pointed out that though the hotel was claimed to be registered, no documents were produced. He pointed out that no documents of whatsoever nature were produced supporting the claimant that Antra was actually operating any hotel in Goa. He pointed out that no tax returns were filed or produced. The reliance was only on some profit and loss accounts made after Antra's demise.

28. Mr Kakodkar also submitted that there was no evidence that Antra had held any valid driving license at the time of the accident. Further, there is evidence that Antra was not even wearing a helmet at the time of the accident. He pointed out that the autopsy report suggests that Antra's death was due to craniocerebral damage consequent to blunt force impact with an object and/or surface. He submitted that if Antra had worn a helmet, then it is unlikely that she would have died in the accident. He, therefore, submitted that this was a case of contributory negligence, or, in any case, Antra was also responsible for her own unfortunate demise for not wearing any helmet.

29. Mr Kakodkar submitted that, in any case, a pay and recover order ought to be made given the devious defence raised by the first Respondent and the non-appearance of the second Respondent. He submitted that the

first Respondent took no plea in the written statement about Anil Codadu riding the bike. He submitted that if such a defence were to be taken, then the Insurance Company would have investigated to find out whether the said person was indeed riding the bike and, if so, whether he had any license to ride the bike. He submitted that the second Respondent (owner), by remaining ex-parte, blocked the truth from coming to record. He submitted that in such circumstances, even if the Insurance Company is called upon first to pay the amount to the claimant, the Insurance Company must be granted liberty to recover such amount from the owner and the driver of the insured vehicle.

30. Mr Mulgaonkar submitted that AW2 Gulshan Gaba, a Chartered Accountant, had prepared the profit and loss accounts based upon the passbook entries in Antra's bank account with Punjab National Bank at Shimla. He, therefore, submitted that the claimant's case about Antra operating a hotel in Goa and earning ₹7,884/- per month ought to be accepted, and based on that, the compensation of ₹1.20 crores (Approximately) should have been awarded.

31. On the aspect of Antra's income, the claimant, i.e. her husband Akash Choudhary, deposed that Antra was exclusively running a business guest house in the name and style "*Travelers Guest House*" at Tito Lane Baga and that he sometimes used to help her. He also deposed that Antra's income was ₹57,884.8 at the time of the accident as assessed by the

Chartered Accountant, i.e. AW2. He deposed that the income tax payable by Antra was assessed at ₹65,740/- for the relevant financial year, but no tax could be paid on account of her death. He deposed that Antra was very supportive, and he, along with Antra, had an ambition of having a good business so that they would not have to work in their old age. Apart from such deposition in his chief, the claimant produced no evidence to back the same. Only the bank statement from Punjab National Bank was placed on record.

32. Mr Gulshan Gaba (AW2), a Chartered Accountant from New Delhi, admitted that he, being a family friend of the claimant, deposed in this matter. He produced on record the profit and loss accounts and the balance sheet prepared by him on 26.04.2018. The accident, in this case, occurred on 03.07.2017. Thus, it is apparent that this account/balance sheet was prepared much after Antra's demise. AW2 also deposed that the profit and loss accounts or balance sheets he prepared were based on the passbook entries. However, Mr Kakodkar pointed out that the profit and loss accounts or balance sheets refer to some books of accounts presumably maintained by Antra. No such books of accounts were ever produced.

33. AW2 does not explain why no taxes were paid for previous years or why no taxes were paid for the relevant Assessment Year. Nothing is produced about operating a business under the name and style "Travelers Guest House" or any other name and style. If indeed, Antra was running a

hotel business, such a business would have generated documentary evidence that could have been easily produced. No documentary evidence of whatsoever nature was produced. Even the claimant, in his evidence, deposed that he was running a hotel called “Lagom Comforts” at Anjuna. He claimed that his wife was running another hotel at Baga (Tito Lane). He insisted that his wife’s business was “registered.” However, he failed to produce any registration documents.

34. After evaluating testimonies and the documents produced by the claimant and the AW2, it is difficult to accept the claimant’s case about Antra operating any hotel or earning ₹7,884/- per month. The entries in the passbook also do not match. No evidence, which would generally be available if this version was true, was produced on record. There are no tax records or records of GST, trade licenses, permissions, etc. Based on the entries in the passbook, it is difficult to accept that Antra was earning this amount of ₹57,884.80 per month from any business.

35. At the same time, it cannot be ruled out that Antra was assisting the claimant in running some hotel business. The claimant has provided no details about his own hotel business. However, since there is no serious cross on this aspect, the claim statement about Antra being extremely supportive of the business must be considered.

36. Besides, even if it is held that Antra was a homemaker, it would be idle to contend that a homemaker's life has no value. In the case of *Kirti*

*and Another Vs Oriental Insurance Company Limited*⁷ and *Arvind Kumar Pandey and others Vs Girish Pandey and Another*⁸, the Hon'ble Supreme Court has held that it goes without saying that the role of a homemaker is as important as that of a family member whose income is tangible as a source of livelihood for the family. If the activities performed by a homemaker are counted one by one, there will hardly be any doubt that the contribution of a homemaker is of a high order and invaluable. In fact, it is difficult to assess such a contribution in monetary terms.

37. Therefore, considering the evidence on record, it would be reasonable to hold that Antra's contribution, if monetised, would come to at least ₹5,000/- per month. An addition of 40% is due towards future prospects. This means that Antra's income at the time of her death in the unfortunate accident could be taken at ₹5,000/-per month after accounting for a future prospects of 40%.

38. In this case, the deduction towards her personal expenses would have to be 50%. This is because there is no evidence that apart from the claimant (her husband), there was any other dependent. Even the claimant was not exclusively dependent on Antra's income but certainly was entitled to be compensated for his wife's death in a vehicular accident. Accordingly, after

⁷ (2021) 2 SCC 166

⁸ Civil Appeal No.2512 of 2024 decided on 16.02.2024

deductions, Antra's contribution would be safely taken at ₹7,500/- per month.

39. There was some controversy about the correct multiplier applicable. The evidence on record shows Antra's birth date was 18.05.1992. This means that when the accident took place on 03.07.2017, she was above 25 but below 26. Considering the law in *Sarla Verma vs DTC*⁹ and *National Insurance Company Limited vs Pranay Sethi and others*¹⁰, the appropriate multiplier would be 18 and not 17, as Mr Kakodkar contended.

40. Based on the above, the compensation towards dependency would come to ₹37, 80,000/-. To this amount, an addition of ₹15,000/- towards loss of estate, ₹15,000/- towards funeral expenses and ₹40,000/- towards loss of consortium is due. Thus, the total compensation would come to ₹38,50,000/-. On this amount, the claimant would be entitled to interest at the rate of 6% per annum considering that this accident occurred on 03.07.2017.

41. As regards the contention that Antra had no license at the time of the accident, it must be said that there is no clear proof of this aspect. No such license was produced by either the claimant or Rushikesh Patil, PSI, who was examined on behalf of the Insurance Company. However, Rushikesh Patil claims that he was told that Antra has a license. Even the claimant

⁹ (2009) 6 SCC 121

¹⁰ (2017) 16 SCC 680

stated that Antra had a license, though no such license was ultimately produced.

42. Apart from the absence of clear evidence that Antra had no license, the law laid down in *Sudhir Kumar Rana Vs Surinder Singh and others*¹¹, supports the case of the Appellant–Claimant. In the said case, one of the issues was whether there was contributory negligence on the victim’s part, where evidence suggested that the victim drove the vehicle involved in the accident without any license.

43. The Hon’ble Supreme Court held that in such cases, the question is, negligence for what? If the complainant is guilty of an act or omission which materially contributed to the accident and resulted in injury and damage, the concept of contributory negligence would apply. The Court held that if a person drives a vehicle without a licence, he commits an offence. The same, by itself, should not lead to a finding of negligence as regards the accident. It is one thing to say that the victim was not possessing any licence but no finding of fact has been arrived at that he was driving the two-wheeler rashly and negligently. If he was not driving rashly and negligently, which contributed to the accident, he would be held to be guilty of contributory negligence only because he did not have a license. The Court clarified that the matter might have been different if, by reason of the victim’s rash and negligent driving, the accident had occurred. Accordingly,

¹¹ (2008) 12 SCC 436

the deduction of ₹18,000/- towards contributory negligence from a total award of ₹30,000/- was not approved by the Hon'ble Supreme Court.

44. Again, on the helmet issue, there is nothing to show that Antra was not wearing a helmet or that this aspect had any nexus with the actual accident. Here, evidence shows that the first Respondent drove on the wrong side of a one-way road rashly and negligently, thereby knocking Antra, who was riding the bike on the correct side. Accordingly, no nexus is established between Antra's alleged failure to wear a helmet and the accident.

45. Apart from that, there is no clear evidence that Antra was not wearing a helmet at the time of the accident. Rushikesh Patil, PSI, only states that no helmet was referred to in the panchanama. From that, it cannot be concluded that Antra was not wearing a helmet at the time of the accident.

46. In *Mohammed Siddique and another vs National Insurance Company Limited and others*¹², the allegation was that the victim was riding a motorcycle with two other persons behind him. Therefore, it was contended that the victim was liable for contributory negligence. The contributory negligence could not be inferred unless it was established that the act of riding along with two others contributed to the accident or to the impact of the accident upon the victim. There must be a causal connection

¹² (2020) 3 SCC 57

between the violation and the accident or between the violation and the impact of the accident upon the victim. Here, there is no evidence to show that Antra was not wearing a helmet or, in any case, that her not wearing a helmet contributed to the accident in any manner. Accordingly, on this ground, the compensation could not have been refused or reduced.

47. Mr Kakodkar's contention about the pay and recover order cannot be accepted in the facts and circumstances of the present case. Although the first Respondent may have raised false defence and the owner of the insured vehicle may not have bothered to contest the proceedings, that is insufficient to make pay and recover order. Now that this Court has held that the first Respondent was indeed riding the offending vehicle and that it was because of his rashness and negligence that the accident occurred, it is not as if any serious prejudice was caused to the Insurance Company. In any case, the circumstances for making a pay and recover order were not made out in the present case.

48. Mr Mulgaonkar presses for costs by pointing out that the claimant had paid court fees of ₹1,19,394/-, in addition to some litigation expenses. He submitted that even the first Respondent must be called upon to pay the costs for the false plea.

49. This is a case where the costs will have to be awarded. In addition to the usual costs that will have to be paid by the Respondents, this is a fit case

where the first Respondent should pay costs of ₹25,000/- to the claimant for taking up false pleas and delaying the compensation to the claimant.

50. The impugned judgment and award are set aside for all the above reasons. It is held that the accident in this case occurred due to the first Respondent's rashness and negligence.

51. Further, the Respondents are directed to pay claim compensation of ₹38,50,000/- together with interest at the rate of 6% per annum from the date of the claim petition until the actual payment of this amount. In addition to this, the Respondents are liable to pay usual costs. In addition to the usual costs, the first Respondent is directed to pay the claimant ₹25,000/- within six weeks from today.

52. The appeal is allowed in the above terms with costs.

M. S. SONAK, J.

AMRUT NAGESH TARI | Digitally signed by AMRUT NAGESH TARI
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