

IN THE HIGH COURT OF BOMBAY AT GOA.

FIRST APPEAL NO.17 OF 2012.

1. Smt. Nagma Shamu Dhotre,
aged 56 years, wife of deceased
Shamu Gangaram Dhotre,
2. Fullabai Shamu Dhotre,
aged 36 years,
d/o late Shamu Gangaram Dhotre
3. Sakubai Shamu Dhotre,
aged 35 years,
d/o late Shamu Gangaram Dhotre
4. Hanumant Shamu Dhotre,
son of late Shamu Gangaram Dhotre
5. Sucila Shamu Dhotre,
aged 29 years,
d/o late Shamu Gangaram Dhotre
6. Kamal Shamu Dhotre,
aged 28 years,
d/o late Shamu Gangaram Dhotre
all the applicants are residing
at Fondkulem, Sanvordem, Goa. Appellants.

Versus

1. Shri Chandrakant Sakharam
Talgaonkar, house No. 448,
Tony Nagar, Sanvordem Goa.
2. Shri. Rajendra Chandrakant
Talgaonkar, House No. 448,
Tony Nagar, Sanvordem Goa.
3. The New India Insurance Co. Ltd.
Jaganath Building, Jose Inacio
de Loyola Road, Near Railway
Gate, Margao Goa. Respondents.

Mr. S. S. Kakodkar, Advocate for the appellants.

Mr. E. Afonso, Advocate for the respondent no.3.

Coram:- K. L. WADANE, J.
Reserved on: 13th March, 2015.
Pronounced on:-26th March, 2015.

JUDGMENT

The present appeal is preferred by the appellants against the judgment and award dated 30.9.2011 passed by the Motor Accident Claims Tribunal, South Goa, Margao ("Presiding Officer" for short) in Claim Petition no.130/1994 whereby claim petition under Section 166 of Motor Vehicles Act filed by the appellants is dismissed.

2. Parties shall hereinafter referred to as per their original status in the claim petition.

3. The brief facts of the case may be stated as follows:-

Claimants have filed the petition under Section 166 of the Motor Vehicles Act.

On 14.9.1993 at about 8.30pm, the deceased Shamu Gangaram Dhotre (i.e. husband of claimant no.1 and father of claimants no. 2 to 6) was proceeding to his residential house situated at Fondkulem, Sanvordem,Goa. When he reached near

the primary school at Sanvordem, a truck bearing registration No. GA-02-T-6639 driven by the respondent no.2 in a rash and negligent manner, gave a violent dash to the deceased Shamu Gangaram Dhotre. Due to the dash, the deceased was crushed under the truck and died on the spot. After the accident the respondent no.2, the driver of the offending vehicle ran away from the spot without providing aid to the deceased or without informing the police. On inquiry, it was revealed that the respondent no.2 was solely responsible for the accident and for the death of Shamu Gangaram Dhotre. Therefore, the claimants have claimed total compensation of ₹3,00,000/- (Rupees three lakhs only) on all counts.

4. The respondents no.1 and 2 i.e owner and the driver of the vehicle have opposed the petition by filing their written statement and they have denied the involvement of the vehicle in the accident on the said date and time. According to these respondents, the panchanama and the sketch drawn by the police does not speak about the involvement of the truck in the accident. Even FIR does not speak about the involvement of the said truck. The postmortem report of the deceased does not show any nexus between the cause of the death and the alleged

accident. Rest of the contentions of the petition are denied.

5. The respondents no.1 and 2 came with the specific defence that on the day and time of the accident, their vehicle was out of Sanvordem as it was engaged to carry some goods to Margao and the said truck returned to Margao only at 11.00 p.m and brought to the residence of the respondents. Police have manipulated and fabricated the documents and made these respondents as victims to this claim petition. The respondent no.3 also denied all the contents of the petition, however has admitted that the truck was insured at the time of the accident.

6. Considering the rival contentions of both sides, the learned Presiding officer had framed three issues. First is relating to the rash and negligent driving of the truck by its driver. Second is relating to the death of Shamu Gangaram Dhotre in the accident and third is entitlement of the compensation.

7. Out of the above three issues, the finding on the first issue was recorded in the negative and issues no. 2 and 3 are answered in the affirmatives. Hence, the present appeal.

8. In order to establish the claim of the claimants, CW1 adduced her oral evidence and CW2-Pratap Pausekar, CW3-Sudhakar Dessai, CW4-Yeshwant Bhattikar and CW5-Anand Nair were examined to establish the fact of the accident and involvement of the vehicle in the accident.

9. As against this respondent no. 2 led his evidence besides the oral evidence, panchanama and the sketch are produced on record.

10. I have heard the arguments of Mr. Kakodkar, learned counsel appearing for the appellants and Mr. E. Afonso, learned counsel appearing for the respondent no.3 and I have also gone through the entire evidence on record with the help of learned counsel for both the sides.

11. On perusal of the reasons recorded by the learned Presiding Officer, it appears that it has rejected the petition broadly on the ground that the evidence of so called eye witnesses i.e. CW2- Pratap Pausekar, CW3-Sudhakar Dessai and CW4- Yeshwant Bhattikar does not inspire any confidence. As against this, the learned Presiding Officer has believed the

evidence of RW1 Rajendra Talgaonkar. During the course of the arguments the learned counsel Mr. Kakodkar, has argued that case of the claimants is required to be proved as per preponderance of probability and claimants are not required to prove their case beyond reasonable doubt. As against this Mr. Afonso, learned counsel for the respondent no. 3 has argued that the names of so called eye witnesses are not figured in any of the police papers, therefore, all of them are got up witnesses and they only deposed with intend to help the claimants. Considering the evidence on record and upon hearing both the sides following points arise for my determination:-

<u>SR. NO.</u>	<u>POINTS FOR DETERMINATION</u>	<u>FINDINGS.</u>
1)	Whether the claimants have proved that the deceased Shamu Gangaram Dhotre, died due to the accident which took place on 14.9.1993 at about 8.30p.m due to rash and negligent driving of the truck bearing No. GA-02-T 6639 by the respondent no.2?	 Affirmative.
2)	What Order?	 Appeal is allowed.

12. Looking to the record it appears that the above petition was earlier decided twice against which present claimants preferred appeal before this Court and on both the times, the matter was remanded back. For the first time it was remanded

back for giving opportunity to the claimants to lead further evidence and second time it was remanded at the request of the learned counsel appearing for the parties. No reasons were recorded for remand and for the third time claim petition of the claimants is rejected. Hence, the present appeal.

13. From the record it is seen that before remand of the matter for the first time evidence of CW1-Nagama Dhotre and CW2-Pratap Pausekar was recorded and after the remand the evidence of CW3-Sudhakar Dessai and CW4-Yeshwant Bhottikar were recorded and that can be seen from the various judgments produced on record. The reasons recorded for dismissal of the petition are that there is a contradiction between the evidence of witnesses examined on behalf of the claimants. Secondly, CW3-Sudhakar Dessai and CW4-Yeshwant Bhottikar were deposing after about 10 years and how it would be possible for these witnesses to recall each and everything. Admittedly CW1-Nagama Dhotre was not the eye witness to the accident and the investigation officer has not been examined. So looking to the contradictions, omissions, the learned Presiding Officer has dismissed the petition.

14. Considering the evidence on record and in my opinion the evidence of CW2 Pratap Pausekar is very much material. The learned Presiding Officer has given undue weightage to the minor contradiction occurred in the evidence. It is seen from the record that CW2 Pratap Pausekar was witness in a criminal trial and he has also deposed in Criminal Court in reference to the negligence of the respondent no. 2. Obviously it goes to show that the statement of CW2 Pratap Pausekar must have been recorded by the police in reference to the involvement of the vehicle in the accident driven by the respondent no. 2. On perusal of the judgment of Criminal Case No. 10/S/1994 it appears that CW2 Pratap Pausekar and CW3 Sudhakar Dessai were examined on behalf of the prosecution to establish the guilt of the respondent no. 2 for rash and negligent driving and have cause death of Shamu Gangaram Dhotre. However, the learned Judicial Magistrate has acquitted the accused by giving benefit of doubt. It is material to note that the learned Magistrate has not acquitted the accused on the ground that the vehicle was not involved in the accident. In my view this is important circumstance to infer that the vehicle driven by the respondent no. 2 was involved in the accident.

15. On perusal of the records of the claim petition, it appears that to establish the involvement of the vehicle in the accident the claimants have examined in all four witnesses. Out of which CW2-Pratap Pausekar and CW3-Sudhakar Dessai are mentioned in the list of witnesses to be examined on behalf of the claimants in addition to that there is name of one Mr. M. R. Naik, Assistant Sub Inspector is mentioned. So the claimants have taken efforts to examine all the material witnesses but unfortunately Investigating officer was not examined. On perusal of the record it appears that the learned Presiding Officer has rejected the oral evidence of CW2- Pratap Pausekar and CW3-Sudhakr Dessai on the ground that there are some contradictions in the evidence of these witnesses.

16. Learned Presiding Officer has also pointed out that out of the above two witnesses one witness says that after the accident the vehicle went away and another witness says that after the accident, vehicle had stopped and then went away. I think this is very minor contradiction appearing in the evidence of above two witnesses because after the accident if the driver had taken some pause because of the accident in that event the witness must have thought that the truck stopped and then went away.

On perusal of the reasons recorded by the Presiding Officer it appears that version of CW3-Sudhakar Dessai and CW4-Yeshwant Bhottikar was disbelieved on the ground that inspite of gap of 10 years they could remember the number of the truck which was involved in the accident in the year 1993. True some of the witnesses were examined after the remand and there is no reference in any of the documents that they were witnesses in criminal case. However, the case of the claimants witness no. 2 is different because from the record it appears that CW2-Pratap Pausekar had deposed in the said criminal case that too on 24.1.1995 and the date of accident is 14.9.1993. Copy of the deposition of the witness CW2 Pratap Pausekar is available on record from which it is seen that this witness has given each and every details of date of the accident, time, involvement of the vehicle and its registration number. During the cross examination this witness has admitted that Shambu Dhotre was drunk and was walking on the road and he was slightly unstable. Further from the cross examination it is seen that the statement of this witness was recorded nearly after one month from the date of the accident. So looking to the earlier version of the witnesses, it appears that there was some delay on the part of the investigating officer to record the statement of this witness

however, this witness has deposed before the Court that too in the year 1995 about the fact of the accident, involvement of the vehicle and on perusal of the evidence of this witness before the Presiding Officer, he has also given details of the accident in reference to time, registration number and name of the driver. Therefore, even if we ignore the evidence of the other witnesses still there is no reason to disbelieve the evidence of CW2 Pratap and on perusal of his evidence it appears that it is sufficient to establish that the accident occurred due to rash and negligent driving of the truck by the respondent no. 2.

17. Mr. Kakodkar, learned counsel appearing for the claimants has argued that the available evidence on record is sufficient to establish the fact of the accident. From the record, it is seen that after the accident, the driver of the truck along with the truck ran away and, therefore, it could not be traced for sometime and this fact is clear from the statement of the respondent no. 2 because he stated on oath that police had filed chargesheet against him in Sanquem Court. He has been acquitted in the said case and certified copy of the judgment is placed on record at Exh. 49. So looking to the above situation, it is material to mention her certain observations in the case of *United India*

Insurance Co. Ltd Vs. Deepak Goel and others, reported in *2014(2) T.A.C. 846 Delhi* in which it is held thus at paragraphs 20 and 21:-

“20. In deciding the accident cases, the Tribunals or the Courts bear in mind the caution struck by the Apex Court that a claim before the Motor Accidents Claims Tribunal is neither a criminal case nor a civil case. In a criminal case in order to have conviction, the matter is to be proved beyond reasonable doubt and in a civil case the matter is to be decided on the basis of preponderance of evidence, but in a claim petition before the MotorMAC.APP.750/2006 Page 6 of 7 Accidents Claims Tribunal, the standard of proof is much below than what is required in a criminal case as well as in a civil case. Undoubtedly, the enquiry before the Tribunal is a summary enquiry and, therefore, does not require strict proof of liability.

21. Nonetheless, in a case, where FIR is lodged, chargesheet is filed and specially in a case where driver after causing the accident had fled away from the spot, then the documents mentioned above are sufficient to establish the fact that the driver of the

offending vehicle was negligent in causing the accident particularly when there was no defence available from his side before the learned Tribunal. Thus, the claimants have prove negligence of the driver of the offending vehicle.”

18. Mr. Kakodkar, learned Counsel, therefore, has rightly relied upon the observations in the case of *Bimla Devi Vs. Himachal Road Transport Corporation*, reported in *AIR 2009 WC 2819* wherein it is observed that the claimants have to establish their case merely on touchstone of preponderance of probability and standard of proof beyond reasonable doubt could not be applied.

19. Keeping in mind the broad principles laid down by the Apex Court, I am of the opinion that the evidence adduced by the claimants in the present matter is sufficient to hold that the accident occurred due to the negligence of the respondent no. 2. Therefore, the above point is answered accordingly.

20. In view of the affirmative findings to the point noted above, appeal succeeds.

21. While deciding issue no. 3, the learned Presiding Officer has determined the compensation based upon the observations in the case of *Sarla Verma Vs. Delhi Transport Corporation*, reported in **2009(4) ALL MR. 429**. Therefore, the claimants are entitled for the compensation as determined by the Presiding Officer.

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22. Hence, I pass the following:-

O R D E R

- i. Appeal is allowed.
- ii. The impugned Judgment and award dated 30.9.2011 is quashed and set aside.
- iii. The respondents are jointly and severally held liable to pay to the claimants the compensation of ₹ 3,70,000/- (Rupees three lakhs seventy thousand only) together with 9% interest from the date of the petition till its realisation.
- iv. Appeal stands disposed of.

K.L. WADANE, J.

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