

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 16 OF 2010

1. Smt. Sangeeta Kisan alias
Krishnappa Chavan,
w/o Kisan alias Krishnappa
chavan, d/o Somalappa
Lamane, aged 30 years,
 2. Kumar Kiran Kisan alias
Krishnappa Chavan (Son),
aged 10 years,
 3. Kumar Kirti Kisan alias
Krishnappa Chavan,
(daughter), aged 5 years,
 4. Kumar Kavya Kisan alias
Krishnappa Chavan,
(daughter) aged 3 years,
 5. Kumar Kadambari Kisan
alias Krishnappa Chavan,
aged 1,
All r/o Geddalamari, Tq.
Meddebihal, Dist. Bijapur,
State Karnataka.
- ... Appellants

V e r s u s

1. Sunil Navnath Gavaliv,
(driver), aged 26 years,
Barkattem, Mollem of
Sanguem Taluka.
 2. Felician Pereira Luis,
(owner) major in age,
r/o H.No.484, Mercurim,
P.O. St. Lourenco,
Agacaim, Goa.
 3. Bajaj Alianz General
Insurance Co. Ltd.,
Pajifond, Margao Goa.
- ... Respondents

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Mr. M. Harmalkar, Advocate for the appellants.

Mr. E. Afonso, Advocate for the respondents.

CORAM : K. L. WADANE, J

JUDGMENT RESERVED ON : 23.04.2015

JUDGMENT PRONOUNCED ON : 09.06.2015

J U D G M E N T :

This appeal is directed against the judgment and order passed by the Presiding Officer, Motor Accident Claims Tribunal – II, South Goa, Margao, in Claim Petition No. 79/2008 dated 17.10.2008 by which the Presiding Officer has rejected the claim petition. Hence, the present appeal.

2. The parties are referred to their original status.
3. The brief facts of the case may be stated as follows :

The claimant nos. 1 to 5 i.e. widow and minor children of the deceased Kisan alias Krishnappa Chandru Chavan filed the petition under the provisions of Section 166 of the Motor Vehicles Act and claimed compensation on account of death of the deceased Kisan in the motor vehicular accident which took place on

17.01.2008.

4. On 17.01.2008, the deceased was driving a tipper truck bearing registration No. GA-01-W-7163 loaded with iron ore from Usgao to Anmod and when the said tipper truck reached at the spot of the accident, another tipper truck bearing registration No. GA-01-T-6995 came suddenly in fast speed in a rash and negligent manner driven by the respondent no.1 and gave dash to the tipper truck driven by the deceased Kisan. As a result, the deceased Kisan sustained serious injuries and died on the spot. According to the claimants, the accident occurred due to the rash and negligent driving of the tipper truck by the respondent no.1. Therefore, they have claimed total compensation of Rs.6,00,000/- from the respondents i.e. the driver, owner and the Insurance Company of the vehicle bearing registration No. GA-01-T-6995. The respondent nos. 1 and 2 have resisted the claim petition and they have specifically denied the negligence of the respondent no.1 and further they have contended that the accident occurred due to the negligence of the deceased himself. The respondent no.3 – Insurance Company also resisted the claim petition on the ground that there was no negligence on the part of the respondent no.1. On the contrary, the accident occurred due to the negligence of the deceased who drove his vehicle bearing no. GA-01-W-7163 in a

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rash and negligent manner without observing the oncoming traffic, on the wrong side of the respondent no.1. Therefore, the deceased was solely responsible for the accident. Some of the contents are denied and some of the contents are denied for want of knowledge. However, the insurance of the truck bearing No. GA-01-T-6995 is admitted. Considering the pleadings of the parties, the learned Presiding Officer has framed the three issues. First relating to the death of the deceased in the motor vehicular accident, second is the negligence on the part of respondent no.1 and third is the entitlement of compensation. Out of which, issue no.1 is answered in the affirmative and issue nos. 2 and 3 are answered in the negative and the claim petition is dismissed. Hence, the claimants have preferred this appeal. While answering issue no.3, the learned Presiding Officer has determined the compensation, however, due to the negative findings on issue no.2, the Presiding Officer has opined that the claimants are not entitled for the compensation.

5. I have heard the arguments of Mr. M. Harmalkar, learned counsel appearing for the appellants and Mr. E. Afonso, learned counsel appearing for the respondents. Before the Tribunal, the claimant no.1 Sangeeta has submitted her affidavit at Exhibit 32, and the documents i.e. the extract of station diary at

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Exhibit 33, spot panchanama and sketch at Exhibits 34 and 35 and Memorandum of Autopsy at Exhibit 36. To prove the salary of the deceased, AW2 Veerendar Mardolkar has deposed at Exhibit 39. The salary certificate is at Exhibit 40. To prove the negligence of the respondent no.1, the claimants have relied upon the oral evidence of AW3 Somangauda Mallangauda Chegareddy.

6. As against this, the respondent no.1 deposed at Exhibit 44 to prove the negligence of the deceased. Considering the oral as well as the documentary evidence on record, the learned Presiding Officer has rejected the claim petition. Considering the evidence on record, a short question arises for determination is as to who was negligence at the time of the accident. Therefore, the following point is framed for determination.

<u>POINT FOR DETERMINATION</u>	<u>FINDING</u>
1 Whether the claimants have proved that the accident occurred due the negligence of the respondent no.1 while driving the motor vehicle ?	No
2 What Order ?	Appeal is dismissed with no order as to costs

REASONS

7. At the outset, it is material to note that the controversy between the parties is around the negligence. The claimants say that the accident occurred due to the negligence of respondent no.1 and respondent nos. 1 to 3 say that the accident occurred due to the negligence of the deceased himself. To resolve the short controversy, the evidence of claimant no.1 is not material because she has admitted in the cross examination that she do not personally witness the accident. Therefore, the only relevant evidence is of AW3 Somangauda Mallangauda Chegareddy and the evidence of respondent no.1 Sunil Gavali coupled with the contents of the spot panchanama and sketch at Exhibits 34 and 35. The evidence of AW3 Chegareddy is in the form of affidavit produced on record. In para 9, this witness has stated that the police took his information after collecting the licence from him. On the date of the accident, he was following the truck driven by the respondent no.1 i.e. truck bearing No. GA-01-T-6995. When he reached at Siddegai, Mollem, and when he was at a distance of 20 to 25 metres away from the vehicle driven by the respondent no.1, the respondent no.1 all of a sudden gave direct dash to the vehicle driven by Kisan. The respondent no.1 lost control and in fast speed gave dash to the vehicle of Kisan. He then immediately applied

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the brake and stopped his vehicle. Looking to the above evidence, it appears that this witness has claimed to be an eye witness to the accident following the truck driven by respondent no.1. Admittedly, there was head on collision between the vehicles driven by respondent no.1 and the deceased Kisan and this witness was following the truck behind the truck of respondent no.1. In such circumstances, I am in doubt as to whether this witness could be in a position to see the oncoming vehicle from the opposite direction because there was vehicle between the vehicles driven by Kisan and respondent no.1. In such circumstances, in a normal circumstances, I do not think that it could be possible for this witness to see the accident clearly. Further more, there is no evidence on record to show that the statement of this witness was recorded by the police, if at all he was witness to the accident. In his oral evidence, this witness has tried to explain that he has narrated the fact of the accident to the police. However, surprisingly, during the cross examination he has admitted that the police did not record his statement but as per their request he submitted his statement in writing. Again he says that he did not submit his statement in writing. From the above admission, it appears that this witness is changing his version from time to time as per his convenience. On the other hand, the respondent no.1 has deposed that the accident occurred due to the negligence of

the deceased. Therefore, a reference has to be made to the spot panchanama and sketch because they exactly support the version of respondent no.1 regarding the manner in which the accident occurred. Particularly, on perusal of the sketch attached to the spot panchanama, it reveals that the tipper truck driven by respondent no.1 is at an extreme edge of its left side. On the contrary, the tipper truck driven by the deceased came towards complete wrong side crossing the centre line between the road and there was head on collision between the vehicles left front. The rear wheel of the tipper truck driven by respondent no.1 is almost on the katcha road and the left side rear wheel of the tipper truck driven by the deceased is at a distance of 2.15 metres from northern edge of the road and its right wheel is at a distance of 2.65 metres from the southern edge of the road. So the tipper truck driven by the deceased is completely went towards the wrong side and gave dash. So the situation appearing from the contents of the spot panchanama exactly supports the oral version of RW1. In such circumstances and the reasons recorded by the learned Presiding Officer, regarding the negligence, appears to be correct based upon the factual situation of the spot of accident and location of the truck. Therefore, the claimants have failed to establish that there was negligence or some negligence on the part of the respondent no.1. As such, there is no substance in the

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above appeal. Hence, point no.1 is answered in the negative. Consequently, the appeal stands dismissed with no order as to costs.

K. L. WADANE, J

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