

IN THE HIGH COURT OF BOMBAY AT GOA.

FIRST APPEAL NO.147 OF 2010.

1. Smt. Filomena Fernandes,
Aged 40 years,
w/o. Shri Piedade Carvalho,
2. Smt. Cristina Faria @ Cristina Gomes,
Aged 62 years, w/o late Shri Camilo
Carvalho, both r/o H.No. 199,
Deulamol, Uguem, Sanguem, Goa.Appellants.

Versus

- 1 Shri Alban Colaco
s/o Piedade Colaco,
r/o. H.No. 522, Carriamoddi,
Kakoda,P.O. Curchorem, Quepem, Goa
(Driver & Owner)
- 2 United India Insurance Co. Ltd.
Jamnadas Building, 2nd Floor,
Church Road, Curchorem. Goa.Respondents.

Mr. C. A. Coutinho, Advocate for the appellants.

Mr. A. Netravalkar, Advocate for the respondent no.2.

Coram:- K. L. WADANE, J.
Reserved on: 19th March, 2015.
Pronounced on:27th March, 2015.

JUDGMENT

The present appeal is directed against the judgment and award dated 28.7.2010 passed by the Presiding Officer, Motor Accident Claims Tribunal-II, Margao ("Presiding Officer" for short)

in Claim Petition no.186/2009 whereby the claim petition under Section 166 of Motor Vehicles Act filed by the appellants was rejected. Hence, the present appeal.

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 for the compensation on account of death of Piedade Carvalho (husband of the claimant no.1 and son of claimant no.2).

On 25.4.2008 at about 8.30 hours, the deceased Shri Piedade Carvalho was proceeding on a motorcycle bearing registration no. GA-02-Q-4393 from Dhargini towards Uguem, Sanquem and when reached near Uguem bridge suddenly a tipper truck proceeding from Uguem towards Dhargini driven and owned by respondent no.1 in a fast speed and in rash and negligent manner, over took another truck proceeding in same direction and thereafter dashed the motorcycle driven by the deceased Piedade Carvalho, as a result of which he fell down on the road and died on the spot. The deceased was a businessman

having transport business and he was also the owner of piggery. His truck was engaged by Gurudas Timblo at his mines at Tollem, Sanquem. His Tipper truck was also engaged by different contractors. He had a flourishing piggery business which he had started by obtaining a loan from Karnataka Bank Ltd, Sanquem. The deceased Piedade Carvalho was the sole earning member of family and was maintaining wife and mother and also looking after his brothers and their family members.

4. The respondents no.1 and 2 have filed their written statement at Exh.11 and they have denied the age, occupation and income of the deceased. They have also denied negligence of the respondent no.1 while driving the truck. According to them, the respondent no.1 was driving the truck in a moderate speed and at the relevant time he reduced the speed of the vehicle and also blew the horn. Hence, according to these respondents the accident occurred due to negligence of the deceased Piedade Carvalho himself. At the relevant time of the accident the motorcycle was in a fast speed and, as such, the deceased could not control the vehicle on the curve and proceeded towards wrong side and dashed against the driver side foot rest of the truck. There was no impact between the

two vehicles from front side. Therefore, police have filed false chargesheet against the respondent no.1, ultimately he has been acquitted from the charges. The insurance of the truck at the time of accident has been admitted.

5. Considering the rival contentions of both the sides, learned Presiding Officer had framed two issues one is relating to negligence and another is regarding entitlement of compensation.

6. I have heard the arguments of Mr. Coutino, learned counsel appearing for the claimants and Mr. A. Netravalkar learned counsel appearing for the respondent no.2 and I have also gone through the entire evidence on record with the help of learned counsel for both the sides.

7. To establish the claim of the claimants, claimant no.1 filed affidavit of her oral evidence at Exh.16 and evidence of eye witnesses namely AW2-Francisco Carvalho at Exh. 40 and AW3-Dharma Bhandari at Exh. 42. As against this the respondent no.1 has examined himself and RW2- Julio Diniz, Head Constable to prove the panchanama of scene of accident. Besides oral

evidence of the parties, the claimants have produced and relied upon the contents of the FIR, Panchanama of scene of accident, Postmortem report, certificate of driving licence of the respondent no.1, registration certificate, insurance cover note, income tax returns, marriage certificate, passing certificate and birth certificate vide Exh. 17 to 27.

8. Looking to the rival contentions of the parties, i.e contents of the claim petition Exh.1 and Written statement of the respondents no.1 and 2, Exh.11, it appears that the learned Presiding Officer has not framed necessary issues and it has only framed issue regarding negligence of respondent no.1 and has given negative finding. However, looking to the averments of the above two documents, it appears that one additional issue of contributory negligence was necessary to be framed and determined because the claimants are blaming respondent no.1 of his negligence and respondents no.1 and 2 are blaming the deceased Piedade Carvalho himself for rash and negligent driving of the vehicle.

9. In this behalf it is material to note and mention the contents of the panchanama of the scene of accident and sketch

attached thereto. Contents of the panchanama of scene of accident has been proved by adducing evidence of RW2- Julio Diniz, Police Head Constable. Rather it is an admitted position regarding scene of accident.

10. From the pleadings of the parties it appears that the deceased was riding his motorcycle from Dhargini to Uguem and tipper truck was proceeding from Uguem to Dhargini, therefore, it is very useful and material to see the situation on the sketch. The evidence and the sketch show that there was curve on the road at the spot of the accident and the road appears to be spacious having 6.80 metres width. Spot of the accident marked as "A" which appears to be almost on middle portion of the tar road having kaccha road of 1.50 metres towards south and 1 metres towards north so the total width of the road is 9.30 metres. Location of the motorcycle and the tipper truck after the impact have no relevancy. We have to see the exact spot where the accident took place. It is seen that it is almost on the middle portion of the road. On perusal of the reasons recorded by the learned Presiding Officer, it appears that the motorcyclist was misjudged while negotiating left turn. In this behalf it is material to note the observation of the learned Presiding Officer which is

one sided because the same is the situation of the truck driver. There was ample space for the truck towards its left side and if at all truck driver has taken his truck towards extreme left side then the accident could have been avoided. Of course motorcycle rider is equally responsible for causing the accident. It appears from the record and situation of the sketch that due to the curve on the road and due to the speed, motorcyclist was unable to control the motorcycle and was unable to negotiate the left turn. The witnesses examined on behalf of the claimants have clearly stated before the learned Presiding Officer that the truck at the relevant time was fast and gave dash to the motorcyclist.

11. On perusal of the reasons recorded by the learned Presiding Officer, it appears that the Presiding Officer held negligence of the motorcyclist alone because impact between the two vehicles were at a right side foot rest of the truck. Therefore, the learned Presiding Officer has held the deceased Piedade Carvalho responsible for the accident. On perusal of the situation of the spot, I am of the opinion that why the impact was appearing at the foot rest is due to curve on the road. Therefore, obviously, while taking turn impact at the right side

foot rest is quite natural and accordingly it is seen that due to the negligence of the both i.e. the respondent no.1 and the deceased Piedade Carvalho the accident occurred. Looking to the nature of the vehicle driven by respondent no.1, it is heavy vehicle compare to the motorcycle. More precaution is expected from the driver who is plying their vehicles on the public road.

12. Considering the pleadings of the parties, it was for the learned Presiding Officer to frame all the necessary issues in reference to the disputed fact and the claim. However, though, issue no.2 has been framed by the learned Presiding Officer no finding is recorded.

13. For the reasons recorded above, I am of the opinion that the accident took place due to contributory negligence of respondent no.1 and deceased Piedade Carvalho and their negligence is estimated to the extent of 50%:50% In view of the above finding, I am of the opinion that the matter needs to be remanded back to the learned Presiding Officer to determine the exact compensation to be paid to the claimants after adjudicating issue no.2.

14. Hence, I pass the following:-

O R D E R

- i. Appeal is allowed.
- ii. The impugned Judgment and award dated 28.7.2010 is quashed and set aside. Claim petition no. 186/2009 is restored to the file of Motor Accident Claims Tribunal-II, Margao.
- iii. Learned Presiding Officer is directed to determine the exact compensation to be paid to the claimants after adjudicating issue no.2.
- iv. Appeal stands disposed of accordingly, with no order as to costs.
- v. Parties are directed to appear before Motor Accident Claims Tribunal,II Margao on 27.4.2015 at 10.00a.m and abide by its further directions.

K.L. WADANE, J.

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