

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 58 OF 2010

1. Shri Narayan Anant Dalvi,,
major, son of Anant Dalvi,
Driver, resident of H. No.
1030/2, Painawaddo,
Tivim, Bardez, Goa.
 2. Mrs. Pratima P. Vaigankar,
major, married, wife of
Pradeep Vaigankar,
Resident of H. No. 273(12),
Kailashwaddo, Assonora,
Bardez, Goa.
- Appellants

V e r s u s

1. Shri Shivdas Bhartu, (deceased)
By his son & legal representative
Shri Rahul Shivdas Bhartu (Respondent no. 2)
H. No. 283/9, Housing Board Colony,
Mapusa, Bardez, Goa.
 2. Shri Rahul Shivdas Bhartu,
aged 22 years, major,
son of Shivdas Bhartu,
H. No. 283/9, Housing Board Colony,
Mapusa Bardez, Goa.
 3. Shri Gajanan Bhartu
17 years old son of Shivdas Bhartu
represented by his brother and guardian
Shri Shivdas Bhartu
H. No. 283/9, Housing Board Colony,
Mapusa, Bardez, Goa.
 4. The New India Assurance Co.
Ltd., Represented by its
Branch Manager having office
At Coscar Corner, 1st Floor,
Hotel, Bardez-Goa
- Respondents

Mr. E. Afonso, Advocate for the Appellants

Mr. Sudin Usgaonkar, Senior Advocate with Ms. Vinita Palyekar, Advocate for the Respondents.

Coram:- K. L. WADANE, J.

Date of reserving Judgment :- 08.01.2016

Date of pronouncement of Judgment:- 21.01.2016

JUDGMENT

The present Appeal is directed against the impugned Judgment and Award passed by the learned Presiding Officer of the Motor Accident Claims Tribunal at Mapusa in Claim Petition no. 25 of 2008 dated 14.05.2009, by which the claim of the claimants, the Respondents herein, for compensation under the provisions of Section 166 of the Motor Vehicles Act, has been allowed. The Respondents who are the Appellants herein, came in Appeal.

2. The parties are herein referred to as they appear in the cause title of the impugned Judgment and Award.

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

That the claimant no. 1, husband of deceased Ujwala and the Respondent nos. 2 and 3 are the sons. It is the case of the claimants that on the date of the accident i.e. on 23.02.2007, the deceased Ujwala was riding on her Activa Scooter bearing no. GA-03/D-6553; when she reached near Ankur Hospital, Mapusa, at that time, Respondent no. 1 was driving the Water tanker bearing no. GA-01/Z-0621 in a rash and negligent manner and was proceeding towards housing Board, gave a dash to the scooter due to which said Ujwala sustained grievous injuries and died on the spot. The said deceased Ujwala was around 48 years of age, she was working as a Clerk in Mapusa Urban Bank Ltd., having

monthly salary of Rs.16,778/-. Therefore, the claimants have claimed total compensation of Rs.25,47,000/- on all count.

4. The Respondent nos. 1 and 2 have appeared and submitted their written statement vide exhibit 12 and they have specifically contended that the vehicle was not involved in the accident. The deceased herself fell down from the scooter and skidded and came under the rear tyre of the tanker due to slope.

5. The Respondent no.3, the Insurance Company, vide its written statement at exhibit 14, has denied almost all allegations. However, it has admitted the Insurance⁴ policy of the vehicle.

6. Considering the rival contentions of both the sides, the learned Presiding Officer has framed three issues, (1) relating to the occurrence of the accident, (2) relating to the negligence of the Respondent no. 1 and (3) regarding entitlement of the compensation.

7. Before the Tribunal, the claimant no. 1 adduced his oral evidence by filing his affidavit and examined two eye witnesses namely Ajay Sawant and Deepak Dangi, employer of the deceased as Aw.3, Investigating Officer Mr. Gosavi is examined as Aw.5 and claimant no. 2 examined as Aw.6. In addition to the oral evidence, the claimants have relied and placed on record copy of FIR, Accident report, Inquest panchanama, post mortem report vide exhibit 22 to 25, insurance policy, registration certificate vide exhibit 26 and 27, death certificate exhibit 29,

marriage certificate exhibit 30, birth certificate exhibit 32 and copy of driving licence at exhibit 33, copy of the salary certificate vide exhibit 44, copy of the panchanama of the scene of accident at exhibit 49, school leaving certificate of the deceased at exhibit 53.

8. As against this, the Respondent no. 1 filed his affidavit vide exhibit 54.

9. Considering the evidence adduced by both the sides, the learned Presiding Officer has allowed the claim and awarded a compensation of Rs.12,52,000/- together with interest. Hence, the Respondents have preferred this Appeal.

10. I have heard the arguments of Mr. E. Afonso, learned Counsel appearing for the Respondents/present Appellants and Mr. Sudin Usgaonkar, learned Senior Counsel appearing for the claimants/present Respondents.

11. Mr. E. Afonso, learned Counsel appearing for the Appellants as well as Mr. Sudin Usgaonkar, learned Senior Counsel appearing for the Respondents has concentrated their arguments only on the aspect of negligence and no other grounds were argued on behalf of both the sides. Therefore, the only short and material controversy between the parties is with regards to the negligence.

12. As according to the claimants, the accident occurred due to rash and negligence driving of the water tanker by the Respondent no. 1. In the written

statement of Respondent nos. 1 and 2, the Appellants have specifically contended that the vehicle was not involved in the accident and the deceased herself fell down on the road and due to slope, she rolled down and came near the rear wheel of the tanker. As against this, it is the specific case of the claimants' that when the deceased was riding on the scooter and at the spot of the accident, the tanker gave a dash to the scooter due to which he fell down and came under the rear wheel of the tanker.

13. Before going to discuss this material aspect, it is material to note and keep in mind, the observations of the Apex Court in the case reported in **(2009) 13 SCC 530, Bimla Devi & Ors. vs. Himachal Road Transport Corporation & Ors.**, wherein it is observed at Paras 11 and 15 thus :

“11. While dealing with a claim petition in terms of Section 166 of the Motor Vehicles Act, 1988, a tribunal *stricto sensu* is not bound by the pleadings of the parties; its function being to determine the amount of fair compensation in the event an accident has taken place by reason of negligence of that driver of a motor vehicle. It is true that occurrence of an accident having regard to the provisions contained in Section 166 of the Act is a *sine qua non* for entertaining a claim petition but that would not mean that despite evidence to the effect that death of the claimant's predecessor had taken place by reason of an accident caused by a motor vehicle, the same would be ignored only on the basis of a post-mortem report vis-a-vis the averments made in a claim petition.

12. ...

13. ...

14. ...

15. In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied. For the said purpose, the High Court should have taken into consideration the respective stories set forth by both the parties.”

14. Looking to the observations of the Apex Court, the evidence adduced by both the sides has to be assessed and scrutinised. To establish the negligence on the part of the Respondent no. 1 at the relevant time of the accident, the claimants have relied upon the oral evidence of two eye witnesses namely Ajay Sawant and Deepak Dangi as well as the evidence of Investigating Officer Mr. Gosavi as well the panhanama of the scene of accident coupled with the sketch.

15. Aw.2, Mr. Ajay Sawant, has adduced his oral evidence by way of affidavit wherein at para nos. 1 and 2, he has specifically stated that he has seen the accident as he was going from that side. The deceased was traveling on her scooter Honda Activa bearing registration no. GA-03/D-6553. The Respondent no. 1 was driving rashly and negligently the water tanker bearing registration no. GA-

01/Z-0621 and was heading towards Housing Board when it reached near Ankur Hospital and it gave a dash to the scooter of the deceased due to which the deceased died on the spot.

16. I have gone through the cross examination of this witness. There is no material on record to disbelieve the oral testimony of this witness besides some suggestions those are denied by this witness.

17. Looking to the evidence of another witness namely Deepak Dangi, he also stated the same thing which has been deposed by the earlier eye witness Mr. Ajay Sawant. In his cross examination, nothing is brought on record to disbelieve the case of the claimants regarding negligence.

18. Besides the oral evidence of the above two witnesses, it is material to note that the Investigating Officer has adduced evidence at exhibit 48 who has conducted the panchanama of the scene of accident and prepared the rough sketch of the scene appearing on the spot of accident. On perusal of the contents of the panchanama of the scene coupled with the sketch, it appears that the scooter was badly damaged as its front panel, it is dented and handle bar seen broken. Scratch marks are seen on the left side and front panel and front mud guard and rear left side front rest seen damaged. On the other hand, there were no marks of damages of the water tanker except some scratch marks are seen on the front right side and front rear tyre some blood stains were seen. It is also brought on record that the deceased sustained crush injury. Looking to the contents of the

panchanama of the scene, it appears that initially, the scooter struck to the right rear wheel of the tanker and, consequently, the deceased fell down and because of the slope, she rolled and came under the right rear wheel and, therefore, she received the crush injury.

19. The Respondents/Appellants came with a case that the vehicle was not involved in the accident. However, no evidence is adduced on behalf of the Appellants to that effect because the material evidence on record shows there were blood stains over the rear side tyre of the vehicle coupled with the crush injury to the deceased. If at all the vehicle of the Respondents/Appellants was not involved in the accident, then it was not possible to have a crush injury to the deceased. The evidence adduced on behalf of the claimants/Respondents appears to be sufficient to hold that the accident occurred due to the negligence of the Respondent no. 1 whilst driving the vehicle.

20. I have gone through the reasons recorded by the learned Presiding Officer from which it can be seen that the learned Presiding Officer has rightly considered the evidence on record and arrived at a correct conclusion whilst determining the claim of compensation based upon fault liability.

21. In the result, there is no substance in the Appeal and, therefore, it has to be dismissed. Accordingly, the Appeal is dismissed with costs.

K. L. WADANE, J.

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