

IN THE HIGH COURT OF BOMBAY AT GOA**FIRST APPEAL NO.19 OF 2007**

Shri Peter Godinho
 Son of Xavier Godinho,
 (Since deceased)
 Through legal heirs and legal
 representatives.

- 1a. Smt. Greta Godinho
 Widow of Peter Godinho alias
 Pidu Gudinho
 aged 50 years, widow
- 1b. Shri Gracian Godinho
 Son of late Peter Godinho alias
 Pidu Gudinho
 aged 28 years, bachelor
- 1c. Miss Shaina Godinho
 Daughter of late Peter
 Godinho alias Pidu Gudinho
 aged 25 years, spinster
 all above residents of Taki-Xeldem
 Taluka Quepem

53 years of age, married,
 businessman
 C/o Greta Batteries, Masjid
 Building, Curchorem Goa
 represented herein by his attorney
 and wife Smt. Greta Godinho
 major in age, housewife,
 resident of Taki-Xeldem, Goa,
 Taluka Quepem

.. Appellants

V/s

1. Shri Cornelins D'Souza
 son of Xavier D'Souza,
 major, r/o Diana Vitta,
 near Church, Kennigali,
 Mangalore, D. K.... Driver
 & Owner
2. The Oriental Insurance Co.Ltd.
 City Branch-I, Kulyadi Bldg,

K. S. Rao Road, Hampankatta,
Mangalore 575001, Pin440628.. Insurer .. Respondents

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

Shri E. Afonso, Advocate for the respondent no.2.

CORAM :- C. V. BHADANG, J.

DATE : 10th September, 2018

ORAL JUDGMENT :

This First Appeal can be disposed of on a short count. The appellant was injured in an accident, which occurred on 13/11/2002 at about 3.00 p.m. at Barcem in Quepem Taluka. At the time of the accident, the applicant was proceeding to Churchorem from Cancona on his motorcycle bearing No.GA-02-Q-1407. According to the appellant, when he reached Barcem, he was knocked down by an oncoming Truck bearing No.KA-19-1381, which was owned as well as driven by the first respondent. The Truck was covered by a Policy of Insurance issued by the second respondent. Further, according to the appellant, he sustained 100% neurological disablement and 90% Orthopedic disablement, on account of the injuries sustained in the accident.

2. The appellant filed Claim Petition No.48/2003 before the Motor Accident Claims Tribunal, South Goa at Margao, seeking a compensation of Rs.1 Lakh.

3. The petition was contested by the second respondent by filing Written Statement. The respondent no.1, although did not file any Written Statement, examined himself as RW1. On behalf of the appellant, his wife came to be examined as AW1 along with three other witnesses namely Assis Dias-AW2, Dr. S. S. Nadkarni-AW3 and Head Constable, Surendra Naik-AW4.

4. The Tribunal framed the following issues for determination :

"1. Whether the applicant proves that on 13/11/2002 at 3.00 p.m. at Barcem of Quepem Taluka, when he was coming to Curchorem from Canacona on motorcycle bearing no.GA-02-Q-1407, he was knocked down by a truck-bearing no.KA-19-1381 driven by respondent no.1 in a rash and negligent manner by coming in an opposite direction on account of which, he suffered multiple fractures and head injury?

2. Whether the applicant proves that he is entitled for total compensation of Rs.1,00,000/-?"

5. The Tribunal, on appreciation of the evidence, came to the conclusion that the appellant had failed to establish that the accident occurred due to rash and negligent driving of the first respondent and, therefore, answered the issue no.1 in the negative. In view of the finding as against the issue no.1, the

Tribunal did not venture to determine the quantum of compensation on the basis of fault and found that the compensation of Rs.25,000/- paid to the appellant under the no fault liability, was appropriate compensation in the facts and circumstances of the case. Feeling aggrieved, the appellant has filed this appeal.

6. I have heard Shri Kakodkar, the learned Counsel for the appellant and Shri Afonso, the learned Counsel appearing for the second respondent.

7. Although several contentions were raised on behalf of the learned Counsel for the parties at bar, I found that the appeal has to partly succeed on the short count of the Tribunal having not determined all the issues arising in the petition. On behalf of the appellant, reliance is placed on the decision of the Supreme Court in the case of ***Bimlesh and others Vs. New India Assurance Co. Ltd***; (2010)8 SCC 591, in which the Hon'ble Supreme Court has held thus :

“9. The inquiry under Section 168 and the summary procedure that the Claims Tribunal has to follow do not contemplate the controversy arising out of claim application being decided in piecemeal. The Claims Tribunal is required to dispose of all issues one way or the other in one go while deciding the claim

application. The objection raised by the Insurance Company about maintainability of claim petition is intricately connected with its liability which in the facts and circumstances of the case is dependent on determination of the effect of the additional premium paid by the insured to cover the risk of the driver and other terms of the policy including terms of the policy contained in para 5. Since all issues (points for determination) are required to be considered by the Claims Tribunal together in light of the evidence that may be let in by the parties and not in piecemeal, we do not think it proper to consider the rival contentions on merits at this stage. Suffice it to say that matter needs to be sent back to the Claims Tribunal."

(Emphasis supplied)

8. This Court in First Appeal No.15/2009 (**Smt. Remediana Braganza e Rebello and others Vs. Laxman Kolekar and others**) decided on 04/07/2014, in similar circumstances, placing reliance on the decision of the Supreme Court in the case of **Bimlesh** (supra), has remanded the matter back to the Tribunal, for deciding it afresh in accordance with law. In yet another decision in First Appeal No.289/2007, (**Shri Mariano Caetano Braganza Vs. Janardan and 2 others**), decided on 21/08/2013, this Court had adopted a similar course in the face of the fact that the Tribunal had not decided all the

issues. In the case of **Mariano Braganza** (supra), for instance, the issue no.3 pertaining to quantum of compensation was not decided by the Tribunal on merits, as in the present case. I see no reason to take a different view in the matter. In such circumstances, the following order is passed :

ORDER

- (i) First Appeal is partly allowed.
- (ii) The impugned judgment and award is hereby set aside. Claim Petition No.48/2003 is hereby restored to the file of the learned Tribunal, for deciding it afresh, in accordance with law, for rendering specific findings on both the issues as referred to above.
- (iii) The learned Tribunal shall decide the petition as expeditiously as possible and without being influenced by any of the findings or observations in the impugned judgment and award.
- (iv) Parties to appear before the learned Tribunal on 08/10/2018 at 10.00 a.m.
- (v) In the circumstances, there shall be no order as to costs.

C. V. BHADANG, J.

SMA