

IN THE HIGH COURT OF BOMBAY AT GOA**FIRST APPEAL NOS. 11/2013, 37/2016 & 38/2016****FIRST APPEAL NO. 11 OF 2013**

1. Mr. Fakruddin Mulla, s/o late Allisab Mulla, married, age 62 years.
2. Mrs. Roshan Bi Mulla, w/o Fakruddin Mulla, housewife, major in age.
Both are r/o H. No. 164, Ward No. 7, Hathwada, Valpoi, Sattari-Goa.
3. Mrs. Fatima Bi Sher Ali, widow of Sher Ali, r/o Indira Nagar, Chimbhel-Goa.
4. Miss Shaira Banu, D/o late Sher Ali, minor, r/o Indira Nagar, Chimbhel-Goa. ... Appellants

Versus

1. Mr. Gangaram Ghadi, age 40 years, R/o H. No. (not known), Sawtawado, Sanquelim-Goa. (Driver of the vehicle)
2. Mr. Kishor Hanjunker, major in age, R/o H. No. (not known), Karapur Tisk, Sanquelim-Goa. (Owner of the vehicle)
3. National Insurance Company Ltd., Through the Manager, First Floor, Town Center, Municipal Building, Bicholim-Goa. ... Respondents

Shri Sagar Dhargalkar, Advocate for the Appellants.

Shri Emerico Afonso, Advocate for the Respondent Nos. 1 & 2.

Shri U.R. Timble with Ms. Yadika Mandrekar, Advocates for the Respondent No. 3.

FIRST APPEAL NO. 37 OF 2016

Mr. Gangadhar N. Ghadi, s/o Narayan Ghadi, aged 34 years, residing at House No. 14, Gokulwada, Sanquelim, Bicholim-Goa. ... Appellant

Versus

1. Fatima Bi Sher Ali, legal representative of the deceased driver, Sher Ali Mulla, s/o Fakruddin Mulla, major in age, r/o Indira Nagar, Chimbhel, Ilhas-Goa.
2. Rahmuddin Shaik Nuva Shaikh, major in age, residing at H.No.113, Nanus, Valpoi-Sattari, Goa.
3. Oriental Insurance Co. Ltd., Gouveia Chambers, 3rd floor, Helidaro Salgado Road, Panaji-Goa. ... Respondents

Shri Emerico Afonso, Advocate for the Appellant.

Shri Santosh Hari Bharne, Advocate for the Respondent No. 3.

FIRST APPEAL NO. 38 OF 2016

Kishor Narcinva Hanjunkar, s/o Narcinva Hanjunkar, residing at House No. 248, Karapur Tisk, Bicholim-Goa. ... Appellant

Versus

1. Fatima Bi Sher Ali, legal representative of the deceased driver, Sher Ali Mulla, s/o Fakruddin Mulla, major in age, r/o Indira Nagar, Chimbhel, Ilhas-Goa.
2. Rahmuddin Shaik Nuva Shaikh, major in age, residing at H.No.113, Nanus, Valpoi-Sattari, Goa.
3. Oriental Insurance Co. Ltd., Gouveia Chambers, 3rd floor, Helidaro Salgado Road, Panaji-Goa. ... Respondents

Shri Emerico Afonso, Advocate for the Appellant.

Shri Santosh Hari Bharne, Advocate for the Respondent No. 3.

CORAM:- C. V. BHADANG, J.

RESERVED ON: 28th AUGUST 2018

PRONOUNCED ON: 5th SEPTEMBER 2018

JUDGMENT:

These three appeals, involve claims for compensation, arising out of the same vehicular accident, as such, they are being disposed of by this common judgment.

2. The accident in question occurred at about 11:15 p.m. on 12.06.2008, near Procter and Gamble Company on the Valpoi-Honda road. One Sher Ali (since deceased) was driving a mini bus bearing no. GA-04/T-5593 and was proceeding from Valpoi to Honda. The other vehicle involved in the accident is a bus bearing No. GA-01/U-2434, which was coming from the opposite direction and was being driver by one Gangadhar Ghadi, who was injured in the accident. Sher Ali died of the injuries suffered in the accident. Three claim petitions arose out of the said accident, giving rise to these three appeals.

3. First Appeal No. 11/2013:

The parents of deceased Sher Ali, filed Claim Petition No. 17/2009, against the driver of the bus bearing no. GA-01/U-2434 and the National Insurance Company, seeking a compensation of Rs.15,50,000/-, on the ground that the accident occurred solely due to the rash and negligent driving of the bus by the respondent no. 1, Gangadhar Ghadi. The

widow and the daughter of the deceased were arrayed as respondent nos. 4 and 5 in the claim petition as well as in the appeal, who have subsequently been transposed as appellant nos. 3 and 4.

The Tribunal by the impugned judgment and award dated 07.09.2012 dismissed the petition, holding that Sher Ali was solely responsible for the accident and thus, the claimants were dis-entitled to any compensation. Nonetheless, the Tribunal has conducted the exercise of determination of the quantum of compensation and has come to the conclusion that the claimants would have otherwise been entitled to a compensation of Rs.10,73,000/-, in respect of the death of Sher Ali, but for the accident having occurred due to his own negligence. Feeling aggrieved, the present appeal is filed.

4. First Appeal No. 37/2016:

Claim Petition No. 29/2014 was filed by Gangadhar Ghadi, against the widow of Sher Ali and the owner of the mini bus bearing no. GA-04/T-5593 and its insurer, the Oriental Insurance Company Limited, seeking a compensation of Rs.5,00,000/- on account of the permanent disablement sustained by him in the accident. The Tribunal found that the claimant had sustained 10% permanent disablement due to

shortening of the left lower limb and has awarded a compensation of Rs.1,18,400/- in addition to the compensation of Rs.25,000/- on no fault liability basis alongwith interest. The claimant feeling aggrieved by the inadequate compensation granted, has filed the present appeal for enhancement.

5. First Appeal No. 38/2016:

The appellant (the owner of the mini bus bearing no. GA-01/U-2434) had filed claim petition no. 30/2014 against the widow of Sher Ali and the owner and the insurer of the bus bearing no. GA-04/T-5593, seeking a compensation of Rs.1,50,000/- for damage suffered to the mini bus in the accident. The Tribunal has dismissed the petition on the ground that the claimant has failed to produce the evidence that the bus was totally damaged and was sold as a scrap for Rs.25,000/- and also on the ground that the claimant did not avail of the claim from it's own insurance company i.e. the National Insurance Company Limited. Feeling aggrieved, the claimant has filed the present appeal.

6. I have heard the learned Counsel for the parties. With the assistance of the learned Counsel for the parties, I have gone through the record.

7. The following points arise for my determination in these appeals.

(i) Whether, the accident occurred solely due to the rash and negligent driving of the bus bearing no. GA-04/T-5593, by now deceased Mr. Sher Ali ? OR

(ii) Whether, there was any contributory negligence of Mr. Gangadhar Ghadi, driver of bus bearing no. GA-01/U-2434, in the occurrence of the accident ? If yes, how the contributory negligence is to be apportioned ?

(iii) Whether, the legal representatives/dependents of Sher Ali are entitled to compensation, if yes, what amount ?

(iv) What is the compensation to which the appellant Gangadhar Ghadi is entitled to, in respect of permanent partial disablement suffered by him ?

(v) Whether, the appellant Kishore Hanjunker is entitled to a compensation in respect of damages to the bus bearing no. GA-01/U-2434 ? If yes, to what extent ?

8. Point Nos. (i) and (ii):

The claims as raised in the present appeals are based on tortious liability, arising out of negligence. In order to fasten liability, it has to be found as to whether, the driver of the

particular vehicle was responsible for the accident i.e. for having driven the vehicle in a rash and negligent manner. In a case involving two vehicles, the question is also about the contributory negligence of the two drivers, if any, and the extent of such contributory negligence. The owner of the vehicle becomes vicariously liable on account of the master and servant relationship vis-a-vis the driver of the vehicle. The liability of the insurance company arises out of the contract of indemnity in the form of insurance policy. Thus, the question of negligence is the very basis of the liability to pay compensation. It is therefore necessary to see the cause of the accident. In this case, the Tribunal has held, the deceased Sher Ali, to be solely responsible for the accident and has therefore, refused to grant any compensation to his legal heirs/dependents. The first question to be addressed is whether, indeed, the accident occurred due to rash and negligence of Sher Ali or whether, Gangadhar Ghadi was also responsible for contributory negligence and if yes, the extent thereof.

9. Negligence is breach of duty to take care. The question of negligence has to be decided on the basis of direct evidence, if available, and tendered, alongwith the circumstantial evidence in the form of spot panchanama on the

basis of principle of *res ipsa loquitur*. In the present case, we have the benefit of having ocular as well as the evidence in the form of spot panchanama, in order to decide the issue of negligence.

10. Gangadhar Ghadi examined himself as claimant in Claim Petition No. 29/2014 and he was also examined on behalf of the claimant in Claim Petition No. 30/2014 as AW-2. The claimants in Claim Petition No. 17/2009 have examined one Amanulla Khan (AW-3), who claims to have witnessed the accident. The Tribunal has disbelieved the evidence of this witness and has placed reliance on the evidence of Gangadhar Ghadi in coming to the conclusion that Sher Ali was solely responsible for the accident, without there being any contributory negligence on the part of Gangadhar Ghadi.

11. There is a spot panchanama alongwith the sketch of the spot of occurrence, which was produced before the Tribunal and one Amanulla Khan (AW-3), who was one of the pancha witnesses has been examined. It is necessary to state that the accident occurred at 11:15 p.m., while the panchanama was prepared on the following morning between 9:00 to 9:30 a.m. The panchanama shows that the road at the spot of the accident

is a pucca road, having a width of 5.50 metres with about 0.24 metres of kucha patch on either sides. The actual spot of accident was ascertained on the basis of the glass splintered on the road. The spot panchanama indeed shows that the bus bearing no. GA-01/U-2434, driven by Gangadhar Ghadi and which was proceeding towards Valpoi was pushed back to the extent of 12.15 metres. This circumstance has weighed with the Tribunal in holding that the deceased Sher Ali, who was driving the other bus was responsible for the accident. In the opinion of the Tribunal, the bus driven by Gangadhar Ghadi was pushed back to the extent of 12.15 metres, which indicates the speed at which the other bus was being driven by Sher Ali.

12. The reasoning as articulated, in my considered view, cannot be accepted, in its entirety. The Tribunal has failed to see that speed is not the only criteria to determine the question of negligence, particularly, on a clear highway. Driving at a certain speed, which may be considered as rash, on a crowded city road, may not be so on a clear highway. The question depends on facts and circumstances of each case. Normally, in a case of head on collision, as in the present case, the negligence is apportioned equally, albeit, subject to any circumstance indicating to the contrary. The record in the

present case indicates that there was head on collision, which is indicative from the glass splinters scattered on the very middle of the road and both the vehicles were damaged in their front. The spot panchanama indicates that the road at the spot of the accident was sufficiently wide for the two vehicles to pass on conveniently. Even assuming that the on coming vehicle driven by Sher Ali was coming in high speed, Gangadhar Ghadi, driver of the other vehicle had an opportunity to avoid the collision by taking his bus to extreme left, in as much as, the road permitted the same. While determining the question of negligence, in such a case, the Tribunal has also to examine, whether, there was a last opportunity to avert the collision, which the other driver failed to avail of.

13. Now coming to the oral evidence. I have carefully gone through the evidence of Amanulla Khan (AW-3). He has witnessed the accident. The Tribunal has disbelieved this witness. Although, Amanulla Khan (AW-3) stated that the deceased and the family members of the deceased were known to him, it appears that he stayed on the spot of the accident only for five minutes and did not even care to inform the police. The Tribunal, in my considered view, is right in disbelieving this witness. However, that does not mean that implicit reliance can

be placed on the evidence of Gangadhar Ghadi, the driver of the other vehicle, who would be an interested witness, trying to absolve himself. It is trite that the standard of proof to establish negligence, in the case of the present nature, is not as high as in a criminal case and it proceeds on preponderance of probability. I have gone through the evidence of Gangadhar Ghadi. Except saying that the bus driven by Sher Ali, coming from the opposite direction had come to the other side (the side from which the witness was driving his vehicle), nothing has come in the evidence of Gangadhar Ghadi to attribute any negligence to Sher Ali.

14. Now there is indeed a circumstance about the speed at which, Sher Ali might have driven the bus. As noticed by the Tribunal, the bus driven by Gangadhar Ghadi, was pushed back to the extent of 12.5 metres. Here also, the question would depend on several factors, such as, the weight of the vehicles, unladen and laden, if any. A smaller vehicle, hit by a heavy vehicle, even at a moderate speed, would be pushed back, particularly, when the smaller vehicle is empty. Unfortunately, there is no evidence on this aspect led by the parties to clearly bring out the negligence of one of the drivers. In such a case, the Court would be left to take a broader view, on the basis of

preponderance of probability in arriving at a conclusion as to negligence. At any rate, the Tribunal, in my considered view, was not justified in attributing the entire negligence on Sher Ali, only on account of the fact that the vehicle driven by Gangadhar Ghadi was pushed back to a certain extent.

15. The Hon'ble Supreme Court in the case of **N.K.V. Brothers Private Limited Vs. M. Karumai Ammal & Others, (1980) 3 SCC 457** has *inter alia* held that the Courts and Tribunals, in a case of the present nature, should not succumb to niceties or technicalities and should take care to see that innocent victims do not suffer and the drivers and owners do not escape liability merely because of some doubt here or some obscurity there.

In **T.O. Anthony Vs. Karvarnan & Others, (2008) 3 SCC 748**, which was also a case of head on collision, the Hon'ble Supreme Court, affirmed the finding of the Tribunal apportioning the negligence to the extent of 50% each.

In the case of **Jiju Kuruvila & Others Vs. Kunjamma Mohan & Others, (2013) 9 SCC 166**, the Hon'ble Supreme Court has held that the mere position of the vehicle after the accident, as shown in the spot panchanama, are not substantive proof as to the rash and negligent driving

on the part of one or the other and when two vehicles coming from the opposite directions collide, the position of the vehicles and their directions etc. depends upon a number of factors like the speed of the vehicles, intensity of collision, reason for collision, the place at which one vehicle hit the other etc. It can thus be seen that the totality of the evidence has to be considered and the primary evidence in such cases would be that of the driver/s, (in the present case, one out of them is dead and we have the oral evidence of the other), which has to be appreciated alongwith the documentary evidence in the form of panchanama.

16. On a careful consideration of the circumstances, I find that the accident was a result of the contributory negligence on the part of Gangadhar Ghadi, to the extent of 40%. Thus, the contributory negligence of the two drivers, namely, the deceased Sher Ali and Gangadhar Ghadi is apportioned at 60%:40% respectively. The points are answered accordingly.

17. Point No. (iii): (First Appeal No. 11/2013)

The deceased Sher Ali was aged 24 years, at the time of the accident and was working as a driver and was earning Rs.6,500/- per month, including daily allowance of Rs.50/- per

day. The claimants have examined Shaikh Badruddin (AW-5), the employer of the deceased, who has stated that he was paying to the deceased a monthly salary of Rs.5,000/-, in addition to allowance of Rs.50/- per day. The Tribunal has accepted this evidence and reckoned the monthly income of the deceased at Rs.6,500/- per month. There is no reason to take a different view. However, the Tribunal has not considered the addition towards future prospects.

18. The Hon'ble Supreme Court in the case of **National Insurance Company Limited Vs. Pranay Sethi & Others, AIR 2017 SC 5157** has held that where the deceased was self employed or was on a fixed salary, addition of 40% be made towards future prospects. The present case would be covered by para 61(iv) of the judgment in the case of **Pranay Sethi** (supra). The deceased was 24 years of age and as such, an addition of 40% of the established income has to be made in this case. The parents of the deceased alongwith the widow and the daughter, were four dependents on the deceased and as such, deduction towards personal and living expenses has to be to the extent of $\frac{1}{4}^{\text{th}}$, in accordance with the decision of the Supreme Court in the case of **Smt. Sarla Verma & Others Vs. Delhi Transport Corporation & Another, (2009) 6 SCC**

121. The standardised addition of Rs.15,000/- each, towards loss of estate and funeral expenses alongwith Rs.40,000/-, towards loss of consortium, would be admissible to the widow. The multiplier applied, depending upon the age of the deceased is 18. The total compensation thus can be computed as under:

1. Annual Income (Rs.6,500 x 12 months)	: Rs.	78,000/-
2. Add: 40% towards future prospects	: Rs.	31,200/-
		Rs. 1,09,200/-
3. Less: $\frac{1}{4}$ th towards personal and living expenses of the deceased	: Rs.	27,300/-
		Rs. 81,900/-
4. Compensation towards loss of dependency (Rs.81,900 x 18)	: Rs.	14,74,200/-
5. Add: Towards loss of estate	: Rs.	15,000/-
6. Add: Towards funeral expenses	: Rs.	15,000/-
7. Add: Towards loss of consortium	: Rs.	40,000/-
Total Compensation	: Rs.	15,44,200/-

In as much as the contributory negligence of the deceased Sher Ali is apportioned as 60%, the claimants would only be entitled to 40% of the aforesaid amount i.e. Rs.6,17,680/-. I am inclined to grant interest at the rate of 7% per annum on the amount of compensation, from the date of the petition till realisation. The point is answered accordingly.

19. Point No. (iv): (FA No. 37/2016)

The claimant Gangadhar Ghadi has suffered 10%

disablement as per the certificate dated 13.04.2015 (at Exhibit 32). It shows that the claimant has suffered fracture of the left shaft femur and the fracture of the right clavicle and there is an implant in the situ (femur), which has resulted into the shortening of the left lower limb by an inch. The certificate mentions that the claimant had full functional recovery of the right upper limb and the percentage of permanent disability, according to the ALIMCO scale was 10% on account of shortening of the limb. The claimant was 32 years of age as on the date of the accident, his date of birth being 09.08.1976. The appellant had examined Kishore Hanjunker (AW-2), his employer, who claimed that he was paying salary of Rs.8,000/- per month, which the Tribunal has not accepted. According to the Tribunal, the salary was paid in cash and Kishore Hanjunker (AW-2) has not produced the Books of Account to show that the payment was made. The Tribunal has therefore reckoned the notional income at the rate of Rs.3,000/- per month. As noticed earlier, in the other appeal (First Appeal No. 11/2013), which is a death claim in respect of the driver of the other vehicle, the Tribunal has accepted the claim of monthly income of Rs.6,500/-. On an overall consideration, I do not find that the Tribunal could have reckoned the monthly income at Rs.3,000/- per month. It would be appropriate to consider the

income at Rs.6,500/- per month. The appellant being less than 40 years of age, a similar addition of 40% can be made towards future prospects. The appropriate multiplier, looking to the age of the appellant, would be 16.

20. The Hon'ble Supreme Court in the case of **Raj Kumar Vs. Ajay Kumar & Another, (2011) 1 SCC 343**, had an occasion to consider various heads, under which, compensation can be granted, in an injury case. This is what is held in para 6 of the judgment.

“6. The heads under which compensation is awarded in personal injury cases are the following:

Pecuniary damages (Special Damages)

(i) Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food, and miscellaneous expenditure.

(ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising:

(a) Loss of earning during the period of treatment;

(b) Loss of future earnings on account of permanent disability.

(iii) Future medical expenses.

Non-pecuniary damages (General Damages)

(iv) *Damages for pain, suffering and trauma as a consequence of the injuries.*

(v) *Loss of amenities (and/or loss of prospects of marriage).*

(vi) *Loss of expectation of life (shortening of normal longevity).*

In routine personal injury cases, compensation will be awarded only under heads (i), (ii)(a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (ii)(b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life.”

(Emphasis supplied)

It can thus be seen that, in routine injury cases, the compensation will be awarded only under the head of actual expenses on treatment, actual loss of earning during the period of treatment and general damages on account of pain and suffering. It is only in serious cases of injury, where there is specific evidence, that compensation can be granted under any of the heads at (ii)(b), (iii), (v) and (vi) above.

21. The medical evidence as to the percentage of disability, more often than not is in relation to a limb or a part of the body and not to the whole body. That apart, the permanent partial disability (either with reference to any limb/part of the body or in relation to the whole body), may not always translate into an equivalent percentage of loss of earning capacity. The question whether, the particular disablement would result into future loss of earning capacity and the percentage thereof, depends upon the various circumstances, such as, the nature and the extent of the injury, the part of the body, which is affected and the avocation of the person.

22. Coming to the present case, the appellant was engaged as a driver and has suffered shortening of one of the legs. The disability is bound to affect his future earning capacity as a driver of a heavy vehicle. In the present case, I am inclined to hold that the loss of future earning capacity, would be equivalent to the permanent partial disability, which he has suffered to the extent of 10%.

23. Insofar as compensation under the head of actual loss of salary during the period of treatment is concerned, there

is no acceptable evidence as to the actual period of treatment. There is also no evidence of an attendant being employed or the expenses, on such attendant. However, I am inclined to award a consolidated amount of Rs.25,000/- towards the special diet and the travelling expenses. The total compensation thus can be computed as under:

1. Annual Income (Rs.6,500 x 12 months)	: Rs.	78,000/-
2. Add: 40% towards future prospects	: Rs.	31,200/-
		Rs. 1,09,200/-
3. Compensation in the event of permanent total disablement (Rs.1,09,200/- x 16)	: Rs.	17,47,200/-
4. Compensation admissible (10% of Rs.17,47,200/-)	: Rs.	1,74,720/-
5. Add: Towards pain and suffering	: Rs.	50,000/-
6. Add: Towards medical expenses	: Rs.	7,000/-
7. Add: Towards special diet and travelling expenses.	: Rs.	25,000/-
Total Compensation		Rs. 2,56,720/-

In as much as the contributory negligence attributed to the claimant is 40%, the claimant would only be entitled to 60% of the aforesaid amount i.e. Rs.1,54,032/-. I am inclined to grant interest at the rate of 7% per annum on the amount of compensation, from the date of the petition till realisation. The point is answered accordingly.

The appellant is the owner of the mini bus bearing no. GA-01/U-2434, which is said to be completely damaged in the accident. The appellant claimed compensation of Rs.1,50,000/- being the price/valuation of the bus. The Tribunal has refused to grant compensation for two reasons. Firstly, that the appellant has failed to establish that the valuation of the vehicle, as on the date of the accident was Rs.1,50,000/- and secondly, the appellant ought to have claimed compensation from the insurer, which had issued the policy of insurance, covering the risk out of the use of the said bus.

25. It is a matter of record that the appellant did lodge a claim with the insurance company of the bus, however, could not submit the documents, as required by the insurance company and hence, the claim was not granted. It is contended on behalf of the appellant that the registration of the mini bus was cancelled, as it was completely damaged in the accident and therefore, the appellant could not furnish the documents to the insurance company.

26. Be that as it may, it is not possible to accept that just because the appellant had failed to get the insurance claim from the insurance company, which had covered the risk arising

out of the use of the bus, the appellant would be dis-entitled to get compensation under Section 166 of the Motor Vehicles Act (Act, for short). This is because the claim made under the insurance policy and the one made under Section 166 of the Act are not similar. The claim under the insurance policy is contractual in nature and is based on the contract of indemnity towards the insured, where the consideration is the premium paid by the insured to the insurer. Quite to the contrary, the basis of the compensation, under Section 166 of the Act is the negligence of the driver of the offending vehicle. In my considered view, the Tribunal was not justified in refusing to grant compensation under Section 166 of the Act, for the reason that the appellant could not get the insurance claim sanctioned, from his own insurance company. It is not the case, that the appellant had obtained an insurance claim from his own insurance company and is still seeking compensation under Section 166 of the Act. It is not necessary to examine the question whether, the claimant after obtaining insurance claim from his own insurance company, can also stake a claim under Section 166 of the Act or not, inasmuch as the said issue does not arise in this case. In my considered view, only because the claimant could not obtain insurance claim, which is purely of a contractual nature, would not dis-entitle the appellant from

getting compensation under Section 166 of the Act, particularly, when negligence of the driver of the oncoming vehicle is established, albeit, to a certain extent.

27. Coming to the quantum of compensation, the record shows that the year of manufacture of the mini bus was 1994 and thus, it was about 14 years old at the time of the accident in the year 2008. The appellant had declared the valuation of the bus [Insured's Declared Value (IDV)] for the purpose of insurance at Rs.1,50,000/- in February, 2008, when the policy of the insurance was obtained. Thus, the IDV of the vehicle being prior to the date of the accident, would carry a certain amount of probative value. The appellant has produced an estimate of the labour charges for repairs of the mini bus at Rs.1,37,550/-, in addition to the price of the spare parts, which required replacement at Rs.74,900/-. The estimate was given by Laxmi Engineering Works, Sanquelim. The appellant did not examine any authorised person of Laxmi Engineering Works, to substantiate the estimate so produced. Normally, the operating age of the vehicle can be reckoned as 15 years. As noticed earlier, the mini bus was about 14 years old when the accident occurred. It would be reasonable to reckon the valuation of the bus at Rs.1,50,000/-, as declared by the appellant, at the time of

obtaining the insurance policy, much prior to the accident. In view of the fact that Gangadhar Ghadi, the driver of the vehicle has been held to be responsible for the contributory negligence to the extent of 40%, the appellant would only be entitled to a compensation of Rs.90,000/- (being 60% of Rs.1,50,000/-). According to the appellant he has sold the bus for Rs.25,000/-. Thus, the net amount that the appellant would be entitled is Rs.65,000/-. Here also, I am inclined to grant interest at the rate of 7% per annum from the date of the petition till the realisation. The point is answered accordingly.

28. Consequently, the following order is passed:

ORDER

FIRST APPEAL NO. 11/2013

- (i) First Appeal No. 11/2013 is hereby allowed.
- (ii) The impugned judgment and award dated 07.09.2012, passed by the Tribunal in Claim Petition No. 17/2009 is hereby set aside.
- (iii) The respondent nos. 1, 2 and 3 shall jointly and severally pay an amount of Rs.6,17,680/- to the appellants alongwith interest at the rate of 7% per annum from the date of the petition, till realisation. The said compensation shall be inclusive of the compensation granted under no fault liability.
- (iv) The compensation so granted shall be equally apportioned between the appellants. The share of the respondent no. 5, shall be invested in a fixed deposit with any

nationalised bank, till the respondent no. 5 attains majority.

- (v) The respondent no. 4 shall be entitled to receive quarterly interest on such deposit, to be applied towards the welfare of the minor.

FIRST APPEAL NO. 37/2016

- (i) First Appeal No. 37/2016 is partly allowed.
- (ii) The impugned judgment and award dated 09.12.2015, passed by the Tribunal in Claim Petition No. 29/2014 is hereby modified.
- (iii) The respondent nos. 2 and 3 shall jointly and severally pay an amount of Rs.1,54,032/- to the appellant alongwith interest at the rate of 7% per annum from the date of the petition, till realisation. The said compensation shall be inclusive of the compensation granted under no fault liability.

FIRST APPEAL NO. 38/2016

- (i) First Appeal No. 38/2016 is partly allowed.
- (ii) The impugned judgment and award dated 09.12.2015, passed by the Tribunal in Claim Petition No. 30/2014 is hereby set aside.
- (iii) The respondent nos. 2 and 3 shall jointly and severally pay an amount of Rs.65,000/- to the appellant alongwith interest at the rate of 7% per annum from the date of the petition, till realisation.

C. V. BHADANG, J.