

**IN THE HIGH COURT OF BOMBAY AT GOA****FIRST APPEAL NO.103 OF 2017**

1. Mrs. Jovita Filomena  
Ferrao e Monteiro,  
aged 71 years,  
r/o. H.No.718,  
Palmar St. Estevam,  
Ilhas-Goa.
  2. Mr. Andrew Monteiro,  
aged 39 years, Bachelor,  
S/o. Late Remediano Monteiro,  
r/o. H.No.718,  
Palmar St. Estevam,  
Ilhas-Goa.
- .... Appellants

V/s

1. Mr. Sameer Tari,  
Aged 27 years,  
driver, r/o. H.No.1117,  
Tonca wada,  
St. Estevam, Goa.
  2. Mr. Nanu Tari,  
Major in age,  
r/o. H.No.1117,  
Tonca wada,  
St. Estevam, Goa.
  3. ICICI Lobard  
General Insurance Co. Ltd.,  
101, 1<sup>st</sup> Floor, Kamat Towers,  
Plot No.9, Patto Plaza,  
Opp. KTC Bus Stand,  
Panaji-Goa 403 001.
- ....Respondents

Shri E. Afonso, Advocate for the Appellants.

**CORAM : C.V. BHADANG, J.**

**DATE : 22<sup>nd</sup> OCTOBER, 2018**

**ORAL JUDGMENT :**

By this appeal, the appellants, who are original claimants, are seeking modification of the judgment and award dated 24/04/2017 passed by the Motor Accident Claims Tribunal ('Tribunal' for short) at Ponda in Claim Petition No.61/2016. By the said judgment, the Tribunal while partly allowing the petition filed by the appellants has granted a compensation of ₹4,52,000/- along with interest at 9% p.a. which is inclusive of a compensation under Section 140 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act' for short). The Tribunal has held that the deceased was responsible for contributory negligence to the extent of 20% and has deducted an amount of ₹1,13,000/- from the total amount of compensation of ₹5,65,000/- as computed by the Tribunal. The appellants are only seeking the modification on the ground that the deceased cannot be held to be responsible for any contributory negligence.

2. I have heard Shri E. Afonso, the learned Counsel for the appellants. None appears for the respondents. Perused record.

3. The accident in question occurred on 05/11/2012 when

the deceased Mr. Remediano Monteiro while walking by the side of the road at Kandola Marcela, Opposite Lisa Beauty Parlour, was hit by a motorcycle bearing no.GA-07-J-4426 which was driven by the first respondent. The Tribunal found that the deceased was walking in the middle of the road and that is the sole reason on the basis of which the Tribunal has held that the deceased contributed to the accident to the extent of 20%.

4. I have gone through the evidence as well as the impugned judgment. The Tribunal has relied upon the spot panchanama along with the sketch. It may be mentioned that the only evidence led before the Tribunal was that of the appellant Mrs. Jovita Filomena Ferrao e Monteiro (AW1). None of the respondents led any evidence either on the point of negligence or the quantum. In fact, the respondent no.1 being the rider of the motorcycle, was the best witness available to be examined to show the manner in which the accident occurred. The record discloses that the respondents no.1 & 2 had gone to the extent of denying the involvement of the motorcycle in the accident.

5. The question of negligence, in a dispute of the present

nature has to be decided on the basis of the ocular evidence of the occurrence of the accident if available and tendered, along with the attending circumstances, in consonance with the principle of *res ipsa loquitor*. At the cost of repetition, it needs to be mentioned that the respondent no.1 did not enter into the witness box and thus the best evidence has been withheld. The spot panchanama along with the sketch has also not been proved on record. Even assuming that the strict rules of evidence Act may not apply to the proceedings before the Tribunal, and the spot panchanama can be taken into consideration, it does not conclusively show that the point of impact was in the middle of the road. This is because there are some blood stains shown to be existing at the spot which is at the extreme edge of the road. Thus, the sketch does not clearly bring out that the spot of the impact was in the middle of the road which is the sole reason for the Tribunal to have held the deceased responsible to the contributory negligence to the extent of 20%.

6. On behalf of the appellants reliance is placed on the decision of the Supreme Court in the case of ***Syed Sadiq & Ors. V/s. Divisional Manager, United India Insurance Company Ltd. (2014) 2 SCC 735*** and the decision of this

Court in the case of **Mr. Anthony Pereira V/s. Mrs. Maria D'Costa e Pereira & Ors. in First Appeals No.168/2008 and 95/2008** decided on 09/05/2014 and **Shaligram Ramaji Dhekale & Anr. V/s. Ravindra Manikrao Khadse & Ors. in First Appeal No.231/2009** decided on 03/12/2009 in order to submit that even assuming that the deceased was crossing the road, the driver of the offending vehicle was expected to be careful and cautious while driving the vehicle on road in a busy street.

7. In the case of **Syed Sadiq** (supra), the Supreme Court has held thus in para 29 of the judgment :

“28. On the matter of extent of contribution to the accident, it is held by the Tribunal that the appellant claimants herein should have taken utmost care while moving on the highway. Looking at the spot of the accident, the Tribunal concluded that the appellant claimants were moving on the middle of the road which led to the accident. Therefore, the Tribunal concluded that though the tractor has been charge-sheeted under Sections 279 and 338 IPC, but given the facts and circumstances of the case, the appellant claimants also contributed to the accident to the extent of 25%. The High Court without assigning any reason concurred with the findings of the Tribunal with respect to

contributory negligence. We find it pertinent to observe that both the Tribunal and the High Court erred in holding the appellant claimants in these appeals liable for contributory negligence. The Tribunal arrived at the above conclusion only on the basis of the fact that the accident took place in the middle of the road in the absence of any evidence to prove the same. Therefore, we are inclined to hold that the contribution of the appellant claimants in the accident is not proved by the respondents by producing evidence and therefore, the finding of the Tribunal regarding contributory negligence, which has been upheld by the High Court, is set aside.

(Emphasis supplied)

8. It can thus be seen that in that case the Tribunal had arrived at a conclusion of 25% contributory negligence of the appellant on the ground that the accident took place in the middle of the road. The Supreme Court held that the aforesaid conclusion was not based on any evidence.

9. In the case of ***Shaligram Ramaji Dhekale*** (supra), a learned Single Judge of this Court held that even assuming that the deceased was crossing the road, the driver of the motorcycle was expected to be careful and cautious while

driving on a busy road, as there is every possibility of persons crossing the road near such places.

10. The question whether the accident occurred due to the rash and negligent driving of the offending vehicle and whether there is any contributory negligence would depend upon facts and circumstances of each case. Mere speed is not indicative of rash and negligent driving. This is for the reason that a given speed, although may not amount to a rash driving on a clear highway, it can amount to rash and negligent driving on a city road which is busy and crowded. In the present case, there is no acceptable evidence to show that the deceased was crossing the road and to show that the point of impact was in the middle of the road, inasmuch as the sketch annexed to the spot panchanam, indicates that there were blood stains at the extreme edge of the road. If that be so, the said sketch cannot be used to find that the spot was in the middle of the road particularly in the absence of any independent evidence including that of the respondent no.1 who was riding the motorcycle. For that reason, the finding recorded by the Tribunal holding the deceased to be responsible to contributory negligence to the extent of 20%, to my mind, cannot be sustained. Thus, the Tribunal was in

error in deducting the amount of compensation of ₹1,13,000/- from the total amount of compensation of ₹5,65,000/-.

11. In the result, the following order is passed:

**O R D E R**

- (i) The appeal is partly allowed.
- (ii) The impugned judgment and order is hereby modified.
- (iii) The appellants are held entitled to a compensation of ₹5,65,000/- jointly and severally against the respondents, along with simple interest at the rate of 9% p.a. from the date of the filing of the petition, till the realisation.
- (iv) This shall be inclusive of the compensation under Section 140 of the Act.
- (v) In the circumstances, the parties are left to bear their own costs.
- (vi) Award be drawn accordingly.

**C.V. BHADANG, J.**

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