

IN THE HIGH COURT OF BOMBAY AT GOA**FIRST APPEAL NO. 98 OF 2016**

1. Shri Andrez Sonya Vangad,
alias Andrew Fernandes,
son of Sonya Vangad,
aged 49 years, service,
married and his wife
 2. Effie Fernandes alias Effie Conceicao
Francisca Fernandes,
aged 48 years, service,
both resident of House No.821 (old)
237 (New), Kalsoi Wado, Village Codali,
Kirlapal-Dabhal, Taluka Dharbandora.
- Appellants

V e r s u s

1. Shri Sumit Gaonkar,
Son of Vithobha Gaonkar,
Rider of motorcycle bearing registration
Number GA09-J-7740,
Resident of 35, Zariwado, Cotarli,
Sanguem Goa 403704.
 2. Shri Sangam Gaonkar,
Son of Ganesh Gaonkar,
Owner of motorcycle bearing registration
No.GA09-J-7740.
Resident of House No.128, near
Puirish Devasthan, Madhala Wada,
Cotarli, Sanguem Goa 403704.
 3. National Insurance Company Ltd.
Insurer of motorcycle bearing registration
Number GA09-J-7740,
Branch office at Margao Goa.
- Respondents.

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

None for the Respondents.

CORAM: C. V. BHADANG, J.
DATE: 25th September, 2018.

JUDGMENT:

Heard Shri Kakodkar, the learned counsel for the appellants. None for the respondents.

2. This appeal can be disposed off on a short count.
3. The appellants are the parents of Stenzil Fernandes who died in a vehicular accident which took place on 4/2/2014 at 9.05 hours at Codali, Dharbandora. The appellants filed Claim Petition No.138 of 2014 before the Motor Accidents Claims Tribunal at Margao, seeking a compensation of Rs.20,25,000/- from the respondents in respect of death of Stenzil Fernandes.
4. The Tribunal framed the following issues:
 - i) Whether the claimants prove that the respondent no.1 drove the motorcycle from Codali Tisk to Sanvordem at a fast speed, in a rash and negligent manner and dashed against the scooter of Stenzil, since deceased, on the stated date, place and time?
 - ii. Whether the claimants prove that due to the violent impact Stenzil, since deceased, sustained grievous injuries and

succumbed to them?

iii. Whether the claimants prove that they are entitled to the compensation of Rs.20,25,000/-?

5. The Tribunal came to the conclusion that the appellants have failed to establish that the accident occurred due to rash and negligent driving of the respondent no.1. In that view of the matter the Tribunal answered the issue no.1 in the negative. A perusal of the impugned judgment would show that in so far as issue no.2 is concerned, the Tribunal found that due to the injuries sustained in the accident, Stenzil Fernandes died on the next date of the accident i.e. on 5/2/2015. However, looking to the fact that the appellants had failed to establish that the accident occurred due to rash and negligent driving of the respondent no.1, the Tribunal answered the issue no.2 in the negative. Lastly in so far as issue no.3 is concerned, the Tribunal has found that the appellant no.1 was working as a clerk and the appellant no.2 was working as a teacher and they were not dependent on the deceased. Here again, the Tribunal has based its finding on issue no.1 and has found that insofar as the issue no.1 has been answered in the negative, the appellants would not be entitled to any compensation. Thus without determining any quantum of compensation to which the appellants would have been entitled, had the accident been caused due to the rash and negligent driving of the respondent no.1, the Tribunal has answered the issue no.3 in the negative and has

proceeded to dismiss the petition, vide the impugned judgment and award dated 20/7/2016, which is subject matter of challenge in this appeal.

6. Shri Kakodkar, the learned counsel for the appellants has placed reliance on the decision of the Supreme Court in the case of **Bimlesh and others Vs. New India Assurance Company Limited (2010) 8 SCC 591** and the decision of this Court in case of **Smt. Remediana Braganza e Rebello and others Vs. Laxman Kolekar and others** (F.A. No.15 of 2009) and **Miss Aisha alias Alisha Talpankar Vs. Shri Arvind Talekar and anr.** (F.A. No.295 of 2007), in order to submit that the Tribunal ought to have decided the issues no.2 and 3 independent of the finding against issue no.1. It is submitted that as held by the Hon'ble Supreme Court in the case of **Bimlesh and others (supra)**, the Tribunal ought to determine all the issues and the Tribunal erred in restricting itself only on the question of negligence, without deciding the other issues on merits.

7. The Hon'ble Supreme Court in the case of **Bimlesh and others (supra)** has held thus in para 9 of the judgment:

“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.

8. This Court in the case of **Ms. Alisha Talpankar and Smt. Remediana Braganza** (supra) placing reliance on the decision of the Supreme Court in the case of **Bimlesha and others** where the Tribunal had failed to decide all the issues on merits had remanded the matter back to the Tribunal. In that view of the matter, the following order is passed:

ORDER:

- (i) The appeal is partly allowed. The impugned judgment and order dated 20/7/2016 passed by the Tribunal in Claim Petition no.138/2014 is hereby set aside.
- (ii) The Claim Petition No.138/2014 is restored back to the file of the Motor Accident Claims Tribunal, South Goa at Margao for deciding it fresh in

accordance with law by rendering specific finding on all the issues.

(iii) The Tribunal shall decide the petition as expeditiously as possible and without being influenced by any of the observations made in the impugned judgment and award dated 20/7/2016.

(iv) The appellants to appear before the learned Motor Accident Claims Tribunal on 22/10/2018 at 10 a.m.. The Tribunal shall issue notice to the respondents and shall proceed to decide the petition in accordance with law.

(v) Records and Proceedings, if called, be sent back to the Tribunal.

(vi) In the circumstances, there shall be no order as to costs.

(vii) Decree be drawn accordingly.

C. V. BHADANG, J.

Ap/