

Suchitra

**IN THE HIGH COURT OF BOMBAY AT GOA**

**FIRST APPEAL NO.18/2012**

Shri Pundlik Damanna Harijan,  
S/o Damanna Harijan, Major in age,  
R/o H.No.74, Kareband,  
Margao – Goa.

...APPELLANT

***Versus***

1. Smt. Leela Suresh Naik Shiredkar,  
w/o Late Shri Suresh Laxman Naik  
Shirodkar, Aged 39 years, Housewife,

2. Shri Sandeep Suresh Naik Shirodkar,  
s/o Late Shri Suresh Laxman Naik Shirodkar,  
Aged 26 years, Unemployed,

3. Kum. Sangeeta Suresh Naik Shirodkar,  
d/o Late Suresh Laxman Naik Shirodkar,  
aged 20 years, Unmarried,

4. Kum. Suchita Suresh Naik Shirodkar,  
d/o Late Suresh Laxman Naik Shirodkar,  
Aged 19 Years, Student All the above  
mentioned Respondents are R/o H. No  
1958/B, Barbhat, Shiroda, Ponda -Goa.

5. Shri Shrikant Basappa Madar,  
s/o Basappa Madar, z Major in age  
R/o H. No 74, Padda Khareband,  
Margao – Goa.

...RESPONDENTS

Mr. Tarshish Leo Pereira, Advocate *for the Appellant.*

Mr. Suraj Rohidas Naik, Advocate *for the Respondents No.1 to 4.*

**CORAM: M. S. SONAK, J.**  
**DATED: 14<sup>th</sup> October 2021**

**ORAL JUDGMENT:**

**1.** Heard Mr. Tarshish Pereira for the appellant and Mr. Suraj Naik for respondents no.1 to 4. Respondent No.5 – owner though served is neither present nor represented.

**2.** This appeal is instituted by the driver of Bajaj Pulsar motorcycle bearing registration No.GA-08-C-2074 which was involved in an accident on 30.04.2007 at about 17.00 hrs. resulting in the demise of Suresh Laxman Naik Shirodkar, who was, riding a bicycle.

**3.** The widow of the deceased and his son and two daughters instituted the Claim petition claiming an amount of ₹7,41,924/-. By the Judgment and Award dated 28.10.2010, the Motor Accident Claims Tribunal (Tribunal) has allowed the claim and directed the appellant driver and respondent no.5 owner of the Bajaj Pulsar motorcycle to jointly and severally pay to the claimants a compensation of ₹7,41,924/- together with interest @ 9% p.a. from the date of registration of the Claim Petition till the date of payment of the entire amount. It is against this Judgment and Award that the present appeal has been instituted.

4. In this case, it appears that the motorcycle was not insured and therefore, the award has been made against the driver and owner of the motorcycle. In the application seeking stay for the execution of the award, this Court, by Order dated 21.03.2012 stayed the execution subject to the appellant depositing in this Court the total awarded amount within eight weeks. Even liberty was given to the respondents/claimants to apply for withdrawal of the said amount upon its deposit. Directions were also issued for the investment of the said amount.

5. The record however indicates that the appellant failed to deposit the awarded amount despite securing a stay on execution. No steps were taken on behalf of the claimants as well for all these ten years to move for expeditious hearing of the First Appeal or to at least proceed with the execution since the stay was conditional and the condition subject to which the same was granted was never complied with.

6. Mr. Tarshish Pereira learned counsel for the appellant submitted that the evidence on record very clearly bears out that it is the deceased who was negligent and therefore responsible for the unfortunate accident that took place on 30.04.2007. To begin with, he referred to the evidence of Mahendra Khanolkar (AW2) who was examined as an eye witness. Mr. Pereira pointed

out that this witness has admitted that both he and the deceased were employees of the Irrigation Department and were knowing each other. He pointed out from the evidence as also the sketch accompanying the Panchanama that the Irrigation Department was on the right-hand side while proceeding from the Power House to Arlem. He pointed out to the admission in the evidence of AW2 that while going from Power House to Arlem if one has to go to the Irrigation Department, the deceased would have to go to the right-hand side and access the side road.

7. Mr. Pereira then referred to the evidence of the appellant who was examined as RW1. He pointed out that the appellant has deposed that the accident took place because the deceased suddenly swung towards extreme right to go on the road which leads to the Irrigation Department. He pointed out that RW1, on oath, had stated that the deceased did not show any hand signal to take the right turn but took this right turn suddenly without due care and caution.

8. Mr. Pereira then referred to the sketch accompanying the Panchanama and pointed out how the version of the appellant (RW1) was probabalized in this case. Based on all this evidence He submits that this is a clear case where the accident took place not on account of the negligence of the appellant but rather, on

account of the negligence on the part of the deceased. He submits that the appreciation of the evidence by the Tribunal is not proper and on a correct appreciation it ought to be held that the appellant was not responsible for this accident and rather, this accident took place on account of negligence on the part of the deceased. He submitted that the Claim Petition should have been dismissed on this fundamental ground.

9. Mr. Pereira, without prejudice to the aforesaid, pointed out that the compensation awarded is also quite excessive. He submitted that in this case the deceased was 52 years old at the time of the accident and would have retired by the age of 58. He submitted that the Tribunal erred in adopting the multiplier of 11 as regards this crucial circumstance. He, therefore, submitted that the compensation amount is required to be substantially scaled-down having regard to this vital circumstance.

10. Mr. Suraj Naik defended the impugned award based on the reasoning therein. He pointed out that the compensation amount awarded in this case is lesser than the just compensation that was required to be determined following the law. He relies on *National Insurance Company Ltd. v. Pranay Sethi – (2017) 16 SCC 680* in support of this contention.

**11.** The rival contentions now fall for my determination.

**12.** In this case, Mr. Tarshish Pereira, with considerable forensic skill did attempt to make out a case that the accident was on account of the negligence on the part of the deceased and the appellant whom he represents was in no manner responsible for the same. However, having regard to the evidence on record, both the documentary as well as oral, no case is made out to differ from the finding recorded by the Tribunal, again, based on evaluation of both oral as well as documentary evidence on record.

**13.** In this case, there is no dispute that the Presiding Officer of the Tribunal who has made the impugned award had the benefit of recording the evidence of the witness who deposed in the matter. Therefore, the assessment of the Tribunal on the aspect of credibility of witnesses will have to be given due consideration in a matter of this nature.

**14.** In *Santosh Hazari v. Purshottam Tiwari – (2001) 3 SCC 179*, the Hon'ble Supreme Court has held that the rule is - and it is nothing more than a rule of practice - that when there is a conflict of oral evidence of the parties on any matter in issue and the decision hinges upon the credibility of witnesses, then

unless there is some special feature about the evidence of a particular witness which has escaped the trial Judges notice or there is a sufficient balance of improbability to displace his opinion as to where the credibility lies, the appellate court should not interfere with the finding of the trial Judge on a question of fact. The Hon'ble Court relied upon its ruling in *Sarju Pershad Ramdeo Sahu Vs. Jwaleshwari Pratap Narain Singh & Ors. AIR 1951 SC 120*). Having regard to this practice, no case is made out to interfere with the finding of fact on the aspect of the negligence of the appellant recorded by the Tribunal.

**15.** Even otherwise, in this case, there can be no dispute that AW2 Mahendra Khanolkar was an eyewitness to the accident. He has deposed that the appellant was riding the motorcycle at a fast speed of about 70 km. per hour. He has denied the suggestion that the deceased tried to suddenly come to the right-hand side to take a turn towards the Irrigation Department. The accident took place at about 5.00 p.m. and there was no good reason pointed out as to why at this hour the deceased would be wanting to go to the Irrigation Department where he was working. Besides, there is positive evidence of the widow (AW1) that her husband, at the time of the accident was going to the place of some person to give invitation card for their daughter's marriage. The inferences drawn by the Tribunal from

the sketch accompanying the Panchanama are also quite reasonable and warrant no interference.

**16.** Therefore, on cumulative consideration of the evidence on the record as well as applying the practice referred to in *Santosh Hazari (supra)* no case is made out to differ from the Tribunal on the finding of rashness and negligence on the part of the appellant herein.

**17.** On the aspect of the justness of compensation, there is no evidence on record that the deceased was to retire at the age of 58 years. Mr. Naik submits that the age of retirement at the relevant time was 60 years. Be that as it may, having regard to the law laid down in the case of *Sarla Verma & Others v. Delhi Transport Corporation and another – (2009) 6 SCC 121* and *Pranay Sethi (supra)*, there was no error in applying the multiplier of 11 having regard to the age of the deceased at the time of the accident.

**18.** In this case, AW3, the Superintending Engineer from the Department where the deceased was working was examined and he produced a salary certificate indicating that the income of the deceased at the time of the accident was ₹8,323/- per month. He also deposed that on account of the 6<sup>th</sup> Pay Commission the

deceased would have been entitled to a gross salary of ₹15,500/-. This latter part of the evidence has been discarded by the Tribunal simply on the ground that no documentary evidence was produced by this witness in support of his statement.

**19.** Be that as it may, in terms of the law laid down by *Pranay Sethi (supra)*, the Tribunal should have made an addition of 15% towards future prospects because the age of the deceased at the time of the accident was 52 years. This has not been done. Besides, the Tribunal should have awarded ₹15,000/- towards loss of estate, ₹40,000/- towards loss of consortium, and ₹15,000/- towards funeral expenses. Instead, the Tribunal has awarded only an amount of ₹5,000/- towards loss of consortium, ₹2,000/- towards loss of estate, and ₹2,000/- towards funeral expenses probably because these were the amounts claimed by the claimants in the Claim Petition. Irrespective of the claim, the Tribunal, is duty-bound to award just compensation.

**20.** There is also no good reason to deny the claim of ₹6,073.76 towards the settlement of pharmacy bills. These pharmacy bills were produced on record and there is evidence that the deceased remained at the Goa Medical College for about eight days after the accident and until his unfortunate demise. In such circumstances, there was no good reason to deny this claim

towards medicine/pharmacy bills particularly, since such claim was quite reasonably projected at ₹6,073.76 and further, the same was even backed by the pharmacy bills.

**21.** Having regard to the aforesaid, including, in particular, the law laid down in *Pranay Sethi (supra)*, the compensation amount will have to be re-worked. The Tribunal has concluded that the yearly income of the deceased was ₹99,876/- and has then deducted 1/3<sup>rd</sup> towards the living expenses of the deceased. The figure comes to ₹66,584/-. This will have to be enhanced by 15%. The resultant figure will come to ₹76,571.06. This enhancement towards the future prospects is in terms of what is provided in paragraph 59.3 of *Pranay Sethi (supra)*.

**22.** Having regard to the multiplier of 11 correctly adopted by the Tribunal, loss of dependency comes to ₹8,42,287.60. To this amount, a further amount of ₹70,000/- will have to be added towards loss of consortium, loss of estate, and funeral expenses. This takes the figure to ₹9,12,287.60. To this figure, a further amount of ₹6,073.76 will have to be added and the just compensation will have to be determined at ₹9,18,361.36.

**23.** For all the aforesaid reasons this appeal is disposed of by not interfering with the finding that the appellant was negligent and responsible for the accident and determining the just compensation at ₹9,18,361.36 payable jointly and severally by the appellant and respondent no.5 herein.

**24.** There is no case made out to interfere with the award of interest @ 9% p.a. from the date of the registration of the Claim Petition till the date of payment of the entire amount. The other directions in the impugned Award also warrant no interference.

**25.** The appeal is disposed of in the aforesaid terms. There shall be no order as to costs.

**M. S. SONAK, J.**