

Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.114/2016

SAMUEL J. TAURO (Since Deceased)

(1) Mrs. Suzan Tauro, aged 57 years
wife of late Shri Samuel J. Tauro

(2) Mrs. Samantha Michelle Tauro,
aged 31 years, daughter of late Shri
Samuel J. Tauro and her husband

(3) Shri Shafi Mohammed, aged 28
years all above residents of House No.
129/6, Luiswaddo, Calata, Majorda,
Salcete, Goa, 403 713

(4) Mrs. Sarah Ruth Tauro, aged 28
years, daughter of late Shri Samuel J.
Tauro and her husband

(5) Shri Sherman Elton Nunes, aged
33 years, both (4) and (5) residents of
House No. 117, 'Villa Lumen, Sarfona,
Sancoale, Cortalim, Goa 403-710.

... APPELLANTS

Versus

KEDO KONDO SHELKO, son of
Kondo Dhau Shelko, aged 53 years,
Palaskata, Mollem, Dharbandora, Goa.

... RESPONDENT

Mr. Zeller D'Souza, Advocate *for the Appellant*.

Mr. R. G. Ramani, Senior Advocate with Mr. P. Kakodkar,
Advocate for the Respondent.

CORAM: M. S. SONAK, J.

DATED: 16th June 2022

ORAL JUDGMENT:

1. Heard Mr. Zeller D'Souza for the appellant and Mr. R. G. Ramani learned Senior Advocate who appears along with Mr. Pranav Kakodkar for the respondent-claimant.

2. This appeal challenges the Judgment and Award dated 26.07.2016 made by the Motor Accident Claims Tribunal (Tribunal) in Claim Petition No.179/2011, awarding the claimant compensation of ₹1,80,000/- with interest @ 9% p.a. from the date of institution of the petition i.e. 29.06.2011 till payment of the said amount.

3. The claimant had pleaded that on 25.06.2011 at about 10.30 hrs. when he was riding pillion on a Motorcycle bearing registration no.GA-01-K-7026, a Maruti 800 car bearing registration no.GA-01-E-0209 came from the opposite direction on the extreme right hand side in a rash and negligent manner and dashed the Motorcycle on which the claimant was riding pillion. This accident caused the claimant a permanent disability. Hence the claim petition.

4. The Tribunal, by the impugned award has accepted the claimant's case about the vehicular accident and the involvement of the Maruti 800 car bearing registration no.GA-01-E-0209 and after that proceeded to award the claimant compensation as indicated above. Hence this appeal.

5. Mr. D'Souza, learned counsel for the appellant with his forensic skill, firstly submitted that there was no legal evidence on record about the involvement of the Maruti 800 car. He submits that the witnesses examined on behalf of the claimant have specifically admitted that they did not check the Chassis Number or the Engine Number of the vehicle allegedly involved in the accident. He submitted that the number plate could hardly be regarded as credible evidence in such matters. He submits that using fake number plates is not something unknown these days. He, therefore, submits that what was crucial was the Chassis Number and the Engine Number. Since any person did not verify this, there is no legal evidence on record to link the appellant's vehicle with the accident.

6. Mr. D'Souza then submitted that Mr. Gokuldas Pandurang Naik, allegedly riding the Motorcycle bearing registration no. The claimant never examined GA-01-K-7026 at the time of the accident in this matter. He submits that non-examination of this

crucial witness belies the case put up by the claimant. Accordingly, he submits that an adverse inference must be drawn against the claimant to suppress the best possible evidence.

7. Mr. D'Souza finally submitted that the claimant had not established even the injuries in terms of the law. He submits that AW4 Dr. Edwin Araujo has deposed that he treated the claimant only after the claimant had allegedly received treatment in two other hospitals. He pointed out that even Dr. Araujo had admitted that the injuries that he treated were of an abscess, and further, such injuries would have resulted otherwise than in the involvement with the vehicular accident.

8. Mr. D'Souza submitted that the Investigating Officer (AW5) and the Pancha Witness (AW3) were admittedly not at the spot at the time of the alleged accident. He submitted that these witnesses have admitted that they did not check the Chassis Number or the Engine Number of the vehicle allegedly involved. He submitted that AW3 was an interested witness and a stock pancha. He submitted that the evidence of these two witnesses does not inspire any confidence and, therefore, should not have been relied upon by the Tribunal.

9. Mr. D'Souza submitted that even though the preponderance of probabilities may be the test for assessing the evidence in such matters, in the absence of proof of basic facts, no liability could have been imposed upon the appellant.

10. Mr. D'Souza submits that for all the reasons mentioned above; the impugned award is liable to be set aside.

11. Mr. Ramani learned Senior Advocate for the claimant defends the impugned award based on the reasoning. He points out that in the Written Statement of the Insurance Company, there was an apparent reference to the vehicle bearing registration no.GA-01-E-0209 being insured up to March 2011. He pointed out that even in the appellant's Written Statement, no defense about using any fake number plates was ever raised. He submitted that the appellant did not even bother to examine himself if he was serious about the defence now raised.

12. Mr. Ramani submitted that the insurance company was dropped from the array of the respondents considering its definite statement about the non-renewal of the insurance policy beyond March 2011. He submitted that there were considerable difficulties in serving the driver and the matter was delayed. He submits that the driver was dropped from the array of the

respondents in such circumstances. He relied on *Josephine James v. United India Insurance Company Limited and Another – (2013) 16 SCC 711* to submit that the driver of the vehicle involved in the accident is not a necessary party and his non-joinder is never fatal to the maintainability of the claim petition.

13. Mr. Ramani submitted that the test in such matters is that of a preponderance of probabilities. He submitted that there is ample evidence to sustain findings recorded by the Tribunal. For all these reasons, Mr. Ramani submitted that this appeal may be dismissed.

14. The rival contentions now fall for my determination.

15. At the very outset, reference is required to be made to certain decisions of the Hon'ble Supreme Court, which explain the scope of proceedings before the Tribunal and the approach needed to be adopted when dealing with claim petitions for death or injuries arising out of vehicular accidents. These decisions are *Sunita and others v. Rajasthan State Road Transport Corporation and others – (2020) 13 SCC 486*, *Anita Sharma and others v. New India Assurance Company Limited and another – (2021) 1 SCC 171*, *Narcinvha Chari v. Mr. Joao*

Faria & Ors. in First Appeal No.34 of 2017, Smt. Neha Nilesh Arlekar and others v. Mr. S. D. Rocky & Ors. in First Appeal No.23 of 2015 and Shri Rama Andrade v. Shri Sameer R. Salgaonkar in First Appeal No.62 of 2015.

16. In all the cases above, the Hon'ble Supreme Court has held that the approach of the Tribunals when dealing with such matters has to be sensitive enough to appreciate the turn of events on the spot or the hardship that the claimants usually face in tracing witnesses and collecting information about the accident. No doubt, this was said in the context of death cases where the dependents have considerable difficulties securing witnesses to describe the precise nature of the accident.

17. In the above cases, it is also held that the Courts/Tribunals must be mindful that strict principles of evidence and standard of proof, like in a criminal trial, are inapplicable in MACT claim cases. The standard of proof in such matters is one of the preponderance of probabilities rather than proof beyond a reasonable doubt.

18. The Courts have also held that the Tribunals have to be mindful that the approach and role of Courts/Tribunals while examining evidence in accident claim cases ought not to be to

find fault with the non-examination of some best eyewitnesses, as may happen in a criminal trial; but, instead should be only to analyze the material placed on record by the parties to ascertain whether the claimant's version is more likely than not true.

19. The Courts/Tribunals, in matters of this nature, the Courts/Tribunals are required to take a holistic view, bearing in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible by the claimants. The Courts/Tribunals should also draw appropriate inferences from respondents' failure to properly cross-examine the witnesses of the claimants or confront them with their version despite the adequate opportunity.

20. In *Anita Sharma (supra)* the Hon'ble Supreme Court has reiterated that the standard of proof in accident claim cases is that of the preponderance of probabilities, held that the approach of the Tribunals while examining evidence in accident claim cases ought not to be to find fault with the non-examination of some best eyewitnesses but, instead, to see whether, on a holistic basis, the version put up by the claimant is likely.

21. In this case, the claimant has deposed in the matter and states the involvement of the appellant's vehicle and the rashness

and negligence of its driver. The Investigating Officer (AW5), who reached the spot soon after the accident, has also deposed about the involvement of the vehicle bearing registration no.GA-01-E-0209. To the same effect is the evidence of the Pancha (AW3). These witnesses have produced on record and deposed to the lodging of the FIR, the undertaking of the panchanama, and the sketch of the accident spot.

22. True, these witnesses admitted that they had not checked the Chassis Number and the Engine Number of the Maruti 800 car bearing registration no.GA-01-E-0209. To my mind, however, the mere fact that these details were not checked is insufficient to conclude that the appellant's Maruti 800 car was not at all involved in the accident.

23. If the appellant was indeed serious in his plea about the user of fake number plates, then the minimum that was expected of the appellant was that he raises such a plea in his written statement and, after that, make such plea good by examining himself if not other witnesses to at least probabalize his version. Merely raising of a doubt of this nature, is certainly not sufficient to defeat the claim or the claimant's versions. Therefore, applying the test of preponderance of probabilities, the evidence produced

on record by the claimant suffices to conclude the involvement of the appellant's vehicle in the accident.

24. Similarly, the non-examination of Gokuldas Pandurang Naik, the rider of a Motorcycle bearing registration no.GA-01-A-7026 is insufficient to disbelieve the claimant's version or call for the drawal of an adverse inference against the claimant. The claimant has examined himself. The investigating officer (AW5) and the Pancha (AW3) have deposed of moving the claimant to the hospital from the accident site. All this evidence is sufficient to probabalize the claimant's version. Besides, in terms of the decisions referred above, non-examination of the best eyewitnesses is insufficient to disbelieve a claimant's version in such matters.

25. AW5 and AW3 have been quite candid in their depositions. Therefore, there was no error on the part of the Tribunal in accepting their evidence. Their evidence supports the claimant's version. There is no explanation why the appellant did not himself step into the witness box in this matter.

26. Mr. Ramani pointed to the appellant's written statement that he claims to have sold the Maruti 800 car to someone else in December 2020. Admittedly, the appellant continues to be the

owner of the records of the RTO. If this version of the appellant has to be believed, then Mr. Ramani rightly questions how the appellant could have any knowledge or even doubt about using fake number plates. However, as noted earlier, there is sufficient evidence on record to establish the involvement of the appellant's vehicle in the accident.

27. For all the above reasons, there is no case made out to interfere with the impugned award. Accordingly, this appeal is liable to be dismissed and is hereby dismissed. However, there shall be no order for costs.

28. The appellant has deposited the awarded amount in this Court. The claimant is now permitted to withdraw the same with the accrued interest. The claimant should provide his bank details so that the Registry can directly transfer the amount into his bank account.

M. S. SONAK, J.

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