

Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.51/2017

SMT. MARY FERNANDES,
Wife of Shri. Manuel Fernandes,
Aged 44 years, resident of
H.No.314/4, 4th Ward,
Colva, Salcete Goa.

... APPELLANT

Versus

1. SHRI ROQUE OLAVO SOARES
Son of Shri. Remedios Soares,
resident of H.No.645,
Curra – Raia
Salcete – Goa.

2. LAND ACQUISITION OFFICER
Selaulim Irrigation Project
Sanguem-Goa (original owner)

3. SHRI. PRECIOSA SOARES
Resident of Loutulim
Salcete – Goa (owner)

...RESPONDENTS

None for the Appellant.

**Ms. Susan Linhares, Additional Government Advocate for
Respondent No.2.**

CORAM: M. S. SONAK J.

DATED: 29th April 2022

ORAL JUDGMENT:

1. The advocate for the appellant has withdrawn his appearance. The Registrar sent notice to the appellant before leave was granted to the advocate to withdraw his appearance. The appellant is, however, not present in the Court today.

2. This appeal is directed against the judgment and award dated 04.10.2016 in Claim Petition No.60/2011, by which the Motor Accident Claims Tribunal (Tribunal) determined that the appellant was entitled to compensation of ₹48,000/- provided she was to establish that the accident was due to the rashness and negligence of the Mahindra Jeep driver (respondent no.1 herein). However, the Tribunal held that the appellant did not prove such rashness and negligence and dismissed the claim petition. Hence this appeal.

3. In this appeal, therefore, three issues arise for determination:-

(a) Whether the appellant had succeeded in proving that the accident took place on account of the rashness and negligence of respondent no.1 (driver of the Mahindra Jeep)?

(b) If yes, what would be the just compensation payable to the appellant?

(c) Is respondent no.2 (State) not liable to pay any compensation because the State already auctioned the Mahindra Jeep to respondent no.3?

4. On the first issue, it is necessary to note that an FIR was registered against respondent no.1, alleging the commission of offenses under Sections 279 and 337 of the Indian Penal Code (IPC). The complaint based on which this FIR was lodged had also alleged that respondent no.1, under the influence of alcohol and without putting on the headlights at night, drove the Mahindra Jeep in a rash and negligent manner, endangering human life. The complaint alleges that when respondent no.1 reached Green House, Colva, he dashed against the oncoming Honda Activa Scooter bearing registration no.GA-08-B-8188 proceeding from Margao to Colva taking a turn towards right due to which the rider and the pillion sustained injuries.

5. Further, in this case, the claimant who was riding pillion on the above referred Honda Activa Scooter examined herself and deposed to the genesis of the accident. Likewise, Peter D'Silva,

the rider of the Honda Activa Scooter, also examined himself in this matter and deposed to the genesis of the accident.

6. In contrast, respondent no.1, the driver of the Mahindra Jeep, failed to step into the witness box and depose in the matter. Since respondent no.1 had taken a specific defense that the Honda Activa Scooter had come on the wrong side, the minimum expected from respondent no.1 was to step into the witness box and make good this defense. However, he failed to do so. But the Tribunal failed to draw any adverse inference against respondent no.1 for his failure to do so.

7. The Tribunal has gone almost entirely by the sketch to the panchanama (Exh. X1 Colly). Therefore, apart from the issue of whether this document has been proved following the law or not, the Tribunal, in this case, was not justified in simply attempting to interpret this sketch without having due regard to the testimony of the two eyewitnesses, i.e., the claimant AW1 and Peter D'Silva (AW11).

8. It is necessary to note that Peter D'Silva had instituted Claim Petition No.60/2011 and had deposed in the said claim petition. However, in the present claim petition, he tendered the same affidavit and the cross-examination, which was admitted in

evidence as Exh.99. Therefore, since he was already cross-examined in Claim Petition No.60/2011, in this claim petition, there was no cross-examination on behalf of respondent no.1.

9. Suffice to mention that this is a case where two eyewitnesses have deposed and demonstrated how the driver of the Mahindra Jeep – respondent no.1 was responsible for the accident. The police, after investigation, registered FIR against respondent no.1, alleging the commission of offenses under Sections 279 and 337 of IPC. Respondent no.1 failed to step into the witness box and establish that he was not negligent, but Peter D'Silva was negligent.

10. There is nothing on record to indicate that respondent no.1 took steps to challenge the FIR against him. The Tribunal has not very correctly interpreted even the sketch. Such interpretation cannot hold given the testimony of the two eyewitnesses who have substantially withstood the cross-examination. Based on all these factors, there was no warrant to hold that respondent no.1 was not negligent or that Mr. Peter D'Silva was the one who was negligent in the matter.

11. The approach of the Tribunal in evaluating the evidence on record is also not consistent with the law laid down by the Hon'ble Supreme Court in *Sunita & Ors. V/s. Rajasthan State Road Transport Corporation & Ors. - (2020) 13 SCC 486*, *Anita Sharma & Ors. V/s. New India Assurance Company Limited & Anr. - (2021) 1 SCC 171*, *Parmeshwari V/s. Amir Chand & Ors. - (2011) 11 SCC 635*, *Mangla Ram V/s. Oriental Insurance Company Ltd. & Ors. - (2018) 5 SCC 656* and *Dulcina Fernandes & Ors. V/s. Joaquim Xavier Cruz & Anr. - (2013) 10 SCC 646*.

12. In all the cases mentioned above, the Hon'ble Supreme Court had held that the approach of the Courts/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 for an accident when they were themselves not present at the accident spot. Further, the Courts/ Tribunals must be conscious 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.

13. The Courts/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. The Courts/Tribunals, in matters of this nature, 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 to be done by the claimants. The Courts/Tribunals should also draw appropriate inferences from the failure of respondents to properly cross-examine the witnesses of the claimants or confront them with their version despite the adequate opportunity. The courts/Tribunals must take the legal effect of the failure to cross-examine crucial witnesses on crucial issues must be taken into account by the Courts/Tribunals.

14. In *Sunita & Ors.* (supra), the Hon'ble Supreme Court has held that it is well settled that in motor accident claims cases, once the foundational fact, namely, the actual occurrence of the accident, has been established, then the Tribunal's role would be to calculate the quantum of just compensation if the accident had

taken place because of the negligence of the driver of a motor vehicle and, while doing so, the Tribunal would not be strictly bound by the pleadings of the parties. Notably, while deciding cases arising out of motor vehicle accidents, the standard of proof to be borne in mind must be of a preponderance of probability and not the strict standard of proof beyond all reasonable doubt which is followed in criminal cases.

15. In *Sunita & Ors.* (supra), the Hon'ble Supreme Court also held that the Tribunal had justly accepted the claimant's contention that the respondents did not challenge the propriety of the FIR and the charge sheet before any authority. The only defense raised by the respondents to this plea was that the FIR was based on wrong facts and was filed in connivance between the complainants and the police, against which the respondents had complained to the in charge of the police station and the District Superintendent of Police but to no avail. The Hon'ble Supreme Court noted that apart from this bald assertion, the respondents produced no evidence before the Tribunal to prove this point. The Hon'ble Supreme Court did not approve the approach of the High Court in not even making a mention, let alone record a finding of any impropriety against FIR or charge sheet or the

conclusion reached by the Tribunal, and yet, the FIR and the charge sheet were found to be deficient by the High Court.

16. 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, not beyond a reasonable doubt. The Court held that *therefore the approach and role of Courts 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 claimant's version is more likely than not true.*

17. Therefore, if the above evidence on record is evaluated by adopting the approach indicated by the Hon'ble Supreme Court in all the above decisions, the finding recorded by the Tribunal on the issue of rashness and negligence deserves to be reversed. Such finding is accordingly reversed, and it is held that the accident, in this case, took place on account of the rashness and negligence of respondent no.1.

18. The second point for determination is what would be the just compensation payable to the claimant in this case. The

Tribunal has determined the compensation at ₹48,000/- based on the reasoning found in paragraphs 65 to 77 of the impugned judgment and award. The Tribunal has correctly assessed the evidence on record. Indeed, there was no evidence to believe that the claimant was earning ₹10,000/- per month as claimed. The compensation has been awarded regarding the 8% permanent disability certified by the medical evidence on record. Compensation has also been awarded towards medical expenses incurred by the claimant and as proved by the bills on record. This determination is proper and warrants no interference.

19. The last issue is about the liability of respondent no.2. Though it is possible that the State auctioned the Mahindra Jeep in favor of respondent no.3, the RTO documents continue to indicate respondent no.2 as the registered owner. Therefore, considering the provisions of Section 2(30) of the Motor Vehicles Act containing the definition of "Owner" and the law laid down by the Hon'ble Supreme Court in *Naveen Kumar vs. Vijay Kumar and Others – (2018) 3 SCC 1*, and *Prakash Chand Daga vs. Saveta Sharma and Others – (2019) 2 SCC 747*, the respondent no.2 who is the registered owner cannot avoid any liability.

20. In *Naveen Kumar (supra)*, the Hon'ble Supreme Court held that having regard to the definition of "owner" under Section 2(30) of the Motor Vehicles Act, 1988, the person in whose name a motor vehicle stands registered (i.e., whose name is reflected in records of Registering Authority) would be treated as "owner" of vehicle for purposes of Motor Vehicles Act. Therefore, considering the principle underlying the provisions of Section 2(30), where a registered owner of the vehicle, despite transferring/selling his vehicle to another person, continues to be reflected in records of Registering Authority as an owner of that vehicle, he would be treated as the owner of the vehicle for purposes of Motor Vehicles Act and would not stand absolved of his liability as owner under the said Act. The Court held that to hold otherwise would defeat the salutary object and purpose of the Motor Vehicles Act, 1988.

21. In *Prakash Chand Daga (supra)*, the Hon'ble Supreme Court rejected the contention of the appellant/registered owner of the offending vehicle that the accident had occurred within thirty days of the transfer of vehicle and, as such, liability could not be fastened on him. The Court held that even though there would be a transfer of ownership of the vehicle in law, that would not absolve the party in whose name the vehicle stands in RTO records from liability to the third person. The Court held that

merely because the vehicle was transferred does not mean that such a registered owner stands absolved of his liability to a third person. Thus, so long as his name continues in RTO records, he remains liable to the third person.

22. For the above reasons, even the third point for determination will have to be decided to favor the appellant and against the respondents.

23. This appeal is therefore allowed. Accordingly, the respondents are held jointly and severally liable to pay the appellant compensation of ₹48,000/- together with interest @ 9% p.a. from the date of institution of the claim petition till the date of actual payment.

24. The respondents, including in particular respondent no.2, who is the registered owner, to deposit this awarded amount in this Court within two months from today. This means that respondent no.2 will have to deposit the entire awarded amount in this Court. Further, it will be open to respondent no.2 to take such steps as are permissible in law against respondents nos.1 and 3. Once the amount is deposited, the appellant will be entitled to withdraw the same after producing identity documents and furnishing bank details.

25. The Registry to intimate the appellant about this order.

26. The appeal is disposed of in the terms mentioned above.
However, there shall be no order for costs.

M. S. SONAK, J.