

Niti/Amrut

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.37 OF 2017

Mr. Navin C. Naik,
Major in age,
S/o. Mr. Chandrakant Naik,
R/o. House No.227,
Cardoz-Waddo, Taleigao,
Tiswadi Goa. appellant

Versus

1. Mrs. Archana Ramdas Sapekar,
W/o. late Mr. Antonio Rosario
Fernandes, Age 34 years,
Housewife.

2. Mast. Elrio Jesus Fernandes,
S/o. late Mr. Antonio Rosario
Fernandes, Age 5 years, student,
represented herein by his mother
being natural guardian,
Both R/o. H.No.1116,
Odlem Bhat, Taleigao,
Tiswadi-Goa.

3. Mrs. Padma Shobham Kanapeni,
Mother of late Viniket Shobham
Kanapeni, Age 53 years, Housewife,
R/o. Aruna Newas, Near Syndicate
Bank, Taleigao, Tiswadi-Goa. ...Respondents

Mr. Mahesh Amonkar, Advocate for the Appellant.

Mr. Milton Marshal, Advocate for the Respondent Nos.1 & 2.

CORAM : M. S. SONAK, J.

DATE : 8th APRIL 2022

JUDGMENT :

1. Heard the learned Counsel for the parties.
2. This appeal challenges the judgment and award dated 25.10.2016 in Claim Petition No.102/2014 made by the Motor Accident Claims Tribunal, North Goa (Tribunal), awarding the claimants Archana, widow of late Antonio Fernandes, and Elrio, minor son of Antonio, compensation of ₹14,17,000/- on account of a vehicular accident that took place on 14.10.2012.
3. The accident was between a Hero Honda motorcycle bearing registration no.GA-07-B-0010 that Antonio was riding and Pulsar motorcycle bearing registration no.GA-07-A-4574 that one Viniket Kanapeni was riding. The evidence on record now bears out that Viniket was a minor, having no driving license. Unfortunately, Viniket also died in the same accident.
4. The Tribunal, by the impugned award, has fastened the liability on Navin C. Naik, the appellant herein, who is admittedly the owner of the Pulsar motorcycle. Hence, this appeal.

5. Mr. Amonkar, at the outset, made it clear that the appellant was not questioning the quantum of compensation awarded by the Tribunal. He, however, submitted that in this case, there is no evidence whatsoever either about the involvement of the Pulsar motorcycle or, in any case, there is no evidence about the accident taking place due to any rashness and negligence on the part of Viniket - the driver of the Pulsar motorcycle. Therefore, he submits that there was no question of fastening any liability on the appellant in the absence of any proof of rashness and negligence.

6. Mr. Amonkar submits that documents like FIR, panchanama, and sketch produced on record do not constitute substantive evidence. The author of these documents was never examined and, therefore, even the contents of such documents remain unproven. He submits that the Tribunal has committed a serious error in relying on such documents. He relied on *Narayan Kalangutkar & Anr. V/s. New India Insurance Co. Ltd. & Ors.*¹ and *Jiju Kuruvila & Ors. V/s. Kunjujamma Mohan & Ors. - Civil appeal nos.4945-4946 of 2013* decided by the Hon'ble Supreme Court on 02.07.2013, in support of his contentions.

¹ 2012 (2) Mh.L.J. 803

7. Mr. Amonkar submits that the Tribunal erred in relying on the testimony of Mr. Sydney Barreto (AW3), the alleged eyewitness to the accident. He submitted that AW3 was a got-up witness, and there are several contradictions in his testimony. He submitted that even if the presence of AW3 at the spot or near the site is accepted, it was impossible for AW3 actually to witness the accident from his position and location. Mr. Amonkar, therefore, submits that the Tribunal should not have relied upon the testimony of AW3 in support of the finding of rashness and negligence.

8. Mr. Milton Marshal, learned Counsel for Archana and Elrio (claimants), defends the impugned award based on reasoning therein. He submits that the police documents were not objected to and were accordingly admitted in evidence. Such documents corroborate the sterling testimony of AW3 - an eyewitness. The proceedings before the Tribunal are summary in nature, and the standard of proof is that of the preponderance of probabilities. He relied on several decisions, including *Vidhyadhar V/s. Mankikrao & Anr.*², *Oriental Insurance Company Limited V/s. Premlata Shukla & Ors.*³, *Sunita & Ors. V/s. Rajasthan State Road Transport Corporation &*

² AIR 1999 SC 1441

³ (2007) 13 SCC 476

*Ors.*⁴, *Anita Sharma & Ors. V/s. New India Assurance Company Limited & Anr.*⁵, *Bimlesh & Ors. V/s. New India Assurance Company Limited*⁶, *Dulcina Fernandes & Ors. V/s. Joaquim Xavier Cruz & Anr.*⁷ and *Pushpabai Purshottam Udeshi & Ors. V/s. M/s. Ranjit Ginning & Pressing Co. (P) Ltd. & Anr.*⁸ in support of his contentions.

9. Mr. Marshal also submitted that the appellant has taken patently false evidence that the Pulsar motorcycle was not even involved in the accident in this case. However, no witnesses were examined in support of this defense. He, therefore, submitted that such defense was never proved, and now the appellant should not be permitted to urge the issue of lack of negligence on the part of Viniket. Mr. Marshal points out that the appellant, through his advocate, did not even cross-examine the eyewitness AW3 and should therefore now not be allowed even to raise such a plea in appeal before this Court.

10. Mr. Marshal submitted that the sketch accompanying the panchanama makes out a case of *res ipsa loquitur*, and the onus

4 (2020) 13 SCC 486

5 (2021) 1 SCC 171

6 (2010) 8 SCC 591

7 (2013) 10 SCC 646

8 (1977) 2 SCC 745

shifted upon the appellant to prove otherwise. The appellant has led no evidence in the matter, and this onus remains undischarged.

11. The rival contentions now fall for determination.

12. Considering the rival contentions, the only issue which falls for determination is whether the accident was caused due to the rashness and negligence of Viniket, the driver of the pulsar motorcycle.

13. Now, there is evidence on record that has been relied upon by the Tribunal that Viniket was admittedly a minor and had no driving license to drive the Pulsar motorcycle or even otherwise. The Tribunal has rightly held that the very driving of such a Pulsar motorcycle by Viniket amounts to negligence. Mr. Marshal also refers to certain provisions of the Motor Vehicles Act to point out that the owner should not hand over his vehicle to a minor or an unlicensed driver.

14. The appellant did raise the plea of non-involvement of the Pulsar motorcycle in the accident. However, this plea was not seriously pressed. There is otherwise unimpeachable evidence about the involvement of the Pulsar motorcycle in the accident.

Mr. Marshal is justified in contending that the appellant raised a false defense and, in any case, failed to make good such a defense.

15. This is not a case where the Tribunal has exclusively relied upon documents like FIR, panchanama or the sketch to conclude rashness and negligence. Instead, this is a case where the Tribunal has relied upon the testimony of AW3, an eyewitness to the accident. Therefore the decisions relied upon by Mr. Amonkar will not apply.

16. Since this is the First Appeal, the testimony of AW3 was once again critically assessed with the assistance of the learned Counsel for the parties. No dent whatsoever has been made to his testimony. Incidentally, through his advocate, the appellant was not even present to cross-examine this eyewitness.

17. AW3 stated that he knew both the deceased Antonio, who was riding a Hero Honda motorcycle and Viniket, who was riding a Pulsar motorcycle. He explained that both these persons are from his village, and he is elected a Zilla Panchayat member. He also stated how he was sitting on a cement-type sofa along the pavements with his friends 'chitchatting' at the time of the accident. He stated that the Hero Honda motorcycle was being driven at a slow speed of about 30 to 40 KMPH, but Viniket

rode the Pulsar motorcycle fast and carelessly. He also stated about the Pulsar coming over to the wrong side and causing the accident. In the cross-examination on behalf of respondent No.1 in the Claim Petition, not much dent was made to this testimony of AW3.

18. Mr. Amonkar tried to point out some discrepancies. However, so-called discrepancies are too trivial to make any dent in the otherwise credible testimony of AW3. Mr. Amonkar tried to urge that this witness was several meters away, and considering that the accident took place at about 8.00 p.m., this witness couldn't have seen the impact. Mr. Amonkar also suggested that this witness was not even facing the road.

19. This is not the correct way of reading the evidence. The accident has taken place on the main road having a width of over 14 meters. Not even any suggestion was put about inadequate lighting. Besides, AW3 knew both the parties, and therefore, based on the contention now raised, there is no case made out to discard the testimony of AW3 - eye witness.

20. The evidence of AW3 finds sufficient corroboration in the documents like FIR, panchanama, and sketch produced on record by AW2 - Head Constable. Moreover, such documents were

admitted in evidence without any objection from the appellant. Therefore, the principles laid down in *Premlata Shukla* (supra) assist the claimants' case.

21. Similarly, this is a case where the appellant took up a defense about Pulsar not being involved in the accident. After that, neither the appellant stepped into the witness box nor produced any evidence supporting his defense. In *Vidhyadhar* (supra), the Hon'ble Supreme Court has held that where a party to the suit does not appear in the witness box and states his own case on oath and does not offer himself to cross-examine by the other side, a presumption would arise that the case set up by him is not correct.

22. In *Premlata Shukla* (supra), the Hon'ble Supreme Court has held that if the objection is not raised and the document is allowed to be exhibited/marked, then one cannot be permitted to turn round and raise a contention that the contents of the documents have not been proved and should not be relied upon. *Premlata Shukla* (supra) was also a matter concerning a claim petition under the M. V. Act.

23. In *Bimlesh and Ors.* (supra), the Hon'ble Supreme Court has held that the procedure before the Claim Tribunal is

summary. In *Sunita and Ors.* (supra), *Anita Sharma* (supra), *Dulcina Fernandes* (supra), the Hon'ble Supreme Court has held that the approach of the Courts/Tribunals when dealing with such matters has to be sensitive enough to appreciate the turn of events at 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.

24. Further, 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. 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.

25. 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 specific 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.

26. Therefore, based upon evidence on record and the legal position referred to above, there is no case made out to interfere with the findings of fact recorded by the Tribunal concerning the rashness and negligence of Viniket. Mr. Amonkar's contention to the contrary will therefore have to be rejected.

27. Since no contention was raised on the issue of quantum of compensation, this appeal will have to be dismissed and is hereby dismissed.

28. The appellant has deposited only an amount of ₹2,25,000/- including the statutory deposit amount in this Court. Accordingly, the respondent Nos.1 and 2 will now be entitled to withdraw this amount by providing proper identification and

bank details so that the registry can remit this amount into such bank accounts at the earliest.

29. Mr. Marshal submitted that the execution had been filed earlier, but the same was disposed of on account of the pendency of this appeal. Therefore, the respondent Nos.1 and 2 will have to leave to either file fresh execution or revive the earlier execution to recover the impugned award amount.

30. The appeal is dismissed without any order for costs.

M. S. SONAK, J.

NITI K
HALDANKAR

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