

Amrut

IN THE HIGH COURT OF BOMBAY AT GOA
FIRST APPEAL NO.80 OF 2016

Mr. Sheikh Mohidin
r/o H.No.876, Pairaband
Cuncolim, Salcete Goa.

... Appellant

Versus

1. Smt. Piedade Margarida Rodrigues,
alias Margarita Fernandes
widow of Shri Vincent Fernandes
alias Egipcio Milagres Vincent Fernandes,
Aged 46 years.
2. Miss Casintra Fernandes
d/o late Shri Vincent Fernandes
alias Egipsico Milagres Vincent Fernandes
aged 12 years
both r/o H.No.87, Combhabhat
Paroda, Salcete Goa.
(the respondent No.2 is represented
by her mother and natural guardian
the respondent No.1 abovenamed)
3. Shri Rehmat Khan
s/o Haider Khan Nagroli
r/o H.No.679,
C/o Simon Anthon Fernandes
Mandopa, Navelim, Salcete Goa.
(driver of Rickshaw No.GA-02-Z-6106)
4. Shri Anthony D.Vandal
s/o Danuppa Vandal
r/o Zoglowaddo, Deao
Quepem, Goa.
(owner of rickshaw No.GA-02-Z-6106)

5. Mr. Abdul Shaikh
s/o Mr. Hasrat Sab Shaikh
r/o 80, Karojem Moddi
Cuncolim, Salcete Goa.

...Respondents

Mr. Shailesh Redkar, Advocate for the Appellant.

Mr. James Lopes, Advocate for respondent Nos. 1 and 2.

Mr. Sanman Keny, Advocate for respondent No.4.

CORAM: M. S. SONAK, J

DATE : 8th April 2022

ORAL JUDGMENT:

1. Heard the learned counsel for the parties.

2. This is an appeal instituted by one Sheikh Mohidin challenging the judgment and award dated 17.11.2015 made by the Motor Accident Claims Tribunal in Claim Petition No. 74/2011 awarding the respondent Nos. 1 and 2 the compensation of ₹5,02,500/- together with interest at the rate of 9% per annum from the date of application till actual payment.

3. The accident that led to the institution of this Claim Petition took place on 25.02.2010, in which Vincent, a 48 years old milk seller- laborer earning ₹5000/- per month, died. Piedade is his widow aged 46 years, and Ms. Casintra, his daughter, then aged 12 years, are the claimants.

4. This appeal is instituted by Sheikh Mohidin on the sole ground that he is not the registered owner of the vehicle involved in the accident because the registration continues in the name of respondent No.4, i.e., Anthony D. Vandal. There is no challenge on the factum of the accident, negligence of the driver, or quantum of compensation. The only contention is that respondent No.4, i.e., Anthony Vandal continues to be the registered owner of the offending vehicle, and therefore, no part of the liability could have been foisted upon the Appellant.

5. In support, Mr. Redkar relied on the provisions of Section 2(30) read with Section 166 of the M. V. Act. He relied on *Naveen Kumar Vs Vijay Kumar and others*¹, *Prakash Chand Daga Vs Saveta Sharma and others*², and *State of Maharashtra Vs Almonisa Hakim Kureshi and others*³. Based on all this, Mr. Redkar submitted that the impugned award to the extent it holds the Appellant jointly and severally liable along with others may be set aside, and the Appellant is absolved of the liability to satisfy the award.

6. At the commencement of the hearing, Mr. Lopes, learned counsel for respondents Nos. 1 and 2 (claimants), pointed out that though the claimants applied for execution of the impugned award in the year 2016, to date, they have managed to recover only an amount

1 (2018) 3 SCC 1

2 (2019) 2 SCC 747

3 (2017) 6 Bom CR 62

of ₹1,00,000/- or thereabouts. He pointed out that the Appellant, as well as respondent No.4, have successfully avoided service or, in any case, refused to appear before the executing Court and face the execution proceedings. He pointed out that though this appeal was instituted, no stay was applied for, and thereafter there was no diligence in taking steps to get the matter ready for hearing. He pointed out that as a result, despite the impugned award and further, even though there was no stay, the Appellant, has frustrated the execution proceedings so that the claimants get no worthwhile compensation even though almost 12 years have passed from the date of the accident in which Vincent died.

7. Mr. Lopes also pointed out that the Appellant, in his pleadings, admitted to the ownership of the offending vehicle. The Appellant claimed to have even transferred the vehicle to Rehmat Khan. The evidence on record shows that for the period between 2005-and 2010, it is the Appellant who took out insurance policies in respect of the offending vehicle in his own name. He pointed out that the insurance policies also indicate in unambiguous terms that it is the Appellant who hypothecated the offending vehicle with the Centurion Bank of Punjab Ltd. Mr. Lopes, therefore, submits that even in terms of the provisions of Section 2(30) of the M. V. Act and the decision in *Naveen Kumar* (supra) the Appellant is the owner of the offending vehicle and cannot avoid liability.

8. Mr. Lopes also pointed out that the impugned award fails to make an addition of 25% towards future prospects and award compensation for the consortium to the minor daughter Ms. Casintra. He submitted that the compensation amount in terms of *National Insurance Company Limited Vs Pranay Sethi and others*⁴ would come to ₹7,60,000/-. He submitted that it is the duty of this Court to award just compensation even though no cross-appeal or cross objection may have been filed by the claimants. He relies on *Surekha and others Vs Santosh and others*⁵ in support of this proposition.

9. Mr. Keny, learned counsel for respondent No.4-Anthony Vandal, supports the contention of Mr. Lopes to the extent such contentions foist liability on the Appellant herein. He also pointed out the admission in the pleadings of the Appellant and contended that the Doctrine of Estoppel should be invoked in this matter. He pointed out that this is a case where the Appellant seeks to prove the case not even pleaded by him before the tribunal. He, therefore, urges dismissal of this appeal.

10. The rival contentions now fall for my determination.

11. This is, in my view, quite an unfortunate case. Apart from the patent untenability and unfairness of the plea that is sought to be raised in support of this appeal, even the conduct of the Appellant has

4 (2017) 16 SCC 680

5 (2021) 201 PLR 795

been quite gross. The Appellant has left no stone unturned to frustrate the execution of the award. Even after the dismissal of this appeal, the Appellant appears to be supremely confident about dodging the execution proceedings and not paying a widow and minor daughter the compensation determined by the tribunal, come what may. But since this is a statutory appeal, the Appellant's contention on merits will have to be decided.

12. The unfair circumstances are evident not only from the falsity and patently untenable of the plea raised but also from the conduct of the Appellant before this Court. In this appeal, a notice was first issued on 02.12.2016. Almost two years were taken to effect service, and ultimately, the matter could be admitted only on 07.12.2018. Since, at the stage of admission, there was no appearance on behalf of the respondents, the rules require the Appellant to take steps to effect fresh service upon the respondents. The record indicates that even by 29.01.2019, the Appellant did not even bother to pay postal charges for the issue of notice to the respondents. Some postal charges were paid, but no proper service was effected, requiring the Appellant to take fresh steps for effecting service.

13. The record indicates that even by 17.02.2020, i.e., almost four years after the institution of the appeal and two years after its admission, the learned Advocate for the Appellant had not taken any steps for effecting service. Therefore, the matter was notified to the Registrar's board. On the notified date, i.e., 09.03.2020, there is again

an endorsement that the learned Advocate has not taken any steps. The service was ultimately completed only on 19.05.2020.

14. The Appellant, in this case, has not applied for a stay of execution proceedings. This was obviously designed because the stay would normally entail the requirement of a deposit of the awarded amount. Instead, the Appellant chose an easier way out of dodging the proceedings before the executing Court. Mr. Lopes pointed out that at one stage, the Appellant did remain present before the executing Court but thereafter simply refused to appear before the executing Court or file an affidavit of assets.

15. Thus, on the one hand, the Appellant wished to pursue the appeal before this Court or rather delay the hearing before this Court, and, on the other hand, dodged the execution proceedings before the executing Court. By not asking for interim relief, the Appellant avoided making any deposit before this Court but at the same time succeeded in keeping the execution proceedings at bay for almost 12 years after the husband and father of Piedade and Casintra died in the road accident. Such conduct that nowadays masquerades as *a strategy or even intelligence*, on the part of the Appellant, is quite unfortunate and deserves deprecation.

16. Now on merits, at the outset, reference is required to be made to the pleadings of the Appellant in his written statement before the tribunal. In his pleadings, the Appellant admits having acquired the

offending vehicle bearing registration No. GA-02-Z-6106 from respondent No.4 Anthony Vandal. There is evidence that this acquisition took place sometime in the year 2005 or thereabouts. There is overwhelming evidence, both through the oral deposition of Anthony Vandal (RW3) and Rafael Lobo, (RW4) Divisional Manager of the Insurance Company, that it is the Appellant who took out the insurance policies in his own name for the offending vehicle from the year 2005 to the year 2010. The insurance policies/cover notes have also been placed on record and constitute unimpeachable documentary evidence.

17. The Appellant did not even bother to cross-examine the Divisional Manager (RW4) in this matter. The insurance policies/cover notes on page 146 of the paper book are concerned with the period 02.01.2009 to 01.01.2010. On this policy, there is a clear endorsement that the offending vehicle has been hypothecated by the Appellant with the Centurion Bank of Punjab Limited. This fact was not disclosed by the Appellant in pleadings, but this fact was not even disputed in the course of the evidence when these insurance policies were produced on record by the above witness. The Appellant disclaimed liability by urging that he had transferred this vehicle to Rehmat Khan, implying that he had the power to transfer this vehicle to Rehmat Khan as the owner of the offending vehicle.

18. Considering this overwhelming evidence as also the Appellant's pleadings, the plea now raised is thoroughly dishonest and untenable

both on facts as well as in law. None of the above facts or circumstances were even remotely involved in *Naveen Kumar* (supra). Besides, even *Naveen Kumar* (supra) holds that the person in whose name the motor vehicle stands registered is normally the owner, but in relation to a motor vehicle that is subject to an agreement of hypothecation, it is the person in possession of the vehicle under that agreement, who is the owner. The decision relied on, therefore, goes against the Appellant.

19. This is even otherwise clear from the provisions of Section 2(30) of the M. V. Act relied upon by Mr. Redkar. Section 2(30) of the M. V. Act reads as follows:-

"2(30) "owner" means a person in whose name a motor vehicle stands registered, and where such person is a minor, the guardian of such minor, and in relation to a motor vehicle which is the subject of a hire-purchase agreement, or an agreement of lease or an agreement of hypothecation, the person in possession of the vehicle under that agreement."

20. *Naveen Kumar* (supra) was incidentally not a case where any issue of hypothecation of the vehicle was involved. The decision is therefore distinguishable. In any case, the decision goes against the plea of the present Appellant because even *Naveen Kumar* (supra) recognizes the position in relation to a motor vehicle which is the subject matter of the hypothecation, it is the person in possession of such vehicle under the agreement who will be the owner of such vehicle. The Appellant tried his best to suppress this fact. This is why

at the outset, it was stated that the plea of the Appellant is dishonest and untenable. Such a plea was taken up only to frustrate the execution of the award and deprive the claimants of the compensation due to them.

21. For the same reasons, *Prakash Chand Daga* (supra) and *State of Maharashtra Vs. Almonisa* (supra) are distinguishable. In none of those cases the issue of hypothecation of the vehicle was involved. In none of those cases, there was evidence that the insurance policies had been taken out for a continuous period of five years in the name of the party seeking to avoid liability on the specious plea that the registered owner continues to be some different person. In none of those cases had the party admitted to ownership and even claimed to have made a transfer to some third party based upon such ownership.

22. Incidentally, in *Almonisa* (supra), the award had declared both State of Maharashtra as well as transferee as jointly and severally liable, and it was this award that was not interfered with by the High Court. In the present case as well, it is not as if the Appellant alone has been held liable. The Appellant has been held to be liable jointly and severally along with others.

23. Now coming to the issue of just compensation, there can be no dispute that the same becomes payable even where the claimants may not have chosen to institute cross-appeal or file cross-objections. This position was not even disputed by Mr. Redkar.

24. The tribunal has taken the monthly income of the deceased Vincent at ₹5000/- per month. In the absence of cross-objections, there is no need to revisit this position. However, in terms of *Pranay Sethi* (supra), a 25% addition was necessary for future prospects. This means that annual income of Vincent had to be taken at ₹75,000/- and not ₹60,000/-. In terms of *Pranay Sethi* (supra), the consortium of ₹40,000/- each was due to the two claimants. The compensation of ₹30,000/- was also due to funeral expenses and loss of estate. There is no dispute that the multiplier, in this case, would be 13, considering that Vincent was 48 years old at the time of the accident. The deduction has to be one-third towards personal expenses of Vincent. Based upon all this, the just compensation comes to ₹7,60,000/-. The impugned award is modified accordingly. Further, this is a case where the Appellant should be called upon to pay the costs quantified at Rs.50,000/- considering his conduct not only before the executing Court but this Court as well. Accordingly, the Appellant is directed to pay costs of ₹50,000/-. This appeal is accordingly disposed of, with costs of ₹50,000/-payable by the Appellant.

25. The Appellant is now directed to deposit the awarded amount together with costs before the executing Court within four weeks from today. The executing Court is directed to dispose of the execution proceedings as expeditiously as possible, and in any case, within three months from the date, the claimants filed authenticated copy of this judgment and order before it.

26. Mr. Lopes states that already subsistence allowance has been deposited before the executing Court for the issue of a warrant of arrest of the Appellant. The executing Court should treat this matter with utmost seriousness, and even the police authorities, as and when called upon to execute the warrant, should treat this matter with seriousness. This is quite necessary so that the victims of road accidents and their dependents are not deprived of the compensation that is due and payable to them. In this unfortunate case, the Appellant, by dodging execution proceedings and raising dishonest and untenable pleas, has succeeded in delaying execution by over 12 years. He appears supremely confident of delaying this process further even by making himself scarce and avoiding judicial processes.

27. The Registrar of this Court is also directed to be extremely vigilant in such matters. If no timely steps are taken to prosecute the appeals instituted by the insurance companies, owners, or driver of the vehicles, the matter should be immediately placed on board if not dismissed at the stage of the registry itself for failure to take timely steps. It is not unknown that the matters are filed in the registry but not processed simply to inform the executing Court that the matter is pending before the High Court and seek adjournment before the executing Court.

28. The executing Courts/ Tribunals, at least in such matters, must not easily adjourn execution in the absence of any stay from the Appeal Court. This is an instance where the Appellant has abused the

process of the Court by instituting this appeal in the year 2016 and not praying for an interim relief but at the same time dodging the proceedings before the executing Court so that the claimants do not receive the compensation awarded in their favor for the last over 12 years.

29. The Registrar is requested to circulate this order to the Motor Accident Tribunals in the State of Goa at the earliest.

30. The appeal is disposed of with costs, modification, and directions as aforesaid.

M. S. SONAK, J

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