

Santosh

**IN THE HIGH COURT OF BOMBAY AT GOA
FIRST APPEAL NO. 103 OF 2016**

The New India Assurance Company Ltd,
Jagannath Building,
Jose Inacio de Loyola Road, Near Fly
over, Margao-Goa, (Insurance Company
of the Tata Tipper Truck) Appellant.

Versus.

1. Smt. Jayshree G. Gaunder @ Gounder,
Wife of late Ganesh Gaunder @
Gounder, 21 years, married,

2) Naveen G. Gaunder @ Gounder, 5
years, minor, son of late Ganesh Gaunder
@ Gounder,
both R/o H. No. 297, Pratapnagar,
Dharbandora, Goa.

3) Jaya son of Janardhan Suryavanshi N.,
R/o Vitavaward, Pujaf Yavatmal, major,
Maharashtra. (Driver of the Truck MH-
46-H-5445).

4) Anil V. Ingole,
R/o. B.101, PL-19 Sec.-4, Kalamboli,
Panvel Raigad, Maharashtra, major. ... Respondents.

**Mr. U.R. Timble, with Ms. Yadika Mandrekar, Advocates
for the Appellant.**

Mr. Vaman G. Kurtikar, Advocate for the Respondents.

CORAM : M. S. SONAK, J.

DATE : 18th August 2022

ORAL JUDGMENT. :-

1. Heard Mr. Timble, who appears along with Ms. Yadikar Mandrekar for the Appellant and Mr. V. Kurtikar for the Respondents.

2. The challenge in this Appeal is to the judgment and Award dated 26th October 2015 in Claim Petition No.167/2013, by which the Motor Accident Claims Tribunal, Margao (Tribunal) has awarded compensation of ₹13,77,000/- to the Claimants by way of compensation for the death of Shri Ganesh Kumar Gaunder in a vehicular accident on 24th April 2013.

3. Mr. Timble, the learned Counsel for the Appellant submits that there was no eye witness to the accident and the documentary evidence on record does not make out any case of rashness and negligence on the part of the driver of the insured truck. Accordingly, he submits that in the absence of rashness and negligence on the driver of the insured vehicle, no liability can be imposed on the owner/driver of the truck or the Appellant-Insurance Company.

4. Mr. Timble, without prejudice, submits that the Tribunal erred in awarding ₹1,00,000/- to Claimant No.1 for the consortium and ₹1,00,000/- to Claimant No.2 for loss of care and guidance. He submits that such amounts exceed what is contemplated in *National Insurance Company Limited vs. Pranay Sethi & Ors.*¹ He proposes that even the Award of ₹25,000/- towards funeral expenses is excessive and contrary to the law in *Pranay Sethy (supra)*.

5. Mr. Kurtikar, the learned Counsel for the Claimants, defends the impugned Award based on the reasonings reflected therein. He, however, submits that the compensation awarded is inadequate and does not represent a just compensation. He submits that the Tribunal made no addition towards future prospects in terms of law laid down in *Pranay Sethy (supra)*. He hands in a calculation sheet and submits that the just compensation, in this case, would come to ₹17,22,000/-. He, therefore, submits that this Appeal may be dismissed, but only after enhancing the compensation amount.

6. The rival contentions now fall for my determination.

7. On hearing the rival contentions, the following points arise

1. (2107) 16 SCC 680

for determination :

(a) Whether the finding of the Tribunal on rashness and negligence is sustainable ?; and

(b) Whether the compensation determined and awarded by the Tribunal constitutes just compensation?

8. In so far as the first aspect is concerned, though it is true that the Claimants failed to examine any eyewitness to the accident, other evidence on record is reasonably sufficient to sustain the finding recorded by the Tribunal on the issue of rashness and negligence of the truck driver. The Tribunal quite correctly relied upon **Surinder Kumar Sehgal & Ors. vs. New India Assurance Co. Ltd. & Ors.** - 2011 (4) T.A.C. 532 (Delhi), in which it is noted that direct evidence of negligence is not always available, particularly in accident cases and where it is so, the Court has to consider the indirect and circumstantial evidence available on record. The Court has further noted that the Court may infer negligence in such cases from the facts and circumstances. The Court also held that it is well-settled law for the offending vehicle's driver to step in the witness box and depose to the genesis of the accident. Further, if the driver of the offending vehicle keeps away from the witness box, the

Claimant's version, as corroborated by the version recorded by the police, must prevail, and negligence may be inferred therefrom.

9. The approach of the Tribunal is quite consistent with the law laid down in *Sunita & Ors. V/s. Rajasthan State Road Transport Corporation & Ors.*²; *Anita Sharma & Ors. V/s. New India Assurance Company Limited & Anr.*³, *Parmeshwari V/s. Amir Chand & Ors.*⁴, *Mangla Ram V/s. Oriental Insurance Company Ltd. & Ors*⁵ and *Dulcina Fernandes & Ors. V/s. Joaquim Xavier Cruz & Anr.*⁶.

10. In all the cases 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 mindful that strict principles of evidence and standard of proof, like in a criminal trial, are inapplicable in MACT claim cases. The standard of

2. (2020) 13 SCC 486

3. (2021) 1 SCC 171

4. (2011) 11 SCC 635

5. (2018) 5 SCC 656

6. (2013) 10 SCC 646

proof in such matters is one of the preponderance of probabilities rather than proof beyond a reasonable doubt.

11. 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. They must take a holistic view bearing in mind that strict proof of an accident caused by a particular vehicle in a specific manner often cannot be adduced 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. They must consider the legal effect of the failure to cross-examine crucial witnesses on crucial issues.

12. 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.

13. In this case, the evidence of AW.1 may not be very relevant because she was not an eyewitness to the accident in which her husband died. On the other hand, evidence of Umakant Naik-AW.2 is quite relevant. AW.2 is the Investigating Officer who not only lodged the F.I.R. against the truck driver but also investigated the matter by conducting a panchanama and the sketch of the spot of the accident. Therefore, the Tribunal has quite correctly relied upon the oral testimony of AW.2 and the documentary evidence produced on record. Based on this material, the Tribunal has drawn a legitimate inference that the truck was driven in a rash and negligent manner and, consequently, was responsible for the accident in which Ganesh Gaunder died.

14. The evidence on record establishes that the trailer truck overtook the Dio scooter on which Ganesh Gaunder was riding

pillion. After that, the truck suddenly went on the extreme left side, and in the process, rear portion of the truck hit the Dio scooter. As a result of the impact, the rider and the pillion rider were flung off the scooter. The pillion rider got entangled in the truck's rear wheel and was dragged for about 60 meters. There is evidence that a charge sheet was filed against the truck driver.

15. In my opinion, the above evidence is sufficient to establish the finding on rashness and negligence, mainly since such a finding can be arrived on the touchstone of preponderance of probabilities in such matters. The first point is accordingly answered against the Appellant.

16. On the second point, Mr. Timble is justified in contending that the Award towards loss of consortium, care and guidance, and funeral expenses is over and above what is prescribed in *Pranay Sethy (supra)*. Accordingly, towards consortium, an amount of ₹40,000/- could have been granted to each of the claimants, and ₹15,000/- could have been awarded towards funeral expenses. To that extent, the Award warrants modification, though not necessarily by scaling down overall compensation awarded by the Tribunal.

17. Even after accepting Mr. Timble's contention, an additional

amount of ₹15,000/- will have to be awarded to the Claimants towards the loss of estate in terms of *Pranay Sethy (supra)*. Similarly to the accepted monthly income of ₹7500/-, an addition of 40% is due towards future prospects, again in terms of the law laid down in *Pranay Sethy (supra)*.

18. Considering the above aspects, the annual income of Ganesh Gaunder would be ₹60,000/- and an addition of 40% would take this annual income to ₹84,000/-. There is no dispute about the age; consequently, the multiplier of 16 is applicable in this case. The compensation towards dependency would, therefore, come to ₹13,44,000/-. By adding ₹1,10,000/- towards consortium, funeral expenses, and loss of estate would take the total compensation to ₹14,54,000/-. The accident, in this case, took place on 24th April 2013. Accordingly, Mr. Timble is justified in contending that the interest of 9% per annum is rather excessive. The interest is therefore determined at 7% per annum.

19. Thus, even after partially accepting Mr. Timble's contention, the just compensation, in this case, would work out to ₹14,54,000/-.

20. In *Surekha and ors. vs. Santosh and ors.*⁷, the Hon'ble Supreme Court has held that by now it is well settled that in matter of insurance claim compensation in reference to motor accidents, the Courts should not take a hyper-technical approach and should ensure that just compensation is awarded to the affected persons or claimants. Therefore, even though no appeal or cross objection was instituted by the Claimants, the compensation was enhanced so that it corresponded to the just compensation.

21. Recently, in *Jabbar vs. The Maharashtra State Road Transport Corporation*⁸ the Hon'ble Supreme Court held that it is the duty of the Courts to award just compensation irrespective of whether the same was claimed or not. Hon'ble Supreme Court of India referred to its judgment in *Ramla & ors. v. National Insurance Co. Limited & ors.* - [(2019) 2 SCC 192] and held that there is no restriction that the Court cannot award compensation exceeding the claimed amount, since the function of the Tribunal or Court under Section 168 of the Motor Vehicles Act, 1988 is to award "just compensation". The Motor Vehicles Act is a beneficial and welfare legislation. A "just compensation"

7. (2020) SCC OnLine SC 1312.

8. Civil Appeal Nos.8556 of 2019 decided on 13/11/2019

is one which is reasonable on the basis of evidence produced on record. Further, there is no need of a new cause of action to claim an enhanced amount. Therefore, the Courts are duty bound to award just compensation.

22. Accordingly, this Appeal is disposed of by determining the just compensation at ₹14,54,000/- in place of ₹13,77,000/-. However, the interest rate is reduced from 9% per annum to 7% per annum.

23. The Appellant-Insurance Company is directed to deposit the enhanced amount in this Court within six weeks from today, after giving due intimation to the learner Counsel for the Claimants. The Claimants, subject to payment of additional Court Fee, are permitted to withdraw this enhanced portion on usual terms.

24. In addition, the Claimants are also permitted to withdraw the balance of the deposited compensation, together with the interest that shall have accrued by furnishing identification documents and bank details. Registry to ensure that the amounts are directly transferred into the bank accounts of the Claimants.

M. S. SONAK, J.

SANTOSH S MHAMAL Digitally signed by SANTOSH S MHAMAL
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