

Niti

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.32 OF 2017

1. Shri, Narayan Gaonkar
s/o Bhicaro Gaonkar
58 years of age
(since deceased through Legal
representatives)

1.a) Neha Narayan Gaonkar
23 years of age

1.b) Bramah Narayan Gaonkar

2. Smt. Mangala Narayan Gaonkar alias
(Mangal Datta Velip),
w/o Narayan Gaonkar,
52 years of age, Housewife,
All above are resident of House No. 1430,
Pollem, Loliem, Canacona – Goa.

... Appellants

Versus

1. Shri. Mohan Shetty,
s/o Parmeshwar Shetty,
c/o N.W.K.R.T.C., N.W. Division,
Sirsi, Karnataka. (driver of the K.R.T.C.
bus No. KA-42/F-392 License No. C.
No. 633812 Valid upto 05/11.2013) .

2. The Managing Director,
C/o North West Karnataka Road
Transport Corporation (N.W.K.R.T.C.),
N.K. Division, Sirsi, Karnataka. (owner of
the K.R.T.C. bus No. KA-42/F-392).

.... Respondents

Mr. Sanman R. Keny, Advocate for the Appellants.

Mr. Salil Saudagar, Advocate for the Respondents.

CORAM: M. S. SONAK, J.

DATE : 18th AUGUST 2022

ORAL JUDGMENT :

1. Heard Mr. Sanman Keny for the appellants and Mr. Salil Saudagar for the respondents.
2. The appellants are the claimants in Claim Petition No.115/2012. They challenge the judgment and award dated 14.11.2016 made by the Motor Accident Claims Tribunal (Tribunal), dismissing their Claim Petition after determining the compensation at ₹17,95,000/-. The Claim Petition was denied because, according to the Tribunal, the appellants failed to prove that the accident was due to rash and negligent driving of the bus driver of the bus bearing registration no.KA-42-F-392.
3. Mr. Keny, the learned Counsel for the appellants, submits that the Tribunal was over-impressed by the bus driver's acquittal in the criminal proceedings. He submits that the scope of criminal proceedings and proceedings for compensation under the MV Act are quite different, and this difference was not borne in mind by the Tribunal.

4. Mr. Keny submits that there was ample documentary evidence on record in the form of panchanama, the sketch of the scene of the accident, and even photographs. However, the Tribunal did not adequately consider and evaluate all this evidence. He submits that the Tribunal unduly discarded even the evidence of the eyewitness.

5. Mr. Keny relied on *Mangala Ram V/s. Oriental Insurance Co. Ltd.*¹, *Sunita And Others V/s. Rajasthan State Road Transport Corporation And Others*², *Anita Sharma, and others V/s. New India Assurance Company Limited and another*³, *Vimla Devi & Ors. V/s. National Insurance Company Ltd.*⁴, *Parmeshwari V/s. Amir Chand & Ors.*⁵ and submitted that the approach of the Tribunal, in this case, was contrary to the law laid down in these decisions.

6. Mr. Keny submitted that this appeal ought to be allowed, and the compensation determined by the Tribunal should be awarded to the parents of deceased Neeraj, who died in a vehicular accident on 09.03.2012.

1 (2018) 5 SCC 656

2 (2020) 13 SCC 486

3 (2021) 1 SCC 171

4 (2019) 2 SCC 186

5 (2011) 11 SCC 635

7. Mr. Salil Saudagar, learned Counsel for the respondents, defended the finding recorded by the Tribunal but submitted that the determination of compensation by the Tribunal was excessive and contrary to the law laid down in *National Insurance Company Limited V/s. Pranay Sethi & Ors.*⁶

8. Mr. Salil Saudagar submitted that the so-called eyewitness was disbelieved in criminal proceedings; therefore, the Tribunal quite correctly refused to give credence to his evidence. He submits that the bus driver was honorably acquitted; therefore, the Tribunal's findings cannot be faulted.

9. Mr. Salil Saudagar submitted that this appeal deserves to be dismissed but after correcting the compensation amount determined by the Tribunal and scaling the same down appropriately.

10. The rival contentions now fall for determination.

11. The claimants had pleaded that on 09.03.2012 at 12.10 hrs., their son Neeraj, then aged 24 years, was proceeding from Maxem to Pollem on his motorcycle bearing registration no.GA-09-F-5895. When he reached Picnic Bar, Dapot, Maxem,

⁶ (2017) 16 SCC 680

Canacona, N.W.K.R.T.C. bus bearing registration no.KA-42-F-392 dashed him while being driven at a fast speed and in a rash and negligent manner by the bus driver. They pleaded that the bus driver was overtaking a H.P. gas tanker, and it came on the extreme wrong side of the road and dashed against the motorcycle Neeraj was riding. They pleaded that the bus was so fast that the bus driver could not control the same, and while taking the bus to the left side, he pulled Neeraj and his motorcycle to the middle of the road. Neeraj sustained head and other injuries to which he succumbed on the spot.

12. The claimant no.1(b) examined himself as AW1. Besides, Vaibhav Bandekar – a pancha, was examined as AW2, and Audumbar Naik – an eyewitness, was examined as AW3. The bus driver examined himself. The respondents examined Suresh Annappa Guddadmane - bus conductor, as RW2 and C.S. Suryakantha - Administrator Supervisor, as RW3 in defense.

13. In this case, there is no dispute that the neutral authorities, that is, the police authorities, chose to file an F.I.R. against the bus driver. After investigations, even a charge sheet was filed against the bus driver. Indeed, the bus driver was ultimately acquitted in the criminal prosecution. However, it is to be borne in mind that the standard of proof required in a criminal

prosecution is that of proof beyond a reasonable doubt. However, in summary, proceedings under the MV Act, rashness and negligence have to be evaluated on the touchstone of preponderance of probabilities. Therefore, mere acquittal in a criminal prosecution is not very relevant. Based simply upon such acquittal, the Tribunals cannot exonerate the bus drivers, the owners, and their insurers.

14. In the decisions relied upon by Mr. Keny, 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 M.A.C.T. claim cases. The standard of proof in such matters is one of the preponderance of probabilities rather than proof beyond a reasonable doubt.

15. 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.

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. In *Sunita & Ors.* (supra), the Hon'ble Supreme Court held that the Tribunal had correctly accepted the claimant's contention that the Respondents did not challenge the propriety of the F.I.R. and the charge sheet before any authority. The only defense raised by the Respondents to this plea was that the F.I.R. was based on wrong facts and was filed in connivance between the complainants and the police, against which the Respondents had complained to the superiors, but to no avail. The Hon'ble Supreme Court noted that apart from this bald assertion, no evidence was produced by the Respondents before the Tribunal to prove this point. The filing of the F.I.R. was followed by the filing of the charge sheet for offenses under Sections 279, 337, and 304-A of I.P.C. and Sections 134/187 of the MV Act, which, again reinforces the allegations in the said F.I.R. insofar as the occurrence of the accident was concerned and the role of the driver in causing such accident.

18. 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 F.I.R. or charge sheet or the conclusion reached by the Tribunal. Yet, the F.I.R. and the charge sheet were found to be deficient by the High Court. The Tribunal did not even look into these documents in the present case because the I.O. was not examined. There was no need to

examine the I.O. because such records were produced and relied on by both the contesting parties.

19. The Hon'ble Supreme Court, in paragraph 27, specifically held that the Tribunal's reliance upon F.I.R. No.247/2011 in the said case and the charge sheet could not be faulted as these documents indicated the complicity of the driver in the said matter. The Court held that the F.I.R. and the charge sheet, coupled with other evidence on record, inarguably establish the occurrence of the fatal accident and also point towards the negligence of respondent no.2 in causing the said accident. The Court observed that even if the final outcome of the criminal proceedings against respondent no.2 is unknown, the same will make no difference, at least to decide the claim petition under the MV Act. The Court referred to its decision in *Mangla Ram* (supra), where it was held that the nature of proof required to establish culpability under criminal law is higher than the standard required under the law of torts to create liabilities.

20. In *Dulcina Fernandes* (supra), the Hon'ble Supreme Court held that sufficient credence has to be given to the circumstances that neutral prosecution agencies deemed it appropriate to not only lodge an F.I.R. against the driver of the offending vehicle but further to prosecute him. The Court referred to *Vimla Devi*

(supra) and the adoption of the touchstone of preponderance of probabilities as opposed to proof beyond a reasonable doubt. The Court also referred to *United India Insurance Co. Ltd. V/s. Shila Datta*⁷ and held that rules of pleadings do not strictly apply in such proceedings. Though the Tribunal adjudicates a claim and determines the compensation, it does not do so as in adversarial litigation. The Court held that the Tribunal is required to follow a summary procedure.

21. In *Dulcina Fernandes* (supra), the Court rejected the contention that acquittal in a criminal case was an extremely relevant circumstance by observing the following in para 12:

"12. C.W. 2, who was at the relevant time working as the Head Constable of Main Eurtorim Police Station, had deposed that a criminal case was registered against the first Respondent in connection with the accident and that after investigation he was charge-sheeted and sent up for trial. Though it is submitted at the Bar that the first Respondent was acquitted in the said case what cannot be overlooked is the fact that upon investigation of the case registered against the first Respondent, prima facie, materials showing negligence were found to put him on trial."

22. In this case, the Tribunal's approach is contrary to the principles laid down by the Hon'ble Supreme Court in all the

⁷ (2011) 10 SCC 509

above matters. There was no good reason to discard the evidence of AW3 – the eyewitness. Besides, based on the documentary evidence like the F.I.R., the panchanama, the scene of the accident, sketch, and finding of rashness and negligence on the part of the bus driver was due keeping in mind that the standard of proof in such matters was that of preponderance or a balance of probabilities.

23. The Tribunal should have appreciated the difficulties that claimants face in tracing witnesses or collecting information for the accident when they were not present at the accident spot. 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.

24. Applying the above principles to the evidence on record, including in particular the deposition of AW3 and the sketch of

the scene of the accident and panchanama, the case is made out to record the finding that the accident, in this case, took place due to the rashness and negligence of the bus driver.

25. The Tribunal also failed to consider that the bus in this case was a heavier and larger vehicle; therefore, the duty of care expected of the bus driver was much greater than the duty of care expected by the deceased was riding a motorcycle. From the evidence on record, it is apparent that the care and caution exercised by the bus driver were not of the expected level. Maybe no case was made out for the conviction of the bus driver, but that does not mean that no case of rashness and negligence for determination of civil liability was also not made out.

26. Accordingly, the finding of the Tribunal that the bus driver was not rash and negligent and consequently not responsible for the accident is hereby reversed.

27. Regarding compensation, Mr. Saudagar is justified in contending that the Tribunal has failed to make appropriate deductions or has proceeded to determine amounts over and above those prescribed in *Pranay Sethi* (supra). Therefore, the determination of compensation will have to be modified to that extent.

28. The evidence on record bears out Neeraj's annual income of ₹1,20,000/-. However, considering his age, an additional 40% towards future prospects is due. This means that Neeraj's yearly income could be taken at ₹1,68,000/-.

29. Neeraj was a bachelor and, therefore, a deduction of 50% is due towards his personal expenses. The multiplier, in this case, is 18 in terms of *Pranay Sethi* (supra) and *Sarla Verma V/s. Delhi Transport Corporation & Anr.*⁸. Thus, the compensation towards dependency would come to ₹15,12,000/-.

30. The appellants are entitled to a consortium of ₹40,000/- each. Thus, the appellants will be entitled to a total consortium amount of ₹80,000/-, ₹15,000/- towards loss of estate, and ₹15,000/- towards funeral expenses. Thus, the total compensation can be worked out to ₹16,22,000/-. This accident occurred on 09.03.2012, and, therefore, interest at the rate of 7% per annum would be appropriate.

31. The just compensation is, therefore, determined at ₹16,22,000/- together with interest at the rate of 7% per annum from the date of the Claim Petition till the realization of this

8 (2009) 6 SCC 121

amount. Accordingly, this just compensation is now awarded to the appellants/claimants.

32. Accordingly, the respondents are jointly and severally held liable and directed to pay the appellants the compensation amount of ₹16,22,000/- together with interest at the rate of 7% per annum from the date of institution of the Claim Petition till the realization of this amount. The respondents are further directed to deposit this compensation amount in this Court within eight weeks from today, after giving due intimation to the learned Counsel for the appellants.

33. Upon deposit, the appellants/claimants can withdraw the deposited amount after furnishing proper identification documents and bank details. The Registry to ensure that the amount is paid directly into the bank account of the appellants/claimants.

34. The appeal is allowed in the above terms. Accordingly, there shall be no order for costs.

M. S. SONAK, J.

NITI K
HALDANKAR

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