

Amrut

IN THE HIGH COURT OF BOMBAY AT GOA
FIRST APPEAL NO.59 OF 2017

Mrs. Sarita Agarwal,
Widow of Subhaschandra Agarwal,
63 years of age, Housewife,
resident of H.No.1389, C/o Furtado,
Near Furtado Floor Mill Molaco, Mercas,
Tiswadi Goa. ... Appellant

Versus

1. Mrs. Felecia Coelho,
Major of age,
resident of House No.249/B,
Tuemwada, Korgao, Pernem Goa.
2. Mr. Narayan J. Sawant,
Major of age,
Resident of House No. Not known,
Sawatwado, Mandrem,
Pernem Goa.
3. Choramandalam Ms. General Insurance
Company Ltd., Through its Manager,
having its office situated at No.203,
2nd Floor, Dempo Trade Centre Patto,
Panaji Goa. ...Respondents

Mr. Amay A. Phadte, Advocate for the Appellant.

Mr. James Lopes, Advocate for respondent No.3.

CORAM: M. S. SONAK, J

DATE : 29th April 2022

ORAL JUDGMENT :

1. Heard the learned counsel for the parties.
2. The Appellant is the widowed mother of Snehil Agrawal, who died in a vehicular accident on 28.05.2012 on NH 17A near Mercedes Circle. Snehil was 23 years old at the time of his death.
3. The Appellant challenges the impugned judgment and award dated 25.10.2016 by which the Motor Accident Claims Tribunal (Tribunal) has held that the claimant was unable to prove that the accident took place due to any rashness and negligence on the part of Narayan Sawant (respondent No.2) – the driver of tipper truck bearing registration No.GA-03-T-8476. After answering this issue against the claimant, the Tribunal did not take pains to determine the compensation amount to which the claimant would otherwise have been entitled. Hence, this appeal.
4. On hearing the learned counsel for the parties and evaluating evidence on record, I am satisfied that the Tribunal's finding of rashness and negligence on the truck driver's part has to be reversed and compensation of ₹11,68,921/- has to be awarded to the claimant. The reasons for this conclusion are set out hereafter.

5. Before recording the reasons, I am again constrained to note that in several cases, the tribunals do not bother to give their findings on all the issues that arise before them. In many instances, the tribunals decide only on the issue of rashness and negligence. They do not bother to answer the issue of just compensation even though the parties have led evidence on this issue. This is not at all proper.

6. In *Bimlesh & Ors. V/s. New India Assurance Company Limited*¹, in paragraphs 7,8 & 9, the Hon'ble Supreme Court has held that the Tribunal has to follow the summary procedure subject to any rules that may be made in this behalf. The Code of Civil Procedure, 1908, is not strictly speaking applicable to the proceedings before the Claims Tribunal except to the extent provided in Section 169(2) of the MV Act and the Rules made thereunder. The whole object of the summary procedure is to ensure that the Claim Petition is heard and decided by the Claims Tribunal expeditiously. In paragraph 9, the Hon'ble Supreme Court has held that the *Claims Tribunal is required to dispose of all issues one way or the other in one go while deciding the claim petition*. Therefore, normally, the Tribunals should not dispose of the Claim Petitions based on some preliminary issue, usually raised by the Insurance Company about maintainability or otherwise. So also, the Tribunals, even after holding that the issue of rashness and negligence is not proven, should not shirk deciding on other issues, including the issue of the quantum of compensation.

¹ (2010) 8 SCC 591

7. The Hon'ble Supreme Court has held that since all the issues (points for determination) are required to be considered by the Claims Tribunal together in the light of the evidence that may be led in by the parties and not piecemeal, often matters are required to be remanded. In *Bimlesh* (supra), the matter had to be remanded. Therefore, in this case, it will have to be held that the approach of the Tribunal in not deciding all the issues together is contrary to the law laid down in *Bimlesh* (supra).

8. Recently, even in the *Agricultural Produce Marketing Committee, Bangalore Vs The State of Karnataka and others, 2022 LiveLaw (SC) 307*, the Hon'ble Supreme Court has reiterated that the Courts must avoid shortcuts and decide all issues that fall for their determination.

9. The Registrar is requested to circulate a copy of this judgment to the Presiding Officers of the Motor Accident Claims Tribunal in North and South Goa Districts. Then, at least hereafter, they should decide all issues before them. Furthermore, the tribunals should be duty-bound to take cognizance of the decisions in *Bimlesh* (supra) and *Agricultural Produce Marketing Committee, Bangalore* (supra) so that the claim petitions can be disposed of expeditiously and there is no occasion for remand.

10. The points for the determination that arise in this appeal are as follows:-

(a) whether the claimant proves that the truck driver's rashness and negligence caused the accident in which Snehil died?

(b) if the claimant succeeds in proving the above issue, what could be the just compensation payable to her?

11. On the first point, the Tribunal should follow the approach when determining the issue of rashness and negligence is explained in several decisions of the Hon'ble Supreme Court, including but not restricted to *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

12. 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

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

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 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.

14. 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.

15. In *N. K. V. Bros. (P) Ltd. vs. M. Karumai Ammal & Others*⁷ the Hon'ble Supreme Court, in paragraph 3 made the following observations:-

"3. Road accidents are one of the top killers in our country, specially when truck and bus drivers operate nocturnally. This proverbial recklessness often persuades the courts, as has been observed by us earlier in other cases, to draw an initial presumption in several cases based on the doctrine of res ipsa loquitur. Accidents Tribunals must take special care to see that innocent victims do not suffer and drivers and owners do not escape liability merely because of some doubt here or some obscurity there. Save in plain cases, culpability must be inferred from the circumstances where it is fairly reasonable. The Court should not succumb to niceties, technicalities and mystic maybes. We are emphasising this aspect because we are often distressed by transport operators getting away with it thanks to judicial laxity, despite the fact that they do not exercise sufficient disciplinary control over the drivers in the matter of careful driving. The heavy economic impact of culpable driving of public transport must bring owner and driver to their responsibility to their 'neighbour'. Indeed, the State must seriously consider no fault liability by legislation. A second aspect which pains us is the inadequacy of the compensation or undue parsimony practised by tribunals. We must remember that judicial tribunals are State organs and Article 41 of the Constitution lays the jurisprudential foundation for state relief against accidental disablement of citizens. There is no justification

7 AIR 1980 SC 1354

for niggardliness in compensation. A third factor which is harrowing is the enormous delay in disposal of accident cases resulting in compensation, even if awarded, being postponed by several years. The states must appoint sufficient number of tribunals and the High Courts should insist upon quick disposals so that the trauma and tragedy already sustained may not be magnified by the injustice of delayed justice. Many states are unjustly indifferent in this regard."

16. In *Bashti Kasim Saheb vs. Mysore State Road Transport Corporation & Others*⁸, the Hon'ble Supreme Court has made the following significant observations that apply to the circumstances of the present case:-

"8. The evidence in the case indicates that there was no traffic on the road at the time of the accident. No untoward incident took place like sudden failure of the brakes or an unexpected stray cattle coming in front of the bus and still the vehicle got into trouble. In absence of any unexpected development it was for the driver to have explained how this happened and there is no such explanation forthcoming. In such a situation the principle of res ipsa loquitur applies. The petitioner, in the circumstances, could not have proved the actual cause of the accident and on the face of it, it was so improbable that such an accident could have happened without the negligence of the driver, that the Court should presume such negligence without further evidence. The burden in such a situation is on the defendant to show that the driver was not negligent and that the accident might, more probably, have happened in a manner which did not connote negligence on his part, but the defence has failed to produce any evidence to support such a possibility. We,

therefore, agree with the finding of trial court on this issue and set aside the judgment of the High Court."

17. In this case, the Tribunal's approach is found to be contrary to the above principles explained by the Hon'ble Supreme Court. The Tribunal has applied unequal yardsticks while evaluating the claimant's evidence and evidence of Narayan Sawant – truck driver (RW1), Suraj Samant, PSI, Old Goa Police Station (RW2), and Disha Mapari, LHC, Bicholim Police Station (RW3). While the claimant's evidence (AW1) on the aspect of how the accident took place has been rejected as hearsay because she was not present at the time of the accident, the Tribunal failed to apply the same yardsticks to the evidence of RW2 (PSI) and RW3 (LHC). As a result, the evidence of RW2 and RW3, who were also not present at the time of accident, was pure hearsay and should have been rejected.

18. RW2 stated that the accident case was investigated by LHC Disha Mapari (RW3), who "*upon inquiry*" informed him that the deceased had dashed against a stationary truck and expired due to the impact. Disha Mapari (LHC) – RW3 deposed that "*as per the inquiry*" she found that the truck was parked when the accident took place. She went to the extent of deposing that the accident took place due to the deceased's negligence. In my view, RW3 was not competent to depose in this manner when she was not present at the time of the accident. She did not elaborate on whether her investigation had prompted her to make such a statement. Furthermore, she did not

elaborate on what were such investigations. The Tribunal, however, has erroneously relied upon the evidence of RW2 and RW3.

19. Narayan Sawant (RW1) is the most relevant witness. He was a truck driver. His examination in chief comprises only two paragraphs that read as follows:-

"1. On 28.05.2012 I was the driver of mini truck GA-03-T-8476. The said truck was loaded with sand. I was proceeding from Panaji to Vasco. On the way about 15-20 mts before reaching 'Estrela' there was left rear tyre burst of the said mini truck. Thereafter I parked the said mini truck opposite the road leading to 'Estrela' completely by the left side of the road to change the tyre. I was underneath the said mini truck lifting the same on jack to change the tyre. At that time a motorcycle dashed on the back of said mini truck and its rider was injured. Myself and some passersby helped the injured motorcyclist put in ambulance. Thereafter Police came and conducted the panchanama of the scene. Police registered a case of unnatural death.

2. I say that what is stated by me in the foregoing paragraphs is true to my knowledge."

20. He denied the suggestion in his cross-examination that there was no left rear tyre burst or his going underneath the truck to lift the jack to change the tyre. He also denied that the accident occurred due to his fault when he suddenly stopped the vehicle on the road without giving any signal. What is significant about the evidence of Narayan Sawant – truck driver (RW1) that he has not deposed about placing any stones or branches usually placed when a vehicle is parked on a

highway due to breakdown. He has also not deposed about putting hazard warning lights or reflecting traffic warning triangles. He has also not deposed about any negligence on the part of Snehil. Despite all this, his version has been blindly accepted by the Tribunal. The Tribunal, without any material on record, concluded positively that the accident must have taken place due to the fault of the deceased.

21. Mr. Phadte has correctly referred to Regulations 22 and 28 of the Motor Vehicles (Driving) Regulations, 2017. Regulation 22(1)(ii) provides that the vehicle shall not be stopped near or on a sharp bend. Regulation 22(2)(b) provides that the vehicle shall not be parked on the main road or at a stretch of a road where the notified maximum speed limit is fifty kilometers per hour or more. Regulation 22(2)(d) provides that the vehicle shall not be parked before or after an intersection or a junction up to fifty meters from the edge of the intersection or junction. Finally, regulation 22(2)(m) provides that the vehicle shall not be parked if it is likely to obstruct any other vehicle or cause inconvenience to any person.

22. Narayan Sawant (RW1) – the truck driver has deposed that about 15-20 mts before reaching '*Estrela*' there was left rear tyre burst. Therefore he parked his mini truck opposite the road leading to '*Estrela*' entirely by the left side of the road to change the tyre. The Tribunal has relied upon the sketch attached to the panchanama (Exhibit 29 Colly). This sketch bears out that '*Estrela*' referred to by Narayan Sawant, is nothing but a T-junction. But the truck was

therefore parked right on the main road at this T-junction in breach of Regulation 22 referred to above.

23. The version about the truck being parked entirely by the left side of the road is also not supported by the sketch because the sketch very clearly depicts 2.40 meters Katcha road. This truck has been parked way beyond this katcha road and occupies a considerable portion of the highway. The sketch also clearly indicates that though this may be the highway, it has only two lanes. This truck was parked right at the junction rendering it quite unsafe for any vehicle to move and pass it without causing itself vulnerable to the traffic from the road connecting the intersection. In short, based on the evidence of RW1, a case was made out that the truck was stopped or parked in breach of Regulation 22.

24. Besides, Mr. Phadte referred to regulation 28, which reads as follows:-

"28. Vehicle breakdown. - In case a vehicle with more than two wheels has broken down at a place where it can be recognised in time as a stationary obstacle,-

(i) the hazard warning lights of the vehicle shall be switched on immediately;

(ii) on highways and major roads with fast speed, reflective traffic warning triangles shall be placed at a distance of fifty meters behind the broken-down vehicle; and

(iii) if there is a bend on the road where the vehicle is parked, reflective traffic warning triangles shall be placed before the bend."

25. As noted earlier, RW1 – the truck driver has not deposed anything about compliance with requirements of Regulation 28. There is no reference to any hazard warning lights required to be switched on immediately. There is no reference to reflective traffic warning triangles required to be placed at a distance of fifty meters behind the broken-down vehicle. There is no reference to any reflective traffic warning triangles to be placed near the bend because this was a case of an alleged breakdown at the T-junction. Even the sketch to the panchanama indicates no steps taken by the truck driver consistent with Regulation 28 or even otherwise to warn other commuters and vehicles.

26. Mr. Phadte also referred to Section 122 of the Motor Vehicles Act, 1988 which reads as follows:-

"122. Leaving vehicle in dangerous position.— No person in charge of a motor vehicle shall cause or allow the vehicle or any trailer to be abandoned or to remain at rest on any public place in such a position or in such a condition or in such circumstances as to cause or likely to cause danger, obstruction or undue inconvenience to other users of the public place or to the passengers."

27. The evidence on record, particularly in the context of non-compliance with rules and regulations referred to above, indeed makes

out a case that the truck driver, on his own version, left the truck in a dangerous position. All this spells out rashness and negligence on the truck driver's part. Yet, all these aspects were not even referred to, much less considered by the Tribunal before recording a finding based on no evidence whatsoever that it is the deceased who was rash and negligent and, therefore, responsible for the accident. Based on such a finding, his widowed mother was deprived of due and payable compensation to her.

28. In *Dr. Bhaktaprahlad Vs Nirwani*⁹, the Division Bench of Karnataka High Court after considering the provisions of Rules 102 and 109 of the Central Motor Vehicles Act, 1989 concluded that the combined reading of Section 122 and Rules 102 and 109, it was clear that the front and rear parking lights have to remain lit even if the vehicle is kept stationary on the road. Since in the case before it, the lorry driver had not switched on the parking lights, and it was parked on the metalled portion as could be seen from Exhibits P2 and P3, there was negligence on the part of the lorry driver.

29. Mr. Lopes, learned counsel for the insurance company, submitted that the findings recorded by the Tribunal were correct and warranted no interference. Without prejudice, he submitted that this was a case of contributory negligence at the highest because the accident took place at 10.00 a.m. in broad daylight. He submitted that the sketch shows a sufficient place from where the deceased could have

passed. He submitted that only the legitimate negligence that could be drawn was that the deceased was riding the motorcycle in a rash and negligent manner and could not control the vehicle which resulted in the accident.

30. As noted earlier, the finding of the Tribunal is entirely unsustainable. On the aspect of contributory negligence, the sketch bears out that the truck was parked right at the junction though this was a highway, it was only a two-lane highway. Therefore, it would not be correct to say that the motorcycle had sufficient place to pass even assuming that the truck driver's version about puncture of the rear left tyre and consequent parking of the truck is to be believed.

31. Incidentally, apart from the truck driver's self-serving statement, there is no legal evidence in support of the tyre puncture theory. Neither the panchanama nor the sketch reflects this version. The panchanama or the sketch also do not refer to any jack or tools for removing puncture. Therefore, this is not a fit case to invoke contributory negligence theory.

32. The first point will have to be determined in favor of the claimant by holding that the accident took place because of rash and negligence contributable to the truck driver Narayan Sawant.

33. On the next point for determination, there is clear evidence on record that Snehil was employed as Service Delivery Engineer with

Omnitech Infosolutions Limited. To this effect, the claimant's deposition is clear and cogent on this aspect, and the same was not even challenged seriously in the cross. The oral evidence is backed by documentary evidence in the form of a letter of appointment. The claimant also examined Sudhakar Pawar (AW2), the store and TRC Manager of the company, who stood by the appointment letter and terms therein.

34. Mr. Lopes pointed out that the appointment letter at Exhibit 37 talks about Snehil being paid professional consultant fees of ₹5,500/- which includes conveyance expenses of ₹750/- per month and mobile expenses of ₹250/- per month. He, therefore, submitted that Snehil's monthly income could not be taken beyond ₹5500/- per month.

35. The appointment letter at Exhibit 37 is not restricted only to professional consultant fee components. A clause for incentives provides that such incentives would be credited to his salary account. The claimant has produced a copy of Snehil's bank statement from Kotak Mahindra. Srinivas Jansale (Chief Manager of Kotak Mahindra Bank at Panaji) examined in support of this bank statement. This bank statement is for the period between 25.06.2011 and 18.07.2012. The accident in which Snehil died took place on 28.05.2012. The entry of 07.05.2012 i.e. hardly about three weeks before Snehil's unfortunate demise in the vehicular accident indicates that the salary for the month of April 2012 was ₹7268/-.

36. Based on the above evidence, his monthly salary can be safely taken as ₹7268/-. AW1 had deposed that Snehil was earning ₹10,000/- per month through hardware repairs in addition to the salary. She has also deposed that the paperwork of Snehil to the compassionate appointment with the Madhya Pradesh Government on account of the demise of his father was also complete. However, there is no evidence about this additional income of ₹10,000/-.

37. Further, though the paperwork about the compassionate appointment is placed on record, the same cannot be considered because there was no firm offer of a compassionate appointment from the concerned Government. However, the evidence on record establishes that Snehil was drawing a salary of ₹7268/- per month at the time of his death in the vehicular accident.

38. There is no dispute about Snehil's age, and consequently, the multiplier applicable in terms of *National Insurance Company Limited Vs. Pranay Sethi and others*¹⁰. The compensation towards dependency would therefore come to ₹10,98,921/-. To this, ₹40,000/- will have to be added towards consortium, ₹15,000/- towards funeral expenses, and ₹15,000/- towards estate loss. The total compensation is therefore determined at ₹11,68,921/-. Besides, this is a fit case where the interest at the rate of 9% per annum should be awarded to the claimant from the date she instituted the claim petition till she is paid this amount.

10 (2017) 16 SCC 680

39. For the above reasons, this appeal is allowed. Accordingly, the impugned judgment and award is set aside. Respondent Nos. 1, 2, and 3 are held jointly and severally liable to pay the just compensation of ₹11,68,921/- to the claimant and interest at the rate of 9% per annum from the date of claim petition till the date of effective payment.

40. Respondent Nos. 1, 2, and 3, including particularly respondent No.3, is directed to deposit the awarded amount in this Court within two months from today after giving due intimation to the learned counsel for the Appellant. Upon deposit, the Appellant will be entitled to withdraw this amount after furnishing the identification documents and bank details. Registry to facilitate the remission of this amount directly to the bank account of the appellant/claimant.

41. The appeal is allowed in above terms.

42. There shall be no order for costs.

M. S. SONAK, J