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IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.34 OF 2017

Shri Narcivha Chari
also known as Narcinhva Chari,
son of Vishwanath Chari,
aged 66 years, Indian National,
Resident of House No.204-A,
Mahalaxmi, Bandora, Ponda – Goa.

...Appellant

Versus

1. Mr. Joao Faria
Son of Thomas Faria
major, resident of near
State Bank of India,
Taliegao, Tiswadi, Goa.

2. Bajaj Allianz General Insurance
Company Ltd., 3C & 3D, Sesa Ghor,
20 Patto Plaza, EDC Complex, Panaji-Goa.

3. Mrs. Leonor Thomas Faria,
S/o. Thomas Faria,
R/o. H.No.239, Cardozwada, Taliegao,
Tiswadi, North Goa. (since deceased)
through her legal representative respondent
no.1 Mr. Joao Faria.

...Respondents

Mr. Prashil Arolkar, *Advocate for the Appellant.*

Ms. Reshma Satardekar, *Advocate for Respondent Nos.1 & 3.*

Mr. P. Shirodkar, *Advocate for Respondent No.2.*

CORAM: M. S. SONAK, J.

DATED: 4th MARCH 2022

ORAL JUDGMENT :

1. Heard Mr. Prashil Arolkar, learned Counsel for the appellant, Ms. Reshma Satardekar, learned Counsel for respondent nos.1 & 3, and Mr. P. Shirodkar, learned Counsel for respondent no.2.

2. At the commencement of the final hearing of this appeal, Ms. Satardekar pointed out that respondent no.3, i.e. the owner of the vehicle has since expired. Mr. Arolkar, however, submitted that respondent no.1 is the son of respondent no.3, who was incidentally the driver of the offending vehicle. Having regard to this circumstance, we continued with the final hearing since even otherwise respondent no.1 would represent the interest of deceased respondent no.3.

3. Further, there was also some discrepancy about the names of respondents nos.1 & 3. Accordingly, leave is granted to the claimant to indicate the correct names in the cause title. The claimant will also have to indicate in the cause title the factum of the demise of respondent no.3 and make an endorsement of her

deletion for which leave is now granted. Mr. Arolkar states that such amendment/correction will be carried out forthwith.

4. This appeal is directed against the judgment and award dated 11.08.2015 in Claim Petition No.99/2010 by which the Tribunal has dismissed the Claim Petition by holding that the involvement of the bullet motorcycle bearing no.GA-07-H-0461 or the involvement of Mr. Joao Faria (respondent no.1) has not been established. The Tribunal, after answering this issue, has not bothered to determine the quantum of compensation by holding that this is unnecessary.

5. 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

¹ (2010) 8 SCC 591

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 proved, should not refrain from deciding other issues including the issue of the quantum of compensation. 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 let in by the parties and not in piecemeal, often matters are required to be remanded. In *Bimlesh* (supra) the matter had to be remanded.

6. 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).

7. In this case, the accident took place on 23.09.2009, though the impugned award incorrectly refers to this date as 07.11.2009. The claimant was sixty years old at the time of the accident and must now be in his seventies. At this point, it will not be proper to remand the matter, instead, the matter will have to be decided based on the evidence let in by the parties.

8. The Tribunal, in this case, has recorded a finding that there is no sufficient evidence that the bullet motorcycle bearing registration no.GA-07-H-0461 was involved in the accident. The Tribunal has also recorded a finding that, as a consequence, there is no evidence that respondent no.1, whose correct name must now be taken as Mr. Joao M. Faria, was not riding the bullet motorcycle on the date of the accident. Based on these findings, the claim petition came to be dismissed.

9. Now, according to me, the above finding warrants interference because the Tribunal has failed to appreciate the material on record from the perspective indicated by the Hon'ble Supreme Court in the cases of *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.

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

10. In all the aforesaid cases, 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. Further, the Courts/Tribunals must be cognizant of the fact 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 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 particular 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 legal effect of the failure to cross-examine crucial witnesses on crucial issues must be taken into account by the Courts/Tribunals.

11. In *Sunita & Ors.* (supra), the Hon'ble Supreme Court has held that it is well settled that in motor accident claims cases, once the foundational fact, namely, the actual occurrence of the accident, has been established, then the Tribunal's role would be to calculate the quantum of just compensation if the accident had taken place because of the negligence of the driver of a motor vehicle and, while doing so, the Tribunal would not be strictly bound by the pleadings of the parties. Notably, while deciding cases arising out of motor vehicle accidents, the standard of proof to be borne in mind must be of a preponderance of probability and not the strict standard of proof beyond all reasonable doubt which is followed in criminal cases.

12. In *Sunita & Ors.* (supra), the Hon'ble Supreme Court held that the Tribunal had justly accepted the claimant's contention that the respondents did not challenge the propriety of the FIR and the charge sheet before any authority. The only defense raised by the respondents to this plea was that the FIR was based on wrong facts and was filed in connivance between the

complainants and the police, against which the respondents had complained to the in charge of the police station and the District Superintendent of Police 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 FIR was followed by the filing of the charge sheet for offenses under Sections 279, 337, and 304-A of IPC and Sections 134/187 of the MV Act, which, again reinforces the allegations in the said FIR insofar as the occurrence of the accident was concerned and the role of the driver in causing such accident. 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 FIR or charge sheet or the conclusion reached by the Tribunal, and yet, the FIR and the charge sheet were found to be deficient by the High Court.

13. The Hon'ble Supreme Court in paragraph 27 specifically held that the Tribunal's reliance upon FIR No.247/2011 in the said case and the charge sheet, cannot be faulted as these documents indicated the complicity of the driver (respondent no.2) in the said matter. The Hon'ble Supreme Court held that the FIR 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 Hon'ble Supreme Court observed that even if the final outcome of the criminal proceedings against respondent no.2 is unknown, the same would make no difference at least to decide the claim petition under the MV Act. The Hon'ble Supreme 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 liability.

14. Now, the material on record in the present case will have to be evaluated after following the aforesaid principles laid down by the Hon'ble Supreme Court on the issue of appreciation of evidence in Claim Petitions.

15. In the present case as well, though after some delay, that is after about 45 days, FIR was lodged implicating respondent no.1 and the bullet motorcycle bearing registration no.GA-07-H-0461. Indeed, there were some discrepancies in referring to the names and, at one stage, even the number. However, the appellant was quite clear about the involvement of the bullet motorcycle, and the so-called discrepancies were set right before the criminal proceedings were actually initiated before the Court.

16. Apa Parab, Head Constable (AW2) has deposed in this matter. He stated that he conducted the investigations that included the recording of the scene of the accident panchanama and other details. Based on his investigations, a charge sheet was ultimately filed to prosecute the driver i.e. respondent no. 1. Due cognizance was taken by the Judicial Magistrate First Class as is evident from the proceedings in IPC No.25/2010/B.

17. Mr. P. Shirodkar, learned Counsel for the Insurance Company, has today placed on record the certified copy of the judgment and order dated 21.01.2013 in the above IPC case No.25/2010/B and pointed out that the driver was acquitted in the criminal proceedings. From the perusal of the judgment and order dated 21.01.2013, this appears to be so. In paragraph 41, the learned Judicial Magistrate First Class has acquitted the driver by saying that the prosecution has failed to prove the charge against the accused "*beyond reasonable doubt*".

18. Now, it is quite well settled that an acquittal from the criminal charge under Sections 279 and 338 of IPC is not very relevant when it comes to the determination of rashness and negligence in a Claim Petition before the Tribunal. This is because in the criminal case the strict standard of proof beyond all reasonable doubt is the prescribed norm. In contrast, the

Tribunal, while deciding cases arising out of motor vehicle accidents, has to decide the matter on the touchstone of preponderance of probabilities.

19. Further, as noticed in *Sunita & Ors.* (supra), the fact that the FIR was registered, charge sheet was filed is quite relevant to determining the issue of complicity and also rashness and negligence on the touchstone of preponderance of probabilities. In this case, as well, the driver did not react to the filing of the FIR and the charge sheet. Specific questions were posed to the owner, who is incidentally the mother of the driver, as to whether any complaints were filed to the higher authorities and she replied in the negative. Thus, the circumstances that had been considered by the Tribunal in the case of *Sunita & Ors.* (supra) and which were approved by the Hon'ble Supreme Court for proving rashness and negligence, also exist in the present matter. Based thereon, the Tribunal was not right in completely exonerating the driver or holding that his complicity in the accident was not proved in the accident that has given rise to this claim petition.

20. In this case, although the driver and the owner had denied their involvement or rather the involvement of their bullet motorcycle in the accident, in the course of cross-examination of

the claimant on behalf of the owner and the driver, the following suggestion was put :

“It is not true to suggest that since my wife remained behind, I returned back to help her to cross the road.”

21. Now the aforesaid suggestion could not have been put unless the driver was present at the site and had noticed the claimant either crossing the road or returning to help his wife to cross the road.

22. Besides, I think that too much emphasis has been laid on certain contradictions, omissions, or inaccuracies in the testimony of the claimant to answer the issue of complicity and rashness, and negligence against the claimant. Such an approach would be contrary to the law laid down by the Hon'ble Supreme Court in the several decisions referred to above. Such an approach would not amount to taking a holistic view bearing in mind that strict proof of an accident caused by a particular vehicle in a particular manner may not be possible to be done by the claimants. The Tribunal also failed to give due weight to the failure on the part of the respondent to properly cross-examine the witness of the claimants or to confront them with their version, despite the adequate opportunity.

23. Ms. Satardekar, learned Counsel for respondents nos.1 & 2, did point to the delay in lodging of the FIR. The claimant has explained that after the injuries sustained by him he had to be moved to the hospital. He has explained that at the time of the accident he was not in a position of noticing the features of the driver or the number of the bullet motorcycle. The statement of the claimant's wife during police investigations is also to the same effect. There is nothing unnatural in this explanation. The old couple would naturally be tending to or rather suffering the impact and injuries than thinking of compensation claim. Besides, the evidence is that the driver fled away on the bullet after the impact.

24. In *Anita* (supra), the Hon'ble Supreme Court has held that the High Court ought not to have drawn any adverse inference against the witness for his failure to report the matter to the police. The Court held that it is quite natural that such a person who had accompanied the injured to the hospital for immediate medical aid could not have gone to the police station to lodge the FIR. Further, the Hon'ble Supreme Court has held that in MACT claim cases, the standard of proof is one of the preponderance of probabilities, rather than beyond reasonable doubt. *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.

25. Therefore, based on all this material on record, the finding recorded by the Tribunal about the non-involvement of the driver or the non-involvement of the bullet motorcycle, that is admittedly insured with the Insurance Company will have to be reversed and is hereby reversed.

26. Now, on the issue of compensation, Ms. Satardekar is right in her alternate submissions that the claimant has come to the Tribunal with an exaggerated claim. She, quite correctly, pointed out that there is no clear proof about income and the fact that the claimant was indeed a motorcycle pilot. She pointed out that there is no clear proof even about the precise age of the claimant at the time of the accident. She pointed out that the claims towards attendant charges or loss of income or transportation are grossly exaggerated and, in any case, not proved. There is some substance in Ms. Satardekar's criticism on this core.

27. The claimant has, however, produced medical bills in the amount of ₹16,911/- before the Tribunal. From the perusal of

the bills and the nature of expenses reflected therein, it will have to be said that such bills inspire confidence and it is reasonable to accept that this amount was indeed spent by the claimant for treatment of his injuries on account of the accident. Similarly, a claim of ₹20,000/- towards future medical expenses is also within the bounds of reasonability. The Hurt Certificate indicates that the claimant suffered a closed fracture lower end left tibia fibula without neurovascular deficit. Records also indicate that the claimant was discharged after one day's hospitalization, but had to visit the hospital for follow-up for the next few days. Some expenses towards physiotherapy can also not be ruled out. Therefore, the claim of ₹20,000/- towards future medical expenses can be allowed.

28. There is a claim for transportation expenses to the extent of ₹31,160/-. To my mind, that is quite excessive having regard to the nature of injuries suffered by the claimant and the follow-up action which he has referred to in his evidence. However, an amount up to ₹10,000/- can be awarded towards transportation expenses. The claimant has not produced any evidence about his being a motorcycle pilot. Only a certificate has been produced on record. It speaks about his yearly income being ₹60,000/-. This certificate is issued by the Panchayat based on some affidavit filed by the claimant. Even this affidavit is not produced on record.

This certificate also does not speak about the claimant being a motorcycle pilot. The claimant also did not produce any evidence about owning a motorcycle taxi or having a batch to ply as a motorcycle pilot. Nevertheless, an amount of ₹10,000/- can be awarded to the claimant for loss of income on account of the injuries.

29. The claimant has made an exaggerated claim towards attendant charges. Though some receipts bearing the thumb impression of the attendant have been produced the evidence in this regard hardly inspires any confidence. Further, considering the nature of injuries suffered by the claimant coupled with the claimant's case of having an income of ₹5,000/- per month, it does not stand to reason that claimant, in this case, engaged one Prema Raghoba Naik to attend to him and paid her an amount of ₹1,00,500/- over a year. Therefore, no award can be made under this head.

30. Towards pain and suffering and the consequent impact on longevity an award of ₹25,000/- is required to be made in this matter. The claimant was already sixty years old at the time of the accident though there is no clear proof of age produced by the claimant on record. The Hurt Certificate or the medical certificate further referred to his age being sixty years. There was

no serious cross-examination on this aspect as well. Considering all these factors, compensation to the extent of ₹25,000/- would suffice.

31. This means that the claimant, in this case, can be held to be entitled to compensation of ₹81,911/- that can be rounded off to ₹85,000/-. Further, the claimant can be awarded interest at the rate of 7% per annum on this compensation amount.

32. Accordingly, this appeal is allowed and the claimant is held entitled to receive compensation of ₹85,000/- from the respondents together with interest at the rate of 7% per annum from the date of institution of the Claim Petition till the date of actual payment.

33. The Insurance Company will have to deposit this amount within six weeks from today and upon such deposit being made the claimant will be entitled to withdraw the same by providing proper identification and furnishing bank details. The Registry shall ensure that the compensation amount is directly deposited into the bank account of the claimant.

34. The appeal is allowed in the aforesaid terms. There shall be no order for costs.

M. S. SONAK, J.

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