

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA
FIRST APPEAL NO.77 OF 2018

The New India Assurance Company
Ltd, Dadaji Mension, Opp. Sarawat
Bank, 2nd Floor, Ponda, Goa. Divisional
office, 3rd Floor Velho Building, Panaji
Goa

.... Appellant.

Versus.

1. Shri Bharat Keshav Bagale
Aged 59 years, son of Keshav Bagale,

2. Aarti Bharat Bagale,
Aged 51 years, wife of Bharat Bagale.

Both r/o Terse, Bambarde, Kudal
Sindudurg, Maharashtra.

3. Shri Bismark S. Messias
s/o Jose M Messias,
[H.no.](#) 6-32 Villa Massias,
Vasco da Gama Mormugao Goa.

4. Shri Savio Messias
s/o Bismark S. Messias
r/o Hotel Bismark, Vasco-da-gama
Mormugao Goa.

5. Bajaj Allianz General Insurance
Company Limited,
Bajaj Finsery, 3rd Floor, Survey 208/1-B,
behind Weikfeild IT Park, Viman Nagar,

Pune-411 014.

6. Shri Prasad Joshi,
s/o Laxmikant Narayan Joshi, Behind
Salgaokar Guest House, Altinho Panaji-
Goa.

7. Gajanan Satlkar,
S/o. Shantaram Satlkar Terse, Bambarde,
Kudal, Sindudurg Maharastra.

8. Mahadevrao Maruti Mahadik,
Plot no. 11, Mahadik Colony,
Kolhapur, Maharastra 416003.

9. United India Insurance Company
Limited, Rajarshi Shahu Sadam, Station
Road, Kolhapur, Maharastra 416003.

10. Shri Vasant Gaikwad,
s/o Bandu Gaikwad, Major of age,
Manerajun Tasgaon, Dist. Sangh,
Maharastra Respondents.
(Respondents no.8,9 and 10 dropped
as per order dated 7/7/2012).

Mr. Amey J.S. Kakodkar, Advocate *for the Appellant.*

Mr. Dinesh Naik, Advocate *for Respondents No.1 & 2.*

CORAM : M. S. SONAK, J.

DATE : 14th July 2022

ORAL JUDGMENT: -

1. Heard Mr. Amey Kakodkar for the Appellant and Mr. Dinesh Naik for Respondents 1 and 2-Claimants. Respondents 3 to 7 are served but are neither present nor represented.

2. This Appeal is directed against the Judgment and Award dated 27th September 2016 in Claim Petition No.82/2010 made by the Motor Accident Claims Tribunal, at Panaji (Tribunal).

3. Mr. Kakodkar, learned Counsel for the Appellant, submits that the Tribunal was unjustified in apportioning the blame on the driver of the TATA 407 vehicle, which the Appellant insured. He proposes that the evidence on record establishes that the accident occurred because of rashness and negligence of the driver of the Skoda Octavia car. He submits that no liability should have been imposed on the owner, driver, and the Appellant-Insurance Company.

4. Mr. Dinesh Naik, learned Counsel for the Claimants, submits that as long as the compensation amount awarded to the Claimants is not disturbed, the Claimants have no concern with the issue of contributory negligence or apportionment of the compensation.

5. The rival contentions now fall for determination.

6. The accident, which gave rise to Claim Petition No.82/2010, occurred on 17th February 2010. The deceased, the son of the Claimants, was working as a cleaner and traveling in the TATA 407 vehicle insured by the Appellant. On 17th February 2010, at about 4.30 a.m., the Scoda Octavia car coming from the opposite direction, while overtaking a truck proceeding in the same direction, hit a stray cattle crossing the road. The impact was so severe that the cattle was flung into the air and hit the windscreen of the TATA 407. As a result, the driver of the TATA 407 lost control, went off the road, and dashed against a truck coming from the opposite direction. The deceased was thrown out of the TATA 407 vehicle. He sustained injuries, as a result of which he ultimately passed away.

7. On the issue of rashness and negligence, Claimant No.1 examined himself. However, since he was admittedly not an eye witness, the Tribunal did not rely much on his testimony. The Tribunal, however, admitted in evidence the police records like accident panchanama, etc.

8. The Claimants, however, examined Gajanan, the driver of the TATA 407 vehicle, as AW.3. He deposed to the genesis of the accident. First, he deposed about the Scoda car being driven at breakneck speed. Second, he deposed about the dash with the

cattle and how the cattle flung towards the TATA 407 and eventually hit its windscreen. Third, he deposed about the damage control measures he adopted by applying brakes and turning towards his right side. Finally, he deposed how the TATA 407 turned on one side and the deceased suffered injuries after he was thrown out.

9. AW.3 also deposed that he was driving at a speed of around 50 km. per hour. But, after he saw the Scoda car coming from the opposite direction, he slowed down to 35 km. per hour. Not much dent has been made to his testimony during the cross-examination.

10. The Claimants also examined Umesh Shenvi (AW.4), another occupant of the TATA 407 vehicle. His evidence is also consistent with AW.3. Again, not much dent was made to his evidence during the cross-examination.

11. AW.5-Panch witness proved the panchanama. The record evidence shows that the Scoda car driver was solely responsible for the accident. In any case, at least after the Claimants examined the driver and the occupant of the TATA 407 vehicle, the onus had shifted on the driver of the Skoda car to establish how he was not solely responsible for the accident. However, the driver of the

Skoda car did not even step into the witness box. The onus, therefore, remained undischarged.

12. The Tribunal has held that the driver of the Skoda car drove the car at high speed and in a rash and negligent manner. However, at one point, the Tribunal held that since this was a highway, only because the car was driven at a fast speed, no rashness and negligence can be inferred. There is some contradiction in the reasoning of the Tribunal. However, the evidence overwhelmingly establishes that the Scoda car was driven rashly and negligently. In its attempt to overtake a truck, the Scoda car dashed against a stray cattle. As a result of the dash, the cattle was flung upon the windscreen of the TATA 407 vehicle.

13. In the above-established circumstances, the Tribunal was not justified in apportioning the blame on the driver of the TATA 407 vehicle. This is more so because the driver and the occupant of TATA 407 stepped into the witness box and explained their version. However, the driver of the Skoda car did not even bother to step into the witness box and explain his version. Even the sketch annexed to the panchanama supports the contention about the driver of the Skoda car being solely responsible for the accident.

14. Therefore, this Appeal is allowed, and the Appellant is held not liable to pay the compensation amount awarded by the Tribunal. The responsibility for payment of the entire compensation amount shall be that of Respondents No.3, 4, and 5, i.e., the owner, driver, and the insurer of the Scoda car. But not to prejudice the claimants, a pay and recover order will be appropriate.

15. The Appellant-Insurance Company has deposited the awarded amount in this Court. The Claimants are now permitted to withdraw this amount and the interest that shall have accrued on this amount. However, the Appellant will be entitled to recover this amount from Respondents No.3, 4, and 5 by instituting execution proceedings. The Claimants will have to furnish identification documents and bank details so that the Registry can transfer the amount directly into their bank accounts.

16. The Appeal is allowed to the above extent. Accordingly, there shall be no order for costs.

M. S. SONAK, J.

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