

Amrut

IN THE HIGH COURT OF BOMBAY AT GOA
FIRST APPEAL NO.93 OF 2013

Mr. Shaikh Ahmed Saab
Son of Mr. Shaikh Fakirsaab
major in age, driver,
resident of Sai Apartment
Shantinagar, Mandopa,
Navelim, Salcete Goa (driver).

... Appellant

Versus

1. Mrs. Augusta Dias,
wife of late Mr. Caitano Dias
Aged 45 years, housewife,
and her children,
2. Mr. Polica Dias
S/o late Caitano Dias
Aged 26 years, service.
The claimant No.1 and 2 are herein
represented by their attorney
Miss Celina Dias,
daughter of late Caitano Dias
aged 18 years, student,
All resident of H.No.150,
Firgulem, Navelim,
Salcete Goa.
3. Miss. Celina Dias
Daughter of late Caitano Dias
Aged 18 years, student
All resident of H.No.150,
Firgulem, Navelim,
Salcete Goa.

4. Mr. Ahmed Fakirsab Shaikh
S/o Mr. Fakirsaab Shaikh
major in age,
Resident of Sai Apartment
Shantinagar, Mandopa,
Margao Goa.

5. Mr. Milagres Dias
S/o late Caitano Dias
Aged 25 years, service,

6. Miss Matilda Dias
D/o late Caitano Dias
Aged 23 years, unemployed
both r/o H.No.150,
Firgulem, Navelim,
Salcete Goa.

...Respondents

Mr. C. A. Coutinho, Advocate for the appellant.
None for the respondents.

CORAM: M. S. SONAK, J

DATE : 18th January 2022

ORAL JUDGMENT :

1. Heard Mr. C. A. Coutinho, learned counsel for the appellant. The respondent though served neither present nor represented.

2. This appeal is directed against the judgment and award dated 02.01.2013 made by the Motor Accident Claims Tribunal,

Margao, in Claim Petition No.45 of 2010 awarding the respondent/claimant compensation of Rs.6,03,500/- with interest at the rate of 9% per annum from the date of the application till the date of award and further interest at the same rate in case the said amount is not paid within a month from the date of the award.

3. Mr. Coutinho submitted that in this case the driver of the offending vehicle was acquitted in the criminal proceedings initiated against him and therefore, the rashness and negligence on the part of the driver cannot be said to have been proved. He submits that in the absence of any rashness and negligence on the part of the driver of the offending vehicle, no compensation should have been awarded.

4. Mr. Coutinho, without prejudice to the aforesaid, submits that the compensation determined by the tribunal is also quite excessive. He submits that the accident took place in the year 2009 and at that stage, the wages of daily wage laborers could not have been taken as Rs.300/- per day. He relied on the Notification fixing minimum wage at Rs.225/- per day. He submits that the compensation determined is quite excessive and does not represent just compensation.

5. I have considered the above submissions made by Mr. Coutinho. According to me, in the facts of the present case, both submissions cannot be accepted.

6. In the first place, there is ample evidence on record to establish rashness and negligence on the part of the driver of the offending vehicle. Such rashness and negligence have to be established in the claim petition by applying the test of preponderance of probability. The tribunal has considered the evidence of AW1, AW2, and AW3 in some detail. The tribunal has also considered the evidence of RW1 and upon analyzing all such evidence recorded correct findings that the driver of the offending vehicle was indeed negligent resulting in the accident of Caitano on 08.01.2009. Even the documentary evidence on record in the form of the scene of offense panchanama etc. is sufficient to establish by a preponderance of probability the issue of rashness and negligence.

7. The circumstance that the driver may have been acquitted in the criminal case is not very relevant because the test to be applied in a criminal case is that the proof beyond a reasonable doubt. If the acquittal order is perused, it only states that the prosecution has failed to prove the guilt of the accused beyond all reasonable doubt and therefore, the accused came to be acquitted.

Therefore, the contention of Mr. Coutinho that the issue of rashness and negligence must be held as not proved in the claim petition based on the acquittal in the criminal proceedings cannot be accepted.

8. On the aspect of justness compensation, in the first place, it is necessary to note that the Notification relied upon by Mr. Coutinho was never produced before the tribunal. In any case, Notification only speaks about minimum wages and therefore, based on such Notification, there is no reason to upset the findings recorded by the tribunal that Caitano was earning Rs.300/- per day. Besides, in this case, the tribunal has proceeded on the basis that Caitano must have been earning this amount for only 20 days in a month, and on that basis, the tribunal has taken the monthly earning of the deceased Caitano at Rs.6000/-. There is no error in this analysis and conclusion.

9. However, even if the contention of Mr. Coutinho based on the Notification fixing the minimum wages is accepted, then the daily earning of Caitano will have to be taken as Rs.225/- per day. Considering that he was earning this amount for 20 days in a month, the monthly income will have to be taken as Rs.4500/-. To this, a 10% addition will have to be made having regard to the future prospects and the age of Caitano at the time of the

accident. This means that the monthly income would have to be taken as Rs.4950/-. The multiplier, in this case, is 11 and the deduction to the extent of 1/3rd towards personal expenses is due. Having regard to all these factors, the compensation towards the dependency would come to Rs.4,35,600/-.

10. To the above amount, Rs.15,000/- would have to be added towards funeral expenses and another Rs.15,000/- towards loss of estate. Besides, the claimant would be entitled to Rs.40,000/- each towards consortium by spousal and filial. This means that to the amount of Rs.4,35,600/- a further amount of Rs.1,50,000/- will have to be added taking compensation amount to Rs.5,85,600/-.

11. The tribunal, in this case, has awarded compensation of Rs.6,03,500/-. This additional amount of Rs.18,000/- does not warrant interference because in this case, the appellant has to date not paid any compensation whatsoever to the claimants. The appellant did not deposit any compensation amount in this Court on a specious plea that he has not sought for any interim relief. In all probabilities, the execution proceedings must have been delayed on the ground of the pendency of the present appeal. The record indicates that there was a delay even in taking steps to serve the respondents. Time and again, the extension was sought

to pay the process fee and supply copies. The matter appeared before the Registrar of this Court on no less than 15 to 20 dates only for payment of process fee and supply of copies. For all these reasons, this appeal is required to be dismissed with exemplary costs. The costs would have to be a minimum of Rs.25,000/-.

12. Therefore, though no costs are being imposed, there is no case made out to reduce the compensation amount by Rs.18,000/- because the same can be regarded as costs in the matter. This is again on the basis that the alternate submission of Mr. Coutinho is correct.

13. For all the aforesaid reasons, this appeal is liable to be dismissed and the same is hereby dismissed.

14. The appellant is directed to deposit the compensation amount in this Court within two months from today. If this is not done, the registry to place the matter for directions. In this case, the records indicate that the appellants delayed the proceedings to deprive the dependents of a poor laborer compensation due to them. Possibly, for this reason, the dependents were not even in a position to contest this appeal.

M. S. SONAK, J