

Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.37/2019

Mr. Shahabuddin Usman Khan,
r/o H.No.154, Mossordém, Near
Community Health Centre, Valpoi,
Goa temporarily at Shop No.5,
Ground Floor, Felicinta Complex,
Gogol, Margao, Salcete, Goa.
(amendment carried out vide Order
dated 02.05.2011)

... APPELLANT

Versus

Mr. Antonio Roque Paulo Alvito
Baptista, alias Roque Baptista alias
Antonio Baptista, s/o Caetano
Baptista, aged about 76 years, r/o
H.No.193, Opp. Advocate Shinkre's
House, St. Joaquim Road, Borda,
P.O. Fatorda Margao, Salcete Goa
represented herein by his son Mr.
Derick C. Joaquim Baptista, aged
about 37 years, r/o H.No.193, Opp.
Advocate Shinkre's House, St.
Joaquim Road, Borda, P.O. Fatorda
Margao, Salcete Goa.
Since deceased through his L.Rs.

1. Mrs. Maria Filomena Benvinda
Coelho Fernandes, wife of late Mr.
Antonio Roque Paulo Alvito Baptista,
aged 66 years, housewife,

2. Mr. Derick Caetano Joaquim Baptista, son of late Mr. Antonio Roque Paulo Alvito Baptista, age 40 years, in service and his wife,

3. Mrs. Amelia Terezinha Imaculada Lourdes Fernandes, age 38 years, presently un-employed, all residents of H.No.193, St. Joaquim Road, Borda, P.O. Fatorda, Margao, Salcete-Goa.

(Amendment carried out vide Order Dated 9.10.2013).

4. Mr. Nazir alias Nazeer Ahemed, aged 30 years, (driver of mini bus GA-02/T-4337) son of Noor Ahemed, r/o H.No.868, Gogol Hsg. Board, Margao-Goa.

5. Mr. Inacio Gonsalves, aged 56 years, (owner of mini bus GA-02 T-4337) son of Andrew Gonsalves, r/o H.No.172, Maina, Curtorim, Salcete, Goa.

6. Mr. Vinod Baburao Damkale, r/o H.No.264, Calcondem, Navelim, Salcete, Goa.

... RESPONDENTS

Mr. Shailesh Redkar with Mr. Krishna M. N. Dessai, Advocates *for the Appellant.*

Mr. Pankaj Shirodkar, Advocate *for Respondent Nos.1 to 3.*

Mr. Milton Marshal, Advocate *for Respondent No.5.*

Mr. S. S. Kakodkar, Advocate *for the Respondent No.6.*

WITH
CROSS OBJECTIONS NO.3/2019
IN
FIRST APPEAL NO.37/2019

Mr. Vinod Baburao Damkale,
r/o H.No.264, Calcondem,
Navelim, Salcete, Goa.

... Cross-Objector
(Respondent No.6 to the appeal)

Versus

1. Mr. Shahabuddin Usman Khan,
r/o H.No.154, Mossordém, Near
Community Health Centre, Valpoi,
Goa temporarily at Shop No.5,
Ground Floor, Felicinta Complex,
Gogol, Margao, Salcete, Goa.
(amendment carried out vide
Order dated 02.05.2011)

(Appellant to the appeal)

2. Mr. Antonio Roque Paulo Alvito
Baptista, alias Roque Baptista alias
Antonio Baptista, s/o Caetano Baptista,
aged about 76 years, r/o H.No.193,
Opp. Adv. Shinkare's House,
St. Joaquim Road, Borda, P.O.
Fatorda Margao, Salcete Goa
represented herein by his son
Mr. Derick C. Joaquim Baptista,
aged about 37 years, r/o House
No.193, Opp. Adv. Shinkre's House,
St. Joaquim Road, Borda, P.O.
Fatorda Margao, Salcete Goa.
Since deceased through his L.Rs.

3. Mrs. Maria Filomena Benvinda
Coelho Fernandes, wife of late
Mr. Antonio Roque Paulo Alvito
Baptista, aged 66 years, housewife,

4. Mr. Derick Caetano Joaquim Baptista,
son of late Mr. Antonio Roque Paulo
Alvito Baptista, age 40 years,
in service and his wife,

5. Mrs. Amelia Terezinha Imaculada
Lourdes Fernandes, aged 38 years,
presently un employed, all residents
of House No.193, St. Joaquim Road,
Borda, P.O. Fatorda, Margao,
Salcete-Goa.

(Amendment carried out vide Order
Dated 9.10.2013).

(Respondents No.1, 2
& 3 to the appeal)

6. Mr. Nazir alias Nazeer Ahemed,
aged 30 years, (driver of mini bus
GA-02/T-4337) son of Noor Ahemed,
r/o H.No.868, Gogol Hsg. Board,
Margao-Goa.

(Respondent No.4 to
the appeal)

7. Mr. Inacio Gonsalves, aged 56 years,
(owner of mini bus GA-02-T-4337)
son of Andrew Gonsalves,
r/o H.No.172, Maina, Curtorim,
Salcete, Goa.

(Respondent No.5 to
the appeal)

8. United India Insurance Co. Ltd. (Deleted)
Ashirwad Gaunekar Building, Tisk,
Ponda Goa (Dropped vide Order dated
02.05.2011)

... Respondents

Mr. S. S. Kakodkar, Advocate *for the Cross-objector.*

Mr. Shailesh Redkar with Mr. Krishna M. N. Dessai, Advocates
for the Respondent No.1.

Mr. Pankaj Shirodkar, Advocate *for Respondent Nos.3 to 5.*

Mr. Milton Marshal, Advocate *for Respondent No.7.*

CORAM.: M. S. SONAK, J.

Reserved on: July 08, 2022

Pronounced on: July 14, 2022

JUDGMENT:

1. Heard learned counsel for the parties.
2. The challenge in the First Appeal and the Cross Objections is to the Judgment and Award dated 23.08.2017 (as corrected vide Corrigendum dated 18.12.2017) in Claim Petition No.189/2010 made by the Motor Accident Claims Tribunal at Margao (Tribunal).
3. First Appeal No.37 of 2019 is instituted by Shahabuddin Usman Khan (Shahabuddin), who was alleged to be the owner of Tata Mini Bus bearing registration No.GA-02-T-4337, involved in the accident dated 14.04.2008, gave rise to Claim Petition No.189/2010. Nazir alias Nazeer Ahemed (Nazir) – respondent no.4, was driving the minibus at the time of the accident. Shahabuddin alleges that Inacio Gonsalves (Inacio) – respondent no.5, was the *de jure* owner of the minibus. In the alternate, Vinod Damkale (Vinod) – respondent no.6, was the owner. The respondents nos.1, 2, and 3, the wife, son, and daughter of late

Antonio Baptista, who died in the accident dated 14.04.2008, were the claimants in Claim Petition No.189/2010.

4. Shahabuddin, apart from questioning the findings about the rashness and negligence of Nazir and the quantum of compensation, mainly contends that he was not the mini bus's legal owner under Section 2(30) of the Motor Vehicles Act, 1988 (said Act). He contends that Inacio (R5) or in the alternate Vinod (R6) were the owners and consequently liable for payment of the compensation awarded by the Tribunal.

5. Vinod (R6) has instituted Cross Objections No.3/2019. His main contention is that Shahabuddin or Inacio is the minibus owner and, therefore, liable to pay the compensation awarded by the Tribunal. He also contends about Nazir's absence of rashness and negligence or, in the alternative, Antonio's contribution to the accident. Finally, he also questions the quantum of compensation awarded by the Tribunal.

6. Mr. Redkar, the learned counsel for Shahabuddin, submits that whatever the transactions between him, Inacio and Vinod, the RTO records continue to be in the name of Inacio. Therefore, under Section 2(30) of the said Act, only Inacio is liable to pay compensation in terms of the Award. In the alternate, he submits

that since there is some evidence about Vinod's hypothecation of the minibus, the awarded amount can be recovered from Vinod. Mr. Redkar, however, offers that in no circumstances could any liability have been imposed on Shahabuddin.

7. Mr. Redkar admitted that Shahabuddin had signed several affidavits affirming his ownership of the minibus and may have also undertaken to bear the liability. However, he submits that there can be no estoppel against the law. Applying this principle, Shahabuddin must be absolved of any liability to the contrary, notwithstanding his assertions on oath.

8. Mr. Redkar relies on *Naveen Kumar vs. Vijay Kumar And Others*¹, *State of Maharashtra vs. Almonisa*², *Sheikh Mohidin vs. Piedade Margarida Rodrigues & Ors.*³ and *Skoda Afonso vs. Motor Accident Claims Tribunal, Panaji, Goa & Ors.*⁴ in support of his contentions.

9. Mr. Kakodkar, the learned counsel for the Cross Objector – Vinod, submits that Shahabuddin cannot wriggle out from the representations he held on oath by filing affidavits and even pleadings. He presents that estoppel is a doctrine steeped in

1. (2018) 3 SCC 1

2. 2017 (6) Bom.C.R. 62

3. 2022 SCC OnLine Bom. 823

4. (1993) 3 MLJ 285

equity and good conscience. He relies on *Kamaljit Singh vs. Sarabjit Singh*⁵ to support this proposition.

10. Mr. Kakodkar, in the alternate, submits that Inacio is liable because his name continues in the RTO records. Mr. Kakodkar presents that in any case, Vinod was undoubtedly not responsible for payment of compensation as held in the impugned Judgment and Award.

11. Without prejudice, Mr. Redkar and Mr. Kakodkar submitted that there was no rashness and negligence on the part of Nazir. In any case, they proposed that even deceased Antonio contributed to the accident; therefore, this was a case of contributory negligence. Finally, they submitted that the compensation awarded was inflated and did not represent fair and just compensation.

12. Mr. Kakodkar also relied on *New India Assurance Co. Ltd. vs. Smt. Laxmi Rama Padsalgi & Ors.*,⁶ *Rajasthan State Road Transport Corporation vs. Kailash Nath Kothari & Ors.*,⁷ *Maimuna Begum vs. Tajul Khan*⁸ and *Urmila Devi &*

5. (2014) 5 All M.R. 911 (SC)

6. 2009 (3) T.A.C. 52 (Bom.)

7. 1998 (1) T.A.C. 42 (S.C.)

8. 1989 Bom.C.R. 673

*Ors. vs. Branch Manager, National Insurance Company Limited & Anr.*⁹ in support of his contentions.

13. Mr. Kakodkar cited *Urmila Devi (supra)* to submit that the scope of Cross Objections is broad. He offered that the Cross Objections can never be restricted only against the appellant but can also apply against the co-respondents. Mr. Kakodkar submitted that in any case, the Court has ample powers to mould relief in terms of Order 41 Rule 33 of the Civil Procedure Code.

14. Mr. Milton Marshal, the learned counsel for Inacio, submitted that Inacio had, much before the accident, sold the minibus to Vinod, and Vinod had sold the same to Shahabuddin. He presents that Shahabuddin, on oath, had accepted this position and assumed full responsibility for payment of compensation. He submitted that Shahabuddin should not be permitted to approbate and reprobate by orally arguing estoppel without any pleadings or plea before the Tribunal. He presents that estoppel is a doctrine of equity, and the same cannot apply to the iniquitous conduct of Shahabuddin. He relied on *Prakash Chand Daga vs. Saveta Sharma & Ors.*¹⁰ *HDFC Bank Ltd.*

9. (2020) 11 SCC 316

10. 2019 (1) T.A.C. 326 (S.C.)

*vs. Kumari Reshma & Ors.*¹¹ and *Laxmi Rama Padsalgi (supra)* in support of his contentions.

15. Mr. Pankaj Shirodkar, the learned counsel for the claimants, submitted that the cross-objections could only be directed against the appellant and not the co-respondents. He relies on *Panna Lal vs. State of Bombay & Ors.*¹² to support his submission. He submits that Vinod and Inacio should not be permitted to question the finding on the issue of rashness and negligence and quantum of compensation. Finally, he presents that even otherwise, there is ample evidence to support the conclusions recorded by the Tribunal on these issues.

16. Mr. Shirodkar submits that the Tribunal, in this case, erred in rejecting the medical bills produced on record by the claimants in an amount of ₹1.36 lakhs or thereabouts. He submits that the Tribunal was not justified in rejecting the bills merely because some of the bills referred to non-medical items like boot polish, etc. He presents that this Court should enhance the compensation amount by at least ₹1.36 lakhs, and this Court has the power to do so even in the absence of any cross-objections by

11. 2015 (1) T.A.C. 1

12. AIR 1963 SC 1516

the claimants. He relied on *Surekha And Ors. vs. Santosh And Ors.*¹³

17. The rival contentions now fall for my determination.

18. Considering the rival contentions, the following points arise for determination in this appeal and cross-objections:-

(a) Whether the Tribunal was justified in exonerating respondent no.2 (Inacio) and holding respondent no.1 (Nazir), respondent no.4 (Vinod), and respondent no.5 (Shahabuddin) jointly and severally liable to pay the compensation?

(b) Whether the finding of the Tribunal on rashness and negligence on the part of Nazir is correct?

(c) In the alternate, whether a case of contributory negligence was made out in the facts of the present case?

(d) Was the Tribunal justified in rejecting the medical bills produced by the claimants, thereby reimbursing the claimants for ₹1.36 lakhs?

(e) Does the quantum of compensation awarded by the Tribunal represent just compensation?

13. (2021) 201 PLR 795

19. On the first point for determination, reference has to be made to the definition of the term "owner" in Section 2(30) of the said Act, which reads as follows:-

"(30) "owner" means a person in whose name a motor vehicle stands registered and where such person is a minor, the guardian of such minor, and in relation to a motor vehicle which is the subject of a hire-purchase, agreement, or an agreement of lease or an agreement of hypothecation, the person in possession of the vehicle under that agreement."

20. Before the above definition is applied to the evidence on record, reference is necessary to the following facts and circumstances as clearly borne out of the record.

21. In Claim Petition No.189/2010, neither Shahabuddin nor Vinod were impleaded as respondents. Only after leave was granted by Order dated 02.05.2011, Vinod and Shahabuddin were impleaded as respondents nos.4 and 5 in Claim Petition No.189/2010.

22. Vinod and Shahabuddin were impleaded as respondents because Inacio, in his written statement, took a defense that he had already transferred the minibus to Vinod. After that, Vinod transferred the minibus to Shahabuddin. The defense was that on

the accident date, Shahabuddin was the owner of the minibus, or in any case, Vinod was the owner of the minibus.

23. After the impleadment, Shahabuddin filed an application dated 15.09.2012 before the Tribunal, in which he admitted that he was the owner of the minibus that was involved in the accident. Shahabuddin stated that he undertakes to compensate the claimants if the Tribunal orders payment of compensation under Sections 140 and 166 of the said Act. Furthermore, Shahabuddin pleaded that he was the owner in possession of the minibus under the agreement dated 11.02.2008, in which he had taken the entire responsibility for any consequences that might arise after the execution of the said agreement.

24. By the application dated 15.09.2012, Shahabuddin pleaded that Inacio and Vinod may be dropped from the claim petition since they were not responsible for settling any liabilities. By this application, Shahabuddin sought the leave of the Tribunal to produce his affidavit cum declaration dated 04.09.2012 undertaking to pay compensation to the claimants should the Tribunal make any award for payment of compensation. This application is a part of the record at Exh.47.

25. To the above application dated 15.09.2012, Shahabuddin annexed his affidavit sum declaration dated 04.09.2012. This affidavit cum declaration dated 04.09.2012 is transcribed below for the convenience of reference:-

"AFFIDAVIT CUM DECLARATION

I Shri Shahabuddin Khan, S/o Usman Khan, major in age, businessman, Indian national, Pan Card No. AWCPK9042Q, permanent resident of Phelinsinta Complex, Gogal, Margao Goa, do hereby solemnly state on oath and declare as under:

1. I say that I have purchased the vehicle mini bus registered No. GA-02 T-4337 having Chasis No. 379035 ETQ757583 and engine No. 497 D22 ETQ757583 of Model May 96 covered with Permit No. GDPST/SGM/786/07 valid till September 12 2012 by virtue of agreement for sale dated 11/02/2008 duly executed before notary Rajiv Shinkre under registration No. 33846 dated 11/02/2008.

2. I say that I have paid the entire amount in due course of time and the possession of the said vehicle was handed over to me with a responsibility for any consequences that may arise in the due course of transfer of said vehicle in my name.

3. I say that the previous owner have requested me to renew Insurance policy of the said vehicle at the time of handing over the possession of the vehicle.

4. I say that the said vehicle was involved in an accident occurred on 14/04/2008 due to the rash and neglition driving of the applicant in claim petition No. 189/2010.

5. I say that I am the solely responsible to pay any compensation to the said applicant in claim Petition No. 189/2010 sf the Hon'ble Tribunal passes any order to that effect

6. I say that respondent No.1 and respondent no.5 namely Inacio Gonsalves and Vinod Baburao Dhamakale are not responsible for the said accident and as such they may be dropped from the present proceedings in the claim petition No. 189/2010.

7. I say that I undertake to make the entire payment to the applicant in Claim petition No. 189/2010 if Hon'ble Tribunal south Goa passes such Order.

8. I say that I am swearing this affidavit cum declaration in order to produce in claim petition No. 189/ 2010 before the accident Claims Tribunal Margao at South Goa.

9. I say that the content of para 1 to 8 are true to my personal knowledge and nothing is false or Misrepresents.

Solemnly affirm at Margao

On 04th day of
September 2012

sd/-

Shri Shahabuddin Khan

sd/-

DEPONENT"

26. The record bears out yet another affidavit dated 14.03.2012 made by Shahabuddin, again asserting that he has purchased the minibus from Vinod and become the absolute owner of the minibus. The record also bears out another affidavit cum declaration cum undertaking dated 21.02.2012 made by Shahabuddin declaring that from 11.02.2008, he was the absolute owner of the minibus and was plying the minibus by engaging his own driver Nazir alias Nazeer Ahemed. This affidavit acknowledges that the mini bus met with an accident on 14.04.2008 and proceeds to state that the claimants have falsely implicated Inacio and Vinod in Claim Petition No.189/2010, even though Inacio and Vinod had already sold the minibus to him (Shahabuddin). This affidavit asserts that at the time of the accident, Inacio was not the owner of the minibus, and therefore he (Shahabuddin) assumes all liability arising out of Claim Petition No.189/2010 and shall be responsible for paying compensation if awarded by the Tribunal and Inacio shall not be liable to pay any compensation to the claimants or any other parties.

27. Thus, Shahabuddin's pleadings, affidavits, and undertakings make it clear that he was the owner in possession of the minibus on the date of the accident. Furthermore, Shahabuddin also made it clear that Nazir alias Nazeer was the

driver engaged by him. Based on all this material, Shahabuddin did not even raise any earnest plea before the Tribunal about his not being the owner of the minibus or his not being liable to pay compensation to the claimants.

28. However, after the Tribunal held Shahabuddin and Vinod to be jointly and severally liable for payment of compensation, Shahabuddin instituted this appeal. His star ground in this appeal is that not he but Inacio or Vinod are the owners of the minibus involved in the accident and, therefore, responsible for payment of compensation to the claimants.

29. Mr. Redkar submitted that Shahabuddin is entitled to urge such a ground because adjudication on such a ground is possible, based on the evidence on record, and there can be no estoppel against the law. Mr. Redkar relied upon the definition of 'Owner' in Section 2(30) of the said Act and the decision in *Naveen Kumar (supra)* to submit that unless a proper change is effected in the RTO records, the person, whose name is reflected in the RTO records is solely liable for payment of compensation to the claimants.

30. The factual position reflected in the present case is not comparable to the situation in *Naveen Kumar (supra)*. Besides,

Naveen Kumar (supra) explains that the object behind enacting Section 2(30) was to provide some solace to the claimants, who would otherwise be compelled to follow several transferees for the satisfaction of their claim. Therefore, *Naveen Kumar (Supra)* will not apply to the present fact situation, particularly when Shahabuddin has not just admitted but virtually asserted the entire responsibility and liability to pay compensation to the claimants. As noted earlier, Shahabuddin even requested the Tribunal to drop Inacio and Vinod because they were not liable for payment of any compensation.

31. The pleadings and affidavits filed by Shahabuddin did not even raise an issue about whether any person other than Shahabuddin was the owner of the minibus in question. Shahabuddin, by his pleadings, affidavits, and undertakings, did not even require Inacio and Vinod to establish their case further that they were not the minibus owners, and it was Shahabuddin who was the owner in possession of the minibus in question.

32. Therefore, Shahabuddin cannot be permitted to raise the plea that Mr. Redkar now asserts on his behalf. Moreover, after Inacio and Vinod have drastically altered their respective positions, it would be most inequitable to permit Shahabuddin to raise such a plea in appeal and avoid the liability that

Shahabuddin had solemnly undertaken to assume before the Tribunal. Accepting Shahabuddin's contentions would defeat the legislative intent behind enacting section 2(30), as explained in *Naveen Kumar (supra)*.

33. In *Kamaljit Singh (supra)*, the Hon'ble Supreme Court has explained that the doctrine of estoppel is steeped in the principles of equity and good conscience. Equity will not allow a person to say one thing at one time and the opposite of it another time. Therefore, it would estop him from denying his previous assertion, Act, conduct, or representation to say something contrary to what was implied in the transaction under which he obtained the benefit and enjoyment.

34. The Hon'ble Supreme Court, in paragraphs 12 to 14, referred to the explanations on estoppel, which read as under:-

"12. Lord Edward Coke, Chief Justice of the Kings Bench and 17th Century English Jurist explains estoppel thus:

"Cometh of the French Word' estoupe', from where the English word stopped; and it is called an estoppels or conclusion, because a man's own act or acceptance stoppeth or closet up his mouth to allege or plead the truth." [Co. Litt. 352a]

13. Law Lexicon (Second Edition, Page 656) defines estoppel in the following words:

"An Estoppel is an admission, or something which the law treats as an equivalent to an admission, of so high and conclusive a nature that any one who is affected by it is not permitted to contradict it." [11th Edn p.744 in the note to the Dutchess of Kingston's case]

"An admission or determination under circumstances of such solemnity that the law will not allow the fact so admitted to be questioned by the parties or their privies."

"The preclusion of a person from asserting a fact, by previous conduct inconsistent therewith, on his own part, or on the part of those under whom he claims."

14. *Black's Law Dictionary (9th Edn., page 629) describes estoppel as :*

"A bar that prevents one from asserting a claim or right that contradicts what one has said or done before or what has been legally established as true."

35. Applying the above principles to the situation at hand, Shahabuddin cannot be permitted to contend anything contrary to his pleadings, affidavits, and undertakings based on which Shahabuddin precluded practically all the parties before the Tribunal from establishing their versions. By unequivocally admitting and even asserting the position that he was the owner in possession of the minibus involved in the accident,

Shahabuddin rendered it entirely unnecessary for any of the parties to establish this fact by leading cogent evidence.

36. Because there was some doubt about Vinod's position and the currency of hypothecation, the Tribunal held Vinod to be jointly and severally liable along with Shahabuddin. However, before the Tribunal, neither Vinod nor Shahabuddin raised any serious issue about Inacio being the owner of the minibus and consequently responsible for payment of compensation to the claimants.

37. The precedents in *Laxmi Padsalgi (supra)*, *Kailash Nath Kothari (supra)*, and *Maimuna Begum (supra)*, again, involve facts not comparable to the fact situation in the present case. Furthermore, the anxiety in most decided cases is to avoid prejudice against the claimants for failure on the part of the registered owner to take steps with the RTO authorities.

38. Mr. Marshal demonstrated that Inacio took all the steps expected of him by the RTO authorities. The pleadings, affidavits, and undertakings of Shahabuddin rendered it entirely unnecessary for Inacio to produce any further evidence to establish that Inacio was not liable for payment of any

compensation. Shahabuddin, in such circumstances, cannot be permitted to approbate and reprobate.

39. None of the decisions relied upon by Mr. Redkar or Mr. Kakodkar involved a fact situation even remotely comparable to the fact situation in the present case. Instead, the facts, in this case, are similar to those in *Sheikh Mohiddin vs. Piedade Rodrigues (supra)*, where an owner attempted to take undue advantage to push the liability on the party from whom he had purchased the vehicle involved in the accident. However, in that case, such an attempt did not succeed.

40. Even if Shahabuddin's belated plea based on his interpretation of section 2(30) of the said Act were to be considered and liability imposed on Inacio, the agreements, affidavits, and undertakings would oblige Shahabuddin to assume fully the responsibility to pay the compensation awarded. Therefore, the contention that Inacio should be driven to institute a separate suit or proceedings to recover this amount from Shahabuddin or Vinod is unacceptable.

41. Apart from the issue of whether such a different suit might be maintainable, multiplicity cannot be promoted at the behest of Shahabuddin, who specifically admitted and assumed liability.

Therefore, the parties cannot treat the proceedings to secure compensation for accident victims as a game of chess and the Tribunals as chessboards. Even if they do, they must abide by the game's rules that emphasize fairness. For all the above reasons, the first point will have to be held against Shahabuddin and Vinod.

42. On the aspect of rashness and negligence or quantum of compensation, Vinod, based on his cross-objections, cannot question the impugned Award on these grounds. Mr. Shirodkar correctly relied on *Panna Lal (supra)*, in which the Hon'ble Supreme Court has explained that Order 41 Rule 22 of the Civil Procedure Code permits, as a general rule, a respondent to prefer an objection directed only against the appellant. It is only in exceptional cases, such as where the relief sought against the appellant in such an objection is intermixed with the relief granted to the other respondents, so that the relief against the appellant cannot be granted without question being re-opened between the objecting respondent and other respondents, that an objection under Order 41 Rule 22 can be directed against the other respondents. The use of the word "cross-objection" in Order 41 Rule 22 expresses unmistakably the intention of the legislature that the objection has to be directed against the appellant.

43. Be that as it may, Mr. Redkar and Mr. Kakodkar, learned counsel for Shahabuddin and Vinod, respectively, were heard on their objections to the findings of rashness, negligence, and quantum of compensation. Mr. Marshal, learned counsel for Inacio, was also heard on these questions, even though Inacio had not even filed any cross-objections in this matter. Thus all parties, whether entitled or not, were heard on these points.

44. Upon consideration of their submissions, there is no case made out to interfere with the finding about rashness and negligence recorded by the Tribunal. In the first place, the accident was between the minibus and a TVS Scooty driven by the deceased. Being a larger vehicle, the minibus driver was expected to be more careful.

45. Secondly, AW3 – ASI Salim, attached to the Margao Town Police Station, had deposed in the matter and explained the road conditions and the position of the two vehicles when he conducted the Scene of Accident Panchanama and lodged the complaint against Nazir for offenses punishable under Sections 279 and 337 of the Indian Penal Code at Exh.92 Colly. He deposed that his inquiry had revealed that the minibus driver, while overtaking the TVS Scooty in a rash and negligent manner, dashed the Scooty and injured the deceased.

46. Thirdly, in this case, Nazir failed to appear and cross-examine AW3. Such cross-examination would have been vital. The absence of such cross-examination was rightly taken into account by the Tribunal. In addition, the cross-examination on behalf of other respondents brought on record details such as the width and position of the vehicles and the genesis of the impact.

47. Moreover, Francis Coelho (AW2) deposed in this matter as an eyewitness. He deposed Nazir's rashness and negligence and the genesis of the accident. However, no dent was made to his evidence. Nazir remained absent, and there was no cross-examination on his behalf. The evidence does not support any theory of contributory negligence.

48. The above evidence is more than sufficient to sustain the finding of rashness and negligence, mainly since the standard of proof before a Tribunal is a preponderance of probabilities and not proof beyond a reasonable doubt. The approach of the Tribunal, in this case, is consistent with the law laid down by the Hon'ble Supreme Court in *Sunita and others v. Rajasthan State Road Transport Corporation and others*¹⁴, *Anita Sharma and others v. New India Assurance Company*

14. (2020) 13 SCC 486

*Limited and another*¹⁵, *Mangla Ram v. Oriental Insurance Company Ltd. & Ors.*¹⁶, *Parmeshwari vs. Amir Chand & Ors.*¹⁷, *Dulcina Fernandes & Ors. vs. Joaquim Xavier Cruz & Anr.*¹⁸

49. On the quantum of compensation, it is necessary to note that the Tribunal has awarded compensation of only ₹3,86,000/- as against the claim of ₹29 lakhs. The evidence on record shows that the deceased was 76 years old but was working in a pharmacy when he met with the accident on 14.04.2008. The evidence indicates that in the accident, he suffered injuries rendering him 100% permanently disabled. The evidence also shows that the deceased continued in this position for almost five years when he died on 02.08.2013.

50. The Tribunal has accepted that the deceased earned ₹5,000/- per month and would have earned ₹3,20,000/- in five years and four months. Accordingly, the Tribunal has awarded ₹10,000/- towards transportation, ₹20,000/- towards attendant charges, and a further ₹15,600/- towards physiotherapist charges.

15. (2021) 1 SCC 171

16. (2018) 5 SCC 656

17. (2011) 11 SCC 635

18. (2013) 10 SCC 646

51. The compensation amount awarded by the Tribunal is inadequate. No award has been made for the pain and suffering the deceased underwent for five years. Though several bills were produced on record at Exh.123 Colly, the Tribunal rejected them because some bills referred to items like honey, vanilla, Horlicks, boot polish, food supplements, and no medicines. Moreover, the Tribunal rejected the bills because prescriptions did not back some of the medications reflected therein. Thus, as against bills of ₹1.36 lakhs or thereabouts, the Tribunal awarded only ₹20,000/- towards medicines.

52. Even after excluding items such as Horlicks, honey, vanilla, boot polish, etc., the records establish that at least ₹1,00,000/- was spent on medicines. This amount was required to be reimbursed. The bills could not have been rejected wholesale merely because they included some additional items. Therefore the compensation of at least an additional ₹80,000/- is due towards medicines.

53. Towards pain and suffering, a compensation of at least ₹70,000/- is due. Moreover, there is no dispute that the deceased was in a vegetative state for almost five years, and the claimants had to take care of him.

54. Thus, additional compensation of ₹1,50,000/- is due and payable to the claimants. The just compensation, in this case, is therefore determined at ₹5,36,000/- in place of ₹3,86,000/- determined by the Tribunal. This will represent just compensation in this matter.

55. The Hon'ble Supreme Court in *Surekha And Ors. (supra)*, and this Court in *Kadamba Transport Corporation Ltd. vs. Smt. Akshata Santosh Sawant & Ors.*¹⁹ *The New India Assurance Co. Ltd. vs. Smt. Fatima Malik Shaikh & Ors.*²⁰, *M/s. Kadamba Transport Corporation Ltd. & Anr. vs. Shri Vishram Jadhav & Anr.*²¹ have held that just compensation cannot be denied to the claimant simply because the claimant may not have filed the cross-appeal or cross-objections.

56. Shahabuddin, Vinod, and Nazir had deposited some amounts before the Tribunal, where the claimants were forced to take out execution proceedings. Therefore, the claimants are entitled to immediately withdraw these amounts along with the

19. FA No.110/2015 decided on 10.03.2022

20. FA No.10/2016 decided on 07.04.2022

21. FA No.18/2018 decided on 23.06.2022

interest that shall have accrued on the same, if not already withdrawn.

57. Shahabuddin, Vinod, and Nazir are directed to deposit the enhanced compensation amount together with any shortfall in the initially awarded amount with interest @ 9% p.a. from the date of the petition before the Tribunal within two months from today. The Tribunal should pay this amount on deposit to the claimants.

58. If the claimants have instituted execution proceedings, the Tribunal should expeditiously dispose of the same. The Tribunal should endeavor to dispose of the execution proceedings within six months from the date the claimants file an authenticated copy of this Order before the Tribunal.

59. The appeal and the cross-objections are dismissed. However, Shahabuddin, Vinod, and Nazir are directed to deposit before the Tribunal the enhanced compensation amount of ₹1,50,000/- with interest @ 9% p.a. from the date of the petition till the deposit within two months from today. There shall be no order for costs.

60. The Registry will send the records and proceedings to the Tribunal, so that there is no delay in the execution proceedings.

M. S. SONAK, J.

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