

Santosh

**IN THE HIGH COURT OF BOMBAY AT GOA
FIRST APPEAL NO. 146 OF 2018**

1. M/s. KADAMBA TRANSPORT CORPORATION LTD. A Company having their Registered Office at Paraiso de Goa, Porvorim, Goa represented herein by their Managing Director SHRI MR. DERRICK PEREIRA NETO, major, married, service, having address at Porvorim, Goa.

2. SHRI SANTOSH CHANDRAKANT NAIK, major, driver, s/o Chandrakant Naik, r/o House No. 469, Amayawado, Khandola , Marcela , Goa

.... Appellants.

Versus.

MS. VRINDA KAUR
minor, through her mother & Legal Guardian, r/o House No. 397/7, Near Deeruma Namlekar, Salvador-do-Mundo, Betim , Goa

..... Respondent.

Mr. A.R. Kantak, Advocate *for the Appellants.*

None *for the Respondent.*

CORAM : M. S. SONAK, J.

DATE : 19th August 2022

ORAL JUDGMENT. :-

1. Heard Mr. A.R. Kantak for the Appellant. The Respondent, though served, is neither present nor represented.
2. The challenge in this appeal is to the Judgment and Award dated 1st February 2018 in Claim Petition No.85/2015, by which the Motor Accident Claims Tribunal, North Goa, Panaji (Tribunal) has awarded compensation of ₹ 60,000/- to Miss Vrindha Kaur, who was two years old at the time when she sustained injuries in the accident on 30th July 2014.
3. Mr. Kantak, the learned Counsel for the Appellants, submits that there was no rashness and negligence on the part of the Kadamba Transport Corporation (K.T.C.) bus driver and, therefore, no liability could have been imposed on the Appellant-KTC. He submits that the evidence on record bears out that the accident occurred due to the mini-bus driver's rashness. Furthermore, he presents that the Claimant did not bother to implead the mini-bus owner, driver, and insurance company as parties to the claim petition. He submits that the claim petition should have been dismissed for all these reasons.

4. Mr. Kantak submits that the K.T.C. bus driver deposed in this matter to the genesis of the accident. He presents that the bus driver has deposed that there were speed breakers which made it inconceivable that he was at a fast speed when entering the highway from Yamuna bar side. He submits that even otherwise, the bus driver had deposed that he was driving the bus slowly when he entered the highway, and the accident occurred due to the mini-bus driver's negligence. Mr. Kantak maintained that the mini-bus driver gave a dash to the K.T.C. bus on the left side body of the bus in the middle.

5. Mr. Kantak, without prejudice, submits that the compensation awarded is excessive because in the cross-examination of the mother of Vrindha, it was brought out that the baby did not have to go through any surgeries as claimed in the examination-in-chief.

6. To a query from the Court as to why the compensation amount should not be enhanced, Mr. Kantak submitted that the medical evidence on record shows that the baby suffered only a few injuries and was discharged from the hospital on the same date. Therefore, he submits that the medical documents only speak about follow-up and, based on the same, no case is made

out for enhancement of the compensation amount.

7. Based on Mr. Kantak's contentions, broadly, the following two points arise for determination in this appeal :

(a) Whether the finding of rashness and negligence recorded by the Tribunal is legal and proper ?; and

(b) Whether the Tribunal's quantum of compensation has been correctly determined and the same constitutes "just compensation"?

8. Regarding rashness and negligence, the Claimant's mother and guardian examined herself as AW.1 and Anil Talekar, Assistant Sub-Inspector (A.S.I.), attached to Porvorim Police Station as AW.2.

9. The evidence of these two witnesses is quite clear and convincing. AW.1 was in the bus at the time of the accident and, therefore, is an eyewitness to the accident. Her evidence was not dented in the cross-examination.

10. AW.2 has deposed to the investigations done by him, panchanama, and other case papers concerning the accident. He deposed that his investigations revealed that the accident occurred

due to rashness and negligence on the part of the K.T.C. bus driver. He deposed that not only an F.I.R. but ultimately a charge sheet was filed against the K.T.C. bus driver.

11. The evidence of AW.2 is crucial because, despite his lengthy cross-examination, he maintained that there were no speed breakers at the entry spot from Yamuna bar side to the highway. On the other hand, the K.T.C. bus driver who examined himself in this matter took a bold plea that he entered the highway from Yamuna bar side after coming over the speed breakers. He also stated that there are more speed breakers on the other side of the road after crossing the highway. He deposed that it is for this reason that it was inconceivable that he was driving the bus in a rash and negligent manner or at a fast speed.

12. AW.2, an Assistant Sub-Inspector, attached to Porvorim Police Station and within whose jurisdiction the accident took place, was quite clear in maintaining that there were no speed breakers on the spots suggested by the K.T.C. bus driver. The bus driver has adduced no evidence whatsoever about such speed breakers. The A.S.I. has stoutly denied the existence of such speed breakers. The Tribunal has correctly relied upon AW.2's evidence in preference to the bus driver's self-speaking evidence.

13. The cross-examination of the bus driver (DW.1) is also highly relevant, and the same is reproduced below for the convenience of reference:

"Cross Examination of DW.1 by Adv. Shri S. Saudagar for the claimant.

It is true that an F.I.R. was lodged against me in respect of this accident and a charge sheet has also been filed in the Court. I am the only accused in the said case for the offense punishable under section 279 IPC. I have not lodged any complaint with a superior officer stating that I have been falsely implicated in the criminal case arising out of the above mentioned F.I.R. It is not true to suggest that the contents of the paras 4 to 10 of my affidavit in evidence are false. To the question whether I have filed a complaint against the driver of the mini bus, I say that I had given in writing to my office regarding the mini bus driver being rash and negligent. It is not to suggest that this statement of mine is false. It is not true to suggest that I have deposed falsely. It is not true to suggest that the accident took place due to my rash and negligent driving of the Kadamba bus."

14. The cross-examination reveals that an F.I.R. was filed against the K.T.C. bus driver; after investigations, even a charge sheet was filed for rash and negligent driving. The bus driver accepted that he did not file any complaint with any superior officer stating that he had been falsely implicated in the criminal

case. He also acknowledged that he had not filed any criminal complaint against the mini-bus driver. However, he maintained that he had given in writing to his office regards the mini-bus driver being rash and negligent. There is no evidence that the Appellant filed any complaint on behalf of their bus driver alleging that the accident was due to rash and negligent driving by the mini-bus driver.

15. Considering the law laid down in *Sunita & Ors. V/s. Rajasthan State Road Transport Corporation & Ors.*¹; *Anita Sharma & Ors. V/s. New India Assurance Company Limited & Anr.*², *Parmeshwari V/s. Amir Chand & Ors.*³, *Mangla Ram V/s. Oriental Insurance Company Ltd. & Ors*⁴ and *Dulcina Fernandes & Ors. V/s. Joaquim Xavier Cruz & Anr.*⁵ the Tribunal was justified in concluding that the accident, in this case, took place due to the rashness and negligence of the K.T.C. bus driver.

16. In all the cases above, the Hon'ble Supreme Court had

1. (2020) 13 SCC 486

2. (2021) 1 SCC 171

3. (2011) 11 SCC 635

4. (2018) 5 SCC 656

5. (2013) 10 SCC 646

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 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.

17. 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. They must take a holistic view bearing in mind that strict proof of an accident caused by a particular vehicle in a specific manner often cannot be adduced by the claimants. The Courts/Tribunals should also draw appropriate inferences from the failure of Respondents to

properly cross-examining the witnesses of the claimants or confront them with their version despite the adequate opportunity. They must take into account the legal effect of the failure to cross-examine crucial witnesses on crucial issues.

18. 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.*

19. The finding and the approach of the Tribunal, in this case, are entirely consistent with these decisions. Therefore, in my opinion, the above evidence is more than sufficient to establish the finding on rashness and negligence, mainly since such a finding can be decided on the touchstone of preponderance of probabilities in such matters. The first point is accordingly answered against the Appellant.

20. On the issue of quantum of compensation, the Tribunal has awarded ₹50,000/- towards pain and suffering and ₹10,000/- towards future medical expenses. The medical evidence in the form of admission and discharge summary, investigation papers, follow-up papers, etc., have been produced on record. The case papers suggest that baby Vrindha was supposed to undergo surgery for her injuries. But, ultimately, her mother admitted in cross-examination that no such surgery could take place.

21. The documentary evidence suggests the nature and extent of the suffering of baby Vrindha, who was only two years old at the time of the accident. She has not only suffered a fracture but also suffered injuries to her eyes that might have some long-term effects. Though the evidence suggests that most of the treatment was in Government hospitals, the treatment and follow-up were over a considerable period. The record bears out that Vrindha was admitted to the hospital on 30th July 2014 and discharged on 1st August 2014 and it does not mean that the treatment did not continue as an outdoor patient for a considerable time. The documents on record, coupled with the evidence of Vrindha's mother, Dimple Kaur, make good this position.

22. Dimple Kaur also deposes that her husband has deserted

her, and she has to look after her minor children, Vrindha and Harjeet Sing. She deposed about Vrindha sustaining injuries to the right thigh, eye injury, head injury, and lower 1/3rd right femur fracture. She has deposed to Vrindha suffering from severe pains and other disabilities. The medical evidence establishes the necessity of follow-up and future treatment.

23. Considering such evidence, it is apparent that the compensation awarded by the Tribunal, in this case, is inadequate and does not represent a just compensation.

24. In my judgment, considering the pain, suffering, and trauma that Vrindha went through due to the accident, compensation of ₹75,000/- is due under the said head. In addition, compensation of ₹25,000/- is due for the medical expenses, transportation, nourishment, etc., in the course of the treatment, which would continue for a considerable period.

25. Towards future medical expenses, compensation of ₹10,000/- awarded by the Tribunal is a pittance, and the same is required to be enhanced to ₹25,000/-.

26. Thus, in this case, the compensation of ₹1,25,000/- would represent a justice compensation.

27. In *Surekha and ors. vs. Santosh and ors.*⁶, the Hon'ble Supreme Court has held that by now it is well settled that in matter of insurance claim compensation in reference to motor accidents, the Courts should not take a hyper-technical approach and should ensure that just compensation is awarded to the affected persons or claimants. Therefore, even though the Claimants instituted no appeal or cross objection, the compensation was enhanced so that it corresponded to the just compensation.

28. In *Jabbar vs. The Maharashtra State Road Transport Corporation*⁷ the Hon'ble Supreme Court held that it is the duty of the Courts to award just compensation irrespective of whether the same was claimed or not. Hon'ble Supreme Court of India referred to its judgment in *Ramla & ors. v. National Insurance Co. Limited & ors.* - [(2019) 2 SCC 192] and held that there is no restriction that the Court cannot award compensation exceeding the claimed amount, since the function of the Tribunal or Court under Section 168 of the Motor Vehicles Act, 1988 is to award "just compensation". The Motor Vehicles Act is a beneficial and welfare legislation. A "just compensation" is one which is

6. (2020) SCC OnLine SC 1312.

7. Civil Appeal Nos.8556 of 2019 decided on 13/11/2019

reasonable on the basis of evidence produced on record. Further, there is no need for a new cause of action to claim an enhanced amount. The Courts are duty bound to award just compensation.

29. This appeal is disposed of for all these reasons by determining the just compensation at ₹1,25,000/-. The interest awarded by the Tribunal of 9% per annum is on the higher side. Considering the accident occurred on 30th July 2014, the same is reduced to 7% per annum.

30. The Appellant is directed to deposit the enhanced portion of compensation in this Court within eight weeks from today. The Registry must send necessary intimation to the Respondent about her entitlement to withdraw the amount of compensation already deposited along with interest accrued thereon and the enhanced compensation, once the same is deposited so that the Respondent can avail of the same after complying with the usual formalities.

31. Registry and the Member Secretary, Goa State Legal Services Authority, should ensure that at least 50% of the compensation amount is invested in a fixed deposit with a nationalized bank in the name of the minor Vrindha for at least

three years so that this amount can be utilized for her higher education.

32. A copy of this order should be sent to the Member Secretary, Goa State Legal Services Authority, so that the Member Secretary can take appropriate steps to see that this compensation amount actually reaches the Respondent at the earliest.

33. The appeal is disposed of in the above terms.

34. There shall be no order for costs.

M. S. SONAK, J.

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