

Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.62/2015

1. Shri Rama Andrade
son of Caitan Andrade,
61 years of age, married,
Retired, Indian National
r/o H.No.98, Odlembhat
Bambolim Tiswadi Goa.

... APPELLANT

Versus

1. Shri Sameer S. Salgaonkar (driver)
r/o H. No. not known, Chonwada Dhargal
Pernem-Goa.

2. The M. D., Kadamba Transport
Corporation Ltd., Paraiso De Goa,
Alto Porvorim, North Goa,
Goa - 403521 (Registered Owner)

3. Kadamba Transport Corporation,
Near Sanjay School, Panaji Goa (Insurer)

...RESPONDENTS

Mr. Ajit Kantak, Advocate for the Respondent Nos.2 and 3.

CORAM:

M. S. SONAK, J.

DATE:

24th February 2022

JUDGMENT:

1. Heard Mr. Ajit Kantak, learned counsel for respondents
no.2 and 3.

2. This appeal is directed against the Judgment and Award dated 17.03.2015 made by the Motor Accident Claims Tribunal (Tribunal) in Claim Petition No.21/2011 dismissing the appellant's claim for compensation of ₹2 lakhs for the injuries sustained by him in the vehicular accident that took place on 21.04.2010.

3. Although the appellant was neither present nor represented, the record was perused and considered. Mr. Kantak appeared and was heard extensively for respondents no.2 and 3 i.e. the Kadamba Transport Corporation (KTC).

4. The Tribunal, in this case, has held that there was no rashness and negligence on the part of respondent no.1 i.e. the driver of the KTC mini bus but rather this was a case where the appellant himself was responsible for the accident. Based on such a finding the claim petition came to be rejected without even the determination of compensation that the appellant would otherwise be entitled to.

5. The Tribunal has reasoned that there was a traffic jam and therefore the case of the appellant that the KTC bus was driven by respondent no.1 at fast speed and dashed the appellant's scooter cannot be believed. The Tribunal has held that the

evidence led by the appellant himself was in variance with his pleadings and based on all this no case of rashness or negligence was made out on the part of the driver of the KTC bus.

6. Before coming to the pleadings and the evidence, it must be made clear at the outset that there is no dispute whatsoever in this case that the appellant was riding his scooter bearing registration No.GA-01-D-5293 and proceeding towards Kundaim. At the circle of the KTC bus stand at around 9.30 a.m., there was a traffic jam and therefore the appellant stopped the scooter and was waiting to proceed otherwise. At that time the KTC minibus bearing registration No.GA-03-X-0077 ran over the foot of the appellant rather ran over the left leg finger of the appellant due to which the appellant sustained injuries. Thus before we assess the issue of rashness and negligence, it must be made clear that there is no dispute about the KTC minibus running over the foot of the appellant and the appellant suffering injuries.

7. Dr. Shivanand Bandekar AW3, Professor and Head of the Department of Orthopaedic Surgery, Goa Medical College, Bambolim has issued a certificate and has also deposed about the appellant suffering the following injury that was reported to be on account of a vehicular accident.

“Degloving injury with near total amputation, fifth toe with vascular deficit.”

8. AW3 deposed that the appellant was treated surgically for the above injury and amputation of the fifth toe was carried out on 17.05.2010. AW3 assessed the disability at 3% as per the Workmen's Compensation Act.

9. Although it is true that in this case, the appellant had pleaded about the KTC bus being driven at a fast speed, the evidence on record may not exactly bear this out because in terms of the deposition of the appellant and his witnesses there was a traffic jam all around. Further, there is some pleading about the front tyre of the minibus running over the foot of the appellant but the evidence points out to the rear tyre doing so. Nevertheless, this cannot be regarded as some case of variation between the pleadings and proof because the evidence on record otherwise bears out that it was the rear tyre of this very KTC minibus that ran over the foot of the appellant when he was forced to stop his scooter on account of the traffic jam.

10. In *Sunita & Others v. Rajasthan State Road Transport Corporation & Others – (2020) 13 SCC 486* and *Mangala Ram v. Oriental Insurance Co. Ltd. - (2018) 5 SCC 656* the

Hon'ble Supreme Court has held that while dealing with claim petition under Section 166 of the Motor Vehicles Act, 1988, a Tribunal *stricto sensu* is not bound by pleadings of the parties and its function is to determine the compensation. The proceedings before the Tribunal are summary in nature and a holistic view has to be taken. Even the issue of negligence has to be proved on the touchstone of preponderance of probability.

11. Now, as noted earlier, there is no dispute whatsoever that it was the KTC minibus that ran over the foot of the appellant. This bus is a much larger vehicle compared to the scooter that the appellant was driving. The duty of care that was expected from the bus was therefore much greater. The minor discrepancies about whether the front wheel ran over the appellant's foot or the rear wheel ran over the appellant's foot are not at all sufficient to conclude that there was no rashness and negligence on the part of the driver of the KTC minibus. Therefore, even though there are some pleadings about the front wheel and the evidence speaks about the rear wheel, the appellant could not have been non-suited by the Tribunal whilst exercising summary jurisdiction.

12. Mr. Kantak however submitted that the appellant came to the Tribunal with a false case. This is certainly not a false case that had been set out by the appellant. It is possible to say that

there were some inaccuracies in the pleadings or that there was some variation in the pleadings and the ultimate proof that was tendered before the Tribunal. But this is not some false case because even the KTC does not dispute that it was their minibus that ran over the foot of the appellant.

13. For the aforesaid reasons the finding that there was no rashness and negligence on the part of the KTC bus driver is required to be reversed.

14. On the issue of quantum of compensation, it is necessary to note that the appellant was 56 or 57 years old at the time of the accident. There is no evidence that the injury sustained by him has affected his work. The appellant was on the verge of retirement from his service as Fitter in M/s. Chowgule Pvt. Ltd. There is no evidence that his work was seriously affected on account of this injury. Even in his claim petition, he has candidly stated that he has retired and is presently doing private work.

15. There is evidence about the degloving injury with near-total amputation, the fifth toe with a vascular deficit. There is evidence about the appellant being treated surgically when the amputation of the fifth toe was carried out. There is evidence about 3% disability. There is evidence about the expenses

incurred by the appellant for the purchase of medicines and crutches. Having regard to all these factors I think that the appellant is entitled to be paid compensation of ₹25,000/- together with interest @ 7% p.a. from the date of the claim petition till the date of payment of this amount. This will include compensation for pain and suffering, medical expenses, disability, and the inconveniences that the appellant might face on account of this disability. As noted earlier, there is no evidence that on account of this 3% disability, the appellant's ability to earn any income was affected.

16. This appeal is therefore partly allowed and the respondents are held jointly and severally liable to pay to the appellant compensation of ₹25,000/- together with interest thereon @ 7% p.a. from the date of filing of the claim petition till the date of actual payment.

17. The respondents, including in particular respondents no.2 and 3 are directed to deposit the aforesaid amount in this Court within two months from today and upon such deposit, the appellant will be entitled to withdraw the same. The appellant will have to furnish his bank details so that the Registry can directly deposit this amount in the bank account of the appellant. The registry to send the necessary intimation to the appellant

once the deposit is made or place the matter for directions if there is a default in deposit.

18. The appeal is disposed of in the aforesaid terms. There shall be no order for costs.

M. S. SONAK, J.