

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.67 OF 2019

The United India Insurance Co. Ltd.
Sanvordem, Curchorem Branch, (Insurer of
Tata Tipper Truck No.GA-09-U-2738)

...Appellant.

Versus

1. Smt. Shashikala @ Vishranti Gokuldas
Rane, w/o. Late Gokuldas Sagun Rane,
aged 37 years, housewife,

2. Miss Pranita Gokuldas Rane,
D/o. Late Gokuldas Sagun Rane, aged 17
years, Student.

3. Mast. Pranay Gokuldas Rane,
s/o late Gokuldas Sagun Rane, Aged 14
years, student, — (now Respondent
Nos. 2 & 3 are minors)

All residents of H. No. 93, Bhirondem,
Sattari, Goa.

4. Shri Mohamad Salamat Hussain,
S/o Shri Riyasat Ali, Resident of
Mollem, Sanguem, Goa, N/o Noora
Hazaribagh, (Driver of Tata tipper truck
No. GA-09-U-2738)

5. Ramchandra Vasudev Shet Parkar,
S/o Vasudev Shet Parkar, Resident of
H. No. 78, Mollem, Sanguem Goa.
(Owner of Tata tipper truck No. GA09-
U-2738)

6. Mr. Shankar Jaiba Rane,

Son of late Mr. Jaiba Rane, Aged 23
years, bachelor, Business, resident of
house No. 74, Bhironda, Sattari, Goa.

7. Vithoba Babu Kharvat Son of Mr.
Babu Kharvat, Major, resident of near
Sateri Temple, Dhawe, Valpoi, Sattari,
Goa

...Respondents.

Mr. A.R.S. Netravalkar, Advocate for the Appellant.

Mr. Milton Marshal, Advocate for Respondents No.1 to 3.

FIRST APPEAL NO.83 OF 2019

1. Smt. Shashikala @ Vishranti
Gokuldas Rane,
w/o. Late Gokuldas Sagun Rane,
aged 43 years, housewife,

2. Miss Pranita Gokuldas Rane,
D/o. Late Gokuldas Rane,
aged 23 years, Student.

3, Mast. Pranay Gokuldas Rane,
s/o late Gokuldas Rane,
Aged 20 years, student,

All resident of H. No. 93,
Bhirondem, Sattari, Goa.

..... Appellants.

Versus.

1. Mohamad Salamat Hussain,
S/o Shri Riyasat Ali,
Resident of Mollem, Sanguem, Goa,
native of Noora Hazaribagh,
(Driver of Tata tipper truck
No. GA-09-U-2738)

2. Ramchandra Vasudev Shet Parkar,
S/o Vasudev Shet Parkar,
Resident of H. No. 78,
Mollem, Sanguem Goa.
(Owner of Tata tipper truck
No. GA09-U-2738)

3. The United India Insurance Co. Ltd.
Sanvordem, Curchorem Branch,
(Insurer of Tata Tipper Truck
No.GA-09-U-2738)

4. Mr. Shankar Jivba Rane,
Son of late Mr. Jaiba Rane,
Aged 23 years, bachelor, Business,
resident of house No. 74,
Bhironda, Sattari, Goa.

... Respondents.

Mr. Milton Marshal, Advocate for the Appellants.

Mr. A.R.S. Netravalkar, Advocate for Respondents No.3.

CORAM : M. S. SONAK, J.

Reserved on : 23rd September 2022

Pronounced on : 27th September 2022

JUDGMENT :

1. Heard learned Counsel for the parties.

2. In both these Appeals, the challenge is to the judgment and award dated 30th January 2019 in Claim Petition No.39/2013, by which the Motor Accident Claims Tribunal, Panaji sitting at

Ponda, (Tribunal) determined the compensation payable to the Claimants, at ₹10,15,000/-, but directed the insurer of the Tata tipper truck bearing registration No.GA-09-U-2738 to pay only 25% of this determined compensation amount. The Tribunal held that this was a case of composite negligence between the driver of the tipper truck and Shanker Rane, rider of the Honda Activa scooter on which the deceased Gokuldas Rane was riding pillion.

3. First Appeal No.67/2019 is instituted by the insurer of the Tata tipper truck urging that even 25% liability should not have been foisted upon the owner/driver/insurer of the Tata tipper truck. On the other hand, first Appeal No.83/2019 is instituted by the Claimants urging that 100% liability should have been imposed upon the owner/driver/insurer of the Tata tipper truck. Besides, both the Appeals have questioned the quantum of compensation. The Appellant-Insurance Company contends that excessive compensation has been determined. However, the Claimants contend that the compensation determined is inadequate and does not represent a just compensation. Hence, the two Appeals.

4. The learned Counsel agree that a common judgment and order can dispose of both these Appeals.

5. Mr Netravalkar, learned Counsel for the Appellant-Insurance Company, submits that the medical evidence on record establishes that Shanker Rane, the rider of the Honda Activa scooter, was drunk and, therefore, solely responsible for the accident in which Prashant Rane expired. He submits that no negligence could be attributed to the Tata tipper truck driver; thus, the owner/driver/insurer of the Tata tipper truck should have been absolved of the liability of paying any compensation.

6. Mr Netravalkar submits that there is no adequate proof of Prashant's income. The employer's testimony is false, particularly because this witness produced no income tax returns or contemporary documents. He submits that if the employer's evidence is to be accepted, Prashant must have been employed when he was a minor, i.e. 17 years of age. He submits that the employer deposed that he was never employing any minors. Mr Netravalkar submits that such contradictory evidence should not have been relied upon by the Tribunal.

7. Mr Netravalkar submitted that the Tribunal erred in deducting only 1/3rd amount when the evidence clearly showed that the deceased was a bachelor. Therefore, towards personal expenses, the deductions should have been 50%, not just 1/3rd, as held by the Tribunal.

8. Mr Netravalkar relied upon the *Rules of the Road Regulations, 1989; B.S. Chandrappa (since deceased) by widow Anusuya and ors. vs. Shobha and ors.* 2003 ACJ 1770; and *New India Assurance Co. Ltd. vs. Kashinath and ors.* 2013 ACJ 1856 in support of his contentions.

9. Mr Marshal, the learned Counsel for the Claimants, countered Mr Netravalkar's submissions. He pointed out that the evidence on record was sufficient to conclude that the Tata tipper truck driver was solely responsible for the accident in which Prashant died. He pointed out that the investigating authorities had filed an F.I.R. and even Charge-sheet against the Tata tipper truck driver. Besides, he pointed out that the Tata tipper truck driver was never examined in this matter; therefore, an adverse inference was liable to be drawn against him. He submits that if the Tribunal followed the principles laid down by the Hon'ble Supreme Court in evaluating evidence in such matters, it would be evident that 100% liability was that of the owner/driver/ insurer of the Tata tipper truck.

10. Mr Marshall relied on *Ashvinbhai Jayantilal Modi vs. Ramkaran Ramchandra Sharma and anr.* (2015) 2 SCC 180 and *Kumari Kiran thr. her father Harinarayan vs. Sajjan Singh and ors.* (2015) 1 SCC 539 in support of his submissions.

11. Mr Marshal, without prejudice, relied on *Khenyei vs. New India Assurance Co. Ltd. And Ors.* (2015) 9 SCC 273 to submit that the Tribunal was duty bound to direct the insurer of the Tata tipper truck to pay the entire compensation amount, with liberty to recover the same from the joint tortfeasors, independently.

12. Mr Marshall submitted that the evidence about batta charges was unduly discarded by the Tribunal. He relies on *Mohd. Ameeruddin and anr. vs. United India Insurance Co. Ltd. and Ors.* (2011) 1 SCC 304 and *New India Assurance Co. Ltd. vs. P. Yashoda and ors.* 2017 (3) T.A.C. 224 (A.P.) in support of his contentions.

13. Finally, Mr Marshall handed in a calculation sheet which he claimed based upon the workings prescribed in *National Insurance Co. Ltd. vs. Pranay Sethi and ors.* (2017) 16 SCC 680 and submitted that compensation of at least ₹14,05,500/- was due and payable to the Claimants.

14. The rival contentions now fall for my determination.

15. Based on the above rival contentions and the record, the following points arise for determination :

(A) Is the Tribunal's finding on composite negligence of the Tata tipper truck driver and the Honda Activa scooter rider correct? and

(B) Whether the quantum of compensation determined by the Tribunal represents a "just compensation"?

16. On composite negligence, the record bears out that an F.I.R. was registered against the Tata tipper truck driver and not against the Honda Activa scooter rider for rashness and negligence. After investigations, the investigating authorities determined that the Tata truck driver was rash and negligent and, therefore, responsible for the accident in question. However, at no stage, the truck driver questioned the F.I.R. either by filing any complaint to the superior Police officials or by taking out proceedings to challenge the same.

17. Significantly, though the Claimants examined Petrisan Andrade (AW.4), an eyewitness to the accident, the Tata truck driver failed to enter the witness box and depose to his version of the genesis of the accident. The Claimants also examined Shamrao Dessai, Head Constable at Ponda Police Station, who deposed about the accident and his investigations.

18. Perhaps, to counter all the above evidence, the Appellant-Insurance Company summoned and examined Deepak

Pednekar, Police Inspector, then attached to the Ponda Police Station as their witness. Even this witness (RW.1), in his deposition, clearly and cogently deposed that the truck driver was rash and negligent in driving as per his investigations. Based upon such investigations, a charge sheet was filed against the truck driver and not against the Honda Activa scooter rider Shanker Rane.

19. RW.1 has deposed that the statement of Shanker Rane made it clear that the tipper truck dashed the Activa scooter in front. Due to this impact, Shanker Rane fell on the left side of the road, his cousin Prashant directly fell underneath the right side rear wheel of the truck, and his head was crushed below the wheel. He also deposed about the truck dragging the scooter to a distance of about 3 to 4 metres. He deposed how his investigations have revealed that the truck had not stopped immediately, but it had stopped after the impact to a distance of 1.5 metres, as shown in the sketch or the scene of the accident panchanama. In his cross-examination, RW.1 reiterated that the truck driver was solely responsible for the accident.

20. Petrisan Andrade (AW.4), an eyewitness to the accident, also clearly deposed the genesis of the accident. AW.4 also maintains that the truck driver was solely responsible for the

accident. No serious dent has been made in his testimony during the cross-examination.

21. The only evidence that suggests some negligence on the part of Shanker Rane-scooter rider is the testimony of Dr Wilson Fernandes (RW.2). This witness speaks about examining Shanker Rane and finding him to be drunk. He deposed that Shanker Rane was restless, abusive, and using filthy language against the tipper truck driver. In the cross-examination, however, RW.2 admitted that he had not conducted any alcohol tests. Further, in his examination report, he mentioned that Shanker Rane was moderately drunk and not totally drunk. RW.2 denied the suggestion that Shanker Rane was so drunk that he was not in a position to drive any vehicle.

22. Based on the above testimony of Dr Wilson Fernandes, some negligence can be attributed to Shanker Rane. However, considering the overwhelming evidence on record and the circumstance that the Tata tipper truck driver failed to step into the witness box, the negligence of the Tata truck driver ought to have been assessed at 75% and not merely 25%. Moreover, as noted earlier, based on the investigations, even a neutral investigating agency concluded that the accident was caused due to the rashness and negligence of the Tata tipper truck driver and not the Activa scooter rider.

23. In *Sunita and ors. vs. Rajasthan State Road Transport Corporation and ors.* (2020) 13 SCC 486, the Hon'ble Supreme Court upheld the Tribunal's finding about rashness and negligence when evidence on record established that the driver of the offending vehicle had not challenged the propriety of the F.I.R. and the charge sheet against him. The only defence raised by the driver was that the F.I.R. was based on wrong facts and was filed in connivance between the complainant and the police. The driver also claimed to have filed a complaint to the superior police officer, but to no avail.

24. The Hon'ble Supreme Court noted that apart from this bald assertion, no evidence was produced to prove this point. The filing of the F.I.R. was followed by the filing of the charge sheet which again reinforces the allegations in the F.I.R. insofar as the occurrence of the accident was concerned and the role of the driver in causing such an accident.

25. The Hon'ble Supreme Court disapproved the approach of the High Court in not even mentioning the circumstance of the F.I.R. and the charge sheet, let alone recording a finding of any impropriety against the F.I.R. or charge sheet or the finding of the Tribunal. The Hon'ble Supreme Court held that there was, in such a situation, no need even to examine the investigating

officer because the documents like the F.I.R., charge sheet, etc. were produced on record by the parties.

26. The Hon'ble Supreme Court held that the F.I.R. and charge sheet, coupled with other evidence on record, inarguably establish the occurrence of the fatal accident and also point towards the driver's negligence in causing the said accident. The Court observed that the final outcome of the criminal proceedings against the driver would be irrelevant given that the nature of proof required to establish culpability under criminal law is much higher than the standard required under the law of torts to establish civil liability.

27. Mr Netravalkar, after adverting to the sketch, did try to urge that the accident was due to the rashness of Shanker Rane and not the truck driver. His reliance on the Rules of Road Regulations, 1989, was entirely misplaced. So also his reliance on the decision in *B.S. Chandrappa* (supra) and *Kashinath* (supra). The Regulations provide that a motor vehicle driver shall pass to the right of all traffic proceeding in the same direction as himself. The two decisions entirely turn on the facts that do not compare with the present case's facts. The oral and documentary evidence point overwhelmingly to the rashness and negligence on the part of the truck driver. Only because there is some evidence of

Shanker Rane being moderately drunk, neglect to the extent of 25% cannot be attributed to the said Shanker Rane.

28. The Tribunal also failed to appreciate that the driver of the offending truck driving such a heavy vehicle should have taken sufficient caution. *Ashvinbhai Modi* (supra), in paragraphs 13 and 14, highlights this aspect.

29. Thus, the finding of composite negligence can be accepted. However, the Tata tipper truck driver was responsible for the accident 75%, and Shanker Rane, the scooter rider, for 25%. The finding of the Tribunal to the contrary is, therefore, required to be reversed.

30. *Khenyei* (supra) holds that in composite negligence, entire compensation can be awarded against the sole impleaded tortfeasor. Therefore, the *inter se* liability of joint tortfeasors can be worked out independently. The observations in paragraph 3 are relevant, and the same read as follows :

"3. It is a case of composite negligence where injuries have been caused to the claimants by combined wrongful act of joint tortfeasors. In a case of accident caused by negligence of joint tortfeasors, all the persons who aid or Counsel or direct or joint in committal of a wrongful act, are liable. In such case, the liability is always joint and several. The extent of negligence of joint tortfeasors in such a case is immaterial for satisfaction of the claim of the plaintiff/claimant and need not be determined by the

Court. However, in case all the tortfeasors are before the Court, it may determine the extent of their liability for the purpose of adjusting inter se equities between them at an appropriate stage. The liability of each and every joint tortfeasor vis-a-vis to the plaintiff/claimant cannot be bifurcated as it is joint and several liability. In the case of composite negligence, apportionment of compensation between tortfeasors for making payment to the plaintiff is not permissible as the plaintiff/claimant has the right to recover the entire amount from the easiest targets/solvent defendant."

31. In *Sushila Bhadoriya vs. M.P. SRTC*, 2004 S.C.C. OnLine MP 360, the Full Bench of the Madhya Pradesh High Court held that in the case of composite negligence, the liability is joint and several. Therefore, it is open to implead the driver, owner, and the insurer of one of the vehicles to recover the whole amount from one of the joint tortfeasors. As to apportionment, it has been observed that both the vehicles will be jointly and severally liable to pay the compensation. However, once the negligence and compensation is determined, it is not permissible to apportion the compensation between the two as it is difficult to decide on the apportionment in the absence of the drivers of both the vehicles appearing in the witness box. Therefore, the claim between the joint tortfeasors cannot be apportioned.

32. The relevant portion of the Full Bench decision in paragraphs 25 to 28 is extracted below for the convenience of reference :

"25. When injury is caused as a result of negligence of two joint tortfeasors, claimant is not required to lay his finger on the exact person regarding his proportion of liability. In the absence of any evidence enabling the Court to distinguish the act of each joint tortfeasor, liability can be fastened on both the tortfeasors jointly and in case only one of the joint tortfeasors is impleaded as party, then entire liability can be fastened upon one of the joint tortfeasors. If both the joint tortfeasors are before the Court and there is sufficient evidence regarding the act of each tortfeasors and it is possible for the Court to apportion the claim considering the exact nature of negligence by both the joint tortfeasors, it may apportion the claim. However, it is not necessary to apportion the claim when it is not possible to determine the ratio of negligence of joint tortfeasors. In such cases, joint tortfeasors will be jointly and severally liable to pay the compensation.

26. On the same principle, in the case of joint tortfeasors where the liability is joint and several, it is the choice of the claimant to claim damages from the owner and driver and insurer of both the vehicles or any one of them. If claim is made against one of them, entire amount of compensation on account of injury or death can be imposed against the owner, driver and insurer of that vehicle as their liability is joint and several and the claimant can recover the amount from any one of them. There can not be apportionment of claim of each tortfeasors in the absence of proper and cogent evidence on record and it is not necessary to apportion the claim.

27. To sum up, we hold as under:-

(i) Owner, driver and insurer of one of the vehicles can be sued and it is not necessary to sue owner, driver and insurer of both the vehicles. Claimant may implead the owner, driver and insurer of both the vehicles or anyone of them.

(ii) There can not be apportionment of the liability of joint tortfeasors. In case both the joint tortfeasors are impleaded as party and if there is sufficient material on record, then the question of apportionment can be considered by the Claims Tribunal. However, on the general principles of Jaw, there is no necessity to apportion the inter se liability of joint tortfeasors.

28. Reference is answered accordingly. Appeal be placed before appropriate Bench for hearing."

33. The law laid down by the Full Bench of Madhya Pradesh High Court in *Sushila Bhadoriya* (supra) was found to be in tune with ***Ganesh v. Syed M. Ahmed*** 1998 S.C.C. OnLine Kar 603 and ***Karnataka SRTC vs. Arun***, 2003 S.C.C. OnLine Kar 715. Rulings of the Madhya Pradesh High Court and the Karnataka High Court were approved by the Hon'ble Supreme Court in *Khenyei* (supra), after clarifying that even if all the joint tortfeasors are impleaded, and both the drivers have entered the witness box, and the Tribunal or the Court is liable to determine the extent of negligence of each driver for inter se liability between the joint tortfeasors, but the liability would remain joint and several to satisfy the claimant.

34. Applying the above principles to the facts of the present case, even though the liability of the truck driver/truck owner/truck insurer may be to the extent of 75%, it is only appropriate that the truck driver/truck owner/truck insurer satisfies the entire claim of the Claimants in the first instance. Upon such satisfaction, the truck driver/truck owner/truck insurer will have the liberty to recover the 25% of the amount from Shanker Rane.

35. The aspect of the composite negligence is answered accordingly.

36. On the aspect of quantum of compensation, the Tribunal was not justified in excluding the batta charges of ₹50/- per day that the deceased was earning in terms of the evidence on record. Moreover, merely because the employer may not be filing any income tax returns is no ground to exclude the batta charges of ₹50/- that the deceased was earning. Besides, the Tribunal was required to add 40% towards future prospects, as the deceased was only 19 years old at the time of the accident.

37. Mr Netravalkar's contention about the deceased being a minor when he entered service is entirely misconceived. The employer's evidence cannot be misconstrued in this manner. The employer's evidence is relatively straightforward and based upon

the same; the Tribunal should have accepted that the deceased had a salary of ₹8,000/- per month and would earn batta of ₹1300/- per month. Thus, based on the evidence on record, it is apparent that the deceased was earning ₹9,300/- per month. Therefore, by adding 40% towards future prospects, his monthly income should have been taken at ₹11,625/-.

38. Mr Netravalkar is, however, justified in contending that the deduction towards personal expenses should have been 50% and not merely $1/3^{\text{rd}}$ as held by the Tribunal. The Tribunal has reasoned that since the deceased's father had expired much earlier, the deceased upon whom his family depended would have contributed at least $2/3^{\text{rd}}$ of his income to the family. Since the deceased was a bachelor, applying the law in *Pranay Sethi* (supra), deduction to the extent of 50% would be appropriate, though, in the peculiar facts of the present case, the reasoning of the Tribunal may not be incorrect.

39. There is no dispute about the multiplier, in this case, being 18. Thus, the compensation towards dependency will have to be worked out at ₹12,55,000/- ($₹11,625 \div 2 = 5812.50 \times 12 \times 18 = 12,55,500$). The Claimants would be entitled to compensation towards loss of consortium at ₹40,000/- each. Thus, the total compensation towards the loss of the consortium would come to ₹1,20,000/-. Besides, the Claimants would be entitled to

compensation of ₹15,000/- for funeral expenses and another ₹15,000/- for loss of estate.

40. Thus, the total compensation would come to ₹14,05,500/-. The accident occurred on 6th January 2013. Therefore, the interest at the rate of 8% per annum would be appropriate and not merely 6%. Furthermore, the Tribunal has noted that the deceased was a young boy of 19 years upon whom his mother, minor brother, and sister depended. Therefore, the interest at the rate of 8% per annum would be appropriate from the Petition date.

41. First Appeal No.67/2019 is dismissed for all the above reasons. However, First Appeal No.83/2019 is allowed. Accordingly, the compensation is determined at ₹14,05,500/-, with interest at the rate of 8% per annum from the date of the Claim Petition till the effective payment.

42. The Appellants in First Appeal No.83/2019 (Claimants) are permitted to withdraw the amount deposited by the Insurance Company and the interest that shall have accrued on the said amount. The Claimants will have to furnish proper identification and bank details. The Registry to ensure that the amounts are transferred directly into such bank accounts.

43. The Insurance Company is directed to deposit the enhanced portion of the compensation in this Court within 6 (six) weeks after due intimation to the Claimants. Upon such deposit, the Claimants are permitted to withdraw the same on the above terms.

44. The Appellant-Insurance Company will have to pay/deposit the entire compensation amount now determined. The deposit will have to be made accordingly. However, the Appellant-Insurance Company will be entitled to recover 25% of this amount from Shanker Rane by taking out appropriate proceedings like execution, etc.

45. The Appeals are disposed of in the above terms.

46. There shall be no order for costs.

M. S. SONAK, J.