

Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.7 OF 2015

1) Commanding Officer,
Military Camp, Signal Station,
Bambolim, Goa.

2) Mr. Gagandeep Singh,
S/o Balbir Singh, Aged 25 yrs.
Military Camp, Signal Station,
Bambolim, Goa.

...APPELLANTS

Versus

1. Mr. Dattatraya Utturkar,
Age 63 yrs, S/o Tukaram Utturkar,

2. Mrs. Rekha Dattatraya Utturkar
Aged 41 yrs, W/o Dattatraya Utturkar,
Both R/o House No. 323,
Near New English High School,
New Vaddem, Vasco, Goa.

...RESPONDENTS

**Mr. Mahesh Amonkar, Standing Counsel for Central
Government *for the Appellants.***

**Mr. Joaquim Godinho with Mr. Manoj Jalmi, Advocates *for
Respondent No.2.***

CORAM: M. S. SONAK, J.

DATED: 22nd APRIL 2022

ORAL JUDGMENT:

1. Heard Mr. Mahesh Amonkar, learned Central Government Standing Counsel for the appellants, and Mr. Joaquim Godinho for the respondents no.1 and 2 (claimants).

2. This appeal questions the judgment and award dated 24.07.2014 made by the Motor Accident Claims Tribunal (Tribunal) in Claim Petition No.188/2012, awarding the claimants compensation of ₹12,81,000/- together with interest at 9% p.a. on account of the death of their son 23-year-old son Ravish in a vehicular accident on 14.01.2012.

3. The record bears out that on 14.01.2012, Ravish was riding a Hero Honda Passion motorcycle bearing registration No.GA-06-H-8418. An accident with a military tipper truck bearing registration No.07N00301 6K at about 13.45 hrs. resulted in Ravish's death. The record also bears out that the police prosecuted the truck driver for offenses under Section 304-A of the Indian Penal Code (IPC). However, Mr. Amonkar was unable to report the status of such prosecution.

4. However, Mr. Amonkar submits that the evidence on record establishes that it was Ravish who was negligent and therefore responsible for the accident. First, he points out that the

truck in question was a part of a convoy of five trucks proceeding very slowly. Second, he points out that appropriate care was taken all along the road to ensure no inconvenience to the public, and further, there was sufficient warning about the convoy. Third, he submits that evidence on record bears out that Ravish drove the motorcycle rashly and negligently and was alone responsible for the accident. Finally, he submits that the Tribunal has not appreciated the evidence on record in the proper perspective.

5. Mr. Godinho defends the impugned award insofar as the finding of rashness and negligence of the truck driver is concerned. However, he submits that the compensation awarded is not just compensation because there is no reference to the correct multiplier. Even principles in *National Insurance Company vs. Pranay Sethi*¹ have not been followed. He relies on *Surekha and Ors. v. Santosh and Ors.*² in which the Hon'ble Supreme Court has held that the Court should not take a hyper-technical approach and decline just compensation to the claimants merely because such claimants may have failed to file any cross-appeal or cross-objections. He submits that the Court must determine and award just compensation.

¹ 2017 (16) SCC 680

² (2021) 201 PLR 795

6. Mr. Godinho submits that there was unimpeachable evidence that Ravish was an Automation Engineer working in Electro Controls, earning a salary of Rs.15,070/- per month. Moreover, there was no dispute about his age. Based on all this, in terms of the decision in *Pranay Sethi (supra)*, compensation of ₹25,59,232/- would represent just compensation.

7. In rejoinder, Mr. Amonkar submits that there is no warrant for any enhancement in the absence of any cross-appeal or cross-objections. He reiterates that in the absence of any negligence on the truck driver's part, the appellants should not even be foisted with any liability to pay compensation.

8. The rival contentions now fall for my determination.

9. The first point for determination in this matter is whether the finding of negligence recorded by the Tribunal warrants interference.

10. It is well settled by several decisions of the Hon'ble Supreme Court, including but not restricted to *Sunita & Ors. V/s. Rajasthan State Road Transport Corporation & Ors.*³ *Anita Sharma & Ors. V/s. New India Assurance Company*

3 (2020) 13 SCC 486

*Limited & Anr.*⁴ *Parmeshwari V/s. Amir Chand & Ors.*⁵

*Mangla Ram V/s. Oriental Insurance Company Ltd. & Ors.*⁶

*Dulcina Fernandes & Ors. V/s. Joaquim Xavier Cruz & Anr.*⁷

that the approach of the Courts/Tribunals when dealing with such matters has to be sensitive enough to appreciate the turn of events at 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. 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. The Courts/Tribunals, in matters of this nature, are required to take a holistic view bearing in mind that

⁴ (2021) 1 SCC 171

⁵ (2011) 11 SCC 635

⁶ (2018) 5 SCC 656

⁷ (2013) 10 SCC 646

strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The Courts/Tribunals should also draw appropriate inferences from the failure of respondents to properly cross-examine the witnesses of the claimants or confront them with their version despite the adequate opportunity.

11. In *Sunita & Others (supra)*, the Hon'ble Supreme Court approved the Tribunal's reasoning on the issue of rashness and negligence when the evidence disclosed that the driver had not challenged the propriety of the FIR charge sheet that was filed against him before any authority. The only defense raised was that the FIR was based on wrong facts or that it was filed in connivance between the complainants and the police. The Hon'ble Supreme Court noted that apart from this bald assertion, the respondents produced no evidence before the Tribunal to prove this point. Furthermore, the Hon'ble Supreme Court stated that after the FIR was filed, the same was followed up with the charge sheet, reinforcing the allegations in the FIR. Finally, the Hon'ble Supreme Court held that the FIR and the charge sheet, coupled with other evidence on record, have arguably established not only the occurrence of the accident but also the negligence of the driver from the touchstone of preponderance of probabilities.

12. In the present case, the claimants are on a much stronger footing. Here, they had examined Sanam Dangui (AW3), who was riding a pillion with Ravish when the accident took place. His testimony is clear and convincing and has not been dented during the cross-examination. He has deposed to the rashness and negligence of the driver and failure to indicate that the truck was turning left. The Tribunal has quite correctly relied on the testimony of this eyewitness.

13. However, Mr. Amonkar relied on the evidence of Mr. Joga Singh (AW1), who was the co-driver accompanying the actual driver, whom he described as the "trainee driver" of the truck. Though Joga Singh has attempted to transfer the blame on Ravish, his evidence is far from inspiring. There is evidence that the actual driver of the truck was issued a license on 09.01.2012, and this accident took place on 14.01.2012.

14. Furthermore, Joga Singh, in his cross-examination, admitted that this very truck driver was involved in an accident on the same morning, i.e., on 14.01.2012 itself, with a Maruti car. The driver was utterly amateur and perhaps lacked the confidence to drive. In such circumstances, the duty of care to be adopted was much more significant. But unfortunately, the same

was not adopted, resulting in the death of Ravish on the fateful day.

15. Given the above evidence, there is no case made out to interfere with the finding recorded by the Tribunal. On the contrary, the conclusion is well supported by the evidence on record. Accordingly, even the police authorities deemed it appropriate to prosecute the driver for rashness and negligence.

16. Now coming to the issue of compensation, it is well settled that the Tribunal and this Court must determine and award just compensation. There is no scope for any hyper technicalities in such matters, including denial of just compensation simply because the same may not have been prayed for. In *Surekha vs. Santosh (supra)*, the Aurangabad Bench of this Court in First Appeal No.2564/2016 (*Shriram General Insurance Company Ltd. v. Surekha*⁸) agreed with the stand of the claimant that the just compensation ought to be ₹49,85,376/- but declined to grant the enhancement merely on the ground that the claimant had failed to file a cross-appeal.

17. However, the Hon'ble Supreme Court observed that it is well settled that in insurance claim compensation in reference to

⁸ 2020 ACJ 434 (Bombay)

the motor accidents, the Court should not take a hyper-technical approach and ensure that just compensation is awarded to the affected person or the claimants. Accordingly, the order of the High Court was modified, and directions were issued to award the claimant just compensation of ₹49,85,376/-.

18. In *The State of Maharashtra vs. Kamaladevi Kaushal and others*⁹ and *New India Assurance Co. Ltd. vs. Seema Sudam Auti and others*¹⁰. In *Kadamba Transport Corporation Ltd. vs. Smt. Akshata Santosh Sawant and others*¹¹, *The New India Assurance Company Ltd. vs. Smt. Fatima Malik Shaikh & others*¹², this Court has held that the absence of any cross-objections or cross-appeal cannot preclude the determination and award of just compensation. Therefore, there can be no bar to consideration of Mr. Godinho's contention on the aspect of just compensation.

19. The evidence bears out that Ravish was a qualified Automation Engineer employed with Electro Controls on a monthly salary of ₹15,070/-. He was a bachelor, which warrants deduction to the extent of 50%. However, he was only 23 years

9 FA No.103/2017 decided on 15.03.2017

10 FA No.1991/2011 decided on 09.06.2017

11 FA No.110/2015 decided on 10.03.2022

12 FA No.10/2016 decided on 07.04.2022

old with a permanent salary, which deserves an addition of 50% towards future prospects. Therefore, based on his age, the multiplier to be adopted would be 18. The total compensation towards dependency would then come to ₹24,41,232/-.

20. To the above amount, Ravish's parents, who are the claimants, would be entitled to ₹40,000/- each towards consortium. Besides, they would be entitled to ₹15,000/- towards loss of estate and ₹15,000/- towards the funeral expenses.

21. Thus, in this case, the just compensation would work out to ₹25,51,232/- and not just ₹12,81,000/- as determined by the Tribunal.

22. Accordingly, the impugned award is modified by rejecting the appellant's contention, and just compensation is determined at ₹25,51,232/-. The interest component is also maintained in the peculiar circumstances of the present case.

23. The appellants had deposited the entire awarded amount together with interest. The claimants have already withdrawn 50%. The claimants are now permitted to withdraw the balance of 50% and interest that might have accrued thereon. For this purpose, the claimants will have to provide proper identification

documents and bank details. The Registry to ensure that the amounts are remitted directly into the claimants' bank accounts.

24. The appellants are directed to deposit the enhanced compensation within two months from today with due intimation to the learned counsel for the claimants. Once this amount is deposited, the claimants can withdraw the same on the above terms.

25. The appeal is disposed of in the terms above. Accordingly, there shall be no order for costs.

M. S. SONAK, J.