

Amrut

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.107 OF 2015

AND

FIRST APPEAL NO.108 OF 2015

FIRST APPEAL NO.107 OF 2015

Miss. Valarie Carvalho

Daughter of Alfred F. Carvalho

Major in age, service,

Resident of H.No. 28/A, Costa Waddo,

Camurlim, Bardez Goa.

Represented through POA

Matilda Carvalho.

... Appellant

Versus

1. Mr. Sanjay D. Halarnkar

Son of Dattaram D. Halarnkar,

Major of age,

Driver of the vehicle

2. Mrs. Sapna Sanjay Halarnkar,

wife of Sanjay Halarnkar,

major of age,

Both resident of H.No.178,

Ward 3, Bharwan waddo,

Camurlim, Bardez Goa.

Owner of the vehicle.

3. The National Insurance Company

through its manager

Office at 3rd floor "Vaman Smriti"

Laxmi Narayan Temple

Mapusa Goa.

...Respondents

WITH
FIRST APPEAL NO.108 OF 2015

Miss. Victoria Carvalho
Daughter of Alfred F. Carvalho
Major in age,
R/o H.No. 28/A, Costa Waddo,
Camurlim, Bardez Goa.
Through Power of Attorney Holder
Mrs. Matilda Carvalho,
wife of Alfred Freddy Carvalho
R/o No.28/A, Costa waddo,
Camurlim, Bardez Goa.

...Appellant

Versus

1. Mr. Sanjay D. Halarankar
Son of Dattaram D. Halarankar,
Major of age,
Driver of the vehicle
2. Mrs. Sapna Sanjay Halarankar,
wife of Sanjay Halarankar,
major of age,
Both resident of H.No.178,
Ward 3, Bharwan waddo,
Camurlim, Bardez Goa.
Owner of the vehicle.
3. The National Insurance Company
through its manager
Office at 3rd floor "Vaman Smriti"
Laxmi Narayan Temple
Mapusa Goa.

...Respondents

Mr. J. J. Mulgaonkar, Advocate for the appellants.
Mr. A. R. S. Netravalkar, Advocate for respondent No.3.

CORAM: M. S. SONAK, J

DATE : 10th March 2022

ORAL JUDGMENT:

1. Heard Mr. Mulgaonkar, learned counsel for the appellants, and Mr. Netravalkar learned counsel for respondent No.3-insurance company.

2. The learned counsel for the parties agree that both these appeals can be disposed of by a common judgment and order even though they arise from two separate claim petitions instituted by two sisters on account of injuries sustained by them in the accident that took place on 31.05.2011.

3. The findings of non-involvement or in any case absence of rashness and negligence on the part of the driver of the offending vehicle i.e. Maruti Zen bearing registration No. GA-07-E-3650 is common to both the impugned awards. The Motor Accident Claims Tribunal has however determined the quantum of compensation separately in both matters. In such circumstances, it is only appropriate that both these appeals are taken up and disposed of by a common judgment and order.

4. As noted earlier, the tribunal, in this case, has held against the claimants on the issue of involvement of the offending vehicle or the issue of rashness and negligence on the part of respondent No.1, the

driver of the offending vehicle. Thereafter, in Claim Petition No.21/2012, the tribunal has determined compensation of ₹1,50,430/- and in Claim Petition No.22/2012 at ₹1,25,014.50. Since the issue of involvement and/or rashness/negligence has been answered against the claimants no compensation has been awarded to the appellants/claimants. Hence, these appeals by the claimants.

5. Mr. Mulgaonkar, learned counsel for the appellants in both these appeals points out that the findings recorded by the tribunal on the issue of involvement/rashness/negligence are in the form of perversity. He submits that the driver and the owner had, in any case, filed a written statement in which they had not denied the involvement of the offending vehicle but they had taken a defense that it was the claimant/appellant in First Appeal No.108/2015 who was negligent in riding Activa scooter and therefore, responsible for the accident. He pointed out that even the insurance company had urged the issue of contributory negligence in its written statement. He pointed out that the insurance company in its written statement had not even hinted at any collusion between the claimants and driver/owner of the offending vehicle. He submitted that there was overwhelming evidence in the form of police records. He submits that all this evidence was completely overlooked by the tribunal and the impugned finding is a result of surmises and conjectures. He submits that the approach of the tribunal is contrary to the law laid down by the Hon'ble Supreme Court in the case of *Sunita and others vs*

*Rajasthan State Road Transport Corporation and others*¹, *Anita Sharma and others vs The New India Assurance Co. Ltd. and others*² and the decisions of this Court in the case of *Smt. Neha Arlekar and others Vs Mr. S. D. Rocky and others* in First Appeal No.23 of 2015 decided on 25.02.2022 and *Narcivha Chari Vs Joao Faria and others* in First Appeal No.34 of 2017 decided on 04.03.2022.

6. Mr. Mulgaonkar submitted that in this case, there was a delay of only 13 days in filing FIR which was also suitably explained. He submits that the tribunal has almost entirely gone by this so-called delay but disbelieved the claimants' version about the accident. He submits that even this approach is directly contrary to the decisions of the Hon'ble Supreme Court in *Anita Sharma* (supra) and *Ravi vs Badrinarayan & Ors*³.

7. Mr. Mulgaonkar submits that in this case, even the compensation awarded by the tribunal is not just compensation. He submits that there is evidence about the appellant in First Appeal No.108 of 2015 being employed as a beautician in Doha Qatar. There is evidence about 30% disability. Based upon all this material on record the compensation of at least ₹5,00,000/- should have been awarded. He submits that the law laid down in *Pappu Deo Yadav Vs*

1 (2020) 13 SCC 486

2 (2021) 1 SCC 171

3 (2011) 4 SCC 693

Naresh Kumar and others⁴ supports the case of these appellants. He submits that even the compensation awarded in the impugned award which is challenged in First Appeal No.107 of 2015 is quite inadequate and is required to be suitably enhanced.

8. Based on all this, Mr. Mulgaonkar submits that both these appeals be allowed.

9. Mr. Netravalkar, learned counsel for the insurance company with his usual vehemence submits that there is no evidence whatsoever of the involvement of the offending vehicle. He points out that the number of the offending vehicle was not stated in the claim petitions. He submits that the FIR was lodged after 13 days which casts serious doubt on the case set out by the claimants. He points out that the claimants are neighbors of the owner of the offending vehicle and therefore this is a case of collusion and connivance. He points out that the vehicle details were not informed to the doctor who has said to be treated the claimants. He submits that based on all this, there is no warrant to interfere with the findings recorded by the tribunal about the non-involvement of the offending vehicle.

10. Mr. Netravalkar submits that in this case, the compensation that has been determined by the tribunal is on the higher side and warrants no interference. He repeats that since the offending vehicle was not at all involved in the accident, there is no question of

⁴ 2020 SCC OnLine SC 752

awarding any compensation. He submits that the driver of the offending vehicle did not have any valid license and this is a fundamental breach of the terms of the insurance policy.

11. For all the aforesaid reasons, Mr. Netravalkar submits that these appeals should be dismissed.

12. The rival contentions now fall for my determination.

13. In this case, the findings recorded by the tribunal about the non-involvement of the offending vehicle are with respect, totally unsustainable, and require interference.

14. In a claim statement, though the number of the offending vehicle was not mentioned, the details of the make of the offending vehicle as also the name of the driver and the owner were spelled out. Besides, there was a reference made to the FIR, which contained all details including the registration number of the offending vehicle.

15. The driver and the owner of the offending vehicle filed a common written statement in response to the claim petitions. In their written statement even they have not gone to the extent of denying the involvement of their vehicle in the accident that took place on 31.05.2011. Instead, at para 5 of their written statement, this is what they have pleaded.

“That on 31/5/2011 at around 7.30 hrs. the respondent No.2 was proceeding from Camurlim to Mapusa on his motor car of Maruti Zen make bearing No. GA-01-E-3652 in a normal speed. When he reached near the Cuchelim Temple, the applicant who was riding her Activa Scooter bearing No. GA-03-B-1920, along with one lady pillion rider, came from the opposite direction in a fast speed, with utter disregards to law, in a rash and negligent manner and in trying to overtake two motor cycles, lost her control and came and gave dash on the car driven by the respondent No.1. These respondents state that there was no rashness or negligence on the part of the respondent No.1 and the accident took place entirely due to the own fault and negligence on the part of the applicant.”

16. Even the insurance company, in its written statement apart from vaguely pleading the non-involvement of the offending vehicle as in para 12 of the written statement or rather after para 12 of the written statement pleaded the following.

“It is denied that the accident has occurred entirely due to rash and negligent driving of Respondent No.1 and there was no fault of the Respondent No.1. The aspect of contributory negligence be also examined.”

17. Thus from the pleadings, it is quite clear that there was no denial about involvement of the offending vehicle, and the only plea that can be said to have been raised by the respondents, including in particular the driver and the owner of the offending vehicle was that the rider of Activa scooter i.e. the appellant in First Appeal No.108 of 2015 was negligent and responsible for the accident that took place.

18. The tribunal, in this case, has completely missed or possibly ignored the aforesaid significant aspect. Instead, the tribunal based almost entirely on surmises, conjectures, and an incorrect approach returned the impugned findings. The mere fact that there was no specific reference to the registration number of the offending vehicle in the claim petitions when in fact there was no dispute about this registration number or mere fact that there was a delay of 13 days in lodging the FIR were not certainly grounds to record the impugned finding or to suspect the involvement of the offending vehicle in the accident.

19. In the impugned findings, the tribunal fails to take into account the legal evidence on the record, and further, the approach of the Tribunal is contrary to the law laid down by the Hon'ble Supreme Court in the matters of appreciation and evaluation of evidence in accident cases. A reference to the decisions in *Sunita & Ors. V/s. Rajasthan State Road Transport Corporation & Ors.*⁵, *Anita Sharma & Ors. V/s. New India Assurance Company Limited & Anr.*⁶, *Parmeshwari V/s. Amir Chand & Ors.*⁷, *Mangla Ram V/s. Oriental Insurance Company Ltd. & Ors.*⁸ and *Dulcina Fernandes & Ors. V/s. Joaquim Xavier Cruz & Anr.*⁹, will be appropriate in this context.

5 (2020) 13 SCC 486

6 (2021) 1 SCC 171

7 (2011) 11 SCC 635

8 (2018) 5 SCC 656

9 (2013) 10 SCC 646

20. In all the aforesaid cases, the Hon'ble Supreme Court has held 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 cognizant of the fact 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 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.

21. The Courts/Tribunals, in matters of this nature, are required to take a holistic view bearing in mind that 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. The legal effect of the

failure to cross-examine crucial witnesses on crucial issues must be taken into account by the Courts/Tribunals.

22. In *Sunita & Ors.* (supra), the Hon'ble Supreme Court has held that it is well settled that in motor accident claims cases, once the foundational fact, namely, the actual occurrence of the accident, has been established, then the Tribunal's role would be to calculate the quantum of just compensation if the accident had taken place because of the negligence of the driver of a motor vehicle and, while doing so, the Tribunal would not be strictly bound by the pleadings of the parties. Notably, while deciding cases arising out of motor vehicle accidents, the standard of proof to be borne in mind must be of a preponderance of probability and not the strict standard of proof beyond all reasonable doubt which is followed in criminal cases.

23. In *Sunita & Ors.* (supra), the Hon'ble Supreme Court held that the Tribunal had justly accepted the claimant's contention that the respondents did not challenge the propriety of the FIR and the charge sheet before any authority. The only defense raised by the respondents to this plea was that the FIR was based on wrong facts and was filed in connivance between the complainants and the police, against which the respondents had complained to the in charge of the police station and the District Superintendent of Police but to no avail. The Hon'ble Supreme Court noted that apart from this bald assertion, no evidence was produced by the respondents before the Tribunal to prove this point. The Hon'ble Supreme Court did not approve the approach of

the High Court in not even making a mention, let alone record a finding of any impropriety against FIR or charge sheet or the conclusion reached by the Tribunal, and yet, the FIR and the charge sheet were found to be deficient by the High Court.

24. The Hon'ble Supreme Court in paragraph 27 specifically held that the Tribunal's reliance upon FIR No.247/2011 in the said case and the charge sheet, cannot be faulted as these documents indicated the complicity of the driver (respondent no.2) in the said matter. The Hon'ble Supreme Court held that the FIR and the charge sheet, coupled with other evidence on record, inarguably establish the occurrence of the fatal accident and also point towards the negligence of respondent no.2 in causing the said accident. The Hon'ble Supreme Court observed that even if the final outcome of the criminal proceedings against respondent no.2 is unknown, the same would make no difference at least to decide the claim petition under the MV Act. The Hon'ble Supreme Court referred to its decision in *Mangla Ram* (supra), where it was held that the nature of proof required to establish culpability under criminal law is higher than the standard required under the law of torts to create liability.

25. In *Anita Sharma* (supra) the Hon'ble Supreme Court has reiterated that in claim cases, the standard of proof is one of the preponderance of probabilities, rather than beyond reasonable doubt. Therefore, the approach and role of Courts while examining evidence in 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.

26. The entire evaluation by the tribunal in the present case is contrary to the law laid down in the aforesaid decisions by the Hon'ble Supreme Court and followed by this Court in cases of *Narcivha Chari* (supra) and *Smt. Neha Arlekar* (supra).

27. The tribunal in this case has gone to the extent of disbelieving the claimants' version because there were 13 days delay in lodging the FIR. This delay has been explained by the claimants by stating that they were busy attending to injuries sustained by them. The explanation, in the facts and circumstances of the present case, was more than acceptable and should not have been discarded. Even otherwise, the Hon'ble Supreme Court in *Ravi* (supra), where there was a delay over four months in lodging the FIR, has held that it is well-settled that delay in lodging FIR cannot be a ground to doubt the claimant's case. Knowing the Indian conditions as they are, we cannot expect a common man to first rush to the Police Station immediately after an accident. Human nature and family responsibilities occupy the mind of kith and kin to such an extent that they give more importance to getting the victim treated rather than rushing to the Police Station. Under such circumstances, they are not expected to act mechanically with promptitude in lodging the FIR with the Police.

Delay in lodging the FIR thus, cannot be a ground to deny justice to the victim.

28. In this case, apart from the absence of denials in the written statement filed by the driver and the owner of the vehicle, there is independent evidence establishing not only the factum of the accident but also the involvement of the offending vehicle. Firstly, there is evidence of the claimants themselves who have in clear and categorical terms deposed to the accident and the involvement of the offending vehicle in the accident. They have also deposed to the rashness and the negligence on the part of the driver of the offending vehicle.

29. In the cross-examination, which was emphasized by Mr. Netravalkar that there are denials as well as suggestions on collusion and connivance with the driver and the owner of the offending vehicle simply because their house is about 15 minutes walking distance from the house of the claimants. Now in the written statement filed by the insurance company, there was not even a hint of collusion and connivance between the owner and the driver of the offending vehicle on one hand and the claimants on the other. In the absence of any such pleadings, it is quite doubtful whether this line of cross-examination should at all be entertained. However, since the strict rule of pleading is not applied in the summary procedure before the tribunal, possibly the same was not objected to. However, by merely posing such suggestions, it is a far cry to say that collusion and connivance stand even remotely proved in this matter. Even the

tribunal has not gone to the extent of inferring any collusion and connivance.

30. Secondly, in this case, the claimant examined Damodar Pednekar, Head Constable (AW3) who deposed to the lodging of the FIR, station diary, extract of accident panchanama, sketch, etc. There is also evidence about inspection and the assessment of the offending vehicle and the Activa Scooter which the claimants were riding. His report also speaks about damages to the vehicles. All this evidence was more than sufficient for holding that the offending vehicle was indeed involved in the accident. There is further evidence about the rashness and negligence of the driver that has not even been rebutted. The finding to the contrary is therefore clearly unsustainable both on facts as well as on law.

31. On the aspect of determination of compensation, however, there is no case made out to warrant interference with the determination made by the tribunal.

32. In First Appeal No. 108 of 2015, there is evidence that the claimant Victoria sustained injuries to her upper lip and suffered a broken tooth in the upper jaw. There is also a certificate which speaks about 30% disability issued by the Dental College. However, there is no evidence whatsoever that on account of these injuries Victoria's work as a beautician or her service in Doha Qatar suffered even a bit. The position in the case of *Pappu Deo Yadav* (supra) relied upon by

Mr. Mulgaonkar is entirely different on facts and the said decision is not even remotely attracted to the facts in the present case.

33. The tribunal has determined ₹1,00,000/- to Victoria under the head of pain and suffering. The tribunal has also determined compensation of ₹50,430/- towards medical bills which include plastic surgery that was required and performed at the GMC. The determination is based on the bills produced by Victoria which have been accepted almost in their entirety.

34. The tribunal has determined compensation of ₹25,000/- towards the pain and sufferings of Valarie, the appellant in First Appeal No. 107 of 2015. Further, the tribunal has determined the compensation at ₹1,25,014.50 towards medical bills. To the query as to how Valarie expended so much amount when the injuries suffered by her were less though suffered by Victoria, Mr. Mulgaonkar pointed out that the treatment was taken by Valarie in a private hospital. The explanation in the circumstances is acceptable, and, in any case, as was pointed out by Mr. Mulgaonkar, this is not the matter where any cross-objection has been filed by the insurance company or the owner and the driver of the offending vehicle.

35. For all the aforesaid reasons, both these appeals are allowed and the respondents are held jointly and severally liable to pay compensation of ₹1,25,014.50 to the appellant in First Appeal No. 107 of 2015 and the compensation of ₹1,50,430/- to the appellant in

First Appeal No. 108 of 2015. Both these amounts will carry interest at the rate of 7% per annum from the date of institution of the claim petitions till the date of actual payment.

36. The respondents including, in particular, respondent No.3-insurance company is directed to deposit the aforesaid compensation amount together with interest thereon in this Court within six weeks from today. Once the amounts are deposited, the appellants are at liberty to withdraw the same after providing proper identification and bank details. The registry to ensure that the compensation amounts together with interest are deposited directly in the bank accounts of the appellants. Both the appeals are disposed of in the aforesaid terms. There shall be no order for costs.

M. S. SONAK, J

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