

Amrut

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.9 OF 2022

1 Mrs. Vidya Velip,
Wife of Videsh Velip,
Age 34 years,
R/o House No.19/1,
Velip Wadda, Cavrem,
Quepem Goa 403 705
9923062527

2 Mrs Parvati Velip,
Wife of Mahadev Velip,
Age 51 years,
House No.19/1,
Velip Wadda, Cavrem,
Quepem Goa 403 705

... Appellants

Versus

1 Mr. Guru Gaonkar,
Son of Sakalu Gaonkar,
Age 36 years,
R/o H.No.517, Matevemoll,
Cola, Canacona, Goa.

2 The Oriental Insurance Co. Ltd.,
Gafur Building, 2nd Floor,
Station Road, Curchorem,
Goa 403 706

... Respondents

Mr. James Lopes and Ms. Gauri Borkar, Advocates for the
Appellants.

Ms. Christabel Afonso, Advocate for Respondent No.2.

CORAM: M. S. SONAK, J.

DATED : 8th DECEMBER 2022

ORAL JUDGMENT

1. Heard Mr Lopes who appears along with Ms. G. Borkar for the Appellants/Claimants and Ms C. Afonso, learned counsel for Respondent No.2 -Insurance Company.
2. The Appellants/Claimants challenge the judgment and award dated 25.08.2021 dismissing their Claim Petition No.53/2017, seeking compensation for the death of Videsh Velip in a vehicular accident that took place on 17.02.2017. Videsh was Vidya's (Appellant No.1) husband and Parvati's (Appellant No.2) son.
3. The Tribunal has dismissed the claim petition by recording a finding that the claimants failed to prove that the vehicular accident occurred due to rashness and negligence on the part of Respondent No.1-owner/driver of minibus bearing registration No. GA-09-U-3385. After recording this finding, the Tribunal did not bother to record any finding on the second issue about the quantum of compensation. In doing so, the Tribunal acted in breach of the ruling of the Hon'ble Supreme Court, requiring the Courts and Tribunals to avoid shortcuts and decide all issues that fall for their determination.

4. In *Bimlesh & Ors. V/s. New India Assurance Company Limited*¹, in paragraphs 7,8 & 9, the Hon'ble Supreme Court has held that the Tribunal has to follow the summary procedure subject to any rules that may be made in this behalf. The Code of Civil Procedure, 1908, is not strictly applicable to the proceedings before the Claims Tribunal except to the extent provided in Section 169(2) of the MV Act and the Rules made thereunder. The whole object of the summary procedure is to ensure that the Claim Petition is heard and decided by the Claims Tribunal expeditiously. In paragraph 9, the Hon'ble Supreme Court has held that the *Claims Tribunal must dispose of all issues one way or the other while deciding the claim petition.*

5. Therefore, normally, the Tribunals should not dispose of the Claim Petitions based on some preliminary issue, usually raised by the Insurance Company about maintainability or otherwise. So also, the Tribunals, even after holding that the issue of rashness and negligence is not proven, should not shirk deciding on other issues, including the issue of the quantum of compensation.

6. The Hon'ble Supreme Court has held that since all the issues (points for determination) are required to be considered by the Claims Tribunal together in the light of the evidence that may be led in by the parties and not piecemeal, often matters are required to be remanded. In *Bimlesh* (supra), the matter had to be remanded.

¹ (2010) 8 SCC 591

7. Recently, even in the *Agricultural Produce Marketing Committee, Bangalore Vs The State of Karnataka and others*, 2022 LiveLaw (SC) 307, the Hon'ble Supreme Court has reiterated that the Courts must avoid shortcuts and decide all issues that fall for their determination.

8. Be that as it may, even the approach of the Tribunal in recording the finding on the issue of rashness and negligence is contrary to the law laid down by the Hon'ble Supreme Court in the cases of *Sunita & Ors. V/s. Rajasthan State Road Transport Corporation & Ors*², *Anita Sharma & Ors. V/s. New India Assurance Company Limited & Anr*³, *Parmeshwari V/s. Amir Chand & Ors*⁴, *Mangla Ram V/s. Oriental Insurance Company Ltd. & Ors*⁵ and *Dulcina Fernandes & Ors. V/s. Joaquim Xavier Cruz & Anr*⁶

9. In all the cases above, 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 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

2 (2020) 13 SCC 486

3 (2021) 1 SCC 171

4 (2011) 11 SCC 635

5 (2018) 5 SCC 656

6 (2013) 10 SCC 646

Courts/Tribunals must be mindful 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.

10. 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.

11. 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-examining 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.

12. 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 followed in criminal cases.

13. 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 defence 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.

14. The Hon'ble Supreme Court noted that apart from the above bald assertion, no evidence was produced by the respondents before the Tribunal to prove this point. Furthermore, the filing of the FIR was followed by the filing of the charge sheet for offences under Sections 279, 337, and 304-A of IPC and Sections 134/187 of the MV Act, which, again, reinforces the allegations in the said FIR

insofar as the occurrence of the accident was concerned and the role of the driver in causing such accident.

15. 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. Yet, the FIR and the charge sheet were found to be deficient by the High Court. The Court, in paragraph 27, specifically held that the Tribunal's reliance upon FIR No.247/2011 in the said case and the charge sheet could not be faulted as these documents indicated the complicity of the driver (respondent no.2) in the said matter.

16. 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 will make no difference, at least in deciding 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.

17. If the Tribunals were to be guided by the law laid down in the decisions above rather than the decisions in the case of *Suresh alias Sudesh Foll Dessai Vs Suresh Shamba Velip and others*⁷, and *Narayan Kalangutkar and another Vs New India Insurance Co. Ltd., and others*⁸, the evaluation of evidence on the issue of rashness and negligence might have been different. The Tribunal, in this case, did refer to the decisions of the Hon'ble Supreme Court in *Bimla Devi and others Vs Himachal Road Transport Corporation*⁹, *Dulcina Fernandes, and others Vs Joaquim Xavier Cruz and Another*¹⁰, and *Anita Sharma & Ors. V/s. New India Assurance Company Limited & Anr.*¹¹, however, with respect, failed to follow and adopt the approach spelt out therein.

18. Evaluating the evidence on record in the light of the principles laid down by the Hon'ble Supreme Court in the above decisions, the first circumstance to be noted is that the owner/driver of the minibus, after filing a written statement and claiming that his minibus was not at all involved in the accident, chose not to examine himself before the Tribunal. This was even though the independent investigating agency had already filed an FIR against him, alleging rashness and negligence. Secondly, even though the independent investigating agency had filed an FIR against the owner/driver of the minibus, there was no protest

7 2011 STPL 3844 Bombay

8 2012 ALLMR (2) 244

9 (2009) 13 SCC 530

10 AIR 2014 SC 58

11 (2021) 1 SCC 171

from the owner/driver or even any complaint to the superior officer about the complaint being wrong or filed for any ulterior purposes.

19. The Tribunal failed to consider the above significant aspects of the matter. Instead, it focused on picking unnecessary holes in the testimony of Head Constable Santosh Kolambkar and eye witness Suresh Velip. The evidence of these two witnesses was fine-combed as if this was a criminal trial seeking the conviction of the owner-driver. Though the Tribunal had accepted that the standard of proof in civil proceedings before the Tribunal was that of the preponderance of probability, the Tribunal has evaluated Suresh Velip's evidence applying the touchstone of proof beyond a reasonable doubt. Much was made of the minor discrepancies on irrelevant issues to disbelieve this eyewitness. Even the cross-examination of this witness was less on the aspect of the accident and more on the feast date.

20. Head Constable Santosh Kolambkar admitted that initially, he had registered the case as a self-accident. He explained that this was based on the information which he immediately received on the spot. Further, he explained that at a later point in time, one of the eyewitnesses (Suresh Velip) gave a statement describing the genesis of the accident. As a result, FIR was filed against the owner/driver after carrying out investigations. Now merely because, at first blush, the police may have registered this case as a self-accident and later on, after following due procedure, lodged an FIR against the owner/driver, the testimony of this witness could not have been disbelieved. The eye

witness Suresh Velip also deposed in the case. But the Owner-driver, who claimed his minibus was not involved in the accident, did not bother to step in the witness box.

21. As noted earlier, in *Sunita and others* (supra), at least a serious defence was raised about FIR was based on wrong facts or that the FIR was filed in connivance between the complainant and the police and even the complaint had been filed to the District Superintendent of Police. However, the Hon'ble Supreme Court held that apart from such a bald assertion, no evidence was produced to prove this point. In the present case, neither any complaint was filed to the superior authority, nor did the owner/driver even bother to step into the witness box to depose about FIR lodged by the police against him, charging the rashness and negligence. The Tribunal did not adequately consider all these crucial aspects.

22. The approach of the Tribunal, in this case, is contrary to the law laid down in *Anita Sharma* (supra), where it is held that the Court while examining evidence in accident claim cases, should not focus upon finding fault with the non-examination of some best eyewitnesses, as may happen in a criminal trial. Still, the Court should analyze the material placed on record by the parties to ascertain whether the claimant's version is more likely than not true. Besides, in the cases referred to above, it is held that the Courts/Tribunals should draw appropriate inferences from the failure of the Respondents to properly cross-examining the claimant's witnesses. However, the

Tribunal failed to draw any adverse inference against the owner/driver who, after raising a bald defence about his non-involvement in the accident, did not even bother to step into the witness box and examine himself.

23. The Tribunal did not also consider the damages to Videsh's scooter. Such damages are reflected in the panchanama, which was admitted in evidence. Such damages do not ordinarily result in a self-accident. The Tribunal also failed to consider that this was a case of an accident between the scooter that Videsh was riding and the minibus, which is a larger and heavier vehicle. This is because the duty of care in such circumstances is much greater on the larger and heavier vehicle.

24. In *N. K. V. Bros. (P) Ltd. vs. M. Karumai Ammal & Others*¹² the Hon'ble Supreme Court has held that the Accidents Tribunals must take special care to see those innocent victims do not suffer and drivers and owners do not escape liability merely because of some doubt here or some obscurity there. Save in plain cases, culpability must be inferred from the circumstances where it is fairly reasonable. The Court should not succumb to niceties, technicalities and mystic maybes.

25. The Tribunal's finding on rashness and negligence is hereby reversed for all the above reasons. Accordingly, by applying the standard of preponderance of probability, the finding is recorded that

12 AIR 1980 SC 1354

the accident occurred due to rashness and negligence of the owner/driver of the minibus.

26. Now coming to the issue of the quantum of compensation, the Appellants claim that Videsh was a supervisor with having monthly income of ₹12,000/-. However, there is no convincing evidence on this aspect. The so-called employer's evidence was quite vague on the element of income. However, the evidence on record is sufficient to hold that Videsh was employed as a supervisor. Therefore, it would be appropriate if Videsh's notional income based on minimum wage rates at the relevant time is considered. A daily wager would earn approximately ₹300/- per day in 2017. Therefore, Videsh's notional income can be safely taken as ₹9000/- per month.

27. Videsh was 33 years old at the time of his demise in an unfortunate accident. A 40% addition is due towards future prospects, considering the law laid down in *National Insurance Company Limited Vs. Pranay Sethi and others*¹³. The deduction of up to 1/3rd is warranted towards personal expenses that Videsh would have incurred. Considering all these factors and the multiplier of 16, the compensation towards dependency would come to ₹15,66,720/-.

28. The Appellants would be entitled to the compensation towards the consortium at the rate of ₹40,000/- each and an additional compensation of ₹30,000/- towards funeral expenses and loss of estate. Thus the just compensation, in this case, would work out to

13 (2017) 16 SCC 680

₹16,76,720/-. Since the accident occurred on 17.02.2017, the interest at the rate of 6% per annum would be appropriate.

29. Accordingly, this appeal is allowed, and the Respondents are directed to jointly and severally pay the Appellants the compensation of ₹16,76,720/- with interest at the rate of 6% per annum from the date of the claim petition till the effective payment.

30. Respondent Nos. 1 and 2, including in particular the Respondent No.2-Insurance Company, is directed to deposit the above amount in this Court within eight weeks from today after due intimation to the learned counsel for the Appellants. Upon deposit, the Appellants are permitted to withdraw the deposited amount by furnishing identification and bank details. Registry to ensure that the amounts are directly transferred into the bank accounts of the Appellants.

31. The appeal is allowed in the above terms.

32. There shall be no order for costs.

M. S. SONAK, J.