

Amrut

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.29 OF 2021

M/S. Kadamba Transport Corporation Ltd.

Through its Managing Director

Mr. Venancio Furtado,

major, married, service,

resident of Porvorim, Goa.

... Appellant

Versus

1. Smt. Kheronisa Issar Salmani,
W/o Late Issar Ahmad Salmani,
Aged 36 years,

2. Miss Shagufta Issar Salmani,
d/o Late Issar Ahmad Salmani,
minor aged 17 years,

3. Miss Shabina Issar Salmani,
d/o Late Issar Ahmad Salmani,
minor aged 14 years,

4. Mast. Saif Issar Salmani,
s/o Late Issar Ahmad Salmani,
minor aged 10 years,

5. Mast. Kaif Issar Salmani,
d/o Late Issar Ahmad Salmani,
minor aged 7 years,
Respondent Nos. 2 to 5
represented by natural guardian
mother Smt. Kheronisa Issar Salmani,
all r/o House No.104/22,
Shabbir Manzil, Below Muslim Community
Housing Society, Behind Verna Masjid,

Nr. Hotel Mardol, Verna, Goa 403 722

6. Shri Prabhakar Mandrekar,
S/o Shri Raghuvir Mandrekar,
Aged 62 years, driver,
r/o H.No.223, Bella Vista,
Sangolda, Bardez Goa.

... Respondents

Mr. A. R. Kantak and Mr. R. Kantak, Advocates for the Appellant.
Mr. V. Braganza, Advocate for Respondent Nos. 1 to 5.

CORAM: **M. S. SONAK, J.**

DATED: **28th July 2022**

ORAL JUDGMENT

1. Heard the learned counsel for the parties.
2. The challenge in this appeal is to the judgment and award dated 05.07.2019 made by the Motor Accident Claims Tribunal, South Goa, Margao, in Claim Petition No.112/2015, awarding the Respondent Nos. 1 to 5 (claimants) the compensation of ₹15,40,000/- with interest at the rate of 9% per annum from the date of petition till the payment for the death of Issar Ahmad Salmani in a vehicular accident on 09.04.2013.
3. Issar was the husband of Respondent No.1 and the father of Respondent Nos. 2 to 5, who were aged 13, 10, 6, and 3 years respectively, at the time of Issar's death.

4. Mr. Kantak, learned counsel for the Kadamba Transport Corporation (KTC), firstly submitted that there was no rashness and negligence on the bus driver's part, and the finding recorded by the Tribunal to the contrary is vitiated. Second, he offered that there was no road divider and, therefore, there was no evidence about the bus being on the wrong side. Third, he submits that the evidence establishes that the bus was driven at slow speed and with full caution. Finally, he presents that the evidence also shows that Issar was riding the motorcycle fast, came on the wrong side, and dashed the bus.

5. Mr. Kantak submits that on behalf of the claimants, no eyewitnesses were examined. The driver Prabhakar Mandrekar however, deposed in the matter regarding the genesis of the accident, and the Tribunal should have therefore relied on the driver's evidence. Mr. Kantak pointed out that the driver was acquitted in the criminal prosecution against him.

6. Mr. Kantak, without prejudice, submits that this is a case of contributory negligence that Issar contributed substantially to the accident. He offers that the Tribunal has not considered this aspect, so the finding on rashness and negligence warrants interference.

7. Mr. Kantak, without prejudice to the above, submitted that the quantum of compensation is excessive. He presents no evidence that Issar was a barber or employed in a barber shop. He submits that Issar's brother and widow suppressed the facts about the relationship,

and even the Tribunal correctly held that the salary certificate was a doubtful document.

8. Mr. Kantak submits that there was no evidence about Issar's income; even his brother has deposed him that he used to give him 50% of his daily earnings. He submits that the Tribunal should not have relied on the Notification for minimum wages. Without prejudice, he offers that even if the minimum wages are taken at ₹222/- per day, the monthly income will come to ₹6660/- and not ₹8000/-.

9. Mr. Braganza, learned counsel for Respondent Nos. 1 to 5, defended the impugned award but submitted that the compensation amount awarded is quite inadequate. He submitted that there was no good reason to reject the salary certificate. He proposes that even the computation is not in accord with *National Insurance Company Limited Vs. Pranay Sethi and others*¹. He submits that this appeal may be dismissed after enhancing the compensation amount.

10. The rival contentions now fall for determination.

11. The first point for determination in this appeal concerns the finding on rashness and negligence recorded by the Tribunal.

12. In this case, the claimants could not examine eyewitnesses to explain the genesis of the accident. However, the claimants have produced on record the investigation papers, which include

¹ (2017) 16 SCC 680

panchanama and the sketch of the accident. Besides, the bus driver has examined himself and his evidence to a certain extent to assist the claimants' case.

13. The Tribunal, in this case, has quite correctly referred to several decisions of the Hon'ble Supreme Court to emphasize that the claimants in such cases have to establish their case only on the touchstone of preponderance of probabilities. In particular, the Tribunal has correctly relied upon *Bimla Devi and others Vs Himachal Road Transport Corporation*², *Dulcina Fernandes, and others Vs Joaquim Xavier Cruz and Another*³.

14. Besides, the approach of the Tribunal, in this case, is entirely consistent with the approach commended by the Hon'ble Supreme Court in *Sunita & Ors. V/s. Rajasthan State Road Transport Corporation & Ors*⁴, *Anita Sharma & Ors. V/s. New India Assurance Company Limited & Anr.*⁵, *Parmeshwari V/s. Amir Chand & Ors.*⁶ *Mangla Ram V/s. Oriental Insurance Company Ltd. & Ors*⁷.

15. In all the above cases, the Hon'ble Supreme Court of India had held that the Tribunals have to be sensitive enough to appreciate the

² (2009) 13 SCC 530

³ AIR 2014 SC 58

⁴ (2020) 13 SCC 486

⁵ (2021) 1 SCC 171

⁶ (2011) 11 SCC 635

⁷ (2018) 5 SCC 656

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. The Hon'ble Supreme Court of India has held that the Courts and Tribunals have to be mindful that the approach and role of Courts and Tribunals while examining evidence in accident claim cases should not be to find fault with the non-examination of some best eyewitnesses, as may happen in a criminal trial, but instead, the Courts and Tribunals should analyze the material placed on record by the parties to ascertain whether the claimant's version is more likely than not true. In matters of this nature, the Courts and Tribunals are required to take a holistic view, bearing in mind that strict proof of an accident caused by a particular bus in a specific manner may not be possible for the claimants. The Courts and 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.

16. In *N. K. V. Bros. (P) Ltd. vs. M. Karumai Ammal & Others*⁸ the Hon'ble Supreme Court, in paragraph 3, made the following observations:-

"3. Road accidents are one of the top killers in our country, specially when truck and bus drivers operate nocturnally. This proverbial recklessness often persuades

⁸ AIR 1980 SC 1354

the courts, as has been observed by us earlier in other cases, to draw an initial presumption in several cases based on the doctrine of res ipsa loquitur. Accidents Tribunals must take special care to see that 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. We are emphasising this aspect because we are often distressed by transport operators getting away with it thanks to judicial laxity, despite the fact that they do not exercise sufficient disciplinary control over the drivers in the matter of careful driving. The heavy economic impact of culpable driving of public transport must bring owner and driver to their responsibility to their 'neighbour'. Indeed, the State must seriously consider no fault liability by legislation. A second aspect which pains us is the inadequacy of the compensation or undue parsimony practised by tribunals. We must remember that judicial tribunals are State organs and Article 41 of the Constitution lays the jurisprudential foundation for state relief against accidental disablement of citizens. There is no justification for niggardliness in compensation. A third factor which is harrowing is the enormous delay in disposal of accident cases resulting in compensation, even if awarded, being postponed by several years. The states must appoint sufficient number of tribunals and the High Courts should insist upon quick disposals so that the trauma and tragedy already sustained may not be magnified by the injustice of delayed justice. Many states are unjustly indifferent in this regard."

17. As noted earlier, the approach of the Tribunal, in this case, is entirely consistent with the law laid down by the Hon'ble Supreme Court of India in cases cited by the Tribunal and the above cases.

18. The evidence on record shows that the bus driver was acquitted in the criminal trial. Incidentally, such acquittal was by the Tribunal's Presiding Officer, in his capacity as the Judicial Magistrate First Class, Vasco. This means the Judicial Officer has correctly appreciated the distinction between the two jurisdictions he was exercising.

19. In the criminal trial, the Judicial Magistrate accepted the bus driver's defense of his non-involvement in the accident. However, in paragraph 28 of the acquittal order, it is held that there is no evidence that Prabhakar Mandrekar was driving the bus on 09.04.2013 at 16.55 hours when the accident took place. The acquittal is also on the ground that the prosecution failed to examine independent witnesses like the bus conductor, who could have thrown independent light on the genesis of the accident.

20. Before the Tribunal, however, Prabhakar Mandrekar – the bus driver, has filed an affidavit in which he has not only admitted that he was driving the bus at the time of the accident but also deposed about how the bus was driven slowly and cautiously. Yet, before the Tribunal, the KTC did not bother to examine the conductor so that there could be some corroboration or otherwise to the partisan and, to a great extent, unreliable testimony of Prabhakar Mandrekar – the bus driver.

21. Admittedly, the prosecution was lodged against the bus driver in this case. At that stage, there was no protest from the bus driver or the KTC. Even the accident sketch shows the brake marks that traveled up to 17 meters. Notwithstanding the valiant efforts of Mr. Kantak, the sketch of the accident establishes the negligence of the bus driver.

22. The bus is a heavier vehicle; therefore, the duty of care expected of the bus driver was higher. As observed by the Hon'ble Supreme Court in *N. K. V. Bros. (P) Ltd.* (supra), the bus driver engaged by the Transport Operators are one of the top killers on Indian roads. The Court recommended the exercise of sufficient disciplinary control over the drivers in the matters of careful driving. The KTC is a State Road Transport Corporation. It is likely that its bus drivers do not adopt sufficient care and caution as they would perhaps adopt if they were driving their own vehicles.

23. In this case, the bus driver's evidence hardly inspires any confidence. In the criminal trial, the bus driver claimed he was not even driving the bus at the time of the accident. Before the Tribunal, however, he admitted that he was driving the bus at the time of the accident. Furthermore, he claimed that he was cautious and slow. However, the evidence on record is more than sufficient to establish by the test of preponderance of probabilities that the accident occurred due to rashness and negligence on the bus driver's part. Consequently, no ground exists to conclude any contributory negligence on Issar's

part. The finding of the Tribunal on the issue of rashness and negligence, therefore, warrants no interference.

24. On the aspect of quantum of compensation, the reasons that prompted the Tribunal to doubt the salary certificate do not appear appropriate. There is evidence about Issar being a barber. In addition, there is evidence of Issar working in his brother's salon. The Tribunal has referred to the minimum wages circular that undoubtedly speaks about the daily wages of a barber being ₹222/- per day. However, that does not mean that Issar was earning only ₹222/- per day. That was the minimum amount Issar was earning. Based on this, quite conservatively, the Tribunal has taken Issar's monthly salary at ₹8000/-. There is no ground to warrant any interference.

25. The Tribunal has correctly determined the compensation towards dependency at ₹13,50,000/-. In terms of *Pranay Sethi* (supra) and *Magma General Insurance Company Limited Vs Nanu Ram alias Chuhru Ram and others*⁹, the compensation of ₹40,000/- each should have been awarded to the claimants towards the consortium. Thus, the compensation of ₹2,00,000/- was due towards the consortium.

26. The claimants would also be entitled to ₹15,000/- towards funeral expenses and ₹15,000/- towards loss of estate. Thus, to the dependency compensation of ₹13,50,000/-, a further amount of ₹2,30,000/- will have to be added, taking the total compensation of

₹15,80,000/- and not just ₹15,40,000/- as determined by the Tribunal.

27. The accident occurred on 09.04.2013; therefore, *prima facie*, the interest rate of 9% per annum appears high. The interest could have been about 7% per annum. However, in the peculiar facts of this case, where the Tribunal has already taken Issar's monthly income as only ₹8,000/- and the fact that Issar had four minor children, there is no case made out to disturb the interest rate.

28. Accordingly, this appeal is dismissed, but it is held that the claimants are entitled to the compensation of ₹15,80,000/- instead of ₹15,40,000/-.

29. The claimants will now be entitled to withdraw the compensation amount deposited in this Court and the interest that shall accrue thereon. First, however, the claimants will have to abide by the directions issued in the impugned award relating to the investment of the compensation amount awarded in favor of minor dependents. Registry to look into this aspect before mechanically permitting withdrawals.

30. Mr. Braganza states that one of the dependents has attained a major. If that is so, it will be open for such a dependent to withdraw her share.

31. The claimants will have to submit proper identification documents and bank details. Registry, in terms of the impugned

award, to transfer the amounts directly into the bank accounts of the dependents.

32. The Appellant- KTC to deposit the excess amount of ₹40,000/- together with interest within eight weeks after giving due intimation to the learned counsel for the claimants. There shall be leave to withdraw the amount on the above terms.

33. This appeal is disposed of without any order for costs.

34. The Civil Application No.50 of 2021 does not survive with the disposal of the appeal, and the same is disposed of accordingly.

M. S. SONAK, J.

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