

Amrut

**IN THE HIGH COURT OF BOMBAY AT GOA
FIRST APPEAL NO.87 OF 2017**

Shri Sudarshan @ Darshan Sanant
S/o Sabhaji Sawant,
37 years of age,
C/o Shri Ramesh K. Mashelkar
Nr. Shantadurga Temple,
Karapur, Sanquelim Goa. ...Appellant

Versus

1. Shri Abhijit Mortulo Peelnekar
Age 35 years,
R/o Gawandiwada, Karapur,
Sanquelim Goa.
2. Infrastructure Logistics Pvt. Ltd.,
Pissurlem mines
Satterri Valpoi Goa.
3. Bajaj Alliaz General Insurance Co. Ltd.
Through its manager,
3 C & D Patto Plaza
Panaji Goa. ...Respondents

Ms. Asha A. Desai, Advocate for the Appellant- Claimant.

Mr. Amey Kakodkar and Mr. P. Shirodkar, Advocates for Respondent No.3.

CORAM: M. S. SONAK, J

DATE : 23rd June 2022

ORAL JUDGMENT

1. Heard Ms. Desai, learned counsel for the Appellant, and Mr. Kakodkar learned counsel for respondent No.3.

2. The challenge in this appeal is to the judgment and award dated 30.08.2016 in Claim Petition No.45/2011 made by the Motor Accident Claims Tribunal at Mapusa (tribunal).

3. The tribunal has determined the compensation payable to the Appellant - claimant for the injuries sustained by him in a vehicular accident at ₹2,05,000/-. However, this amount has not been awarded to the Appellant - claimant because, according to the tribunal, the Appellant has failed to establish that the accident occurred because of any rashness and negligence on the part of the driver of Bolero jeep bearing registration No. GA-04-C-2924.

4. Ms. Desai, learned counsel for the Appellant, submits that the finding regarding rashness and negligence warrants interference. She submits that the accident occurred on a straight road with visibility of up to 300 metres. She submits that the jeep driver had ample opportunity to witness the claimant coming out of the gate and onto the main road. She points out that the jeep was driven in a rash and negligent manner and this is evident from the absence of any brake marks and the Appellant dragged for over five metres after the impact. She submits that the evidence of the claimant coupled with the police records like the sketch attached to the panchanama establishes this circumstance. Ms. Desai submits that the finding on rashness and negligence ought to be interfered with.

5. Ms. Desai submits that the Appellant had claimed compensation of five lakhs, and the tribunal was not justified in restricting the same to ₹2,05,000/-.

6. Mr. Kakodkar defends the impugned award and submits that the evidence on record overwhelmingly establishes that the jeep driver was not negligent and that the accident was due to the claimant's negligence. He relies on Rule 9 of the Road Regulations, 1989, which requires the driver of a motor vehicle entering a road intersection or the main road to give way to all traffic approaching the intersection on his right hand. Mr. Kakodkar submits that the accident occurred around 8.45 p.m. Therefore, it was for the claimant to take care and not to enter the road.

7. For these reasons, Mr. Kakodkar submits that this appeal should be dismissed.

8. The rival contentions now fall for determination.

9. Having evaluated the rival contentions and the evidence on record, in my opinion, this is a case of contributory negligence. Accordingly, the claimant and the jeep driver had contributed equally to the accident, and the claimant will be entitled to only 50% of the compensation amount determined by the tribunal.

10. Mr. Kakodkar is quite right in submitting that the claimant should have been careful when entering the main road from the gate of his house. This is more so because the accident took place at about 8.45 p.m. At the same time, the jeep driver is also responsible for driving at a reasonable speed, particularly at night.

11. The evidence on record establishes that there are no brake marks indicating any attempt on the part of the jeep to avoid the impact. The contention of the jeep driver about his driving the jeep at a reasonable speed cannot be accepted. If the jeep were being driven at a moderate speed, the jeep driver would have controlled the jeep and even prevented the accident. There are no brake marks seen at the site.

12. Further and most difficultly, the evidence on record suggests that the claimant, after impact, was dragged up to 5.2 metres from the accident spot. This circumstance also establishes negligence on the part of the jeep driver. It is only because the jeep was driven at a high speed that the jeep driver could not control the jeep and even dragged the claimant for a distance of over 5 metres.

13. There is some controversy about whether the jeep driver fled from the accident scene. But that by itself is not very relevant for determining whether the accident occurred because of the jeep driver's rashness and negligence.

14. The evidence on record suggests equal contribution by the claimant and the jeep driver to the accident. Therefore, this is contributory negligence in that each party equally contributed to the accident.

15. The tribunal's approach regarding the rashness and negligence of the jeep driver is not quite consistent with the law laid down by the Hon'ble Supreme Court in *Sunita & Ors. V/s. Rajasthan State Road Transport Corporation & Ors*¹, *Anita Sharma & Ors. V/s. New India Assurance Company Limited & Anr.*², *Parmeshwari V/s. Amir Chand & Ors.*³, *Mangla Ram V/s. Oriental Insurance Company Ltd. & Ors*⁴ and *Dulcina Fernandes & Ors. V/s. Joaquim Xavier Cruz & Anr.*⁵

16. In the above cases, the Hon'ble Supreme Court has held that strict principles of evidence and standard of proof, like in a criminal trial, are not applicable in accident claim cases. The standard of proof is one of the preponderance of probabilities rather than proof beyond a reasonable doubt.

17. The above decisions hold that the tribunal, while examining evidence in accident claim cases, should analyze the material placed on

1 (2020) 13 SCC 486

2 (2021) 1 SCC 171

3 (2011) 11 SCC 635

4 (2018) 5 SCC 656

5 (2013) 10 SCC 646

record by the parties to ascertain whether the claimant's version is more likely than not true. The Courts and the Tribunals, in such matters, should take a holistic view bearing in mind that the strict proof of an accident caused by a particular vehicle in a particular manner may not be possible for the claimant. The tribunals should also draw appropriate inferences from the failure to cross-examine the witnesses properly. Courts should not be to find fault with the non-examination of some best eye-witnesses, but rather, the Courts should analyze the material on record to ascertain whether the claimant's version is more likely than not true.

18. By applying the above principles, the tribunal's finding of total absence of rashness and negligence on the part of the jeep driver will warrant interference. However, at the same time, the contention of Mr. Kakodkar based on duties of care that the claimant should have adopted and the impact of Rule 9 of the Road Regulations, 1989 will also have to be accepted. Thus, this is contributory negligence in that both parties contributed equally to the accident.

19. On the aspect of just compensation, the tribunal has correctly determined the same at ₹2,05,000/-. Therefore, the tribunal has applied the correct principles, and there is no error in such determination.

20. In such matters, the percentage of disability *per se* may not be the most relevant factor. What is crucial is the factual disability. The

tribunal has properly considered this aspect. The tribunal has assessed the claimant's income correctly and made awards for pecuniary and non-pecuniary losses based on the evidence on record. As such, there is no case for enhancing this compensation.

21. As a result, this appeal is partly allowed, and the respondents are directed to jointly and severally pay the appellant compensation of ₹1,02,500/- together with interest at the rate of 7% per annum from the date of institution of the claim petition till the date of actual payment. However, the amount already paid under Section 140 of the M. V. Act can be adjusted.

22. The respondents, including in particular respondent No.3, are directed to deposit the above compensation amount in this Court within six weeks after giving notice to the learned counsel for the Appellant. After that, the Appellant must furnish his bank details so that the registry can transfer the said amount directly to his bank account.

23. The appeal is partly allowed. There shall be no order for costs.

24. The Misc. Civil Application No.126 of 2022 will not survive with the disposal of this appeal, and the same is disposed of accordingly.

M. S. SONAK, J