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IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.24 OF 2021

Annu Infra Construct (I) Pvt. Ltd.,
M-2, Gogal Housing Board,
Margao, Goa 403601,
Through our constituted Attorney
Shri Birender Kumar Singh.

....Appellant

Versus

1. Shri Ramesh Naik,
son of Vishram Naik,
major of age.

2. Smt. Pushpa Naik,
wife of Ramesh Naik,

Both residents of House no.216/1,
Bazar wadda, Rivona,
Goa – 403705.

3. Sewerage & Infrastructural
Development Corporation of Goa,
Government of Goa undertaking,
Ishan Bldg., 2nd floor, Opp. CCP,
Panaji, Goa – 403001.

4. Unity Consultant Pvt. Ltd.,
7, Raghuvansh Apt., Plot No.78,
Mayur Colony, above Central Bank of
India, Kothrud, Pune 411038.

....Respondents

Ms Rosette Pereira, Advocate for the Appellant.

Mr James Lopes, Advocate for the Respondent Nos.1 & 2.

Mr A.D. Bhobe, Advocate for Respondent No.3.

CORAM: M. S. SONAK, J.

DATE : 2nd DECEMBER 2022

ORAL JUDGMENT :

1. Heard Ms Pereira for the appellant, Mr James Lopes for respondents nos.1 & 2 and Mr A.D. Bhobe for respondent no.3.

2. The appellant challenges the judgment and award dated 30.08.2019 in Claim Petition No.101/2015, awarding the claimants compensation of ₹9,85,000/- inclusive of no-fault liability amount with interest at the rate of 9% per annum from the date of filing of the petition till effective payment. This compensation is awarded by the Tribunal on account of the death of the claimant's 36-year-old son in an accident arising from the use of a motor vehicle on 20.02.2014.

3. The accident took place when the claimant's son Rajesh was travelling from KTC Margao to his house at Rivona on his Vespa scooter and had reached near Cine Vishant, Margao. There, he hit the lid of a chamber of sewerage manhole, which was above the road surface and kept in a dangerous position. As a result of this impact, Rajesh skidded off the road, fell, suffered injuries and succumbed to them on 21.02.2014. The Tribunal has held the appellant–contractor responsible for undertaking the construction

and maintenance of sewerage manholes accountable for the accident and awarded compensation to the claimants.

4. Ms Pereira, learned Counsel for the appellant, submitted that the accident did not arise from using a motor vehicle. Consequently, the Claims Tribunal had no jurisdiction to entertain the claim. She offered that such a plea was raised in the written statement, but the Tribunal neither framed any issue nor ruled on its jurisdiction. She relied on *Union of India V/s. United India Insurance Co. Ltd. & Ors. – (1997) 8 SCC 683* supports this contention.

5. Ms Pereira, without prejudice, submitted that the appellant had completed the contract on 28.01.2014. Therefore, the appellant was not responsible for the accident on 20.02.2014. She relied on a certificate dated 11.08.2016 issued by the Sewerage & Infrastructural Development Corporation of Goa (Respondent no.3) and a certificate dated 10.08.2016 issued by Unity Consultant Pvt. Ltd. (Respondent no.4). Based on these two certificates she submitted that the appellant could not have been made liable to pay compensation.

6. Ms Pereira submitted that none of the panchas, in whose presence panchanama was allegedly conducted or sketch of the

accident scene drawn, were examined. She pointed out that though the prosecution was launched against two employees of the appellant, the same ended in their acquittal by the Judicial Magistrate First Class by judgment and order dated 30.08.2018. She submits that this is a significant circumstance that should be considered for exonerating the appellant. Lastly, Ms Pereira pointed out that there was no evidence of any negligence on the appellant's part; therefore, no award could have been made against the appellant.

7. Ms Pereira finally submitted that there was no defence about Rajesh's employment as a conductor and, in any case, there was no evidence about his income. She submitted that the pleadings show that Rajesh was employed before the accident but not on the date of the accident.

8. For all the above reasons, Ms Pereira submitted that the impugned award may be set aside.

9. Mr Lopes defended the impugned award based on the reasonings reflected therein. He pointed out that the Tribunal while deciding the application under Section 140 of the MV Act, had already considered and rejected the objection based on its

jurisdiction. He pointed out that the appellant did not even challenge this order dated 28.06.2016 by the Tribunal.

10. Mr Lopes submitted that since this accident arose from the use of a motor vehicle, the Tribunal had the jurisdiction to entertain the claim even in terms of the law laid down in *United India Insurance Co. Ltd. and Ors.* (supra) relied upon by Ms Pereira. He relied on *Union of India V/s. Bagavathi Prasad (dead) and Ors. - ILR 2002 SC 1301* and *Anitha and Ors. V/s. BWSSB and Ors. - MANU/KA/0660/2008* to submit that in similar circumstances, the Tribunal's entertainment of the Claim Petition was upheld by the Hon'ble Supreme Court and the Karnataka High Court.

11. Mr Lopes submitted that there is ample evidence about the negligence on the part of the appellant, and even the proof about the completion of the work on 28.01.2014 was not reliable. He pointed out that there was no explanation why the so-called certificates were obtained almost a year after the Claim Petition was lodged and not soon after the work was allegedly completed on 28.01.2014. He pointed out that there was no clarity about the extent of the work completed and, based on the belated certificates produced, the appellant cannot avoid liability.

12. Mr Lopes submitted that the acquittal in the criminal prosecution is quite irrelevant to the summary proceedings before the Tribunal. He pointed out that, in any case, the acquittal was only by extending the benefit of the doubt.

13. Mr Lopes submitted that the claimants are now 74 and 58, respectively. They lost their son in an accident on 20.02.2014. However, to date, they have not received just compensation.

14. For all the above reasons, Mr Lopes submitted that this appeal may be dismissed with costs.

15. Mr Bhobe submitted that the claimants had raised no claim against respondent no.3. No allegations were made against respondent no.3. He pointed out that even in this appeal, the appellant had not suggested that respondent no.3 was in any manner responsible for payment of compensation.

16. The rival contentions now fall for determination.

17. On the issue of jurisdiction, it is not correct to say that the Tribunal has omitted to give a finding even though the appellant raised such a plea in its written statement. The Tribunal considered the objection under Section 140 of the MV Act and,

by order dated 28.06.2016, overruled this objection by relying upon *United India Insurance Co. Ltd.* (supra) and *Bagavathi Prasad (dead) and Ors.* (supra). The Tribunal has held that both these decisions clearly lay down that a claim for compensation on account of the accident arising from the use of a motor vehicle would lie against a joint tortfeasor connected with the accident.

18. In the case of *Anitha and Ors.* (supra) the claim was instituted for the death of the claimant's husband, who was riding a Kinetic Honda and was thrown off the road due to an unguarded manhole in the middle of the road with no precautionary signs warning of danger. The Bangalore Water Supply and Sewerage Board (BWSSB) and the Bangalore Mahanagara Palike (BMP) were held liable for the death of the claimant's husband under such circumstances. The specific objection about Tribunal not having jurisdiction to entertain the claim was rejected, relying upon *United India Insurance Co. Ltd.* (supra), *Bagavathi Prasad (dead), and Ors.* (supra).

19. The above decisions of the Karnataka High Court and the Hon'ble Supreme Court answer the objection based on jurisdiction now raised by Ms Pereira. Based upon the said decision and the phraseology employed in Section 165 of the MV Act, 1988, the objection to the Tribunal's jurisdiction will have to

be rejected. This is welfare legislation, and even assuming any ambiguity did exist, the same would have to be resolved by retaining the jurisdiction of the Tribunal rather than ousting the same. In the present case, there is no dispute about Rajesh riding a scooter and falling off the scooter after he hit the raised lid of the manhole. There is ample evidence on record about the location and the negligent position of the manhole and its cover. Additionally, there is evidence that there were no precautionary or danger signs to warn the commuters.

20. The contention about completing the works on 28.01.2014 does not inspire confidence and, in any case, does not exonerate the appellant from their liability. Based on such certificates issued by respondent no.3 or the consultant – respondent no.4, the appellant could have, at the highest, contended that respondent no.3 was responsible for paying the compensation amount. However, the appellant does not claim that respondent no.3 was responsible for maintaining the manholes or their lids post-28.01.2014.

21. The certificate issued by respondent no.3 also refers to the successful completion of works between Mh No.3361 to 3363, located near Cine Vishant Theatre. However, there is no clear

evidence about the manhole due to which the claimants' son died falling within the range indicated in the certificate.

22. Mr Lopes pointed out that if the work was indeed concerning this particular manhole and further if the same was completed on 28.01.2014, it is somewhat surprising that certificates of completion were obtained after more than two years, that is, on 10.08.2016 and 11.08.2016. Furthermore, the Claim Petition was admittedly filed in the year 2015. The Appellant did not summon any witnesses from Respondent no. 3 to depose to completing works, maintenance liability, defect liability etc. All these reasons are sufficient to discard the evidence based on such certificates.

23. The evidence of Mukesh Ranjan Verma on behalf of the appellant is hardly relevant because this witness was not present at the time of the accident. Despite not being present, Mr Mukesh Ranjan Verma has denied the facts pleaded by the claimants, which is somewhat surprising. This witness has made a bald statement about the appellant having taken all precautionary measures while carrying out the sewerage works in the Margao constituency. This is a vague statement having no correlation with the particular manhole where the accident took place.

24. In this case, Vishwajit Chodankar (AW3), PSI from Margao Town Police Station, has deposed to the panchanama, sketch and other investigations undertaken by him. He deposed that the investigations revealed that there were no precautionary sign boards put where the sewerage work was going on. He stated that the appellant carried out this work. He admitted that he deposed based on the records.

25. The claimants have examined Jaganath Gurav (AW2), an eyewitness to the accident. This witness clearly deposed about the genesis of the accident and how the sewerage manhole above the road surface was kept in a dangerous position. He deposed how no signboard or barricade was used to safeguard the construction site. No dent was made in the cross-examination of this witness.

26. The circumstance about the two employees of the appellant being acquitted in a criminal prosecution is hardly relevant. The standard of proof in a criminal trial is that of proof beyond a reasonable doubt. In contrast, the proceedings before the Tribunal require proof by way of a preponderance of probability only. So that apart, if the acquittal order handed in by Ms Pereira is perused, it is apparent that the Magistrate only extended the benefit of the doubt to the appellant's employees.

27. The fact that neutral investigating agencies like the police deemed it appropriate to file a charge sheet against the appellant's employees, coupled with the evidence of the eyewitness is sufficient to hold that the accident occurred due to the appellant's negligence.

28. On the aspect of the quantum of compensation, there is evidence about the deceased being a contemnor. However, merely because the pleadings stated that Rajesh was employed as a conductor before the accident and not on the accident date, no inference can be drawn about his being unemployed on the accident date. This is not a reasonable manner of reading or construing pleadings. All the pleadings say or mean that the victim was employed as a conductor just before he died in the accident. If at all the Appellants felt there was any ambiguity, proper questions could have been posed during cross-examination. But, there was no real ambiguity. More so, a Claim Petition seeking compensation can never be read or construed in such a pedantic manner.

29. The Tribunal has awarded compensation relying only upon the notification under the Minimum Wages Act on the ground that the claimants did not examine Rajesh's employer. Mr Lopes, learned Counsel for the claimants, raised no grievance on this

score. Accordingly, the compensation has been determined and assessed following the law laid down in *National Insurance Company Ltd. V/s. Pranay Sethi and Ors. - (2017) 16 SCC 680*.

30. For all the above reasons, this appeal fails and is hereby dismissed. The appellant shall pay costs of ₹25,000/- to the claimants in addition to the costs already awarded by the Tribunal in the impugned order. The directions about investment will no longer operate now that three years have already elapsed. Besides, Mr Lopes pointed out that Rajesh's father is already 75 years old.

31. The claimants are now permitted to withdraw the compensation amount deposited by the appellant and interest, if any, that shall have accrued on the amount. For this, the claimants will have to produce identification and bank details. The Registry to ensure that the amounts are directly transferred into the claimants' bank accounts.

32. The appellant to deposit the costs within four weeks from today after giving due intimation to the learned Counsel for the claimants.

M. S. SONAK, J.

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