

Santosh

**IN THE HIGH COURT OF BOMBAY AT GOA
FIRST APPEAL NO.16 OF 2016**

Chandrakant G. Naik,
s/o. Late Gangaram Naik, about 67
years of age, businessman, r/o. H.No.B-
18, Assolna, Salcete, Goa. ... Appellants.

Versus.

1. Mr. Shaikh Imam,
S/o Saliya Mohammed Shaikh,
about 35 years of age,
r/o Flat No, FF 1, Angel Housing Co-
Operative Society, Behind Lake Plaza,
Fatorda, Margao — Goa.
2. Mrs. Edlin Colaco ,
w/o late Samson Colaco, major in age,
r/o H.No.219, Khareband, Margao —
Goa.
3. The SBI General Insurance Co.Ltd;
2nd floor, Myles High Corporate Hub,
201 EDC Complex, Patto, Panaji-Goa.Respondents.

Mr. Vinayak Gurudas Pai, Advocate for the Appellant.

**Ms. Maria Rosette Pereira, Advocate for Respondents No.1
and 2.**

Ms Megha Y. Salkar, Advocate for Respondent No.3.

CORAM : M. S. SONAK, J.
DATE : 29th September 2022

ORAL JUDGMENT: -

- 1.** Heard Mr Pai for the Appellant; Ms Rosette Pereira for Respondents No.1 and 2; Ms Salkar for Respondent No.3.
- 2.** The Appellant -Claimant challenges the Judgment and Award dated 21st September 2015, made by the Motor Accident Claims Tribunal, at Margao (Tribunal), dismissing his Claim Petition No.40/2013.
- 3.** The Tribunal has held that the Claimant failed to prove that the accident was caused due to the rashness and negligence of Respondent No.2, i.e. the driver of the Indigo Manza car bearing registration No.GA-08-F-6369. Upon recording this finding, the Tribunal did not even bother to compute the compensation to which the Claimant would have otherwise been entitled. This approach of the Tribunal is contrary to the law laid down by the Hon'ble Supreme Court in *Agricultural Produce Marketing Committee, Bangalore vs State of Karnataka and ors.*¹ In this case, the Hon'ble Supreme Court has referred to its earlier

1. 2022 SCC OnLine SC 342.

decisions that the Courts/Tribunal must decide all issues together and avoid shortcuts.

4. In *Bimlesh & Ors. vs New India Assurance Co. Ltd.*,² the Hon'ble Supreme Court has stated that Claims Tribunal is required to dispose of all issues one way or the other in one go while deciding the claim petition. Therefore, even after holding that the issue of rashness and negligence is not proven, the Tribunal should not shirk deciding on other issues, including the quantum of compensation. Thus, it is clear that the approach of the Tribunal in this matter in not deciding the issue of quantum of compensation, is contrary to the law laid down by the Hon'ble Supreme Court.

5. Even on the issue of rashness and negligence, the approach of the Tribunal is in direct conflict with the law laid down by the Hon'ble Supreme Court in the case of *Anita Sharma & Ors. vs New India Assurance Co. Ltd. & Anr.*³ In the present case, the Claimant, apart from examining himself, had examined two eyewitnesses, AW.2 and AW.4. The evidence of the Claimant and these two eyewitnesses was quite clear and convincing, considering that the issue of rashness and negligence had to be

2. (2010) 8 SCC 591

3. (2021) 1 SCC 171.

established on the touchstone of preponderance of probabilities only.

6. However, the Tribunal has rejected the evidence of the two eyewitnesses on the specious plea that there were no precise pleadings about the exact manner in which the accident occurred. In this case, the car driver, i.e. Respondent No.1, did not step into the witness box. Consequently, no witnesses were examined on behalf of the Respondents about the genesis of the accident. Yet, on this specious plea that there were no precise pleadings, the Tribunal chose to reject the Claimant's case and held that the rashness and negligence were not proved. As noted earlier, this approach was contrary to the law laid down in *Anita Sharma* (supra).

7. The car driver-Respondent No.1, has filed a written statement in which he denied the car's involvement. In the written statement, the car driver denied practically everything. The written statement, duly verified at least *prima facie*, amounts to perjury. Almost every pleading in the claim statement has been denied without any sense of responsibility. After all this, Respondent No.1 failed to enter the witness box. The Tribunal, instead of drawing an adverse inference against the car driver, has held that the issue of rashness and negligence was not proved

simply because there were no precise pleadings in the claim petition.

8. In *Anita Sharma* (supra), the Hon'ble Supreme Court noted that the owner-cum-driver denied the responsibility for the accident through his written statement but chose not to enter the witness box in his defence. In such circumstances, the Court held that the Tribunal was duty bound to draw an adverse inference. The Court also held that the approach of the High Court was not sensitive enough to appreciate the turn of events on the spot or the Appellant's hardship in tracing witnesses and collecting information for an accident.

9. The Court held that in the MACT claim cases, the strict principles of evidence and standards of proof, like in a criminal trial, are inapplicable. The test is a preponderance of probabilities rather than proof beyond a reasonable doubt. The Court held that one needs to be mindful that the approach and role of Courts 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, the Courts should only to analyse the material placed on record by the parties to ascertain whether the Claimant's version is more likely than not true.

10. The Court held that strict rules of pleadings and proof do not apply in such matters. In this case, the Claimant had pleaded about the genesis of the accident. Merely because he may not have pleaded about the precise nature of the accident, the evidence of the two eyewitnesses could not have been rejected. As noted earlier, the Tribunal's approach is contrary to several judgments that hold that the proceedings before the Tribunal are summary in nature and that strict rules of pleadings and proof do not apply to such proceedings.

11. The contention based upon the panchanama and the sketch inspires no confidence. Based on the panchanama, it cannot be held that the Claimant failed to prove the issue of negligence. The evidence on record, by applying the touchstone of preponderance of probabilities, is sufficient to hold that the accident occurred due to the rashness and negligence of the car driver. The car, in this case, was a weighty vehicle; therefore, it was the duty of the car driver to take proper care and precaution. For all these reasons, the finding about rashness and negligence is hereby reversed.

12. On compensation, the Claimant can be awarded a consolidated amount of ₹1,00,000/- towards loss of income and business when he was availing treatment. The medical evidence

concerns a compound fracture to the right leg and a disability of 5%. The Claimant was a 67 years old shopkeeper; therefore, the functional disability can be taken as between 5% to 10%. Furthermore, in the Claim Petition, the Claimant had claimed ₹90,000/- for loss of income due to this treatment of six months. Considering all these aspects, compensation of ₹1,00,000/- can be awarded to the Claimant towards loss of income and loss of business during the period of treatment.

13. The Claimant has examined AW.5 and AW.6 on behalf of the hospital and Pharmacy to prove the medical expenses to Rs.1,09,196/-. The Claimant had to be admitted to the hospital for 17 days. During that period, he underwent surgery, which involved an implant. Considering the oral and documentary evidence on record, compensation of ₹1,10,000/- can be awarded towards medical expenses, medicines, etc.

14. Regarding transportation and attendant charges, no evidence as such is produced. However, the Claimant has stated that his wife and children attended him; therefore, compensation of ₹25,000/- should be granted towards attendant charges and transportation ₹20,000/-. Considering the evidence on record, a consolidated amount of ₹30,000/- can be awarded to the Claimant towards attendant charges and transportation.

15. Towards pain and suffering, the Claimant has claimed ₹20,000/-and. This amount can certainly be awarded to the Claimant. However, towards future medical expenses, there is no evidence. But, compensation of ₹20,000 can be awarded to the Claimant considering the implant and his age.

16. Thus, the Claimant can be awarded total compensation of ₹2,80,000/-. The accident, in this case, took place in the year 2012. Therefore, interest at the rate of 8% per annum can be awarded to the Claimant.

17. This Appeal is allowed. The Claimant is held entitled to compensation of ₹2,80,000/-, with interest at the rate of 8% per annum from the date of claim petition till the effective payment.

18. The Respondents are jointly and severally directed to pay the above compensation and interest. In particular, Respondent No.3 is directed to deposit the above amount in this Court within 8 (eight) weeks from today, after giving due intimation to the learned Counsel for the Claimant.

19. Upon deposit, the Claimant is permitted to withdraw this amount after providing proper identification documents and bank details. The Registry to ensure that the amount is directly deposited into the Claimant's bank account.

20. The Appeal is allowed in the above terms. Accordingly, there shall be no order for costs.

M. S. SONAK, J.

SANTOSH S
MHAMAL

Digitally signed by
SANTOSH S MHAMAL
Date: 2022.09.30 10:59:30
+05'30'