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**IN THE HIGH COURT OF BOMBAY AT GOA**

**FIRST APPEAL NO.28 OF 2021**

1. Smt. Kamla Tippanna Suldal  
wife of late Tippanna Yellappa Suldal,  
aged 34 years, widow, housewife  
resident of House No. 155,  
Gandhinagar, Collem,  
Taluka Dharbandora Goa.

2. Miss Umashree Tippanna Suldal  
daughter of late Tippanna Yellappa  
Suldal, aged 17 years, student,  
resident of House No.155, Gandhinagar,  
Collem, Taluka Dharbandora Goa.

3. Miss Priya Tippanna Suldal  
daughter of late Tippanna Yellappa  
Suldal, aged 15 years, student,  
resident of House No.155,  
Gandhinagar, Collem,  
Taluka Dharbandora, Goa.

4. Master Harish Tippanna Suldal  
son of late Tippanna Yellappa Suldal  
aged 11 years, student, resident of House  
No.155, Gandhinagar, Collem Taluka  
Dharbandora, Goa. The Appellants at Sr.  
No.2,3,4 are minors and represented by  
their Natural Guardian-mother  
-the Appellant No.1.

....Petitioners

***Versus***

1. Mr. Nilesh Dhulo Jangli,  
Son of Dhulo Jangli, aged about 27 years,  
occupation driver, resident of House

No.234/1, Satpal Gawli wada, Mollem,  
Taluka Dharbandora Goa.  
(Driver of Tipper Truck bearing No.GA-  
09-U-5096).

2. Mr. Zilu Dhondu Gavli,  
Son of Dhondu Gavli  
aged about 58 years, married, Indian  
National, resident of House No. 237/1,  
Gawliwada, Mollem, Taluka  
Dharbandora Goa.  
(Owner of Tipper Truck bearing  
No.GA-09-U-5096).

3. United India Insurance Company  
Limited, Having office at Salgaonkar  
Chambers, South Goa, Margao (Insurer). ....Respondents

**Mr S.S. Kakodkar, Advocate for the Petitioners.**

**Mr A.R.S. Netravalkar, Advocate for Respondent No.3.**

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

**DATE : 2<sup>nd</sup> MARCH 2023**

**ORAL JUDGMENT :**

**1.** Heard Mr S.S. Kakodkar for the appellants (claimants) and Mr A.R.S. Netravalkar for respondent no.3 (Insurance Company).

**2.** The appellants challenge the judgment and award dated 08.03.2021 made by the Motor Accident Claims Tribunal (Tribunal) dismissing their Claim Petition No.72/2018 on the ground that the appellants failed to prove that the accident in which Tippanna died on

18.03.2017 was on account of rashness and negligence of respondent no.1 – Nilesh Jangli, the driver of Tipper Truck bearing registration no.GA-09-U-5096.

3. The Tribunal, after holding that the claimants failed to establish the truck driver's negligence, did not bother to answer the issue of the quantification of the compensation.

4. The approach of the Tribunal in not deciding all the issues which arise before it is contrary to the law laid down by the Hon'ble Supreme Court in *Agricultural Produce Marketing Committee, Bangalore V/s. State of Karnataka*<sup>1</sup> and *Bimlesh & Ors. V/s. New India Assurance Company Ltd.*<sup>2</sup>. The Court has held that Tribunals must answer all the issues which arise in the Claim Petition and not resort to shortcuts.

5. Accordingly, in this appeal, the following points arise for determination:

- (a) Was the Tribunal justified in answering rashness and negligence against the appellants?
- (b) If rashness and negligence of the truck driver are proved, what would be the just compensation awardable to the appellants?

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1 2022 SCC OnLine SC 342

2 (2010) 8 SCC 591

6. Regarding rashness and negligence, the approach of the Tribunal 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.*<sup>3</sup>, *Anita Sharma & Ors. V/s. New India Assurance Company Limited & Anr.*<sup>4</sup>, *Parmeshwari V/s. Amir Chand & Ors.*<sup>5</sup>, *Mangla Ram V/s. Oriental Insurance Company Ltd. & Ors.*<sup>6</sup> and *Dulcina Fernandes & Ors. V/s. Joaquim Xavier Cruz & Anr.*<sup>7</sup>.

7. In all the cases above, the Hon'ble Supreme Court had 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 Courts/Tribunals must be mindful 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.

8. The Courts/Tribunals have to be mindful that the approach and role of Courts/Tribunals while examining evidence in accident claim

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3 (2020) 13 SCC 486

4 (2021) 1 SCC 171

5 (2011) 11 SCC 635

6 (2018) 5 SCC 656

7 (2013) 10 SCC 646

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. 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 for the claimants. The Courts/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. The legal effect of the failure to cross-examine crucial witnesses on crucial issues must be considered by the Courts/Tribunals.

9. 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 which is followed in criminal cases.

**10.** 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. The Hon'ble Supreme Court noted that apart from this bald assertion, no evidence was produced by the respondents before the Tribunal to prove this point. 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.

**11.** 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 High Court found the FIR and the charge sheet were deficient.

**12.** The Hon'ble Supreme 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. 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.

**13.** Mr Netravalkar, however, relied upon *Narayan Kalangutkar and Anr. V/s. Shabir Yasin Mirban & Ors.*<sup>8</sup> and *Minu B. Mehta & Anr. V/s. Balkrishna Ramchandra Nayan & Anr.*<sup>9</sup> to submit that proof of negligence is a sine qua non without which the issue of award of compensation cannot be considered.

**14.** *Minu B. Mehta* (supra) undoubtedly holds that proof of negligence is necessary before compensation can be awarded. *Narayan Kalangutkar* (supra) also holds that negligence must be established, without which there is no question of award of compensation. However, with respect, *Narayan Kalangutkar* (supra) did not have the

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<sup>8</sup> 2013 ACJ 1099 (Bom.)

<sup>9</sup> AIR 1977 SC 1248

benefit of most of the decisions referred to in paragraph 6 of this judgment and order. The approach in *Narayan Kalangutkar* (supra) does not align with the approach to be adopted in such matters as laid down by the Hon'ble Supreme Court in the decisions referred to in paragraph 6 of this judgment and order.

**15.** In this case, the appellants examined Manohar Patil (AW2), ASI attached to the Collem Police Station on the issue of rashness and negligence. This witness produced on record documentary evidence in the form of FIR, statements of witnesses, panchanama and the sketch of the accident scene. This witness deposed about the drawing of the panchanama and the sketch of the accident scene. In addition, he deposed to the recording of statements of some of the eyewitnesses to the accident.

**16.** Tippanna's widow also deposed in the matter. Still, she admitted that she was not at the site of the accident and, therefore, her knowledge about the accident was derived from the information supplied to her by the police officials. Her evidence is, therefore not quite relevant as was correctly submitted by Mr Netravalkar, the learned Counsel for the Insurance Company.

**17.** The truck driver Nilesh Jangli also deposed in the matter. He deposed that his truck was parked near the electricity pole, and after receiving a trip token, he started the truck and took a right turn by

giving a signal to go to the main NH 4A road towards Ponda side. He deposed that the deceased, who was driving a motorcycle, came in a rash and negligent manner and dashed the truck while trying to take a shortcut to reach the parking slot where the other trucks were parked. He maintained that he was driving the truck at a slow speed. He also deposed about how he was acquitted in a criminal prosecution launched by the State for rash and negligent driving.

**18.** Nilesh Jangli, in his cross-examination, admitted that police had filed a complaint against him because he was driving the vehicle rashly and negligently. He admitted that he did not file any complaint before higher authorities against the police who had filed such a complaint against him. He denied the suggestion of rashness and negligence on his part. Mr Netravalkar submitted that even the truck driver has deposed that the motorcycle "gave dash" to the truck. He offered that this was the finding recorded by the JMFC as well.

**19.** Mr Netravalkar heavily relied upon Nilesh's acquittal by the JMFC in Criminal Case no.52/S/2017 vide judgment and order dated 28.03.2018. It is well settled that such acquittal in a criminal case is not very relevant for determining the issue of rashness and negligence before the Tribunal. In a criminal prosecution, the State has to establish the guilt beyond a reasonable doubt. In proceedings before the Tribunal under the MV Act, the issue of negligence has to be based on the touchstone of preponderance of probabilities.

**20.** Besides, if the acquittal judgment and order is perused, the JMFC has commented upon the non-production of proper eyewitnesses by the prosecution. The JMFC, in paragraph 17, has observed that there was no evidence on record, especially that of any eyewitness, to show that the truck dashed the motorcycle. The JMFC has observed that the Courts have to follow an adversarial system, and the accused is innocent until proven guilty, and he has to be given the benefit of the doubt. Applying these tests, the JMFC concluded that no case was made to convict Nilesh Jangli. Based upon such findings, which may be appropriate in a criminal case, it cannot be said that the appellants did not prove rashness and negligence before the Tribunal.

**21.** First, the Tribunal erred in not following the approach in the decisions referred to in paragraph 6 of this judgment and order. Secondly, the Tribunal failed to note that neutral investigating agencies had deemed it appropriate to file an FIR against the truck driver Nilesh Jangli. Nilesh Jangli did not challenge such FIR or even complain against the IO, who filed such FIR alleging that false FIR had been filed. Third, from the perusal of the panchanama and the sketch, it does not appear on the preponderance of probabilities that the truck driver, upon receiving the trip token without any adequate precaution, took a turn to get to the highway. As a result, Tippanna dashed against the truck. Mr Kakodkar referred to Road Regulations and tried to urge that the truck was wrongly parked. Even if this

aspect is not considered, the evidence on record establishes that no adequate precautions were taken while turning, causing the accident.

**22.** The Tribunal has commented upon the absence of any damage to the truck while admitting sufficient damage to the motorcycle. From this, the Tribunal concluded that the truck was not negligent and, instead, the motorcycle rider Tippanna was responsible for the accident. Such an approach is improper. The truck is a much heavier and larger vehicle as compared to a motorcycle. Therefore, it is obvious that the damages to the motorcycle would be considerably greater. Besides, Manohar Patil, ASI deposed of the damages to the truck, which evidence was not considered by the Tribunal.

**23.** There is no evidence of any mechanical indicators used by the truck driver. The truck driver Nilesh Jangli deposed that he had shown a signal before turning. Such self-serving evidence can hardly be the basis to exonerate the truck driver even from civil liability. The duty of care owed by the truck driver was much more significant than Tippanna's.

**24.** The evidence on record, at least by a preponderance of probabilities, establishes that Nilesh abruptly turned the truck without adequate indication to the commuters on the road. As a result, Tippanna, riding the motorcycle, had no option but to dash into the truck. Therefore, even if Mr Netravalkar's interpretation is to be

accepted, the same does not exonerate Nilesh from the charge of rashness and negligence, particularly when construed from the context of the preponderance of probabilities.

**25.** For all the above reasons, the finding about rashness and negligence recorded by the Tribunal is hereby reversed. The first point for determination is answered accordingly by holding that the truck driver was rash and negligent.

**26.** On the second point of determination, i.e. the quantum of compensation, Mr Netravalkar is justified in submitting that there was no proper evidence about the deceased earning an income of ₹20,000/- per month as a truck driver. He offered that not much credence can be given to the evidence of Mr Vikas Khandeparkar, the alleged employer of Tippanna.

**27.** Mr Khandeparkar deposed, having engaged Tippanna as a Tata Tipper truck driver between 15.05.2014 and 22.12.2016. However, in this case, the accident admittedly occurred on 18.03.2017. Mr Khandeparkar did not produce ownership documents of the Tata Tipper truck but claimed that the truck was already sold. He did not produce any register under the Shops and Establishment Act. He produced no evidence about recording Tippanna's name in the

Inspectorate of Labour. He claimed payment of ₹20,000/- per month in cash. He clarified that the monthly salary was ₹17,000/- and ₹3,000/- would be paid as batta charges. All this evidence does not inspire much confidence on the issue of monthly salary.

**28.** Tippanna's widow has also deposed in this matter. She deposed that her husband Tippanna was working for Vikas Khandeparkar and earning a salary of ₹20,000/- per month, including batta charges. Even though the evidence on the monthly salary is inadequate, based on the evidence on record, the fact that Tippanna was working as a truck driver for Vikas Khandeparkar appears probable. This was deposed to by Tippanna's widow Kamla and even Vikas Khandeparkar, who stepped into the witness box and deposed on this aspect. No considerable dent was made in this aspect during the cross-examination. Mere denials are not sufficient to discredit the witnesses.

**29.** Therefore, the factum of employment can be proved by applying the preponderance of probabilities test. However, the quantum of monthly salary as deposed to by the two witnesses cannot be taken as proved. Therefore, some amount of guesswork would be necessary. Mr Netravalkar relied upon *Rani & Ors. V/s. National Insurance Company Ltd. & Ors. - Civil Appeal No.9078-9079/2017*, in which the Hon'ble Supreme Court, in the absence of proper evidence about the monthly income of a driver, accepted the notional income at ₹5,000/- per month. This was in respect of an

accident which occurred on 17.03.2009. In the present case, the accident occurred on 18.03.2017.

**30.** I believe Tippanna's notional income in 2017 can be safely taken at ₹10,000/- per month, corresponding to ₹300/- per day, including batta charges. There was no specific cross-examination about Tippanna not being employed as a Tata Tipper Truck driver. Moreover, his employer and his widow deposed to this aspect. Accordingly, in 2017, it would not be unreasonable to hold that Tippanna was earning at least ₹10,000/- per month.

**31.** Tippanna was 38 years old at the time of his demise in the vehicular accident. Therefore, applying the law in *Sarla Verma V/s. Delhi Transport Corporation & Anr.*<sup>10</sup> and *National Insurance Company Limited V/s. Pranay Sethi & Ors.*<sup>11</sup> the appropriate multiplier would be 15. Besides, 40% will have to be added to his monthly income towards future prospects. 25% of the amount would have to be deducted towards personal expenses that Tippanna would have incurred. The compensation towards dependency would therefore come to ₹18,90,000/-.

**32.** To the above amount, compensation of ₹16,500/- will have to be added towards the loss of estate and another ₹16,500/- towards

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**10** (2009) 6 SCC 121

**11** (2017) 16 SCC 680

funeral expenses. Therefore, each appellant would be entitled to compensation towards the loss of consortium at the rate of ₹44,000/-. Thus, the total compensation towards the consortium must be computed at ₹1,76,000/-.

**33.** Thus, the total compensation can be computed at ₹20,99,000/- which can be rounded off to ₹21.00 lakhs inclusive of some nominal cost of ₹1,000/- to facilitate the rounding up of the compensation amount along with interest at the rate of 6% per annum from the date of Claim Petition till effective payment. The second point for determination is answered accordingly.

**34.** Incidentally, in this case, as was pointed out by Mr Kakodkar, the Insurance Company had nowhere applied for and secured any leave under Section 170 of the MV Act. Despite the same, Mr Netravalkar was heard on the issue of rashness, negligence, and the quantum of compensation. After hearing him and considering his submissions, I am satisfied that the appellants have established rashness and negligence on Nilesh's part by applying the touchstone of preponderance of probabilities.

**35.** The respondents are jointly and severally directed to deposit the above compensation amount in this Court within eight weeks from today. In particular, respondent no.3 – Insurance Company must

deposit this amount within eight weeks from today after giving due intimation to the learned Counsel for the appellants.

**36.** Once the amount is deposited, the appellants are directed to withdraw the same after payment of the court fee. The Registry to ensure that court fee is recovered before any deposits are permitted to be withdrawn.

**37.** The Registry to further ensure that the appellants provide identification and bank details and that the amounts are transferred directly into the appellants' bank accounts through proper bank channels.

**38.** The appeal is disposed of in the above terms without any order for costs.

**M. S. SONAK, J.**

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