

Amrut

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.33 OF 2022

1 M/s. Kadamba Transport Corporation
Ltd. through its Managing Director
Mr Venancio Furtado,
major, married, service,
resident of Porvorim Goa.

2 The Managing Director,
M/s. Kadamba Transport Corporation
Ltd., Office at Paraiso De Goa,
Porvorim Bardez Goa.

... Appellants

Versus

1 Smt. Mukta Kanchan,
W/o Late Satish Kanchan,
Aged 33 years, housewife,

2 Miss Trisha Satish Kanchan
d/o late Satish Kanchan,
minor aged 13 years, student,
represented by natural guardian
mother Smt. Mukta Kanchan,
both e/o C/o Rama Naik, H.No.
200 B, Opp Bharat Gas Godown,
Assoy Chicalim, Vasco da Gama,
Goa, Pin 403 711.

3 Shri Prakash Harmalkar,
S/o Shri Narayan Harmalkar,
Aged 60 years, driver,
r/o C/o Lahu Lohar, H.No. 1170/1,
Valavne, Thivim. (Deleted as per order
dated 25.11.2022)

... Respondents

Mr. Ajit R. Kantak and Mr. R. Kantak, Advocates for the Appellants.

CORAM: M. S. SONAK, J.

DATED : 19th JANUARY 2023

ORAL JUDGMENT

1. Heard Mr A. R. Kantak, learned counsel for the Appellants. The Respondents, though served, neither present nor represented.
2. The challenge in this appeal is to the judgment and award dated 26.06.2019 made by the Motor Accident Claims Tribunal, Margao, in Claim Petition No.154/2015, awarding Respondent Nos. 1 and 2 (claimants) the compensation of ₹19,20,000/- with interest at the rate of 9% per annum for the death of Satish Kanchan, husband/father of the claimants.
3. Mr Kantak, learned counsel for the Appellants – Kadamba Transport Corporation Ltd. (KTC), submits that the evidence on record does not support the finding of rashness and negligence. Without prejudice, he submits that this is a case of contributory negligence, and the tribunal has not adequately considered this aspect.
4. Mr Kantak submits that the theory of the KTC bus trying to overtake the car was never pleaded in the claim statement.

Accordingly, he proposes that the tribunal could have considered no amount on evidence which is not backed by pleadings.

5. Mr Kantak submits that the sketch accompanying the panchanama establishes a case of contributory negligence at the highest. He presents that if the accident took place as deposed to by the claimants' witness, the motorcycle Satish was riding would have fallen at a distance much further than what is shown in the sketch. He points out that the sketch does not show any brake marks; therefore, it is evident that the KTC bus was driven at a slow speed. Finally, he states that from the alleged point of impact, it is evident that the KTC bus was in its own lane. Based on all these factors, Mr Kantak submits that the finding about rashness and negligence deserves reversal or at least modification by finding contributory negligence.

6. Mr Kantak submits that the tribunal has not properly appreciated the testimony of Gopal Pujari (AW2). He submits that the tribunal also did not consider the important circumstance that the KTC driver was ultimately acquitted in the criminal proceedings. Based on all this, he submits that the finding about rashness and negligence deserves to be reversed or modified by the contributory negligence finding.

7. Mr Kantak submits that there is no evidence about Satish being employed with Mohan Motors and drawing a salary of ₹13,000/- per month. He submits that Gopal Pujari (AW2), who has deposed in this matter, is Mohandas Pujari's brother. Mohandas Pujari (AW3) deposed

that Satish was his employee (welder) on a monthly salary of ₹13,000/-. However, Gopal Pujari claimed that he was working with his brother Mohandas Pujari at Mohan Motors but did not know where Satish was working. He has deposed that he had ten persons working at his workshop. Mr Kantak, therefore, submits that it is inconceivable that Gopal Pujari was unaware of the employment or status of Satish if, indeed, Satish was employed by his brother Mohandas Pujari (AW3) at Mohan motors.

8. Mr Kantak submitted that the claimants had prayed for total compensation of ₹14 lakhs. He submits that even if Satish's notional income is considered, the compensation will not exceed ₹14 lakhs. He, therefore, submitted that a suitable reduction in the compensation amount be awarded.

9. Finally, Mr Kantak submitted that this accident occurred in 2014; therefore, the interest rate of 9% per annum is excessive, and the same should be scaled down to 7% per annum.

10. On due consideration of Mr Kantak's submission and perusal of the records, the following three points arise for determination.

- (a) Whether the finding of the tribunal on the issue of rashness and negligence is correct?
- (b) Whether this was a case of contributory negligence and
- (c) Whether the compensation determined by the tribunal amounts to "just compensation"?

11. On the aspect of rashness and negligence, the record shows that a neutral investigating agency deemed it appropriate not only to record the FIR against the KTC bus driver but also to file a charge sheet alleging rashness and negligence driving resulting in Satish's death. In cross-examination, KTC bus driver Prakash Harmalkar admitted that he filed no complaint or protested against the police for lodging an FIR against him. The fact that the KTC bus driver was ultimately acquitted is hardly relevant, considering that the standard of proof in a criminal trial is that of proof beyond a reasonable doubt; instead, in the proceedings before the tribunal, the standard of proof is that of the preponderance of probability.

12. Gopal Pujari (AW2) was an eyewitness to the accident because he was riding a pillion of the same Splendor motorcycle that deceased Satish was riding. He has convincingly deposed to the genesis of the accident. He has deposed about how the KTC bus was driven rashly and negligently. He also deposed to how the KTC bus driver attempted to overtake the car at the time of the accident. Merely because no pleadings in the claim statement about this aspect of overtaking, Gopal Pujari's evidence on this aspect cannot be ignored. This aspect was deposed to by Gopal Pujari during his cross-examination by Advocate for the KTC.

13. The tribunal has also given due consideration to the KTC driver's evidence. In any case, upon independent evaluation of Gopal Pujari's (AW2's) and Prakash Harmalkar's (KTC driver's) evidence,

Gopal Pujari's version is preferable. This is because the same is corroborated by the panchanama and the sketch attached to the panchanama. The police documents show that the point of impact was near the dividing line of the road but on the right-hand side if one proceeds to Vasco. This was not really the side on which the KTC bus should have been. The sketch also shows that the KTC bus had crossed its lane during the accident. Therefore, the tribunal was entirely justified in rejecting the argument that the police had manipulated the panchanama or that the sketch was not proper. Even in this Court, the reliance is placed on the sketch, but when it comes to inconvenient parts, the contention is that the police must have erred or that the sketch is improper.

14. Therefore, upon holistic consideration of the evidence on record and the law on the subject, in *Bimla Devi & Ors. Vs Himachal Road Transport Corporation*¹ and *Dulcina Fernandes and Ors. Vs Joaquim Xavier Cruz and Anr.*², there is no reason to interfere with the finding of rashness and negligence recorded by the tribunal.

15. The evidence on record also does not suggest contributory negligence. Therefore no such contention was even attempted before the tribunal. The evidence on record establishes by the standard of preponderance of probability that the accident in which Satish died

1 (2009) 13 SCC 530

2 AIR 2014 SC 58

occurred due to rashness and negligence of the KTC bus driver without any contribution from Satish to the same.

16. Accordingly, the first two points for determination are answered against the Appellants.

17. On the issue of the quantum of compensation, although there is some slight ambiguity due to Gopal Pujari's deposition about his not being aware of where Satish was employed, the same is not sufficient to discard the clear and convincing deposition of Mohandas Pujari, Proprietor of Mohan Motors. Significantly, no questions were posed to Gopal Pujari on this aspect of ambiguity. Similarly, no related questions were posed to Mohandas. Accordingly, the tribunal was justified in relying on the evidence of Mohandas Pujari and determining that Satish was indeed employed as a welder at Mohan Motors for a salary of ₹13,000/- per month.

18. The accident took place on 09.11.2014. There is evidence about Satish being a welder i.e. skilled workman. Therefore, there was no serious challenge in this aspect. Considering this circumstance, the salary of ₹13,000/- per month in November 2014, which corresponds to an income of hardly ₹400/- per day, can scarcely be regarded as excessive or exaggerated. Therefore, the tribunal was not unjustified in taking Satish's income at ₹13,000/- per month.

19. While determining the compensation, the tribunal awarded ₹40,000/- towards consortium to Satish's widow and ₹30,000/-

towards loss of love and affection to his daughter. However, considering the law in *National Insurance Company Limited Vs. Pranay Sethi and others*³ and *Anjali and others Vs Lokendra Rathod and others*⁴, the tribunal should have awarded ₹44,000/- to the widow and minor daughters. Furthermore, the tribunal should also have awarded ₹16,500/- towards loss of estate and another ₹16,500/- towards funeral expenses considering these two decisions.

20. Thus construed, the just compensation, in this case, comes to ₹19,41,000/-. Mr Kantak is, however, justified in contending that the interest of 9% is excessive even though the accident occurred on 09.11.2014. Accordingly, the interest rate is reduced from 9% per annum to 7% per annum.

21. The fact that the claimants had claimed only ₹14 lakhs does not prevent the tribunal or this Court from awarding the just compensation, which might be higher than what was claimed by the claimants. In fact, the Hon'ble Supreme Court has held that the Court must determine and award just compensation.

22. For all the above reasons, this appeal is partly allowed by reducing the interest rate from 9% per annum to 7% per annum. However, the just compensation is now determined at ₹19,41,000/- with interest at the rate of 7% per annum from the date of the claim petition till effective payment.

³ (2017) 16 SCC 680

⁴ 2022 SCC OnLine SC 1683

23. The orders for the investment made by the tribunal are not interfered with. Therefore, the Registrar (Judicial) should act consistently with those orders and do the needful.

24. The Appellants – KTC should now compute the compensation amount in terms of this order, and the enhanced component, if any, must be deposited in this Court within eight weeks from today.

25. The Respondent Nos. 1 and 2 (claimants) will now be entitled to withdraw the amount deposited by the Appellants – KTC in this Court with interest, if any, that shall accrue on this amount. However, before permitting such withdrawal, the Registrar (Judicial) should make necessary calculations so that the claimants do not withdraw the amount above what is now determined by this judgment and order.

26. Since the claimants have not appeared in this Court, the Member Secretary of the Goa State Legal Services Authority should contact the claimants and render all possible assistance for withdrawing the compensation amount.

27. The Appellants – KTC, before depositing the enhanced component, if any, must give intimation to the Member Secretary of the Goa State Legal Services Authority so that the Member Secretary can do the needful in the matter.

28. The appeal is disposed of in the above terms. Accordingly, there shall be no order for costs.

M. S. SONAK, J.

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