

(2017) 09 BOM CK 0127
In the Bombay High Court
Case No : 148 of 2010

Mr. Sameer S. Desai, S/o. Subhash Desai

APPELLANT

Vs

Shri Jeevan Narayan Naik, & Anr.

RESPONDENT

Date of Decision : 14-09-2017

Acts Referred:

[Motor Vehicles Act, 1988](#), [Section 166](#),
[Section 166](#), [Section 140](#), [Section 140](#), [Section 110A](#), [Section 110A](#)

Citation : (2017) 09 BOM CK 0127

Hon'ble Judges : Nutan D. Sardesai

Bench : SINGLE BENCH

Advocate : V. G. P. Duple, Emerico Afonso

Final Decision : Allowed

Judgement

1. This is an appeal of the original injured claimant assailing the judgment and award dated 10/08/2010 passed by the learned Presiding Officer, MACT-II, Margao pursuant to which he had dismissed the Claim Petition giving rise to the present appeal against the original respondents. The learned MACT held against the claimant on the aspect of the rashness and negligence at the instance of the respondent no.1 and did not even quantify the quantum of compensation without prejudice thereto which he would have been entitled to had he succeeded in the petition. Be that as it may, the parties would be referred to as the claimant and the respondents for brevity's sake hereinafter.

2. The claimant had maintained the petition under Section 166 of the Motor Vehicles Act, 1988, ("Act" for short hereinafter) carving out a case that he was 27 years old, working as a Seaman/Engine Fitter, earning US dollars 1000 while working on the vessel MVSJN ORCAS. On 20/04/2006 he was proceeding from Canacona to Kindlem and on reaching at Mangan at about 14.15 hrs., the respondent no.1 came riding the motorcycle bearing registration no.GA-08/

C-9827 at a fast speed, in a rash and negligent manner from the opposite direction when suddenly a bullock jumped in front of him and in order to avoid the accident he came on the extreme right side of the road. The claimant took the motorcycle towards the middle of the road to avoid a head on collision but the respondent no.1 got nervous and gave a dash to the front tyre of his motorcycle and after the accident the position of the motorcycle was changed before the panchanama thinking that the claimant had died in the accident. He had sustained injuries, lost consciousness and was immediately shifted to the CHC Canacona, then to the Hospicio Hospital at Margao and thereafter to the Goa Medical College Hospital, Bambolim as his condition was very serious and there was no hope for his survival. He was shifted to the Apollo Victor Hospital, Margao since there was no Senior Neurosurgeon available at the Goa Medical College Hospital, Bambolim.

3. The claimant had suffered multiple injuries which were of a serious nature and therefore he was entitled to the compensation of Rs.24,00,000/- which the respondents were jointly and severally liable to pay to him. Although the respondent no.1 owner cum rider was duly served with the notice of the petition, no written statement in defence came to be filed at his instance disputing the case of the claimant as pleaded particularly on the aspect of the rashness and negligence and it was only the respondents no.2/the insurer which denied the case of the claimant on the aspect of the rashness and negligence as pleaded and which was surprisingly affirmed by the Senior Divisional Manager as being true to her knowledge, belief and information without disclosing the source of her information particularly on the aspect of the rashness and negligence. Similar was the position even after the claimant amended his petition and the same Senior Divisional Manager verified the additional written statement in defence on behalf of the insurer denying the claimant's case on the amendment and the enhanced compensation claimed by him.

4. Be that as it may, Shri V.G.P. Duple, learned Advocate for the claimant came to be heard at his instance who adverted to the panchanama vis-a-vis the plea specifically taken by the claimant in his petition and asserted that the position of the vehicle was changed subsequently to fasten the liability on the claimant. No written statement was filed in defence by the rider cum owner and it was only the insurer which had filed the written statement denying the claimant's case particularly on the rashness and negligence of the rider and instead fastening the liability on the claimant himself. The claimant had examined two witnesses in support of his case, one of them being the pillion on the motorcycle driven by the respondent no.1 and an eye witness and despite which the learned Claims Tribunal did not believe his case. He placed reliance in Royal Sundaram Alliance Insurance Co. Ltd. V/s. Ramya & Ors. [2014 1 MLJ 357], Jiju Kuruvila & Ors. V/s. Kunjamma Mohan & Ors. [2013 (4) TN MAC 44 (SC)] to substantiate his case.

5. Shri V.G.P. Duple, learned Advocate for the claimant submitted that the claimant was 27 years old, drawing a salary of US dollars 1000 per month while

working on board the vessel and that he was entitled to the compensation as claimed in the petition. He also referred to the evidence of the Neurosurgeon Dr. Netalkar who had examined the claimant as also the Disability Certificate apart from the evidence of Dr. Deepak Murthi and relied in The Divisional Controller, KSRTC V/s. Mahadeva Shetty & Anr. [2003 (5) Supreme 266], Neerupam Mohan Mathur V/s. New India Assurance Co. [2013 (14) SCC 15]. He also placed reliance in Mohan Soni V/s. Ram Avtar Tomar & Ors. [2012 (5) Bom.C.R. 842], Sheela Devi V/s. Jayanti Parshad [1994 (0) Supreme (Punj) 17301], N.K.V. Bros. (P) Ltd. V/s. M. Karumai Ammal [AIR 1980 SC 1354], Supriti Dean V/s. Pratap Steel Rolling Mills Pvt. Ltd. [(1983) 0 ACJ 533] and wrapped up his arguments pressing for the grant of the compensation.

6. Shri E. Afonso, learned Advocate for the insurer/respondents no.2 invited attention to the findings rendered by the learned MACT and submitted that he had committed no error in holding against the claimant on the aspect of the rashness and negligence. Rather, the position of the vehicle clearly belied the case of the claimant that he was not rash and negligent. He relied in Mr. Pukh Raj Bumb V/s. Mr. Jagannath Atchut Naik & Ors. [2013 (6) ALL MR 528] and submitted that a stray statement on the change of position of the vehicle did not substantiate the claimant's case on the aspect of the rashness and negligence of the respondent no.1. On the quantum, it was his case that the claimant had not proved the income nor had he proved the loss of earning capacity. No case was made out whatsoever for interference with the impugned judgment and award and therefore the appeal had to be dismissed with costs.

7. In Mahadev Shetty (supra), a plea was taken on behalf of the insurer that amongst others that the accident was an act of God and no compensation was payable. In that context, the Hon'ble Apex Court observed at para 8 that:

"8. The expression "act of God" signifies the operation of natural forces free from human intervention, such as lightening, storm etc. It may include such unexpected occurrences of nature as severe gale, snowstorms, hurricanes, cyclones, tidal waves and the like. But every unexpected wind and storm does not operate as an excuse from liability, if there is a reasonable possibility of anticipating their happening. An act of God provides no excuse unless it is so unexpected that no reasonable human foresight could be presumed to anticipate the occurrence, having regard to the conditions of time and place known to be prevailing at."

8. Sheela Devi (supra), in appeal challenged the award of the Motor Accident Claims Tribunal, Gurgaon which had dismissed the Claim Petition filed under Section 110-A of the Act on account of the death of her husband and father of the appellants no.2 to 5 in a vehicular accident and claiming compensation of Rs.40,000/-. It was their case that the accident had taken place due to the negligent and reckless driving of the taxi being driven by its driver which was owned by M/s. American Express Taxi Company, i.e. the respondent no.2. The Tribunal framed the issues on the aspect of rashness and negligence casting the

burden on the appellant and whether they were entitled to the compensation as claimed in the petition. The Tribunal decided against the appellant on the issue of rashness and negligence which was challenged on the premise that she had adduced ample evidence to prove that the accident had occurred due to the negligence of the taxi driver. Besides, the evidence of Radhey Lal and the other circumstances pointing towards the guilt of the offending vehicle driver were essentially ignored by the Tribunal.

9. In *Sheela Dev (Supra)*, Their Lordships considered the evidence and found that the claimants had examined Radhey Lal and Chander Prakash apart from the Constable Bir Singh. Radhey Lal had described the accident and from whose testimony it was found that it clearly revealed the manner in which the accident had taken place namely due to the rash and negligent driving of the taxi by its driver. What else prevailed with their Lordship was that the driver of the offending vehicle was not produced in the witness box. Had he been produced, he would have been proved the best person to admit or deny the factum of the accident and the manner in which it had taken place. The Insurance Company could not take the plea that the accident had not taken place due to the rash and negligent driving by the driver of the offending vehicle. Such a plea could only be taken by the driver, who admittedly had not been produced in the witness box and in that light and the other evidence on record set aside the finding arrived at by the Tribunal on the issue of rashness and negligence and awarded the compensation in the appellant's favour.

10. In *Ramya (supra)*, the Apex Court held from the material on record that the accident had taken place due to the rashness and negligence of the lorry driver unlike the contention on behalf of the appellant Insurance Company that it was the fault of the deceased who had gone to the wrong side of the road and dashed against the lorry. The Apex Court relied in the judgment in *Jiju Kuravila (supra)* where it was held that in the absence of any direct or corroborative evidence, no conclusion could be drawn as to whether there was negligence on the part of the driver by merely placing reliance on the accident sketch. It extracted paragraph 24 thereof which reads as below:

"24. The mere position of the vehicles after accident, as shown in a Scene Mahazar, cannot give a substantial proof as to the rash and negligent driving on the part of one or the other. When two vehicles coming from opposite directions collide, the position of the vehicles and its direction, etc. depends on number of factors like speed of vehicles, intensity of collision, reason for collision, place at which one vehicle hit the other, etc. From the scene of the accident, one may suggest or presume the manner in which the accident caused, but in the absence of any direct or corroborative evidence, no conclusion can be drawn as to whether there was negligence on the part of the driver. In absence of such direct or corroborative evidence, the Court cannot give any specific finding about negligence on the part of any individual."

and keeping the dictum laid down in the said judgment opined that

independently the Accident Sketch could not have any evidentiary value on its own, unless there was a corroborative piece of evidence.

11. In *Supriti Dean (supra)*, Eric Oliver Dean died in an accident involving his scooter and the truck in sector 7a, Faridabad giving rise to the petition at the instance of his widow, two daughters and his mother which was dismissed by the MACT, Gurgaon giving rise to the appeal before the Apex Court. It was their case that while Eric was riding the scooter, the offending truck came from behind, hit the scooter due to which he was thrown out, sustained multiple injuries and died at the spot itself. In the written statement it was pleaded that the accident had taken place entirely due to the rash and negligent driving of Eric while conceding that the truck belonged to the respondent. The truck in question was going on the main road of sectors 6 & 7 from North to South at a very low speed as it had to turn towards the right side. The rider of the scooter came rashly and negligently and hit the rear part of the truck after it had taken a turn to its right side which was immediately stopped by the driver and there was no question of any rashness and negligence on his part. The widow had produced evidence on record and the Tribunal on discussing the same came to the conclusion that the version about the manner of the accident as pleaded on behalf of the truck owner could not be accepted particularly when the truck driver was not produced in evidence and the two witnesses Binda Parshad and Shiv Narain Pandey who were alleged to be present at the time of the accident, were found to be doubtful. Ultimately, the Tribunal concluded that it was a clear case of contributory negligence for which the truck driver as well as the scooter rider were equally responsible. However, it held that the claimants were not entitled to succeed in the matter as the manner of accident sought to be proved was altogether different from what was pleaded in the petition and dismissed the petition. It was contended on their behalf that although the learned Tribunal had concluded that it was a case of contributory negligence at the instance of both the drivers, it had erred in dismissing the petition on immaterial count. Reliance was placed in *NKV Bros. (P) Ltd. V/s. M. Karumai Ammal [AIR 1980 SC 1354]* where the Hon"ble Apex Court had held that:

"accidents Tribunals must take special care to see that innocent victims do not suffer and drivers and owners do not escape liability merely because of some doubt here or some obscurity there. Save in plain cases, culpability must be inferred from the circumstances where it is fairly reasonable. The Court should not succumb to niceties, technicalities and mystic maybes."

12. *Jaswinder Kaur (supra)*, was an appeal by the claimants challenging the award passed by the 2nd Addl. Member, MACT, Indore whereby the claim application of the claimants was dismissed. Briefly it was her case that her husband was driving the truck on the fateful day when another truck came from the opposite direction in a rash and negligent manner and dashed against his truck due to which he sustained injuries and died on the spot itself. A plea was taken on behalf of the respondent no.2 that as the accident occurred due to the

rash and negligent driving of the other truck, it was not liable to pay the compensation while the insurer took a plea that the accident took place due to the fault of the deceased himself and they were not responsible to pay any compensation. The Tribunal on an appreciation of the evidence held that it was not proved that the accident occurred due to the rash and negligent driving of the oncoming truck and dismissed the petition giving rise to the appeal at the instance of the widow and the children of the deceased.

13. In *Jaswinder Kaur (supra)*, their Lordships of the Madhya Pradesh High Court found on an appreciation of the evidence led by the appellants that the oncoming truck had dashed against the truck of the deceased and besides the FIR also supported her version. The respondents had also not produced any evidence in rebuttal. It was true that no evidence of an eyewitness to the accident was available on record. In such a situation, where evidence was not available, the maxim *res ipsa loquitur* applied as the accident tells its own story. Under such circumstances, the burden shifts on the non-applicant to prove that the accident did not occur due to the rash and negligent driving of this vehicle, and the accident occurred due to the other reasons. In the facts it was found that the driver of both the vehicles had died in the accident. The appellants had not examined the Investigating Officer who had prepared the spot map of the accident. The collision of the vehicles on a public road gave an inference that the accident occurred due to the rash and negligent driving of one or both the vehicles and in the facts held both the drivers negligent in the ratio 50:50 and held that the Tribunal committed an error in dismissing the petition on the ground of non availability of the evidence.

14. In *Pukh Raj Bumb (supra)*, a Division Bench of this Court held that mere marking of the panchanama or the sketch of the scene of accident as an exhibit was not enough and the proof of execution, proof of its contents and evidential value of its document were to be looked into by the Court. The ratio in these judgments would be considered while appreciating the evidence brought on record on behalf of the appellant and the respondents, if any and a final conclusion would be drawn whether the appellant had at all established the rashness and negligence of the minibus driver or conversely whether he was completely at fault and/or that there was contributory negligence at his instance. As a necessary sequel the question which would also arise for determination was whether the claimant was entitled to a certain amount of compensation in case it was held that he had established the rashness and negligence of the minibus driver as was his case or whether he had failed to prove the aspect of the rashness and negligence of the minibus driver.

15. It would therefore be appropriate to examine the case of the claimant as pleaded and proved juxtapositioned with that of the respondents to conclude on the aspect of rashness and negligence and the claimant to compute the quantum of compensation to which the claimant would be entitled in case it is shown from the material on record that he had proved the rashness and negligence of the

respondent no.1. At the cost of repetition, the claimant had clearly set out the case that he was riding his two wheeler bearing the distinct registration no.GA-05-A-4113 and proceeding from Canacona to Kindlem on the afternoon of 20/04/2006 and that on reaching at Mangan, he noticed that the respondent no.1 had come riding the motorcycle of the stated registered number at a fast speed and in a rash and negligent manner. Suddenly a bullock had jumped in front of the respondent no.1 and in order to avoid the accident he had come to the extreme right side of the road in order to avoid a head on collision and in the meantime the claimant took his motorcycle in the middle of the road but the respondent no.1 got nervous and gave a dash to the front tyre of his motorcycle and thereafter the position of the motorcycle was changed before the panchanama thinking that the claimant had died in the accident.

16. Admittedly, the claimant had suffered serious injuries and had lost consciousness at the spot itself and therefore he could not have had any role in changing the position of the vehicles and the only person who had a vested interest to do so would be the beneficiary namely the respondent no.1 who had escaped with some minor injuries. Nonetheless, the scrutiny of the evidence would be necessary to conclude whether there was force in the claimant's case or whether he had failed to prove the rashness and negligence of the respondent no.1 who had admittedly not filed any statement in defence and the only defence came forth at the behest of the insurer denying the claimant's case on the specific plea of rashness and negligence without the said Officer having any personal knowledge about the accident which is neither here nor there.

17. The claimant had examined himself and had reiterated on oath his case on the aspect of the accident namely that he was riding the motorcycle from Canacona to Kindlem on the left side of the road as one proceeds to Sadolshem from Canacona and at a slow speed. On reaching at Mangan at about 14.20 hrs. he saw the respondent no.1 riding the motorcycle from the opposite direction at a fast speed, in a rash and negligent manner and saw that he came on the extreme right of the road i.e. to his left. He took the motorcycle slightly towards the middle of the road to avoid a head on collision. In the meantime, the respondent no.1 got nervous, lost control on his motorcycle and gave a dash on the front tyre of his motorcycle. The position of the motorcycle was changed before the panchanama thinking that he had actually sustained serious injuries and lost consciousness. He had produced the Station Diary extract, the scene of accident panchanama with the sketch, vehicle particulars amongst other documents in support of his case being mainly the medical records to which i would allude while discussing the quantum of compensation to be awarded in his favour.

18. The claimant in all fairness admitted that he had not mentioned about the sudden coming of the bullock in front of the motorcycle in his affidavit though he had made such an averment in paragraph 23 of his petition. He explained that this omission in his affidavit evidence was on account of the fact that the

accident was not on account of the bullock but due to the fast speed and rashness of the respondent no.1 alone. He could not state the distance between his motorcycle and that of the respondent no.1 after the accident since he lay unconsciousness and rightly so he would not be in a position to know what transpired post accident. He categorically denied the case put to him that he had made a false statement that the accident had occurred on account of the fast speed, rashness and negligence of the respondent no.1. There was admittedly one pillion rider on his motorcycle. Besides, the width of the tar road at the accident spot was around 3 to 3.5 mts. with no kaccha road on either side but there was a gutter by the side of the tar road on his left side. He had also seen the motorcycle of the respondent no.1 for the first time when it was at a distance of 9 to 10 mts. and with a pillion on it.

19. He maintained that the motorcycle was driven by the respondent no.1 at a fast speed though he could not specify the speed at which he was riding but he was riding his motorcycle at a speed between 32 to 40 kms. per hour. Moreover, he disclosed that one Vishwas Dessai had told him that after the accident, the position of both the motorcycles was changed before the panchanama thinking that he had died in the accident but he had not filed any complaint before the Police stating that the position of the motorcycle was changed before the panchanama. Suffice it to say that he was materially unshaken in his case that he was riding the motorcycle at a slow speed on the left side of the Canacona Kindlem road at a speed of barely 32 to 40 kms. per hour and it was the respondent no.1 who came from the opposite direction with the pillion at a fast speed, in a rash and negligent manner, came to his side of the road due to which he had taken his motorcycle slightly towards the middle of the road and that the respondent no.1 due to his nervousness had come towards the middle of the road and dashed against the front tyre of his motorcycle causing his fall and loss of consciousness.

20. The Station Diary extract drawn at 14.30 hrs. indicates that a telephonic message was received from the PCR, Margao about the accident involving two motorcycles at Mangan and three persons being injured at the spot and accordingly the Police had proceeded to the spot after registering the motor vehicle accident no.36/2006. The Scene of accident panchanama drawn by the Police shows the position of the vehicles lying post accident, with the motorcycle of the claimant and that of the respondent no.1 lying on the right side of the road as one proceeds from Canacona to Kindlem i.e. apparently the wrong side for the claimant. The panchanama reveals that no brake marks were seen at the spot of impact. There was also a record in the panchanama that the front portion of the motorcycles had been damaged and front wheels of both the motorcycles were seen in a bent position.

21. The claimant examined Vishwas Dessai as a witness in support of his case who stated that on 20/04/2006 he was proceeding from Pagi waddo to Amme, Mangan on foot with his direction being from Sadolshem to Canacona. While

walking on the road, he saw a Hero Honda motorcycle come from behind i.e. Sadolshem towards Canacona at a fast speed and give a dash to the Kinetic motorcycle coming from the opposite direction which was driven at a slow speed. The rider of the Kinetic motorcycle was unconscious while the rider and the pillion rider of the Hero Honda motorcycle were conscious and all of them were then put in an open rickshaw and were taken to the CHC Canacona. He had gone home to have a meal and when he came back, he saw the position of the motorcycles was changed and both the motorcycles were to the right side of the road when the accident had taken place more towards the left side when one proceeds from Canacona to Sadolshem.

22. Vishwas revealed that he learnt that he was told that the rider of the Kinetic motorcycle had died in the accident but whom he met after three months and told him that he had seen the accident and found the position of the motorcycles changed before the panchanama. He maintained that the accident took place due to the fault of the Hero Honda motorcycle. He maintained that while he was walking on the road from Pagi waddo to Amme, Mangan there were no other persons on the road. He saw the Hero Honda motorcycle coming from the opposite direction bearing no.9827 which was red in colour and he had seen it even prior to the accident. Besides, he knew the claimant as well as the respondent no.1 even otherwise. There were two persons on the Hero Honda motorcycle i.e. the respondent no.1 and the pillion but there was only one rider on the Kinetic motorcycle. Although he could not state the speed at which the Kinetic motorcycle was being driven, nonetheless he stated that it was driven at a slow speed which was blue in colour and bearing the no.4113. The Hero Honda motorcycle fell on the right side of the road proceeding from Sadolshem to Canacona while the Kinetic motorcycle had fallen somewhere in the middle of the road and the distance between the two was about a meter. The claimant had also fallen on the road very close to his vehicle and the respondent no.1 and his pillion had fallen nearby. He had continued on the spot for about 4 to 5 minutes and denied the suggestion to the contrary. Barring a bare suggestion that he had been tutored by the claimant to depose falsely there was not even a whisper of a suggestion to the claimant that he personally knew Vishwas Aw2 prior to the accident or that he had tutored Vishwas to say that he had seen the accident and/or that the position of the vehicles were changed but prior to the panchanama. Suffice it to say that his testimony as an eye witness inspires sufficient confidence in the case of the claimant and there is no reason to disbelieve his testimony which has withstood the test of cross-examination.

23. Prakash Aw3, the third witness examined by the claimant in support of his case stated that he was riding as a pillion on the motorcycle driven by the respondent no.1 and proceeding from Sadolshem to Canacona on the afternoon of 20/04/2006. On reaching at Mangan at about 14.15 hrs., the rider of his motorcycle i.e. the respondent no.1 gave a dash to the motorcycle coming from the opposite direction. The respondent no.1 drove his motorcycle at a fast speed and gave a dash to the motorcycle coming from the opposite direction at a slow

speed. The accident had taken place due to the fault of the respondent no.1. He had sustained injuries and was unconscious and regained consciousness in the Hospicio Hospital at Margao after the three of them were put in an open rickshaw and taken to the CHC Canacona.

24. Prakash (AW3) stated during his cross-examination that he was knowing the claimant since the time of the accident and knew the respondent no.1 by face prior to the accident. He described the width of the road at the accident spot being 3.5 mts. and with kaccha road of 1.5 cubit on either side. Besides, the road at the accident spot was a straight road and he saw the oncoming motorcycle for the first time before the accident when it was barely 5 to 7 mts. away and the claimant was alone riding his motorcycle. He was not knowing the distance between both the vehicles upon their fall after the accident as he was unconscious and also did not know at which place the claimant fell after the accident since he regained consciousness in the Hospicio Hospital, Margao. The respondents who were disputing the case of the claimant on the arrival of a bullock surprisingly put a suggestion to him that one ox came in the middle of the road in between both the motorcycles. He categorically denied the suggestion that the claimant was riding his motorcycle at a fast speed and that he dashed his motorcycle against their motorcycle. Moreover, he confirmed that at the time of the accident he had seen only one pedestrian on that road who was proceeding ahead of them by about 8 mts. when he saw him for the first time which in its own way confirms the presence of Vishwas Aw2 as a natural witness available at the accident spot.

25. Prakash Aw3 for that matter fairly conceded that he did not know the speed at which the claimant was riding his motorcycle but stated that their motorcycle was much faster as compared to the motorcycle of the claimant and denying the suggestions to the contrary. It was incumbent upon the respondents no.2 who has vehemently denied the case of the claimant to examine the rider cum owner in support of their case particularly on the aspect of rashness and negligence but they failed to examine him for no explicable reason. However, they examined HC D. Pednekar Rw1 in support of their case. HC Pednekar had registered the motor vehicle accident no.36/2006 with regard to the accident which had taken place at Mangan Canacona on 20/04/2006 based on the information received from the PCR, Margao. He had visited the scene of accident and conducted the scene of accident panchanama as well as drew the sketch. The persons injured in the accident were the claimant Sameer, the rider of the other motorcycle i.e. the respondent no.1 and the pillion Prakash Pagi who too had sustained injuries. He had received the information at about 14.30 hrs. and reached the spot within the next 20 minutes or so. One Prakash was the eye witness to the accident and whose statement he recorded as per his say. He had conducted the inquiry and recorded the statements of the injured persons who concluded that the accident was caused due to the stray cattle and for which purpose he considered it a case of pure vehicular accident. However, it was brought out during his cross-examination that some local persons were available at the spot but who went

away on seeing the Police. He had found both the motorcycles lying on the spot, but was not knowing about the cause of the accident nor had anyone told him about it. Materially it was borne out that no one had shown the actual point of impact between the vehicles. Admittedly, he had reached the spot after about 20 minutes of the receipt of the information from the PCR, Margao. Such being the position, it is surprising how he could deny the suggestion put to him that the positions of the motorcycles were changed before he reached the spot and kept by one side of the road. He also categorically denied the suggestion that Vishwas Aw2 was not the eye witness to the accident when Prakash Aw3 confirmed the presence of a pedestrian on the road walking ahead of them and whom he had seen prior to the accident while riding as a pillion on the motorcycle driven by the respondent no.1 Yet he was belligerent enough to deny the suggestion that he had not conducted a proper inquiry in the present matter or that he had treated it as a pure accident wrongly even though the accident was due to the fault of the respondent no.1.

26. Thus considering the law on the subject and the judgments earlier discussed, i hold that the appellant claimant had amply established that the accident had taken place due to the fault of the respondent no.1 and reverse the finding rendered to the contrary by the learned Tribunal. Since the learned Tribunal had not examined the case of the claimant on his entitlement assuming he had to succeed in the petition, it is an exercise which has to be undertaken by this Court to quantify the compensation to be awarded in his favour. For that purpose, it would be necessary to advert to his pleadings and the supporting evidence both on his earnings, the injuries suffered by him, the extent of the permanent disability and his entitlement on various heads accordingly. In that context the claimant had pleaded that he was 27 years old, a Seaman and a Engine Fitter working on a vessel MV ORCAS and drawing a monthly income of US dollars \$1000. He had sustained injuries to his head, face, nose, eyes, forehead and other parts of the body including fractures and was treated in Apollo Victor Hospitals, Margao, Manipal Hospital, Dona Paula, CHC Canacona, Hospicio Hospital, Margao and GMC Hospital, Bambolim. He had spent a considerable amount on medicines, transport and other miscellaneous expenses and was therefore entitled to the total compensation of Rs.24,00,000/- on the heads of medicines, travelling, loss of income, loss of future income, pain and suffering.

27. Sameer (AW1) had examined himself and reiterated his case on oath that he was working as a Seaman/Engine Fitter on MV ORCAS, managed by Paramount Shipping and Management Pvt. Ltd. at Mumbai earning a salary of US dollars 1000 translating to Rs.45,000/- per month. On account of the accident he had sustained injuries, had lost consciousness and was immediately shifted to the CHC Canacona and from there to the Hospicio Hospital, Margao. However, he was shifted to the GMC Hospital Bambolim as his condition was very serious and there was no hope for his survival. Since however he was not attended to by any senior doctor from 4 p.m. till 3.00 a.m. of the following day, his family members shifted him to the Apollo Victor Hospital, Margao in a very critical condition. He

had suffered injuries to his head in the nature of a depression with swelling, extensive comminuted depressed fracture of the frontal bone, frontal lobe contusion, right temporal extradural haematoma, cerebral oedema and fracture of the medial walls of both the orbits and injuries to the nose, face, eyes and other parts of the body. He was bleeding through the nose and oral cavity and on observation and upon scan/MRI he was found to have fracture of the roof and floor of the bilateral frontal sinuses amongst others. He was kept in the ICU of Apollo Victor Hospital in an unconsciousness condition and kept on a ventilator and thereafter on 26/04/2006 he underwent an operation and continued in the ICU for the next 12 days. He was shifted to an isolation room on 2/05/2006 and earlier he was given transfusion of blood on 1/05/2006. He was discharged on 15/05/2006 on advice for complete bed rest and to attend regular OPD and followup treatment after 15 days.

28. He revealed further that he had difficulty in breathing and there was watery discharge from the right nostril and headache for which he underwent CT Scan and thereafter he was admitted in Manipal Hospital at Donapaula on 10/08/2006. He underwent an operation on 11/08/2006 and was discharged on 14/08/2006 with advice for regular followup treatment. He had sustained permanent disability on account of the accident and the injuries and lost his IQ. He could not concentrate, had lost the power of smell and needed help from others for doing his day- to-day work. His physical efficiency was also reduced on account of the injuries sustained by him. Moreover he was suffering from pain and loss of amenities of life, frustration, disappointment and unhappiness and besides he had lost his service leaving his future in the dark. He was the only earning member of his family and due to the accident he had lost his job. He had spent an amount of Rs.3,00,000/- on his medical and hospital expenses but he had bills only in an amount of Rs.2,69,000/-. He had incurred an expenditure of Rs.20,000/- on travelling, Rs.15,000/-towards the attendant and other miscellaneous expense.

29. He was a sportsman and represented the State for the 23rd Junior Kabaddi Championship in 1996 and was given the merit certificate by the Director of Sports and Youth Affairs. He had passed his Fitter Structural Trade exam in the year 1999 through Goa Shipyard Ltd. and worked as an Apprenticeship Training in Goa Shipyard from 10/10/1996 to 10/10/1999. He had passed the Trade Test conducted by the National Council for Vocational Training held in December 1999 and was awarded the National Apprenticeship Certificate. He had done other courses including Personal Safety & Social Responsibility Course, Personal Survival Techniques, Proficiency in Elementary First Aid, Fire Prevention and Fire Fighting through the Shipping Corporation of India Ltd. Maritime Training Institute. etc. apart from other courses. He produced the medical records of Apollo Victor Hospital including the Discharge Summary and the Scan Report, the Discharge Summary of Manipal Hospital, Summary Certificate, Statement of Bills alongwith the hospital bills and receipts, the hospital bills and the bills of Manipal hospital pharmacy in support of his case. The bills alongwith the receipts towards

the consultancy fee paid to Dr. Netalkar and Dr. Murthy and other receipts towards travelling. He produced the disability certificates issued by the Apollo Victor Hospital and Manipal Hospital and the certificate issued by Dr. Netalkar certifying that he was unfit to appear for any interview or any job. His passport confirmed his voyages abroad, copy of the Continuous Discharge Certificate cum Seafarers Identity document and the other certificates of merit to substantiate his case.

30. Sameer Aw1 was unshaken that he was unconscious after the accident and did not personally know about his movement from CHC Canacona to the Hospicio Hospital Margao and then to the GMC hospital, Bambolim and had learnt about it from his wife when his condition improved with the treatment. There was also no particular rebuttal of his testimony that he had undergone surgery at the hands of Dr. Murthy from Manipal Hospital at Donapaula and Dr. Netalkar from Apollo Victor Hospital at Margao. But for the bare suggestion that he had made a false statement that he was working as a Seaman and earning US dollars 1000 per month there was no material rebuttal of his testimony on any count, be it his employment overseas, his earnings, the multiple injuries suffered by him and the treatment undertaken by him in various hospitals. The hospital records amply demonstrate that he had suffered grievous injuries and was admitted in Apollo Victor Hospital at Margao from 21/04/2006 to 13/05/2006 and underwent surgical procedures as borne out from the records.

31. He examined Vishwas Aw2 in support of his case who broadly corroborated his version that he was unconscious and lying at the spot of accident and that he had informed him sometime later that he had seen the accident. Prakash Aw3 who was the pillion rider on the motorcycle driven by the respondent no.1 and a natural witness to the accident stated that after the respondent no.1 gave a violent dash to the oncoming motorcycle of the claimant, the claimant suffered injuries and he too sustained injuries and was semi unconscious. The claimant, the rider and he were put in an open rickshaw and taken to the CHC Canacona. He was unshaken that the claimant was injured due to the accident on account of the forceful dash given by the respondent no.1 but did not shed any light on the nature and the extent of the injuries suffered by the claimant.

32. Dr. A. Netalkar Aw4, the Senior Consultant Neurosurgeon corroborated his version that he had examined him for the first time on 21/04/2006 in the Apollo Victor Hospital at Margao when he found him unconscious and on life support system. He had suffered fracture of the skull bone with injury to the frontal lobes, had blood clot outside the brain in the front area, right temporal blood clot pressing the brain, had extensive brain swelling, had fractures of all the sinuses in the face and had fracture of both the orbits which hold the eye pots. He had operated on the claimant on 26/04/2006 and was in the Intensive Care Unit for 12 days following the surgery. He duly identified the certificate issued on 24/05/2006 as also the Discharge Summary and confirmed their correctness. The claimant had attended the Outdoor Patients Department of the Apollo Victor

Hospital till 8/02/2008. His CT Scan was done as per his advice and confirmed that he had prescribed medicines for the claimant which were stated in the bills issued by the hospital according to his prescription. He duly identified the Medical Certificate dated 29/05/2006 (Exhibit 55), that dated 8/05/2007 (Exhibit 56-C) and confirmed that the brain fluid was coming out from his nose for to which he referred him to Dr. Murthy who was an ENT Surgeon in Manipal Goa Hospital at Donapaula. Both of them had operated upon the claimant and stopped fluid leaking from his nose. Dr. Netalkar A/W 4 stated that he had referred the claimant for physio therapy following surgery. The claimant had also sustained permanent disablement because of the head injury. He had examined the claimant for the assessment of the permanent disability in GMC hospital as per the order of the Court and which was signed by Dr. P. Sundaram who is the Professor and Head of Department of Neuro Surgery in GMC and which was 30%. Moreover he had issued the Permanent Disablement Certificate showing that the claimant had suffered 20% permanent disablement and that he was further examined on 7/01/2008 and found that he had developed epilepsy on 5/01/2008 and his disability had increased by 10% i.e. to the extent of 30%. He was not working on ship on account of the epilepsy though he could do any other kind of hard work. He further confirmed that he had occasion to examine the claimant in hospital on 14/05/2008 since the claimant was admitted in the hospital due to an epilepsy attack. He also ruled out the possibility of the claimant suffering from epilepsy attacks indefinitely even throughout his life. Although he was cross-examined at length, he was materially unshaken on the nature and the injury suffered by the claimant, the surgeries performed by him and Dr. Murthy and the permanent disability suffered by the claimant.

33. Dr. Deepak Murthy Aw5 stated that he had examined the claimant on 7/07/2006 in Manipal Hospital, Donapula where he was attached as a consultant ENT Surgeon. On examining the claimant, he had complained of watery discharge from the right nostril for which the claimant was admitted in the hospital in August, 2006 and underwent surgery on 11/08/2006. Watery discharge from the nostril was probably due to trauma to the head. He duly identified the details of the Medical Report, Pharmacy Bills of the same hospital and confirmed that the claimant had attended the regular OPD. Besides, he identified various bills of the hospital apart from the bills towards consultancy fees received by him and the certificate of permanent disability confirming the loss of smell. He had stated that the loss of smell could be a permanent disability but it was not assessed since there was no instrument in that regard in the Manipal Hospital at Donapaula Goa. He too was materially unshaken on the treatment given to the claimant, the surgery performed by him and the medicines prescribed by him for his treatment from time to time. As such, the claimant would be entitled to the amount in the bills both of Apollo Victor Hospital and Manipal Hospital.

34. Raghav Aw7 stated that he was working as an Administrator of Manipal hospital at Donapaula. He confirmed on the basis of record that the claimant was

treated by Dr. Murthy, had undergone surgery and had paid their bills in the amount of Rs.34,523/-, Rs.10,000/- and Rs.24,523/- and those towards the consultancy charges of the Doctors. He confirmed that Dr. Murthy was an Administrator of the hospital at the time when the claimant was admitted in the hospital and was unshaken on the various amounts paid by the claimant towards the hospital charges. Eudes Antao Aw8 stated that he was working as a Finance Controller of Apollo Victor Hospital since July 2004. He had been summoned to verify the bills in respect of the claimant. The claimant was admitted on 21/04/2006 and was discharged on 15/05/2006 and had brought alongwith him the copies of their records in respect of the bills paid by the claimant. One bill was in the amount of Rs.1,91,140/- which was entirely paid by the claimant. Besides, there was an inpatient bill of the pharmacy for an amount of Rs.19,273/- apart from another bill for an amount of Rs.6,851/- for the medicines supplied to him. The witness confirmed the readmission of the claimant in their hospital, OPD consultant receipts with Dr. Netalkar, inpatient charges during the course of his readmission and the additional pharmacy bills while confirming that the pharmacy did not issue bills without the prescription of the medicines. He too was unshaken on the admission of the claimant in the hospital and the readmission and the treatment taken from Dr. Netalkar in particular. The claimant would therefore be entitled to the amount towards the hospital charges, consultation fees and those towards the medical bills in the amount of Rs. 3,00,000/-.

35. Batish Gomes Aw9 stated that he was the owner of the taxi of the stated registered number which was driven by his driver and hired by the claimant to go to Bambolim, Appolo Victor Hospital, Margao and Manipal Hospital at Donapaula. He had issued the necessary receipts as Brendon Taxi and identified the same in Court, Exhibit 118 colly. Though cross-examined, he was materially unshaken that his taxi was hired by the claimant for taking him to and fro from the said hospitals for his follow up treatment despite his cross-examination at length. Therefore, the claimant would be entitled to the amount of Rs. 17,000 /- towards the travelling expense incurred by him for his treatment and follow up treatment from time to time in the stated hospitals.

36. Edward Aw10 stated that he was working for Paramount Shipping and Management Pvt. Ltd., and deputed by the company as a special power of attorney to represent them in these proceedings. He produced the Power of Attorney to substantiate his statement and revealed on the basis of the records that the claimant was working as an Engine Fitter on their ship who was first appointed by the First Assignment Letter dated 13/05/2005 alongwith the salary fixation duly signed by the Head of the Marine Personnel Department, Exhibit 123 colly. and stated that his salary per month was US dollars 1000 which included overtime. He also produced the salary statement of the claimant and the salary slips, Exhibit 124 colly. Besides, he identified the letters sent by the company signed by one of their Directors Mr. Dongri intimating the Court that the claimant was employed as a Fitter on short contracts on the vessels managed by

their principals and that he was associated with them up to 29/12/2005. The qualifications of a Fitter were ITI in welding, gas cutting and so on and he was having Seaman's book as well as the Indian Passport and had undergone medical examination successfully prior to joining the ship. He was last earning an amount of Rs.1,800 US dollars which was equivalent to Rs.81,000/-. The claimant had not joined the vessel after December, 2005 since he had met with an accident and was not in a position to join back despite their request to call him on board the vessel.

37. Edward Aw10 maintained that he had deposed on the basis of the records and that he had earlier never met the claimant. Moreover, he was not only the constituted attorney but working as a Fleet Personal Executive in the said company and produced his Photo Identity Card to substantiate his statement. Suffice it to say that he was materially unshaken in his testimony on the employment of the claimant on board the vessel of Paramount Shipping Company and drawing a salary of US dollars 1000 per month. He had also categorically denied the case put to him that the Salary Slips produced on record were false and fabricated and/or they were prepared only to enable the claimant to claim compensation in this petition. Based on his own rebutted testimony, the claimant had amply established that he was working on board the vessel overseas and drawing a monthly salary of US dollars 1000 translating to Rs.45,000/- per month considering the value of the dollar at the relevant time. At the same time, it cannot be overlooked that his employment was contractual and therefore his earnings were for the period of the contract which was from May to December i.e. spread over 8 months. Hence, on the basis of his earnings at US dollars 1000 per month equivalent to Rs.45,000/- per month, the conversion rate of a dollar being Rs.45/- and considering his income over a period of 8 months, he is held entitled to an amount of Rs.16,00,000/- towards the permanent disability at 30% on account of the head injury with consequent fits of epilepsy. He is awarded an amount of Rs.16,00,000/- on that count and as it had completely ruled out the prospects of doing any job on account of such head injury and the consequential seizures/epileptic fits suffered by him periodically.

38. He is held entitled to an amount of Rs.3,00,000/-towards the medical bills, hospital and consultancy charges apart from the medical equipments.He is awarded an amount of Rs.17,000/-towards the travelling, a reasonable sum of Rs.25,000/- towards the services of an attendant, and an amount of Rs.2,00,000/- towards the pain and suffering. Last but not the least, he is awarded an amount of Rs.5,00,000/- towards the loss of income taking the total tally to Rs.26,42,000/-being the just compensation in the circumstances of the case. In view thereof, having held the appellant/claimant entitled to the said amount, i pass the following : O R D E R

The appeal is allowed whereby the respondents are held jointly and severally liable to pay the compensation in the amount of Rs.26,42,000/- to the appellant/

claimant which shall carry interest @ 9%p.a. from the date of the application till date and further interest at the same rate till payment apart from the costs of the petition and the appeal. The amount, if any, paid to the appellant under Section 140 of the Act shall be adjusted against the final compensation so awarded in his favour and who shall pay the deficit Court fees on the excess amount awarded in his favour.