

(2025) 12 BOM CK 1723
In the Bombay High Court, Goa Bench
Case No : First Appeal No.1 Of 2025

National Insurance

APPELLANT

Vs

Conciecao Especiosa Mariana Fernandes

RESPONDENT

Date of Decision : 24-12-2025

Acts Referred:

Citation : (2025) 12 BOM CK 1723

Hon'ble Judges : M.S. Sonak, J

Bench : Single Bench

Advocate : Yadika Mandrekar, Milton Marshal

Final Decision : Disposed Of

Judgement

M.S. Sonak, J

1. Heard learned Counsel for the parties.
2. The Appellant Insurer challenges the Judgment and Award dated 30.01.2024 made by the Motor Accidents Claims Tribunal, North Goa at Panaji (Tribunal), awarding the Respondent Claimant compensation of Rs.1,31,98,000/- with interest @ 6% per annum from the date of filing of the Claim Petition till the deposit of the amount with the Tribunal.
3. The Claim Petition in which the impugned Award was made was filed by the 66-year-old widowed mother of Mario Bernard Fernandes (Bernard) as a result of a motor accident that took place on 17. 01.2021 on the road between Saligao to Calangute. Bernard was riding an Activa scooter when he was involved in an accident with a Toyota Qualis, insured with the Appellant Insurance Company.
4. Ms. Yadika Mandrekar, the learned Counsel for the Appellant Insurance Company, firstly submitted that the issue of rashness and negligence was incorrectly answered against the vehicle owner, and consequently, the liability was incorrectly foisted upon the vehicle owner and the Appellant Insurance Company. She submitted that the

evidence on record suggests that it was Bernard who was negligent when he came from the side road to the main road in a rash and negligent manner and dashed against the insured vehicle.

5. Ms. Yadika Mandrekar elaborated by pointing out that, though the FAR was lodged against the owner of the insured vehicle, upon investigations, the FAR was not pursued, and in fact, leave to close the proceedings was applied for and obtained from the competent Court. She submitted that, from the depositions of the Police officials, it is evident that there was no negligence on the part of the owner of the insured vehicle, and that the accident was caused solely by Bernard's rash and negligent driving of the Aactiva scooter. She submitted that Bernard was not even wearing a helmet at the time of the accident, and the Tribunal has not adequately considered this aspect. She pointed out that even this aspect indicates Bernard's negligence.

6. In the alternative, Ms. Yadika Mandrekar submitted that this was undoubtedly a case of contributory negligence with Bernard's role contributing at least to the extent of 50%. She submitted that there was evidence about speed breakers and, therefore, the contention that the insured vehicle was speeding cannot be accepted. She submitted that the insured vehicle was on the main road, and caution was expected from Bernard, who got on the main road from the side road, even without wearing a helmet. For all these reasons, she submitted that the case of contributory negligence should have been accepted.

7. Ms. Yadika Mandrekar, without further prejudice, submitted that the evidence on record pointed out that Bernard was unemployed on the date of the accident. She submitted that in these circumstances, the Tribunal erred in accepting the Claimant's case that Bernard was employed as a cook/seaman on a cruise liner and that the contract of such employment was not renewed only because of the intervening Covid pandemic. She submitted that there is no evidence of any income other than income based upon the contract, which had already expired. For this reason, she submitted that the determination of the compensation amount is wholly erroneous and exaggerated.

8. For all the above reasons, Ms. Mandrekar urged that this appeal be allowed or, in any case, the determination of compensation be suitably modified and reduced.

9. Mr Milton Marshal, learned Counsel for the Claimant, submitted that there was ample evidence of rashness and negligence on the part of the owner/driver of the insured vehicle. He submitted that the insured vehicle was a larger vehicle and greater caution was expected from its owner/driver. He submitted that the Police authorities did not pursue the FAR for reasons best known and the Tribunal has also commented upon the conduct of the Police officials in closing the matter without bothering to collect proper evidence or by ignoring the evidence which was available with them.

10. Mr. Marshal submitted that the owner of the insured vehicle, despite the opportunity, chose not to file any written statement in this matter. Therefore, the

belated plea that Bernard was not wearing a helmet was correctly not entertained. He submitted that even otherwise, there was no evidence on this aspect. He submitted that the alleged non-wearing of the helmet had nothing to do with the accident, which was caused solely due to the rashness and negligence of the owner/driver of the insured vehicle.

11. Mr. Marshal submitted that there are clear and categorical findings based upon the evidence on record about Bernard's employment and his income. Such evidence has been well appreciated by the Tribunal, and the correct principles have also been applied.

12. For all the above reasons, Mr. Marshall submitted that the Appellant has made out no case to warrant interference with the impugned Judgment and Award made by the Tribunal.

13. The rival contentions now fall for determination.

14. The first point to be considered in this case is whether the finding that the owner/driver of the insured vehicle, i.e. the Qualis, warrants any interference on the grounds urged by Ms Mandrekar?

15. In support of the Claimant's case that it was the owner/driver of the Qualis vehicle who was rash and negligent, two eyewitnesses i.e. Gabriel Fernandes (AW2) and Austin Fernandes (AW6), were examined. On perusal of their evidence, it is evident that a case of rashness and negligence on the part of the owner/driver of the Qualis vehicle has been made out. This evidence, to some extent, is corroborated by Pratiksha Arolkar (RW2), who was examined on behalf of the Insurance Company in support of its plea that the owner/driver of the insured vehicle had not acted rashly and negligently. At this stage, a case has to be made out on the touchstone of preponderance of probabilities and not beyond a reasonable doubt.

16. Gabriel Fernandes and Austin Fernandes, the eyewitnesses to the accident, have given a graphic account of the circumstances surrounding the accident. They have maintained that the Qualis car came from the Saligao side and was proceeding towards Calangute at a very high speed, in a rash and negligent manner, while trying to overtake another four-wheeler. They have deposed that the Qualis, in its bid to overtake another four-wheeler, went to the extreme right-hand side, beyond the middle line, and powerfully dashed into the Activa scooter. They deposed on how the Active scooter skidded backwards by almost 5 to 6 metres from the point of impact, and how the Qualis vehicle managed to stop after covering a distance of more than 10 to 15 metres on the extreme wrong side/lane.

17. The two eyewitnesses have deposed how they had agreed to act as pancha witnesses and finally, Gabriel Fernandes acted as a pancha and identified his signature on the Panchanama at Exhibit 19 Colly. Austin Fernandes has also deposed that there were street lights at the time of the accident and that he was

able to see the accident quite clearly.

18. The Tribunal has also considered the evidence of the witnesses produced on behalf of the Insurance Company and the owner/driver of the insured vehicle. Principal amongst these is the evidence of Pratiksha Arolkar (RW2). She accepted that there were no speed breakers on the road and also admitted that the Qualis vehicle was travelling at a fast speed at the time of the accident. The owner/driver of the insured vehicle failed to file any written statement despite the opportunity. The attempt was, therefore, to take advantage during the course of the evidence and introduce theories as would convenience the owner/driver of the Qualis vehicle and, consequently, the Insurance Company.

19. Regarding Bernard not wearing a helmet, firstly, as noted earlier, no written statement was filed by the owner/driver of the Qualis vehicle to this effect. Therefore, the statement to this effect made by RW1 cannot be accepted at face value. No eyewitness even corroborates such a statement. Hence, based upon such evidence, it would not be correct to attribute any negligence to Bernard or hold that Bernard equally contributed to the accident.

20. In fact, considering the evidence on record, i.e. the fact that the Qualis vehicle was much larger, it was being driven at great speed, and the accident occurred when the Qualis was trying to overtake another vehicle by going to the extreme wrong side of the road, the helmet, possibly, would have made no difference.

21. As regards the non-filing of a charge-sheet or securing the closure by the Police authorities, the Tribunal has discussed the issue in detail. On the deposition of the Police authorities, it is evident that no investigation, or at least a shabby one, was conducted into the matter. For reasons best known to the authorities, the criminal matter was not pursued after the FAR was duly lodged. Statements of material witnesses were not recorded. The excuse that the Police authorities were busy is hardly acceptable.

22. Therefore, given that the Police chose not to prosecute the owner/driver of the Qualis criminally, no case is made out to interfere with the finding that the owner/driver of the Qualis was indeed not rash or negligent. In any event, it is well settled that the parameters of a criminal prosecution and the civil liability are quite different. In the former, proof beyond a reasonable doubt is the test, while in the latter, a finding of rashness and negligence can be recorded even on a test of preponderance of probabilities. The Tribunal has considered the evidence on record, and there is no reason to disagree with its findings on the issue of rashness and negligence.

23. The next point to be determined is whether any case of contributory negligence was made out.

24. Based on the arguments advanced, without any written statement or a specific plea of contributory negligence, no case is made out to disturb the

findings of rashness and negligence or to convert the findings into a case of contributory negligence. Neither was such a plea specifically raised, nor is there any other material on record to sustain it. As discussed earlier, there is ample material on record to sustain the tribunal's finding that the accident was due to the rash and negligent driving by the owner/driver of the Quallis vehicle.

25. Accordingly, there is no case made out to disturb the Tribunal's finding on the aspect of rashness and negligence or to infer a case of contributory negligence.

26. The third point concerns the determination of Bernard's employment status and income at the time of the accident.

27. As regards Bernard's income, there is unimpeachable evidence that he was employed as a seaman/cook with "Star Clippers Ltd" and was earning a monthly wage of USD 1650. A Seafarer's Employment Agreement dated 10.10.2019 between Bernard and his employer was produced on record. Besides, Lancy Luis (AW3), who was examined on behalf of the Claimant, deposed that she was a Human Resource Manager with Joncia Marine Services, which was a recruiting agency for Seafarers registered with the Director General of Shipping, and their clients included Star Clippers, Franci, Star Cruises, Singapore, Dream Cruises, Malaysia, etc. She deposed that she knew Bernard, who was appointed with Star Clippers, France, as a first Cook for a monthly salary of USD 1500 and was also entitled to the Owners' Bonus of USD 150 per month. She deposed how her agency was involved in this agreement and even identified the signature of Ms. Veronica Briet on the contract produced on behalf of the Claimant. She stated that the salaries would be credited to employees' bank accounts.

28. Larissa Lemos (AW7), Asst. Manager of Bank of India, Saligao, deposed as to Bernard's NRE account with the Saligao branch of Bank of India. She produced a certified copy of the statement of the said account along with the certificate as required by the Bankers' Books Evidence Act at Exhibit 47/colly. This statement confirms the deposit of US dollars into the said account for Bernard's salary from Star Clippers.

29. Lancy Luis (AW3) stated that crew members are typically given a two-month vacation at the end of the contract. She deposed that no new contract was executed with Bernard due to the Covid pandemic. She deposed that in fact, the cruise business had to be halted due to the Covid pandemic and resumed only in January, 2022.

30. Thus, there is ample evidence about Bernard's employment with Star Clippers Ltd. The fact that the contract may not have been renewed due to the Covid pandemic is not a ground to hold that Bernard was not employed at all. From the unimpeachable material on record, it is reasonable to infer that Bernard would have, in all probabilities, secured a renewal of his contract, but for the situation created by the Covid pandemic. Therefore, it is not possible to accept Ms. Mandrekar's contention about Bernard being unemployed.

31. The compensation has been calculated based upon the documentary evidence available on record in the form of Bernard's salary. The correct principles laid down inter alia in National Insurance Co. Ltd. vs. Pranay Sethi AIR 2017 SC 5157, have been complied with. Accordingly, no case is made out to interfere with the impugned Judgment and Award made by the Tribunal.

32. For all the above reasons, and despite the able and valiant efforts made by Ms. Yadika Mandrekar, the learned Counsel for the Insurance Company in prosecuting the interests of the Appellant Insurance Company, no case is made out to interfere with the impugned Judgment and Award.

33. This appeal is liable to be dismissed and is hereby dismissed with no order for costs.

34. The 1st Respondent-Claimant is now permitted to withdraw the compensation amount deposited by the Appellant Insurance Company in this Court, together with interest, if any, that shall have accrued on this amount. The 1st Respondent has already withdrawn 50% of the compensation amount. Mr Marshall states that he will provide the account and identification details to the Registry. The Registry, upon due satisfaction, must transfer the deposited amount together with interest that shall have accrued therein into the 1st Respondent's bank account as soon as possible. The Registry should not delay such matters.

35. The appeal is disposed of in the above terms. No costs.

36. Miscellaneous applications, if any, do not survive and are also disposed of.