

(2022) 04 BOM CK 0105
In the Bombay High Court
Case No : First Appeal No.39, 40 Of 2015

Shobha Raikar And Others

APPELLANT

Vs

Anil Shinde And Others

RESPONDENT

Date of Decision : 22-04-2022

Acts Referred:

Citation : (2022) 04 BOM CK 0105

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

Bench : Single Bench

Advocate : S.S. Kakodkar, Megha Salkar

Final Decision : Disposed Of

Judgement

M. S. Sonak, J

1. Heard Mr. S.S. Kakodkar, learned Counsel for the Appellant in both these appeals, and Ms. Megha Salkar, learned Counsel for respondent no.2 (Insurance Company) in both these appeals.

2. Since both appeals arise out of Claim Petitions concerning the accident on 27.10.2013 at 20.40 hours at Margao, it is only appropriate that a common judgment and order dispose of them.

3. The appeals challenge two separate awards made by the Motor Accident Claims Tribunal dismissing the Claim Petition on a finding that the claimants failed to prove that the accident in which they suffered injuries was caused on account of rashness and negligence on the part of Mr. Anil Shinde (respondent no.1) - the driver of Etios Toyota bearing registration no.GA-08-F-8962. The Tribunal did not bother to answer the second issue about compensation.

4. Now, in several cases decided by this Court as also the Hon'ble Supreme Court, it has been made clear that the Tribunal should decide all the issues so that if the appeal Court reverses the finding on the issue of rashness and negligence, the appeal court is not required to either remand the matter or itself

take up the determination of compensation for the first time. Therefore, the approach of the Tribunal in not determining the compensation is not proper. In this regard, reference is made to the decision of the Hon'ble Supreme Court in *Bimlesh & Ors. V/s. New India Assurance Company Limited* (2010) 8 SCC 591.

5. Be that as it may, even the approach to deciding the issue of rashness and negligence is not proper and contrary to the law laid down by the Hon'ble Supreme Court in *Anita Sharma & Ors. V/s. New India Assurance Company Limited & Anr.* (2021) 1 SCC 171, *Parmeshwari V/s. Amir Chand & Ors.* (2011) 11 SCC 635, *Sunita & Ors. V/s. Rajasthan State Road Transport Corporation & Ors.* 2020 (13) SCC 486 *Mangla Ram V/s. Oriental Insurance Company Ltd. & Ors.* (2018) 5 SCC 656 and *Dulcina Fernandes & Ors. V/s. Joaquim Xavier Cruz & Anr.* (2013) 10 SCC 646.

6. 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. The Courts/Tribunals have to be mindful that the approach and role of Courts/Tribunals while examining evidence in accident claim cases ought not to be to find fault with the non-examination of some best eyewitnesses, as may happen in a criminal trial; but instead 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 specific manner may not be possible to be done by 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 courts/Tribunals must take the legal effect of the failure to cross-examine crucial witnesses on crucial issues must be taken into account by the Courts/Tribunals.

7. In this matter, the Tribunal completely overlooked the fact that an Etios Toyota vehicle was a much larger vehicle compared to a Deo scooter that the two claimant sisters were riding. The Tribunal has also ignored the fact that the police, on its investigations, recorded an FIR against the driver of the Etios vehicle. The Tribunal also failed to account for the most cursory cross-examination and the failure to pose any searching or meaningful questions to the two claimants, who suffered injuries in the accident. Finally, the Tribunal failed to draw any adverse inference against Anil Shinde, the driver of the Etios vehicle for his failure to step into the witness box and stand by his version that it is the

claimant Shobha, who was negligent in driving the Deo Scooter and not him.

8. Above all, the Tribunal failed to appreciate that strict rules of pleadings do not apply in a summary jurisdiction under the Motor Vehicles Act. Both the Claim Petitions have been dismissed, relying on a solitary statement in the cross-examination where Shobha says that her scooter got entangled with the car's rear bumper as the rear bumper of the car dashed her scooter. This statement has to be construed from the context and could not have been interpreted as has been interpreted by the Tribunal. Based on this statement, there was no case made out to disbelieve the claimants' case or to exonerate the driver of the Etios vehicle, who did not even bother to step into the witness box. There is no fundamental inconsistency between this statement and the pleadings. This statement has to be construed from the context that the Etios vehicle, in a rash and negligent manner, attempted to overtake the scooter, and in the process, the rear bumper dashed against the scooter. This version is sufficiently corroborated by the police records like FIR, panchanama, and the sketch. The Tribunal has ignored all this material. The finding that the driver of the Etios vehicle was not negligent is required to be reversed because it is contrary to the evidence on record. The appreciation of the evidence is also contrary to the legal principles of evaluation that apply to such matters. This finding is accordingly reversed.

9. Now, coming to the issue of compensation in First Appeal No.39/2015, the claimant Shobha had claimed Rs. 6,47,000/- on account of her injuries in the accident. The Tribunal has found that Shobha produced medical bills of Rs. 2,26,994.15 and the respondents raised no dispute about the authenticity of the medical bills. Besides, there is evidence that Shobha sustained a fracture of the neck of the right femur, which resulted in 40% permanent disability. A medical certificate to this effect is also on record, and even that was not challenged.

10. Moreover, Shobha was a teacher, and there is no evidence of any loss of salary even for two months though claimed.

Therefore, Mr. Kakodkar quite reasonably submitted that the claim of Rs. 75,000/- towards loss of salary will not be pressed by Shobha. However, he proposed that the compensation is due to shock, pain, suffering, loss of amenities of life, traveling and other miscellaneous charges, and even loss of confidence and efficiency.

11. Considering the evidence on record, compensation of Rs. 2,26,994.15 towards medical expenses cannot be denied. Further, compensation of Rs. 25,000/- towards pain and suffering, Rs. 25,000/- towards loss of amenities of life, Rs. 22,700/- towards traveling and miscellaneous charges, and further Rs. 25,000/- towards loss of longevity in life deserves to be awarded as just compensation. This means that the total compensation of Rs. 3,24,694.15 is due and payable jointly and severally to the claimant Shobha in First Appeal No.38/2015. On this amount, Shobha would be entitled to interest at the rate of 7% per annum from the date of the petition till the actual payment. First Appeal

No.39/2015 is allowed accordingly.

12. The claimant in First appeal No.40/2015 is Shobha's sister Maya, who was riding pillion. She had claimed Rs. 28,000/- by way of compensation for her injuries. The Tribunal has accepted her claim to the extent of Rs. 15,401/-. However, an additional amount of Rs. 2,000/- towards medical expenses should also have been awarded. The compensation for Maya is therefore now determined at Rs. 17,401/-. The respondents will have to pay this amount now that the finding on rashness and negligence recorded by the Tribunal, even in this matter, is reversed on the grounds indicated above.

13. First Appeal No.40/2015 is also allowed, and compensation is determined at Rs. 17,401/-. This amount will carry interest at the rate of 7% per annum from the date of the petition till the actual payment.

14. The respondents, particularly respondent no.2 – Insurance Company, are directed to deposit the above amounts in this Court within six weeks from today with due intimation to the learned Counsel for the Appellant. Upon deposit, the appellants will be entitled to withdraw the same after furnishing proper identification documents and bank details.

15. The Registry to ensure that this amount, together with the interest that might have accrued on the same, should be deposited directly into the claimants' bank accounts at the earliest.

16. Both the appeals are disposed of without any order for costs.