
(2015) 03 BOM CK 0130
In the Bombay High Court
Case No : First Appeal No. 256 of 2009

Vimal M. Pujari and Others	Vs	APPELLANT
Ganesh M. Konar and Others		RESPONDENT

Date of Decision : 19-03-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 279, 304-A

Citation : (2016) 1 ACC 648 : (2015) 6 ALLMR 289 : (2015) 3 BomCR 807

Hon'ble Judges : K.L. Wadane, J.

Bench : Single Bench

Advocate : Deepak Gaonkar, for the Appellant

Final Decision : Allowed

Judgement

K.L. Wadane, J.—The present appeal is directed against the judgment and order passed by the learned Presiding Officer of Motor Accident Claims Tribunal, Mapusa Goa, in Claim Petition No. 68/2007 dated 29.08.2009 by which the learned Tribunal has dismissed the petition. Hence, the present appeal.

2. Brief facts of the case may be stated as follows :

3. The parties are referred to their original status.

4. The accident took place on 29.04.2007 near Postwado, Honda, involving Motor Cycle bearing registration No. GA-04-A-8773 driven by respondent no. 1 when one Mohan was walking on the road to whom the respondent no. 1 gave dash due to which he was severely injured and succumbed to the injuries. The motor cycle was owned by respondent no. 2 and insured with respondent no. 3. The claimant no. 1 is the widow and claimant nos. 2 to 7 are the children of the deceased. According to the claimants, the accident occurred due to the negligence of respondent no. 1. Respondent no. 3 resisted the claim petition and contended that the accident occurred due to the negligence of the deceased himself. However, it has admitted the insurance of the motor cycle at the relevant time of the accident. The age, occupation and income of the deceased

has been specifically denied. Considering the pleadings of the parties, the learned Tribunal has framed three issues. The first issue is relating to the accident and the death of the deceased in the motor cycle accident which is answered in the affirmative and no appeal is preferred by the respondent no. 3 against that findings. The second issue is relating to the negligence of respondent no. 1 which is answered in the negative and third issue is relating to the entitlement of compensation. From the reasons recorded by the learned Tribunal, it appears that the third issue is not determined in view of the negative finding on issue no. 2. In order to establish the claim of the claimants, the claimant no. 4 filed his affidavit at Exhibit 23. AW2 Ganesh Gaonkar, is witness to the accident. AW3 Yeshwant Gauns, Investigating Officer and ASI attached to Valpoi Police Station, AW4 Arjun Rama Gauns, Police Head Constable, Valpoi Police Station who drew the panchanama at Exhibit 45.

5. As against this, no oral evidence is adduced on behalf of the respondents. Considering the evidence on record, the learned Tribunal has dismissed the petition as referred to above.

6. The learned counsel appearing for the appellants has relied upon the following judgments :

- (i) In the case of N.K.V. Bros. (P) Ltd. Vs. M. Karumai Ammal and Others, .
- (ii) In the case of Future Generalli Insurance Company Vs. Dinesh Chandra Upadhyay, .
- (iii) In the case of Smt. Ushakiran Shridhar Shinde and Others Vs. Arunkumar Kisaanlal Kalal and Others, .
- (iv) In the case of Anjani Singh and Others Vs. Salauddin and Others, .
- (v) In the case of Rajesh and Others Vs. Rajbir Singh and Others, .
- (vi) In the case of Reshma Kumari and Others Vs. Madan Mohan and Another, .
- (vii) In the case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another,
- (viii) In the case of Smt. Savita Vs. Bindar Singh and Others, .
- (ix) In the case of Smt. Aparna Indapwar, Yatindra Indapwar and Miss Shaiwali Vs. Bacchubhai Karsanbhai Rathod and Others, .
- (x) In the case of Dulcina Fernandes and Others Vs. Joaquim Xavier Cruz and Another, .
- (xi) In the case of Union of India (UOI) and Another Vs. Mrs. Saraswati Debnath and Others, .
- (xii) In the case of The United India Insurance Co. Ltd. Vs. Deepak Goel and Others, .

(xiii) In the case of The Branch Manager, United India Insurance Company Vs. Vijay Vishnupant Karandikar, Sou. Vidya Vijay Karandikar and Govardhandas Ramchandra Kela, .

(xiv) In the case of Halimabai and Others Vs. Rakesh Kumar Mukhasia and Others, .

(xv) In the case of Smt. Kaushnuma Begum and Others Vs. The New India Assurance Co. Ltd. and Others, .

7. The learned counsel appearing for respondent no. 3 has relied upon the following judgments :

(i) In the case of Nalini Ramesh Satarkar V/s Shri Shivappa Shidappa Halli and another, reported in 2011(1) Goa L. R. 229 (Bom)(PB).

(ii) In the case of Pushpabai Purshottam Udeshi and Others Vs. Ranjit Ginning and Pressing Co. (P) Ltd. and Another, .

(iii) In the case of Secretary Communication Ministry Govt. of India Department of Post and Telegraph and Others Vs. Ramrao alias Ramdas and Others, .

(iv) In the case of Minu B. Mehta and Another Vs. Balkrishna Ramchandra Nayan and Another, .

8. I have heard the arguments of Mr. D. Gaonkar, learned counsel appearing for the claimants/appellants and Mr. S. Bharne, learned counsel appearing for respondent no. 3. I have also gone through the entire evidence on record with the help of learned counsel. Considering the evidence on record and upon hearing both the sides, the following point arises for my determination.

9. On perusal of the reasons recorded by the learned Tribunal, it appears that the petition for compensation is mainly rejected on the ground that there was sufficient space for the deceased person who was walking on the road from Valpoi to Honda and looking to the situation of the spot, if the said deceased was walking on his left side of the road then how his dead body reached to the another edge of the road. So looking to the evidence on record, the learned Tribunal has held that there was no negligence on the part of the motorcyclist.

10. From the evidence record, it is seen that after the accident the claimant no. 2 Anant Mohan Pujari lodged a complaint to the Valpoi Police Station and it has come in the evidence of AW3 Yeshwant Gauns that on the basis of complaint the offence was registered against respondent no. 1 for the offence punishable under Sections 279, 304-A of the Indian Penal Code. So looking to the pleadings of the parties and the fact that the offence was registered against the respondent no. 1, one thing is very much clear and admitted fact that there was accident in which the deceased received injuries and succumbed to the injuries. The only question requires to be determined as to who was negligent at the time of the accident. Admittedly, the deceased was walking on the road and the respondent no. 1 was riding the motor cycle. In such circumstances, more care is expected from the

motorcyclist who ply his motor cycle on the public road. The learned Tribunal has observed that there was 5.65 metres road available for the deceased towards his left side. Looking to the contents of the spot panchanama and the sketch attached thereto, it appears that the motorcyclist was proceeding from Honda to Valpoi and the deceased was proceeding from Valpoi to Honda. The motorcyclist was towards the northern side of the road and the spot of accident is almost shown at the northern edge of the road. The total width of the road was 6.00 metres. Therefore, looking to the situation as appearing from the sketch, it appears that though the deceased was walking on the road from Valpoi to Honda, he appears to be almost on the southern edge of the road. Therefore, if at all the motorcyclist /respondent no. 1 was diligent in driving the motor cycle certainly he could be in a position to avoid the accident because towards the southern side of the road there was sufficient space for the motor cycle to pass. The learned Tribunal has observed that there was sufficient space i.e. 5.65 metres for the deceased. I am of the opinion that this was the position vis-a-vis the motorcyclist. In such circumstances, if at all the respondent no. 1 was slow in riding the motor cycle then the accident could not have been taken place. Looking to the reasons recorded by the learned Tribunal, it appears that it had pragmatical approach while appreciating the evidence on record. It has disbelieved the evidence of eye witness because AW2 eye witness says that the deceased was walking on the katcha road however from the spot, it appears that the spot was on the tar road and not on the katcha road. In this behalf, it is material to note that the sketch shows that the spot of the accident was almost on the northern edge of the road and beyond that there was a katcha road. It has come in the evidence of AW2 that after the dash the motor cycle went up to five metres and the deceased also went up to five metres. This fact may lead to different location of the deceased as well as the motor cycle after the impact.

11. Time and again, it is to be noted the broad principles of law laid down by the Hon"ble Apex Court to be followed while deciding the MACT. Therefore, I am of the opinion that while deciding the accident cases the Tribunal or Court shall bear in mind the caution struck by the Apex Court that the claim before the Motor Accident Claims Tribunal is neither criminal case nor a civil case. In a criminal case, in order to have a conviction the matter is to be proved beyond reasonable doubt and in the civil case the matter is to be decided on the basis of preponderance of probability, but in the claim petition before the Motor Accident Claims Tribunal, the standard of proof is much below than what is required in the criminal case as well as in the civil case. Undoubtedly, the inquiry before the Tribunal is a summary inquiry and therefore, does not require strict proof of liability.

12. Looking to the above aspect and considering the evidence of AW2 Ganesh Gaonkar, AW3 Yeshwant Gauns, AW4 Arjun Rama Gauns coupled with the contents of the spot panchanama and the sketch, I am of the opinion that the learned Tribunal has given undue weightage to the location where the dead body was lying. The learned Tribunal has also given undue weightage to the fact that

there was sufficient space for the deceased to his left side to walk but the learned Tribunal has lost sight to see the position vis-a-vis motorcycle. Hence, this Court is of the opinion that the available evidence on record is sufficient to establish that the accident occurred due to the negligence of the motorcycle rider/ respondent no. 1. Hence, the point for determination is answered accordingly.

13. Looking to the findings recorded on issue no. 1, it appears that it become final due to non filing of the appeal by the respondent no. 3 against that findings. Looking to the reasons recorded against the issue no. 3, it appears that this issue has not been determined by the learned Tribunal because of the findings on issue no. 2. In fact, it is for the learned Tribunal to adjudicate each and every issue. In such circumstances, now the learned Tribunal has to decide issue no. 3 in reference to the pleadings of the parties and evidence on record. Therefore, the present appeal is liable to be allowed and the matter needs to be remanded back to the learned Tribunal. Hence, the following order :

ORDER

(i) The appeal is allowed.

(ii) The claim petition is hereby remanded back to the learned Tribunal for hearing and disposal in accordance with law in the light of the observations made herein above.

(iii) The parties are directed to appear before the learned Tribunal on 27.04.2015 at 10.00 a.m.

(iv) The appeal stands disposed of accordingly.