A DULCINA FERNANDES & ORS.

v.

JOAQUIM XAVIER CRUZ & ANR.

(Civil Appeal No. 9094 of 2013)

B OCTOBER 08, 2013

[P. SATHASIVAM, CJI AND RANJAN GOGOI, J.]

Motor Vehicles Act, 1988 - s.166 - Claim under - Adjudication of - To be on the touchstone of preponderance C *of probability - Deceased was riding a scooter which got hit by the pick-up van driven by first respondent - Claim of wife and daughters of deceased - Claims Tribunal assessed compensation at Rs.6.66 lakhs, but ultimately rejected the claim citing that the accident had occurred on account of the* D *negligence of the deceased - Order affirmed by High Court - On appeal, held: Evidence before the Tribunal was recorded seven years after the accident - Keeping in view the nature of the jurisdiction exercised by the Tribunal, it was not correct on its part to hold against the claimants for their failure/* E *inability to examine the pillion rider 'R' as a witness, more particularly in view of the hapless condition in which the claimants must have been placed after death of their sole breadwinner and the sufficiently long period of time that had lapsed in the meantime - Further, the Tribunal was not entirely* F *correct in rejecting the evidence of the CW-3 and 5 - Similarly it erred in accepting the evidence tendered by the first respondent - CW-2, Head Constable, had deposed that a criminal case was registered against the first respondent in connection with the accident - Statements made by him were* G *significant to the issues arising in the instant case - Said aspects of the evidence of CW-2 not considered by the Tribunal - High Court failed to notice the lacunae in the award of the Tribunal - Case fit for interference by Supreme Court - Accident in question occurred due to rash and negligent*

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driving of the pick-up van by the first respondent - Claimants-appellants entitled to compensation as quantified by the Tribunal alongwith interest @ 6% p.a with effect from the date of the award of the Tribunal. A

N' was driving a scooter while 'R' was riding pillion when the pick-up van driven by the first respondent allegedly in a rash and negligent manner hit the scooter as a result of which both 'N' and 'R' fell off and suffered injuries. 'N' died due to the injuries sustained. The wife and the daughters of 'N', i.e. the appellants, lodged Claim Petition under Section 166 of the Motor Vehicles Act, 1988 before the Motor Accident Claims Tribunal. The first respondent took the stand that the accident occurred as the deceased was driving the scooter under the influence of liquor. The Tribunal framed four issues. Though under issue No.3 the Tribunal assessed the compensation payable to the claimants at Rs.6,66,041.78, in view of its' findings against issues 1 and 4, namely that the accident had occurred on account of the negligence of the deceased, the Tribunal thought it proper to reject the claim of the appellants. The order was affirmed by the High Court, and, therefore the present appeal. B C D E

Allowing the appeal, the Court

HELD: 1.1. The plea of negligence on the part of the first respondent who was driving the pick-up van as set up by the claimants was required to be decided by the Tribunal on the touchstone of preponderance of probability and certainly not on the basis of proof beyond reasonable doubt. Though the Tribunal adjudicates on a claim and determines the compensation, it does not do so as in an adversarial litigation. [Para 7] [486-E-F; 487-A] F G

1.2. While it is correct that the pillion rider 'R' could have best unfolded the details of the accident what cannot be lost sight of is the fact that while the accident H

A occurred on 29.06.1997 the evidence before the Tribunal was recorded after seven years i.e. in the year 2004. Keeping in view the nature of the jurisdiction that is exercised by a Claims Tribunal under the Act, it was not correct on the part of the Tribunal to hold against the B claimants for their failure or inability to examine the pillion rider 'R' as a witness in the case. Taking into account the hapless condition in which the claimants must have been placed after the death of their sole breadwinner and the sufficiently long period of time that has elapsed in the C meantime, the Tribunal should not have treated the non-examination of the pillion rider as a fatal and fundamental flaw to the claim made before it by the appellants. Further, the Tribunal was not entirely correct in rejecting the evidence of the CW-3 and 5 on the grounds assigned. D Similar is the position with regard to the findings of the Tribunal in accepting the evidence tendered by the first respondent. CW-2, who was at the relevant time working as the Head Constable of Main Eurtorim, Police Station, had deposed that a criminal case was registered against the first respondent in connection with the accident and E that after investigation he was chargesheeted and sent up for trial. Though, the first respondent was acquitted in the said case, upon investigation, prime facie, materials showing negligence were found to put him on trial. The statements made by CW-2 in the course of his F deposition has considerable significance to the issues arising in the case, namely, whether the deceased was driving the scooter under the influence of alcohol and whether there was any negligence on his part leading to the accident. The said aspects of the evidence of CW-2 G do not appear to have been taken note of or to have received any consideration of the Tribunal. At the same time it is possible to take the view that the evidence of CW-2, properly read and considered, can lead to a conclusion contrary to what has been arrived at by the H Tribunal, namely, that the accident had occurred on

account of the negligence of the deceased. The High Court having failed to notice the above lacunae in the award of the Tribunal and correct the same, the present is a fit case for interference. Accordingly the findings of the Tribunal as affirmed by the High Court in respect of issues 1 and 4 are set aside and it is held that the accident had occurred due to the rash and negligent driving of the pick-up van by the first respondent. [Para 8] [487-E-H; 488-A-H; 489-A-B]

Bimla Devi & Ors. Vs. Himachal RTC **(2009) 13 SCC 530: 2009 (6) SCR 362 and** *United India Insurance Company Limited Vs. Shila Datta & Ors.* **(2011) 10 SCC 509: 2011 (14) SCR 763 - relied on.**

2. The claimants-appellants are entitled to compensation of Rs.6,66,041.78 as quantified by the Tribunal in its order dated 20.07.2004. Insofar as award of interest is concerned, in the facts of the present case, it is directed that the amount awarded shall carry interest at the rate of 6% per annum with effect from the date of the award of the Tribunal i.e. 20.07.2004. [Para 9] [489-C-D]

Case Law Reference:

2009 (6) SCR 362	**relied on**	**Para 7**
2011 (14) SCR 763	**relied on**	**Para 7**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 9094 of 2013.

From the Judgment and order dated 14.11.2008 of the High Court of Bombay at Panaji in FA No. 216 of 2004.

Arun R. Pednekar, V.N. Raghupathy for the Appellants.

Kishore Rawat, M.K. Dua for the Respondents.

The Judgment of the Court was delivered by

A **RANJAN GOGOI, J.** 1. Leave granted.

2. The claimants-appellants are the wife and daughters of one Nicolau Fernandes who died in a motor vehicle accident that had occurred on 29.06.1997 at Santimol, Raia while going from Margao to his village in Ilha, De Rachol. The deceased was driving a scooter and one Rosario Antao was riding Pillion. As the deceased reached Santimol Junction, one pick-up van driven by the first respondent came from the opposite direction; though the deceased tried to avoid the pick-up van which was being driven in a rash and negligent manner, the rear mudguard of the pick-up van hit the scooter as a result of which the deceased and the pillion rider fell off and suffered injuries. Due to the injuries sustained Nicolau Fernandes died on 01.07.1997.

In the aforesaid facts, the appellants, as claimants, had lodged a Claim Petition under Section 166 of the Motor Vehicles Act, 1988 (hereinafter for short 'the Act') before the Motor Accident Claims Tribunal at Margao, Goa. In addition to the first respondent, the New India Assurance Company with whom the pick-up van was insured was also impleaded as a respondent in the proceeding before the Claims Tribunal.

3. Before the Tribunal, the first respondent, in the written statement filed, took the stand that the accident had not occurred on account of any fault or negligence on his part. On the contrary, according to the first respondent, the accident had occurred as the deceased was driving the scooter under the influence of liquor. It was specifically pleaded by the first respondent that the deceased had come on the wrong side of the road and had dashed against the pick-up van of the respondent which was standing parked on the extreme left of the road.

4. On the pleadings of the parties the learned Tribunal framed four issues for trial in the case. Though under issue No.3 the learned Tribunal assessed the compensation payable to the claimants at Rs.6,66,041.78, in view of the findings recorded

against issues 1 and 4 (whether the deceased or the first respondent was negligent and responsible for the accident), the learned Tribunal came to the conclusion that the appellants (claimants) are not entitled to any compensation. The High Court of Bombay having affirmed the findings and the conclusion of the learned Tribunal, the present appeal has been filed.

5. A reading of the award passed by the learned Tribunal and the order of the High Court shows that the claim of the appellants has been rejected on three principal grounds. According to the learned Tribunal and the High Court the most acceptable evidence in the case would have been the version of the pillion rider, Rosario Antio, who however, had not been examined by the claimants. Neither any explanation had been offered by the claimants for not examining the aforesaid person. In these circumstances an adverse inference against the claimants was felt justified. The evidence of CW-3 Benito Vaz, who was examined by the claimants as an eye witness, was discarded by the learned Tribunal in as much as this witness had stated, contrary to the case of the claimants, that the deceased was riding pillion and it was Rosario Antio who was driving the scooter. The evidence of CW-5, who was also examined by the claimants as an eye witness was rejected by the learned Tribunal on the ground that in the circumstances narrated by CW-5 the said witness could not have possibly seen the actual mishap. Having rejected the evidence of CW-3 and CW-5 on the aforesaid grounds, the learned Tribunal considered the evidence tendered by the first respondent who examined himself as RW-1. In his deposition the first respondent had stated that at the time of the accident the pick-up van was parked on the extreme left side of the road and the scooter driven by the deceased came at a high speed and dashed against the pick-up van. The first respondent has also deposed that the deceased as well as the pillion rider were both drunk and after the accident both of them had vomited and were smelling of liquor. The learned Tribunal, upon consideration of the deposition of the first respondent and taking into account

A the answers given by him in cross-examination, came to the conclusion that there is no reason to doubt the testimony of the said witness. Accordingly, the learned Tribunal came to its impugned findings on issue Nos. 1 and 4, namely that the accident had occurred on account of the negligence of the B deceased. On the basis of the said finding the learned Tribunal thought it proper to reject the claim of the appellants. On appeal, the High Court has reiterated the findings and the conclusion of the learned Tribunal on grounds substantially similar to those recorded by the learned Tribunal.

C 6. We have heard Mr.Arun R. Pednekar, learned counsel appearing for the appellant and Mr. Kishore Rawat, learned counsel appearing for the respondent No.2. We have considered the submissions advanced by the learned counsels for the respective parties. We have also perused the orders D passed by the learned Tribunal as well as by the High Court and have carefully considered the evidence led by the parties which had been included in the SLP paper book.

7. It would hardly need a mention that the plea of negligence E on the part of the first respondent who was driving the pick-up van as set up by the claimants was required to be decided by the learned Tribunal on the touchstone of preponderance of probability and certainly not on the basis of proof beyond reasonable doubt. [*Bimla Devi & Ors. Vs. Himachal RTC* F (2009) 13 SCC 530]. In *United India Insurance Company Limited Vs. Shila Datta & Ors.* (2011) 10 SCC 509 while considering the nature of a claim petition under the Motor Vehicles Act, 1988 a three-judge-bench of this Court has culled out certain propositions of which propositions (ii), (v) and (vi) G would be relevant to the facts of the present case and, therefore, may be extracted hereinbelow:

> "(ii) The rules of the pleadings do not strictly apply as the claimant is required to make an application in a form prescribed under the Act. In fact, there is no pleading where H the proceedings are suo motu initiated by the Tribunal.

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(v) Though the Tribunal adjudicates on a claim and determines the compensation, it does not do so as in an adversarial litigation.

(vi) The Tribunal is required to follow such summary procedure as it thinks fit. It may choose one or more B persons possessing special knowledge of and matters relevant to inquiry, to assist it in holding the enquiry."

The following further observation available in paragraph 10 of the report would require specific note: C

"We have referred to the aforesaid provisions to show that an award by the Tribunal cannot be seen as an adversarial adjudication between the litigating parties to a dispute, but a statutory determination of compensation on the occurrence of an accident, after due enquiry, in accordance D with the statute."

8. The cases of the parties before us will have to be examined from the perspective of the principles and propositions laid down in *Bimla Devi* case (supra) and *Shila Datta* (supra). While it is correct that the pillion rider could have E best unfolded the details of the accident what cannot be lost sight of is the fact that while the accident occurred on 29.06.1997 the evidence before the Tribunal was recorded after seven years i.e. in the year 2004. Keeping in view the nature of the jurisdiction that is exercised by a Claims Tribunal under F the Act we do not think it was correct on the part of the learned Tribunal to hold against the claimants for their failure or inability to examine the pillion rider Rosario Antao as a witness in the case. Taking into account the hapless condition in which the G claimants must have been placed after the death of their sole breadwinner and the sufficiently long period of time that has elapsed in the meantime, the learned Tribunal should not have treated the non-examination of the pillion rider as a fatal and fundamental law to the claim made before it by the appellant. As this Court while hearing an appeal instituted upon grant of H

A special leave under Article 136 of the Constitution would not normally re-appreciate the evidence led before Trial Court, we refrain from doing so in the present case though we may observe that the learned Tribunal was not entirely correct in rejecting the evidence of the CW-3 and 5 on the grounds
B assigned. Similar is the position with regard to the findings of the learned Tribunal in accepting the evidence tendered by the first respondent. However, there are certain other features of the case which are more fundamental and, therefore, have to be specifically noticed. CW-2, who was at the relevant time
C working as the Head Constable of Main Eurtorim, Police Station, had deposed that a criminal case was registered against the first respondent in connection with the accident and that after investigation he was chargesheeted and sent up for trial. Though it is submitted at the Bar that the first respondent
D was acquitted in the said case what cannot be overlooked is the fact that upon investigation of the case registered against the first respondent, prime facie, materials showing negligence were found to put him on trial. From the evidence of CW-2 it also transpired that the deceased was not medically examined to ascertain whether he had consumed alcohol and was,
E therefore, driving the scooter under the influence of liquor. In fact, according to CW-2, he had reached the spot within 15 minutes of the incident. In his cross-examination CW-2 had specifically denied that the scooter driven by the deceased had dashed the pick-up van which was stationary i.e. parked on the road.
F The statements made by CW-2 in the course of his deposition has considerable significance to the issues arising in the case, namely, whether the deceased was driving the scooter under the influence of alcohol and whether there was any negligence on his part leading to the accident. The said aspects of the
G evidence of CW-2 do not appear to have been taken note of or to have received any consideration of the learned Tribunal. At the same time it is possible to take the view that the evidence of CW-2, properly read and considered, can lead to a conclusion contrary to what has been arrived at by the learned
H Tribunal, namely, that the accident had occurred on account of

the negligence of the deceased. The High Court having failed to notice the above lacunae in the award of the learned Tribunal and correct the same, we are satisfied that the present is a fit case for our interference. We accordingly set aside the findings of the learned Tribunal as affirmed by the High Court in respect of issues 1 and 4 and hold that the accident had occurred due to the rash and negligent driving of the pick-up van by the first respondent.

9. It has already been noticed that on basis of the discussions under issue No.3, the learned Tribunal has quantified the entitlement of the claimants to compensation at Rs.6,66,041.78. The said relief was withheld in view of the findings on issues 1 and 4 which have been now reversed by us. Consequently, we hold the claimants-appellants to be entitled to compensation of Rs.6,66,041.78 as quantified by the learned Tribunal in its order dated 20.07.2004. In so far as award of interest is concerned, in the facts of the present case we direct that the amount awarded shall carry interest at the rate of 6% per annum with effect from the date of the award of the learned Tribunal i.e. 20.07.2004.

10. Appeal of the claimants is allowed on the above terms. No order as to costs.

B.B.B. Appeal allowed.