

(1994) 07 BOM CK 0109

Bombay High Court

Case No: None

Shakuntala Gajanan Naik and
Others

APPELLANT

Vs

Tushar V. Rajadhyax and Others

RESPONDENT

Date of Decision: July 7, 1994

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 173

Citation: (1995) 1 ACC 628

Hon'ble Judges: G.D. Kamat, J; A.A. Halbe, J

Bench: Division Bench

Judgement

G.D. Kamat, J.

In claim petition No. 147 of 1986 the appellants--claimants claimed compensation in a sum of Rs. 1,50,000/-. The story in the Claim Petition was that the deceased Gajanan Naik, the only earning member of the family, on 22nd April 1986 at a place called Hodar, Curchoram, was returning home at about 11 p.m. At that time, he was knocked down by truck bearing registration number plate GDZ 7273 driven by the first respondent. As a result of this accident, the deceased suffered multiple injuries and succumbed to his death on the spot.

2. The respondent No. 1 is the owner-driver of the truck and the defence taken by him was that the truck driven by him never met with any accident on that date at Hodar, Curchoram.

3. The evidence was led on behalf of the appellants-claimants in support of their claim but the claim petition did not meet favour with the Tribunal. The Tribunal, by its impugned award dated 31st January, 1989, held that appellants had failed to prove that the deceased Gajanan met with accident against the truck driven by the first respondent and that the claim petition was liable to be rejected. The Tribunal has, however, held that in the event it is held that the truck driven by the first

respondent did meet with the accident and killed the deceased Gajanan, on that fateful night then the appellants-claimants shall be entitled to a compensation of Rs. 30,000/-. The Tribunal in the award held that the compensation of Rs. 30,000/- could be made of Rs. 20,000/- by way of financial loss caused to the claimants and Rs. 10,000/- for loss of company.

4. The present appeal is against the impugned award of the Tribunal. The appellant No. 1 is the widow and appellants Nos. 2 and 3, at the relevant time when the Claim Petition was instituted, were aged 12 and 8 years respectively. The grievances in the appeal are that the Tribunal is in error in appreciation of evidence and the inferences drawn that the truck driven by respondent No. 1 did not meet with an accident are equally erroneous. It has become, therefore, necessary to view the evidence in this matter.

5. Shakuntala Naik (A.W. 4) who is the widow of the deceased, says that the accident took place on 22nd April, 1986 at Hodar, Curchoram. According to her, information, her husband met with an accident and she was not present at that time. Her husband was aged about 40 years and was working as a mason and was earning Rs. 40/- per day. She then asserts that her husband was the sole source of her family income and she spent about Rs. 1,000/- for the funeral expenses.

In the cross examination, she refuted that her husband did not die in an accident and asserted that her husband told her before his death that he had been knocked down by Prashant and told her that she should look after his children. According to her, two persons brought her husband to the house. Though she knows them, she can not name them. She denied the suggestion that her husband was addicted to drinks or that his income was not Rs. 40/- per day to a question whether she knows Prashant, she says that she does not know Prashant, but knows the driver who knocked down her husband. Though does not know him personally but she is able to identify the person if brought in the Court. She equally asserts that she has neither seen Prashant nor Tushar.

6. Vithoba Naik (A.W. 4) says that he is aware of the accident in which late Gajanan was killed at about 11p.m. at Hodar two years" ago and that was in a truck accident. He says that the deceased was walking along the road coming from Sanvordem to Hodar and at the relevant time, the witness was riding his scooter in the opposite direction. He says that a truck came from behind the scooter and overtook it, which was in a fast speed. A little beyond, according to him, the truck suddenly applied brakes as the deceased had been knocked down. He saw the driver of the truck getting down and lifting the deceased and when he and his pillion rider approached near about the truck, the driver of the truck told them that nothing had happened and they could go away. The witness says that as they were in hurry, they left the place. According to the witness, he did not see the deceased bleeding but he remembers the registration number plate of the truck being GDZ - 7273. The witness now says that after 2 or 3 days, he read in the newspapers that one person

had met with an accident and expired.

In the cross examination, he affirms that he is not related to the deceased and on the day of the accident, he was travelling with a friend who is from Sanvordem, his name being Yeshwant Naik. He gives the registration number plate of his scooter to be GDC--5594 and says that they had come from Margao on that night. According to him, when the truck had stopped, two persons had got down from the truck and the truck was otherwise empty. He had noticed no other truck at the relevant time crossing that road. He had seen the deceased when his scooter was at a distance of 200 mtrs. for the first time and when he stopped his scooter after the truck came to a halt, he was away at a distance of 15 mtrs. from the deceased. He truthfully says that he did not actually see the truck hitting the deceased.

7. Ratnakar Naik (A.W. 5) is a Panch witness. According to him, he attested the panchanama drawn by the police at the place of accident and the co-pinch was one Damodar. This witness says that the accident had taken place on the road but no vehicle was at the site. He affirms that there was a dead body at the place of the accident.

In the cross examination, he denies that he had not witnessed the panchanama because of his duties in the Post Office on that day. He affirms that the panchanama was drawn at about 8.30 a.m. on 23rd April, 1986.

8. The scene of offence Panchanama suggests that the deceased was on the border of a field by the side of the road and his Chappals were lying close to his body.

9. The evidence of Tulshidas Naik (A.W. 6) does not help the case in so far as accident is concerned. According to him, the deceased Gajanan is his brother and he was staying in one and the same house. He says that he sent his cousin brother upon knowing the accident to lodge a complaint to Police Station. He accompanied the dead body for postmortem. He says that the appellant Shakuntala (A.W. 1)--the wife of his deceased brother--is from Khanapur and presently she is staying at Khanapur with her children and that she has not been mentally keeping well after the death of her husband.

10. Before analysing the evidence on the appellants' side, we may make a reference to the evidence of respondent No. 1 Tushar Rajadhyax. It may be mentioned in the first instance that barring Tushar Rajadhyax, no other evidence has been adduced on behalf of the respondents. In his deposition, Tushar Rajadhyax says that he is owning truck bearing registration number GDZ--7273 and the same is being driven by his driver. He affirms that in absence of driver, he also drives the truck and he holds a driving licence. He then says that his truck never met with any accident at any time and that the present case is false and further asserts that the police did not even lodge any criminal case against him.

However, in the cross examination, he says that some time during night time, he drives the truck and admits that soon after the accident he had applied for anticipatory bail and obtained the same. The reason why he prayed for anticipatory bail is because police had called him for interrogation during the investigation. He however denies the suggestion that he was driving the truck on the fateful night.

11. We are painfully aware of the limits of the Appellate Court in the matter of interference with the awards made by a Tribunal. It is an accepted rule that the Appellate Court will interfere only when the compensation granted is in excess on one hand or when it is meagre and low on the other. But here we are concerned with a case where the Claim Petition instituted by the appellants has been rejected on the ground that the appellants have failed to prove that the deceased met with an accident being hit by the truck driven by the first respondent and insured by the second respondent.

12. Before embarking on re-appreciation of the evidence, it is necessary to find out as to what the Tribunal found so as to reject the claim petition. The Tribunal has held that the evidence led on behalf of the claimants is not sufficient at all to hold that the accident was caused by the said truck No. GDZ-7273, driven by the first respondent. What prevailed upon the Tribunal appears to be that Vithoba Naik (A.W. 4) did not mention the name of the driver of the truck though he gave the number of the truck and there is no corroboration for the evidence tendered by Vithoba. The Tribunal then held that there is serious doubt in accepting the statement of Vithoba Naik in relation to the number of the truck as spoken to by him because Vithoba Naik had not been examined by police when they were investigating the accident. According to the Tribunal, when A.W. 6 Tulshidas Naik told Vithoba Naik (A.W. 4) that he would be cited as a witness in the case, some three days after the death of Gajanan, it was to be reasonably accepted that Tulshidas Naik, who had lodged the complaint to the police in respect of the accident, would have given his name and police would have recorded Vithoba's statement.

13. This inference has been drawn by the Tribunal on the basis of the police report u/s 173 Criminal Procedure Code, produced by the Police Constable Ashok Shet (A.W. 3). Ashok Shet was directed by the Tribunal to produce the case papers in relation to crime registered under No. 30 of 1986 and which was finally treated "A" summary. The witness produced the final report together with the order of the Magistrate. Upon reading the report of the Investigating Officer, it is clear that the police had not recorded any statement of Tulshidas Naik (A.W. 6). Upon lodging the report of death, it appears that the Investigating Officer himself lodged the First Information Report and in the process, Tulshidas Naik was never examined.

14. What is required to be seen is that the First Information Report was lodged on the morning of 24th April, 1986 and Tulshidas Naik had informed Vithoba Naik (A.W. 4) three days after the death of Gajanan that he is required to stand as a witness. The Tribunal was, therefore, in error to hold that on the basis of Tulshidas Naik's

report and because Tulshidas Naik had failed to indicate the name of Vithoba Naik (A.W. 4), the evidence tendered by Vithoba Naik becomes tainted. From what is high-lighted above, it is clear that Tulsidas Naik himself did not know on the day he lodged report that Vithoba Naik (A.W. 4) had knowledge about the accident. From the report of the Police Officer, which is on record, it is clear that the Investigating Officer had recorded statements of (1) Vishwanath Arjun Naik, (2) Tushar Vasudev Rajadhyax (respondent No. 1), (3) Sobastiao Fernandes, (4) Maiuddin Assinaab Mujavar, (5) Anand Babuso Naik, (6) Ganesh Bisso Padte, (7) Deelip Jivaji Naik, (8) Dilip Deu Nankar, (9) Ratnakar Raghoba Ghadi, and (10) Carmino Pedro Costa but not of Tulsidas.

15. It is, therefore, clear that the basis upon which the evidence of Vithoba Naik (AW 4) is rejected, is an error apparent on the record. The next question to ask is whether any corroboration is required in so far as the deposition of Vithoba Naik (AW 4) is concerned. There is no rule of law that a single witness can not be believed. It must be borne in mind that this is not a criminal case and on the contrary, a welfare statute which is designed to compensate either the victims of the accident or the dependents left behind by the victim of accident who dies in that accident.

16. Together with this, we will presently show that on the basis of the evidence on record, the impugned award is not sustainable and the compensation has to be awarded to the original claimants--appellants. The fact that the deceased met with an accident on the night of 22nd April 86 can not be disputed. Dr. Silvano Sapaco Dias, who conducted autopsy examination on the dead body of Gajanan Naik on 23rd April, 1986, says that the death was due to large number of injuries and the combined effect of cerebral concussion and shock therefrom. In cross examination, he affirms that these injuries could be only caused in a vehicular accident and the injuries were within 12 hours from the death and the death was within 12 hours of the examination/autopsy.

17. We have already referred to the evidence of respondent No. 1 Tushar Rajadhyax. In his evidence, he has made a generalised statement that his truck never met with an accident. What is however relevant to note and which is of immense consideration is that he never said that on the night of 22nd April, 1986 at the relevant time, his truck had never moved on Curchoram-Hodar road. This clearly shows that he had no courage of conviction to deny that his truck had made some trip on that night and had it had not been so, respondent No. 1 would have categorically stated so. This has to be also viewed in the context of his deposition that he himself drives the truck during night time.

The third factor which contributes to the material is that the respondent No. 1 approached the Sessions Court for anticipatory bail. If he was not involved in the accident, there was no necessity for him to apply for anticipatory bail as it is common knowledge that there are large number of trucks plying at Curchoram which is a centre for loading and unloading large quantities of iron-ore, which is

eventually exported.

18. We do appreciate that merely because the respondent No. 1 did not state that no trip was made between Hoder and Curchoram on the night of 22nd April, 1986 and merely because the respondent No. 1 obtained anticipatory bail, that by itself is not sufficient to hold against respondent. But what is required to be seen is once we accept the evidence of Vithoba Naik (AW 4), then these two factors assume relevance. It must be borne in mind that unlike criminal trial, where the charges against the accused person must be proved to the hilt in civil proceedings, the findings are based upon preponderance of probabilities. We, therefore, clearly come to conclusion that on the basis of the evidence, the truck bearing No. GDZ-7273 dashed against Gajanan Naik, who died in that accident on 22nd April, 1986, though it may not be conclusively proved that the truck was driven by respondent No. 1, nevertheless he was the owner.

19. The next question is what compensation to be awarded to the appellants. We have already pointed out that the Tribunal held that in the absence of any cogent evidence, a sum of Rs. 20,000/- towards financial loss and a sum of Rs. 10,000/- for the loss of company, making a total compensation of Rs. 30,000/-, is just and reasonable. We must admit that barring the statement of Shakuntala Naik (AW 1), there is no cogent evidence that the deceased Gajanan, as a manson, was earning Rs. 40/- per day and that too throughout the year. No other witness has spoken about the earnings of the deceased. It is in the evidence that Gajanan was about 40 years of age. Barring this statement, there is no reliable evidence about the age of the deceased. The grant of compensation poses several difficulties and it is never possible for any Court to assess exact compensation. It is well settled principle that the compensation to be awarded is an estimate and some amount of discretion always creeps in. We propose not to interfere with that part of the compensation of Rs. 20,000/- awarded on the ground of financial loss but we are, however, unable to agree that Rs. 10,000/- could be the reasonable compensation on the sub-head of loss of consortium. Even assuming that the deceased Gajanan was little beyond 40 years of age, the fact remains that he has left behind (AW 1) Shakuntala, who is 32 years of age and a daughter and a son who were 12 and 8 years respectively at the time of accident. This being the loss of husband, in our view, on the sub-head of loss of consortium, the compensation needs to be enhanced from Rs. 10,000/- to Rs. 20,000/-. It is impossible to deny the compensation of Rs. 1,000/- which the widow has spent for the funeral of late Gajanan.

20. This appeal must accordingly succeed. The impugned award dated 31st January, 1989 made in Claim Petition No. 147 of 1986 is quashed and set aside. The appeal is partly allowed and a sum of Rs. 41,000/- (Rs. 20,000/- on the head of dependency, Rs. 20,000/- for loss of consortium and Rs. 1,000/- for funeral expenses) is awarded and the respondents are directed to pay the same jointly and severally with interest at 12% p.m. from the date of Claim Petition until payment. Costs of Rs. 1,500/- is

awarded.