

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 91 OF 2008
WITH
CROSS OBJECTIONS NO. 12 OF 2014

The Oriental Insurance Co. Ltd.,
Gouveia Chambers, 3rd Floor,
Near Municipal Market,
Panaji Goa.

... Appellant

V e r s u s

1. Mrs. Madhuri T. Rivonkar,
wife of late Tukaram V. Rivonkar,
housewife, aged 37 years,
H.No.139, Vanelim, Colva,
Salcete Goa.
2. Mast. Tejas Tukaram Rivonkar,
son of late Tukaram V. Rivonkar,
aged 15 years, student,
represented by his natural guardian & mother
H.No.139, Vanelim, Colva,
Salcete Goa.
3. Miss. Tanvi Tukaram Rivonkar,
daughter of late Tukaram V. Rivonkar,
aged 9 years, student
represented by her natural guardian & mother
H.No. 139, Vanelim, Colva,
Salcete Goa.
4. Mr. Vassant Tukaram Rivonkar
alias Esvonta Tukaram Rivonkar
(since deceased)
s/o late Tukaram Rivonkar,
aged 73 years, retired, married,
H.No.139, Vanelim, Colva,
Salcete Goa.
5. Mrs. Sunilabai Vasant Rivonkar,
aged 66 years, housewife,
H.No.139, Vanelim, Colva,
Salcete Goa.

:2:

6. Mr. Patricio Pereira,
Major, driver,
House No. 164,
Maina Curtorim,
Salcete Goa.

7. Mr. Joa Patricio Pereira,
House No. 164,
Maina Curtorim,
Salcete Goa.

.... Respondents

Mr. E. Afonso, Advocate for the appellant.

Mr. S. D. Lotlikar, Senior Advocate with Ms. M. Furtado, Advocate
for respondent nos. 1 to 3 and 5.

CORAM : K. L. WADANE, J

JUDGMENT RESERVED ON : 16.01.2015

JUDGMENT PRONOUNCED ON : 30.01.2015

J U D G M E N T :-

The above mentioned First Appeal and Cross objection
are directed against the judgment and award passed by the
Presiding Officer of Motor Accident Claims Tribunal at Margao in
Claim Petition No. 86/2006 dated 02.01.2008.

2. Brief facts giving rise to the present appeal and the
cross objections are summarised as follows :

The parties are referred to their original status.

:3:

Claimant nos. 1 to 5 filed the petition under the provisions of Section 166 of the Motor Vehicles Act for compensation.

3. On 13.11.2005 at about 13.00 hours one Mr. Tukaram Rivankar (since deceased) was proceeding on his Honda Activa scooter bearing registration No. GA-08-B-2957 from Panaji side towards Margao side. Respondent no.1 was coming from the opposite direction on his wrong side direction with his Swaraj Mazda Tipper Truck bearing No. GA-08-T-5111 and gave a dash to the scooter of the deceased. As a result of the accident, the deceased sustained grievous injuries and that too on vital parts of his body due to which he succumbed on the spot. Since the deceased had succumbed to his injuries on the spot, his dead body was brought to G.M.C., Bambolim.

4. According to the claimants, the accident occurred due to rash and negligent driving of the tipper truck by respondent no.1 who is the owner as well as the driver of the vehicle involved in the accident.

5. According to the claimants, at the relevant time of the accident the deceased Tukaram was proceeding on his scooter and

another scooter was ahead of him and when Tukaram reached near the spot of the accident abruptly and suddenly the tipper truck came from the opposite side and by coming to the wrong side gave severe dash to his Activa scooter. So there was negligence on the part of respondent no.1. In the Trial Court though respondent nos.1 and 2 served with the notice remained absent. Therefore, the claim petition proceeded ex-parte as against them. Respondent no.3 filed its written statement at Exhibit 13 and denied all the contents of the petition. It is contended by respondent no.3 that another Activa scooter was involved in the accident so its driver, owner and the insurance company are necessary parties. The claimants have not made them as parties, so the petition is bad for non-joinder of necessary parties. There was no negligence on the part of the driver of the tipper truck i.e. respondent no.1. On the contrary, there was negligence on the part of the deceased himself. At the relevant time of the accident, he was trying to overtake another vehicle. On the contrary, respondent no.1 was very slow in driving his vehicle.

6. On perusal of the rest of the contents of the written statement, it is seen that this respondent no.3 has denied each and every allegations including the age, employment and income of the deceased and therefore, it has lastly prayed to dismiss the

:5:

petition since the petition is filed under Section 166 of the Motor Vehicles Act based upon fault. The accident occurred due to rash and negligent riding of the scooter by the deceased himself. So it was necessary for the claimants to plead and prove the negligence on the part of the tipper driver since the respondent no.3 has denied these facts specifically.

7. In order to prove the claim of compensation, the claimants have examined three witnesses i.e. claimant no.1 Madhuri Rivonkar, witness no.2 Sanjeev Lotlikar, stated to be an eye witness as well as pancha to the spot panchanama, witness no.3 Joseph Athaide who was the rider of another Activa scooter and injured in the same accident. In addition to the oral evidence, the claimants have relied upon the following documents i.e. FIR at Exhibit 28, Post Mortem Report at Exhibit 30, inquest panchanama at Exhibit 31, extract of income tax at Exhibit 34, Pay Slip at Exhibit 36. As against this, the owner as well as the driver of the truck involved in the accident filed an affidavit at Exhibit 44 and examined one witness Amar D'Silva at Exhibit 46. Considering the oral as well as the documentary evidence on record, the learned Presiding Officer of the Motor Accident Claims Tribunal at Margao, has allowed the petition partly and awarded compensation of Rs.23,90,600/- together with 9% interest from the date of the

petition till its realisation. Being aggrieved with the judgment and award, the insurance company/respondent no.3 came in appeal whereas the claimants have filed the cross objections.

8. It is contended on behalf of the insurance company/appellant that the award passed by the learned Presiding Officer of the Motor Accident Claims Tribunal is improper and incorrect. The learned Presiding Officer has not taken into consideration the entire evidence on record and has wrongly awarded the compensation. As against this, the claimants have filed the above mentioned cross objections and contended that the learned Presiding Officer has not taken into account the proper multiplier and other aspects while deciding the claim petition. So also it is contended that considering the nature of the permanent job of the deceased the learned Presiding Officer has not considered 30% increase in his salary so also the number of dependents. The amount which was deducted on account of the personal expenses was not correct. So the claimants have prayed for modification of the award and prayed for a compensation in excess of Rs.30,00,000/-.

9. I have heard the arguments of Mr. E. Afonso, learned counsel appearing for the appellant and Mr. Lotlikar, learned Senior

Counsel appearing for the respondent nos. 1 to 3 and 5.

10. Mr. Afonso, learned counsel urged that so called eye witness as well as the pancha witness is related to the claimants so also by referring the certain admissions given in the cross examination, learned counsel has argued that the oral testimony of the witness Mr. Sanjeev Lotlikar is highly improbable and not believable. According to Mr. Afonso, learned counsel a false panchanama is prepared by the police. Therefore, there is no evidence on record to show that the accident had occurred due to the negligence of respondent no.1 while driving the tipper truck. According to Mr. Afonso, the compensation awarded by the learned Presiding Officer on account of sudden death i.e. to the extent of Rs.1,00,000/- is nowhere contemplated in law. Therefore, the learned Presiding Officer has granted this amount wrongly. According to Mr. Afonso, the deceased Tukaram was in service and his services were temporary. Therefore, the question of increase in his salary does not arise. According to Mr. Afonso, the legal heirs can only ask for the compensation and in the present case only there are three legal heirs i.e. claimant nos. 1 to 3. Therefore, the claimant nos.4 and 5 cannot be treated as the legal heirs. At the first instance, he argued that the claimants have failed to establish the negligence on the part of respondent no.1 and therefore, the

:8:

petition is liable to be dismissed with costs. Alternatively, he has urged that the amount of compensation awarded by the learned Presiding Officer is at the higher side. Therefore, it is liable to be reduced by modifying the award under the appeal. As against this, Mr. Lotlikar, learned Senior Counsel appearing for the respondent nos. 1 to 3 and 5/ cross objectors has argued that the negligence of the tipper driver has been established. According to Mr. Lotlikar, learned Senior Counsel appearing for the respondents that looking to the number of dependents and the age of the deceased, appropriate multiplier is 14 as observed in the case of **Sarla Verma** and 1/4th deduction for self expenses has to be accepted. Mr. Lotlikar, learned Senior Counsel further argued that the deceased had permanent and assured job. Therefore, 30% increase of his gross salary was to be considered by the learned Presiding Officer which was not considered.

11. Considering the pleadings of the parties, evidence on record and upon hearing both the sides, the following points arise for my determination.

<u>POINTS</u>	<u>FINDINGS</u>
1 Whether the judgment and award holding respondent nos. 2 and 3 liable to pay the compensation to	No

the claimants is bad in law and liable to be set aside ?

- 2 In view of the cross objections, Yes
whether the award passed by the
learned Presiding Officer is liable to
be modified ?

R E A S O N S

12. **Point Nos. 1 and 2** :- The above referred points are interlinked with each other. Therefore, they are taken together for joint discussion. At the outset, it is material to note that though it is argued on behalf of the appellant/respondent no.3 that the claimants have not proved the negligence, however it appears that there is sufficient evidence on record to show that the accident had occurred due to the rash and negligent driving of the tipper truck by respondent no.1. On perusal of the evidence of the claimant no.1, it appears that she was not a witness to the accident. Looking to the evidence of witness no.2, Sanjeev Lotlikar, it appears that on the day of accident, he was proceeding on his Activa scooter on correct side. At the relevant time of the accident, the tipper truck came in rash and negligent manner and dashed to his Activa scooter and further knocked down another Activa scooter. He witnessed the accident but due to fear he did not stop and went to his personal work. Within 15 to 20 minutes he came back and at that time he saw so many persons were gathered at the accident spot. At that time, the Investigating Officer requested

him to act as a pancha and accordingly, he acted as pancha for the spot panchanama. During the cross examination, he has admitted that he is distantly related to the claimants and his statement was not recorded by the police. Even assuming for time being, the testimony of this witness is not sufficient to establish the negligence of respondent no.1, still there is other material/evidence on record because the standard of proof required to decide the Motor Vehicle claim is not so much high, such as required in proving the criminal offences and giving punishment to the accused. Therefore, this Court can conveniently look into the contents of the FIR and spot panchanama. During the course of the arguments, learned counsel appearing for the appellant/respondent no.3 argued that the false panchanama was prepared by the police. I do not find any reason to prepare a false panchanama. On perusal of the contents of the spot panchanama coupled with the map/sketch attached thereto, it is clearly seen that the tipper truck completely went to the wrong side and gave dash to the scooter of the deceased Tukaram. There was 16.50 metres brake marks of the tipper truck which indicate the high speed of the tipper truck due to which respondent no.1 was unable to control his vehicle. Thus, considering the situation appears in the map/sketch and from the contents of the spot panchanama, it clearly depicts that the accident occurred due to the negligence of

respondent no.1. The oral evidence of RW1 i.e. the driver of the tipper truck coupled with the oral evidence of another witness Amar D'Silva vide Exhibit 46, it appears that it is the oath against the oath. The situation and the manner in which the accident occurred and claimed by these two witnesses is not supported with the other circumstances appearing on record. I think the spot panchanama and the map/sketch attached thereto are prepared immediately. Therefore, there was no scope for the police or other person to manipulate it. Therefore, the situation appearing from the contents of the spot panchanama and the map/sketch clearly supports the case of the claimants and the versions of the witness no.2 Sanjeev Lotlikar and witness no.3 Joseph. The witness no.3 Joseph appears to be an independent witness who has stated the manner in which the accident had occurred. This witness has admitted in cross examination that he has not filed the petition for compensation. I think such admission has no relevance because this witness might have sustained minor injuries and thought it fit not to file the claim petition. The evidence of this witness appears to be most probable and natural. Hence, taking into account the evidence in its entirety, I am of the opinion that the claimants have proved that the accident occurred due to the negligence of respondent no.1.

13. On the basis of the evidence on record and in the light of the arguments advanced by both the parties, now it is necessary to look into the grounds mentioned by claimant nos.1 to 3, in their cross objections and then to decide whether the learned Presiding Officer of Motor Accident Claims Tribunal has properly adjudicated the things and properly determined compensation or not. Before considering these aspects, now I have to deal with the cross objections made by the claimant nos. 1 to 3. The arguments of Mr. Lotlikar, learned Senior Counsel appearing for the claimant nos. 1 to 3 were three folded. One is that the Trial Court has not considered the proper multiplier to be applied. Secondly, the learned Trial Court has not given increase of 30% in the salary on account of future prospects and thirdly improper deduction from the salary of the deceased for the purpose of self expenses. Mr. Lotlikar, learned Senior Counsel has argued that the claimants have established that the deceased Tukaram was having permanent job and his last pay was Rs.19,005/-. As per the observations laid down by the Hon'ble Supreme Court in the case of **Rajesh and others V/s Rajbir Singh and others** reported in **(2013) 9 SCC 54**, it was for the Trial Court to increase in the salary to the extent of 30% and then to make deduction of self expenses in reference to the number of dependents as observed by the Hon'ble Supreme Court in the case of **Sarla Verma**. And

thirdly, the Trial Court is erred in deducting one third for the self expenses of the deceased had still been alive. Let us examine the evidence on record because the claimants have to prove the basic things i.e. the age of the deceased as on the date of the accident, income and the number of dependents. During the course of the arguments, it reveals that there was no dispute between the parties about the age. The witness Madhuri Rivonkar deposed that Tukaram (since deceased) was born in 1959 and there is no dispute between the parties about his birth date so admittedly the deceased had completed his age of 45 years as on the date of the accident. So more specifically his age was 45 years, nine months and twenty three days.

14. Turning to the another aspect, it is material to note that in order to prove the monthly salary of the deceased the claimants have mostly relied upon the evidence of the claimant no.1 Madhuri coupled with the salary certificate who has stated in para 7 of her affidavit that her husband was quite young, healthy, robust and had a dashing personality who was aged about 45 years at the time of the accident. Her husband was serving as a bank clerk at Goa Urban Co-operative Bank Ltd., at Ponda, and he was drawing gross salary of Rs.19,005/- per month and his net salary was Rs.14,843/-. He was assessed for income tax and paid

:14:

Rs.28,201/- as income tax for the Assessment Year 2004-2005.

The oral evidence of the claimants is supported by documentary evidence i.e. the pay slip at Exhibit 36 issued by the Goa Urban Co-operative Bank Ltd. On the basis of the oral as well as the documentary evidence adduced on behalf of the claimants, it is crystal clear that the job of the deceased was secured job and his last pay was Rs.19,005/- per month.

15. The learned counsel appearing for the appellant has argued that the claim petition under the provisions of Section 166 can be filed by the legal heirs of the victim/deceased and therefore, the claimant nos. 1 to 3 are the only legal heirs. Therefore, the deduction made by the learned Presiding Officer to the extent of one third is proper deduction. I do not agree with the submission of the learned counsel appearing for the appellant simply because the petition under Section 166 can be instituted by the person depending upon the earning of the deceased. What has been considered by the Apex Court is the word 'dependent'. Here in the present case, the father and the mother of the deceased Tukaram are also the claimants, they are old aged and therefore, they can be considered as the dependents. Hence, the number of dependents are five and it has been considered while deciding the proper deduction for the purpose of self expenses.

16. Before the decision of the Hon'ble Supreme Court in the case of **Sarla Verma and others V/s Delhi Transport Corporation and another** reported in **(2009) 6 SCC 121**, there was no uniformity while awarding compensation on account of various heads so there was uniformity in choosing the appropriate multiplier in reference to the number of the dependents. Therefore, finally the Hon'ble Supreme Court has set a law and issued guidelines while deciding the claim of compensation. I have also gone through the observations in the case of **Rajesh and others vs. Rajbir Singh and others** reported in **(2013) 9 SCC 54**. On perusal of the observations in the aforesaid case, it appears that finally the Hon'ble Apex Court has laid down the principle with regard to the award of compensation to its reduction and addition depend upon the facts and circumstances of the case. Keeping in mind the observations of the above two cited authorities, the compensation is hereby redetermined as follows.

17. The salary of the deceased has been proved to be Rs. 19,005 X 12 months comes to Rs. 2,28,060/-, out of which the actual income tax of ~~Rs. 28,209/-~~ **Rs.17,701/-** paid by the deceased has to be deducted. Hence, the amount comes to ~~Rs. 1,99,851/-~~ **Rs.2,10,359/-**. Looking to the permanent job of the deceased, 30% increase in the salary has to be added, which comes to ~~Rs. 59,955.30 ps.~~ **Rs.63,108/-**. Therefore, the total

Corrections
carried out as
per order
dated
8/5/2015
passed in
MCA Nos.
189 & 190 of
2015.

:16:

~~Rs.2,73,467/-~~

amount comes to ~~Rs.2,59,806/-~~. Looking to the number of the

dependents, 1/4th of the amount has to be deducted towards self

~~Rs.68,366.75/-~~

expenses which comes to ~~Rs. 64,951/-~~. After its deduction, the

~~Rs.2,05,100.25/-~~

amount comes to ~~Rs. 1,94,855/-~~. The proper multiplier in the

present case is 14 to be applied. Hence the amount of

~~Rs.28,71,403.50~~

compensation comes to ~~Rs. 27,27,970/-~~. In addition to that, the

claimant no.1 Madhuri is entitled for the compensation of

Rs. 1,00,000/- on account of loss of consortium. The minor

claimants i.e. Tejas and Tanvi are entitled for the compensation of

Rs.1,00,000/- on account of loss of guidance and care to the

minors, and all the claimants are entitled for the compensation of

Rs.25,000/- on account of funeral expenses. Hence the total

~~Rs.30,96,403.50 rounded to Rs.30,96,404/-~~

compensation comes to ~~Rs. 29,52,970/-~~ (Rupees ~~Twenty Nine Lakh~~

~~Thirty Lakh Ninety~~

~~Fifty Two Thousand Nine Hundred Seventy Only~~). On all counts

~~Six Thousand Four Hundred and Four Only)~~

the claimants are entitled to the interest at the rate of 9% from

the date of the petition till its realization.

18. Considering the evidence on record and the reasons

recorded hereinabove, I am of the opinion that, the award passed

by the learned Presiding Officer, M.A.C.T., needs to be modified

and it stands modified accordingly. Consequently, the present First

Appeal No. 91 of 2008 is hereby dismissed and the Cross Objection

No. 12 of 2014 is partly allowed. With the modification in the

Corrections
carried out
as per order
dated
8/5/2015
passed in
MCA Nos.
189 & 190 of
2015.

:17:

award referred to above, the present appeal and cross objections stand disposed of.

K. L. WADANE, J

at*