

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 41 OF 2010

1. Smt. Milagrina Araujo
widow of late Mr. Joaquim F. Araujo,
aged 43 years, housewife,
and her children.
2. Miss. Angela Pedrina Araujo,
daughter of late Mr. Joaquim F. Araujo,
aged 20 years, student,
3. Mr. Armand Araujo,
son of late Mr. Joaquim F. Araujo,
aged 19 years, student,
4. Miss. Alveera Araujo,
daughter of late Mr. Joaquim F. Araujo,
aged 17 years, student,
5. Miss. Aslinda Araujo,
daughter of late Mr. Joaquim F. Araujo,
aged 14 years, student,
All residents of House No. J/20,
Gounloy, Novem,
Salcete Goa, (Appellant No.1 as a mother
& legal guardian of appellants No.4 & 5) Appellants

V e r s u s

1. Mr. Mahesh S. Kambli,
Son of Mr. Shankar Kambli,
major in age, business,
resident of House No.154, Dando,
Caranzalem, (P.O. Tiswadi, Goa(Owner),
2. Mr. Aslam Ahmed Khan
Son of Mr. Yawar Khan
major in age, service,
resident of near Masjid Bahadurpur,
Post Manipur, Patna,
District Sultanpur,
Uttar Pradesh,
Presently residing at House No.154,

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Dando, Caranzalem, (P.O.)Tiswadi, Goa.
(Driver).

3. The Oriental Insurance Co. Ltd.,
Pereira Chambers, 1st Floor,
Fr. Jose Vaz Road,
P.O. Box No. 105,
Vasco-da-Gama, Goa (Insurer). ... Respondents

Mr. Milton Marshal, Advocate for the appellants.

Mr. E. Afonso, Advocate for the respondent no.3.

CORAM : K. L. WADANE, J

JUDGMENT RESERVED ON : 16.07.2015

JUDGMENT PRONOUNCED ON : 31.07.2015

J U D G M E N T :

The present appeal is preferred by the original claimants, dissatisfied with the amount of compensation awarded to them by the Presiding Officer of Motor Accident Claims Tribunal III, South Goa, Margao, in Claim Petition No. 49/2009 dated 11.12.2009.

2. The parties are referred to their original status.
3. The brief facts of the case may be stated as follows :
The claimant no.1/appellant no.1 is the widow and

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claimant nos.2 to 5/appellant nos. 2 to 5 are the children of the deceased Mr. Joaquim Araujo, have filed the Claim Petition under the provisions of Section 166 of the Motor Vehicles Act, contending inter-alia that on 27.09.2008 the deceased Mr. Joaquim Araujo was proceeding to Mormugao Port Trust to join his duties. He was riding his scooter bearing registration No. GA-02-K-2515. The respondent no.2 came from behind in a truck bearing No. GA-01-T-6774 and was proceeding from Margao to Vasco. At the relevant time of the accident, the respondent no.2 drove the truck in a rash and negligent manner and when it reaches at the spot of the accident at Meta strip, the truck gave dash to the scooter of the deceased from behind. As a result, the deceased fell down on the ground and sustained severe head injuries and succumbed to the injuries on 28.09.2008 when he was undergoing medical treatment in Goa Medical College.

4. At the time of the accident, the deceased was earning Rs.15,513/- per month by way of salary. Thus, the claimants have claimed total compensation of Rs.20,00,000/- on all counts.

5. The respondent no.1 is the owner, respondent no.2 is the driver and respondent no.3 is the insurer of the truck.

6. The respondent no.2 did not file written statement nor contested the proceedings. The respondent no.1 filed his written statement and denied almost all the contents and written statement is in the form of general denials.

7. The respondent no.3 stated that the petition is liable to be dismissed for non joinder of necessary parties as the claimants/appellants have not joined the insurer of the scooter. The respondent no.2 was not holding driving licence at the time of the accident. The respondent no.3 further stated that the deceased suddenly came in the middle of the road in front of the truck. Hence, the deceased himself was negligent. Considering the rival pleadings of the parties, the learned Presiding Officer has framed three issues, one is relating to the negligence of the respondent no.2, entitlement of compensation and regarding negligence of the deceased. The learned Presiding Officer has awarded compensation of Rs.8,54,000/-. Hence, the claimants/appellants have preferred this appeal. The respondents have not filed any cross objection to the findings on the issue nos. 1 and 3. So the present appeal is restricted to the quantum of compensation with regard to the findings to issue no.2 only.

8. I have heard the arguments of Mr. M. Marshal, learned

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counsel appearing for the claimants/appellants and Mr. E. Afonso, learned counsel appearing for the respondent no. 3.

9. Considering the pleadings of the parties, evidence on record and upon hearing both the sides, the following point arises for my determination.

	<u>POINT FOR DETERMINATION</u>	<u>FINDING</u>
1	Whether the amount of compensation awarded to the claimants/appellants is just/reasonable ?	No
2	What Order ?	Appeal is allowed.

10. It is material to note that there is no serious dispute about the employment of the deceased so also regarding his age at the time of the accident as he was aged about 48 years and was serving in Mormugao Port Trust at Vasco.

11. According to the claimants/appellants the deceased was getting salary of Rs.15,513/- per month and the claimant no.1 has deposed to that effect in her oral evidence in view of the provisions of Order 18 Rule 4 of the Civil Procedure Code and in para 11 of her affidavit she has stated that at the time of the accident her husband was 48 years old. He was working in Mormugao Port Trust, Vasco and was earning gross salary of

Rs.15,513/- per month. She has further stated that her husband was also receiving bonus from the company annually. The salary certificate is produced on record at Exhibit 35. This has been proved by the evidence of the claimant no.1/appellant no.1, from which it is seen that the gross salary of the deceased was Rs.15,513/- and there are deductions of Rs.8,167/- on account of various heads. Therefore, the learned Presiding Officer has considered the net earning of the deceased to the extent of Rs.7,346/- and based upon the guidelines given in the case of **Sarla Verma** (supra) the amount of compensation is calculated and awarded as referred to above.

12. According to the learned counsel appearing for the claimants/appellants the deductions under the various heads shall not be excluded for the purpose of determining the monthly salary of the deceased for example a deduction of provident fund to the extent of Rs.1000/- is a saving by way of contribution to the provident fund which ultimately the deceased would have received at the time of his retirement. Therefore, such deduction cannot be excluded from the salary of the deceased. I do agree with the submissions of the learned counsel appearing for the claimants/appellants because such deductions are not permissible for the purpose of determining the salary. The learned counsel for

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the claimants/appellants has mostly relied upon the observations in the cases of **Sarla Verma & Ors vs Delhi Transport Corp.& Anr** and **Rajesh V/s Rajbir Singh**. The Apex Court in order to have a uniformity while awarding the compensation has given certain guidelines in the case of **Sarla Verma** (supra). So keeping in mind the guidelines given by the Hon'ble Apex Court, the compensation has to be determined.

13. The claimants/appellants have proved the salary of the deceased to the extent of Rs.15,513/- per month and such income is a fixed income of the deceased and at the time of the accident the deceased was aged about 48 years. Therefore, there were chances of promotion in his service and increase in salary. So as per the observations of the Apex Court in **Rajesh V/s Rajbir Singh**, reported in **(2013) 9 SCC 54**, 30% increase to the actual income of the deceased has to be considered while computing future prospects. Considering the evidence on record and the observations in the cases of **Sarla Verma** (supra) and **Rajesh** (supra), the claimants/appellants are entitled for the compensation as follows :

The income of the deceased is proved to be	Rs.15,513/-
30% increase as per the case of Rajesh V/s Rajbir Singh (supra) after deducting TA of	Rs. 15,513/- + Rs.4581/- = Rs.20,094/- rounded to Rs.20,000/-

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Rs.180/- and washing allowance of Rs.60/-		
1/5 th deduction towards self expenses as per the case of Sarla Verma (supra)		Rs.20,000/- x 1/5 th = Rs.4000/-
Net contribution /income		Rs.20,000/- - Rs.4,000/- = Rs.16000/- x 12 = Rs. 1,92,0000
Appropriate multiplier is 13		Rs.1,92,0000/- x 13 = Rs.24,96,000/-

In addition to that the claimant no.1/appellant no.1 is entitled for the compensation of Rs.1,00,000/- on account of consortium and the claimants nos. 2 to 5/appellant nos. 2 to 5 are entitled for the compensation of Rs.1,00,000/- each on account of love and affection. In addition to the above, the claimants/appellants are entitled for the compensation of Rs.5000/- towards the loss of estate and Rs.5000/- for funeral expenses. Hence, the total compensation comes to Rs.30,06,000/- on which the claimants/appellants are entitled for the interest at the rate of 9% per annum from the date of filing the petition till its realisation.

14. In view of the above observations, I am of the opinion that the claimants/appellants are entitled for the compensation of Rs.30,06,000/- on all counts. The claimants/appellants initially claimed compensation of Rs.20,00,000/- and by way of

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amendment they claimed total compensation of Rs. 29,48,024/-. Therefore, the claimants/appellants have to deposit the Court fees on the difference amount of the claim in view of M.C.A. No.540 of 2014 granted by this Court today. Hence, the appeal is allowed and the award passed by the learned Presiding Officer in Claim Petition No. 49/2009 stands modified as indicated above.

K. L. WADANE, J

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