

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 79 OF 2013

1. Kritik Kishore Naik,
minor, aged 13 years, student,
by his next friend and Administrator
maternal grand mother
Smt. Sheetal Asnodkar
r/o Kaskarwaddo,
Porvorim, Bardez Goa.
 2. Ketan Kishore Naik
aged 18 years, student,
son of late Kishore Shrirang Naik,
c/o Smt. Sheetal Asnodkar
r/o Kaskarwaddo,
Porvorim, Bardez Goa.
- ... Appellants

V e r s u s

1. Buddesa Bandagisa Mulla
major of age,
Near Dada Vaidya High School,
Curti, Ponda,
Ponda Goa.
 2. Ulhas Narayan Narvekar,
major of age,
House No. 431, Jaycee Nagar,
Ponda Goa
 3. National Insurance Co. Ltd.,
Meglidada Mansion,
above Dena Bank,
Ponda Goa.
- ... Respondents

Mr. E. Afonso, Advocate for the appellants.

None for the respondents.

:2:

CORAM : K. L. WADANE, J

JUDGMENT RESERVED ON : 21.08.2015

JUDGMENT PRONOUNCED ON : 08.10.2015

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 the Motor Accident Claims Tribunal, Panaji, in Claim Petition No. 79/2007 dated 11.01.2013.

2. The parties are referred to their original status.

3. The claimants have filed a claim petition under Section 166 of the Motor Vehicles Act, for compensation on account of the death of their father Kishore Shrirang Naik in a motor vehicular accident.

4. The brief facts of the case may be stated as follows :

On 29.04.2007 at about 16.10 hours Kishore S. Naik, father of the claimants was riding a Motor Cycle bearing No. GA-03-E-2221 with his wife Seema as a pillion rider. They were proceeding from their residence at Porvorim by Panaji -Mapusa main road. When they reached near KTC depot road near the Electricity depot at Porvorim, a mini truck bearing registration No. GA-01-W-7515 suddenly reversed across the road. The said mini truck was loaded with electricity poles

:3:

which were protruding through the luggage box. It is further contended that the said poles hit against the forehead of the rider as a result the rider as well as the pillion rider fell down and sustained injuries. As a result of injuries, both Kishore Naik as well as Seema Naik died.

5. The claimants have stated that the deceased Kishore was earning monthly income to the extent of Rs.7,944/-. Since both parents have died in the same accident, they have become orphans. Therefore, the claimants have claimed total compensation of Rs.25,00,000/- on account of death of their father Kishore. The respondent nos. 1 and 2 have filed their written statement vide Exhibit 25 and they have denied the involvement of the vehicle in the accident or the negligence of the respondent no.1. They have contended that the truck was parked by the side of the road for unloading the electricity poles. One of the labourers had signaled the rider to stop the vehicle but the motorcycle did not stop and went ahead at a fast speed. As a result, the rider lost control of the vehicle and dashed against the pole which was being pulled out. Hence, the accident occurred due to the negligence of the motorcycle rider. The respondent no.3 has contended that there was breach of the terms and conditions of the policy and the relevant rules of Goa Motor Vehicle Rules, 1992. In order to establish the claim of the claimants, they have examined AW1 Shrimati Shrirang Naik, AW2 HC Balu Jadhav and relied upon certain documents. Considering the

evidence on record, the learned Presiding Officer of the Tribunal has partly allowed the claim petition and awarded compensation of Rs.9,80,000/- together with interest at the rate of 9% per annum. Being aggrieved with the award passed by the learned Presiding Officer of the learned Tribunal, Panaji, the claimants have preferred this appeal. The respondents have not challenged the findings recorded against them on issue nos. 1, 2 and 4.

6. I have heard the arguments of Mr. E. Afonso, learned counsel appearing for the claimants/appellants. None present for the respondents. Considering the evidence on record and upon hearing the learned Advocate appearing for the claimants/appellants, 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 is just and reasonable ?	No
2	What Order ?	Appeal is partly allowed

7. The learned counsel appearing for the claimants/appellants has argued that the learned Presiding Officer has not considered that the deceased Kishore was permanent in service. Therefore, the learned Presiding Officer ought to have considered 50% increase in his salary. So also the learned counsel has argued that the amount of compensation awarded by the learned Presiding Officer is too low.

Therefore, it needs to be enhanced and prayed to award compensation of Rs.25,00,000/-.

8. To consider the evidence of earning of the deceased, it is material to mention here that the claimants have stated that the deceased was 39 years of age and was working as a Welder at Kadamba Transport Corporation Workshop at Porvorim and earning Rs.7,944/- per month. AW1 Shrimati Shrirang Naik has produced the birth certificate of the deceased which shows that the deceased was born on 02.01.1968. Hence, his age has been proved as 39 years at the time of the accident. The claimants have produced a pay slip at Exhibit 57 issued by the Kadamba Transport Corporation Ltd. The claimants have examined AW3 Vidhyadar Harmalkar who is working as Personal Officer in KTC who deposed that the deceased was working as a helper tinsmith cum welder w.e.f. 07.12.1993 and he was drawing monthly salary of Rs.7,943.50. Thus, from the evidence of Mr. Harmalkar, the salary slip at Exhibit 57 has been proved. The learned Presiding Officer has also relied upon the evidence of Mr. Harmalkar and pay slip. Therefore, the monthly earning of the deceased was Rs.7944/-. Considering the various decisions of the Apex Court, the amount of compensation awarded by the learned Tribunal appears to be on the lower side. Therefore, in view of the observations in the case of **Sarla Verma (Smt.) and others V/s Delhi Transport Corporation and another**, reported in (2009) 6 SCC 121, **Rajesh and others V/s**

Rajbir Singh and others, reported in **(2013) 9 SCC 54**, and **Santosh Devi V/s National Insurance Co. Ltd.**, reported in **(2012) 6 SCC 421**, the claimants are entitled for the compensation as follows :

The monthly earning of the deceased is considered to be Rs.7943.50. The deceased was employed with fixed wages. Therefore, the actual income of the deceased must be enhanced for the purpose of computation of compensation by 50% as the age of the deceased was below 40 years at the time of the accident. Hence, after such enhancement, the monthly earning of the deceased comes to Rs.11,915.25. The one third amount is required to be deducted on account of self expenses. After such deduction, the amount comes to $\text{Rs.}7943.50 \times 12 = \text{Rs.}95,322/-$. Looking to the age of the deceased, the appropriate multiplier of 15 has to be applied. Hence, the amount works out to $\text{Rs.}95,322/- \times 15 = \text{Rs.}14,29,830/-$ to which the claimants are entitled on account of death of the deceased Kishore and loss of future earning. In addition to that, the claimants are entitled for compensation of Rs.1,00,000/- each on account of loss of consortium and loss of care and guidance for minor children. Both the claimants are entitled for compensation of Rs.5000/- for the loss of estate and Rs.5000/- towards the funeral expenses. Hence, the total compensation comes to Rs.16,39,830/- to which the claimants are entitled interest at the rate of 9% per annum from the date of the petition till its realisation. Hence, the point for determination is answered accordingly.

:7:

Therefore, the following order.

O R D E R

- (i) The appeal is partly allowed with costs.
- (ii) The impugned award dated 11.01.2013 passed in Claim Petition No. 79/2007 stands modified to the extent indicated above.
- (iii) The appeal stands disposed of accordingly.

K. L. WADANE, J

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