

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 80 OF 2013

1. Kritik Kishore Naik,
aged 13 years, student,
son of late Kishore Shrirang Naik
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.

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. 78/2007 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 mother Seema Kishore 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 along with his wife Seema i.e. since deceased 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 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 Seema was earning Rs.1,800/- per month. Since both parents have died in the same accident, they have become orphans. Therefore, the claimants have claimed total compensation of Rs.10,00,000/- on account of death of their mother Seema. The respondent nos. 1 and 2 have filed their written statement vide Exhibit 23 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.2,40,000/- 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.

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. During the course of the arguments, Mr. E. Afonso, learned counsel appearing for the claimants/appellants by referring the evidence on record has argued that the amount of compensation awarded by the learned Tribunal is too meagre and in view of the various decisions of the High Court and the Apex Court, the learned counsel has prayed to grant compensation of Rs.10,00,000/- as claimed by the claimants. Admittedly, the respondents have not filed any appeal against the findings recorded by the learned Tribunal as to the issue nos. 1 to 5. The findings as to the quantum of

compensation are challenged by the claimants. Therefore, in order to determine a short controversy, it is material to note that the monthly earning claimed by the claimants is absolutely just and reasonable and the learned Tribunal has also held that the deceased was earning Rs.1,800/- per month. Admittedly, the deceased was aged 37 years at the time of the accident. Considering the observations in the case of **Sarla Verma (Smt.) and others V/s Delhi Transport Corporation and another**, reported in (**2009**) **6 SCC 121** and **Rajesh and others V/s Rajbir Singh and others**, reported in (**2013**) **9 SCC 54**, the claimants are entitled for compensation as follows :

The monthly earning of the deceased is to be considered to the extent of Rs.1,800/-. The relevant multiplier is 15.

$$\text{Rs.1,800/-} \times 12 = \text{Rs.21,600/-}$$

Out of which, one third is to be deducted for consideration of self expenses had deceased been alive. After such deduction, the amount comes to Rs.14,400/-.

$$\text{Rs.14,400/-} \times 15 = \text{Rs.2,16,000/-}.$$

In view of the observations in the case of **Sarla Verma** (supra) and **Rajesh** (supra), the claimants are entitled for the compensation of Rs.1,00,000/- each towards loss of consortium and loss of care and guidance for minor children. The claimants are further entitled for Rs.5000/- towards the funeral expenses and Rs.5000/- towards the loss of estate. Hence, the total compensation

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works out to Rs.4,26,000/- to which the claimants are entitled for interest at the rate of 9% per annum from the date of the filing of the claim petition till its realisation. The point for determination is answered accordingly.

8. Hence, I pass the following :

O R D E R

- (i) The appeal is partly allowed with costs.
- (ii) The impugned award dated 11.01.2013 passed by the learned Presiding Officer of the Motor Accident Claims Tribunal, Panaji in Claim Petition No. 78/2007 stands modified as indicated above.
- (iii) The appeal stands disposed of accordingly.

K. L. WADANE, J

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