

IN THE HIGH COURT OF BOMBAY AT GOA**FIRST APPEAL NO. 31 OF 2012**

1. Mrs. Perfeta alias Perpetua Camelo Marques,
aged 47 years;
r/o H. No.858, Morgado Vaddo,
Goa Velha, Tiswadi - Goa
 2. Mr. Camilo Estavao Marques,
Aged 48 years
r/o H. No.585, Morgado Vaddo,
Goa Velha, Tiswadi – Goa
- ... Appellants.**

Versus

1. Mr. Dilip Galande, Driver
s/o Pandurang Galande,
R/o. Sokasan, Tal. Man,
Zilha Satara, State Maharashtra.
 2. Vrayline India Pvt. Ltd. ; owner
Chopathy view Building,
Opp. Sukh Sagar Restaurant,
S. V. P. Road, Mumbai, Pin 400 007
 3. ICICI Lombard General Insurance Co. Ltd.,
ICICI Bank Towers, Banda-Curla Complex,
Bandra (East) , Mumbai 400 057.
- ... Respondents.**

Mr. E. Afonso, Advocate for the appellants.
None for the respondents.

Coram :- K. L. WADANE, J.

Reserved on :- 30 April 2015.

Pronounced on :- 09 June 2015.

JUDGMENT :

The present appeal is presented by the original claimants against the judgment and award passed by the learned Presiding Officer, M.A.C.T., Panaji (hereinafter referred to as 'Presiding Officer') in Claim

Petition No.107/2007 dated 10/02/2011, by which the claim petition of the claimants is partly allowed and compensation of Rs.6,28,500/- is granted to the claimants along with interest at the rate of 9% p.a. The claimants / appellants have presented this appeal mainly on the ground that the amount of compensation awarded to them is very meagre and disproportionate to the earning of the deceased.

2] Brief facts of the case may be stated as follows :

(Parties are referred to their original status)

The son of the claimants namely Raymond Anthony Marques, aged about 20 years, a sportsman – footballer was riding on his motorcycle bearing registration No. GA 01 / B 6913 (hereinafter referred to as 'motorcycle') on national highway No.17. When he reached at the spot of accident i.e. at Savorikode, one bus bearing registration No. MH 04 / G 5540 (hereinafter referred to as 'bus') was proceeding in the same direction and ran over him and crushed him to death on the spot. The accident occurred due to rash and negligent driving of bus by its driver – respondent No.1. Therefore the offence is registered against him.

3] Deceased Raymond was top class sportsman – footballer owned several State awards. He represented the Goa State in a National and

International football game. He was a regular football player of the Sporting Clube De Goa and was earning Rs.18,000/- per month. He had participated in International game at Portugal. So, according to the claimants, their son deceased Raymond was a very good sportsman having bright future in the field of sports. Therefore, they have claimed lumpsum compensation of Rs.25,00,000/-.

4] The Respondent No.3 – Insurance Company resisted the claim petition by filing its written statement at Exh.25 and it has denied the age, occupation and income of the deceased the manner in which the accident is occurred and compensation claimed. However, it has admitted the contents of Para Nos.15 to 17 and it has further pleaded that the accident occurred due to negligence of the deceased himself. The respondent No.3 admitted the insurance of the vehicle involved in the accident. However, its liability is strict as per the terms and conditions of the policy. The respondent was not holding driving licence, therefore, it is not liable to pay the compensation. Considering the rival pleadings of the parties, the learned Presiding Officer has framed six issues. First issue relating to the manner in which the accident took place. Second issue relating to the negligence of respondent No.1. Third issue relating to the negligence of deceased. Fourth issue relating to the breach of terms and conditions of the policy.

Fifth is relating to the age and income and sixth is relating to the entitlement for compensation. The learned Presiding Officer has decided issues No.1 and 2 in the affirmative and issues No.3 and 4 in the negative. While answering the issue No.5 the Presiding Officer determined the earning of the deceased to the extent of Rs.8,000/- per month and awarded the compensation of Rs.6,28,500/- while answering the issue No.6. So, ultimately, all the issues are decided in favour of the claimants and the respondents have not preferred any appeal or cross-objections in the present proceeding. On the other hand, the claimants have come in appeal only on the ground of the quantum of compensation.

5] I have heard the arguments of Mr. E. Afonso, the learned counsel for the appellants / claimants. None present for the respondents. With the help of Mr. E. Afonso, the learned counsel for the appellants I have gone through the entire evidence i.e. oral as well as documentary on record and upon hearing Mr. E. Afonso following points arise for my determination.

	Points		Findings
1)	Whether the claimants prove that the deceased was earning Rs.18,000/ per month ?	...	'In the negative'
2)	Whether the learned Presiding Officer has		

	rightly calculated the amount of compensation holding that the earning of the deceased was Rs.8,000/- per month ?	...	'In the negative'
3)	What order ?	...	'Appeal is partly allowed'

6] As to points No.1 and 2 :

At the outset, it is material to note that the present appeal is presented by the claimants / appellants on the ground of quantum of the compensation. According to Mr. E. Afonso, the deceased was a sportsman having good career in sports. Therefore, he referred various certificates of merits given to the deceased during his sports career. Those certificates are available on the paper-book at page Nos.65 to 101, which are collectively exhibited at Exh.41. On perusal of all these certificates, it appears that, the deceased was a good sportsman represented the State in a sports of a football.

7] Since the appeal is restricted only to the quantum of compensation, therefore, the other evidence on record is not referred and discussed. Therefore, this Court has to see what evidence is adduced by the claimants to prove the actual earning of the deceased. According to the claimants / appellants, the deceased was in service and was earning Rs.18,000/- per month, therefore, the claimants have mainly relied upon the oral evidence of AW-3. Victor Fernandes, who is stated to be Vice-

President of Sporting Clube De Goa. He has filed his affidavit at Exh.43 under the provisions of Order XVIII Rule 4 of Civil Procedure Code, and deposed that he is a Vice-President of Sporting Clube De Goa. Mr. Raymond Marques was registered player for the Club's Football Team from June 2006. He was promising top class sportsman and outstanding football player. He was a product of the prestigious Sesa Academy. He further deposed that Mr. Raymond Marques was drawing a monthly salary of Rs.18,000/- besides the other perks. The salary certificate is produced on records is at Exh.45. It is signed by AW-3 – Victor Fernandes. In which it is mentioned that the deceased was drawing monthly salary of Rs.18,000/-. So, the claimants have relied upon the oral evidence of AW-3 coupled with salary certificate Exh.45.

8] During the cross-examination this witness has admitted that no appointment letter was issued but a contract was entered into with Rayond Marques. He has not produced the copy of said contract. So, looking to the above admission given by this witness it appears that the best available evidence (if at all in existence) was not produced before the learned Presiding Officer. Looking to the salary certificate, it appears that, it is issued on the letterhead of Sporting Clube De Goa. At the time of deposition of AW-2, he has not brought its office copy nor the original record relating to the pay and perks of the deceased. It is

very easy for anybody to issue such salary certificate on a letterhead. This sporting club must have maintained the record of payment to its employees. But, such record was not brought before the learned Presiding Officer. Therefore, it is very hard to believe oral testimony of AW-3 and the salary certificate. Therefore, the learned Presiding Officer has rightly rejected the oral evidence. It has determined the earning of the deceased to the extent of Rs.8,000/- per month. Probably, the learned Presiding Officer has considered this earning on the basis of the guess work or the minimum earning of person one can earn. Anyway, the finding of the learned Presiding Officer accepting the earning of the deceased to the extent of Rs.8,000/- has not been challenged by the respondents.

9] It is seen from the record that the deceased was aged about 20 years at the time of accident, he died unmarried, therefore, looking to the observations in the case of *Sarla Verma and others vs. Delhi Transport Corporation and another reported in 2009(5) Mh. L. J. 775,* and in the case of *Rajesh and others vs. Rajbir Singh and others reported in (2013) 9 Supreme Court Cases 54,* the calculation arrived at by the learned Presiding Officer appears to be incorrect, therefore, it has to be modified and replaced by the following calculations.

The monthly earning of the deceased has been considered to the

extent of Rs.8,000/- X 12 months comes to Rs.96,000/- per annum. Out of which 1/2 is required to be deducted towards personal expenses of the deceased (as per Sarla Verma's case), if he had been lived. Hence, net contribution comes to Rs.48,000/- per annum and (As per the Sarla Verma's case) proper multiplier to be adopted is 18. Hence, compensation comes to Rs.8,64,000/-. In addition to that, the claimants are entitled for the compensation of Rs.25,000/- for funeral expenses (as per the Rajesh and others case). In addition to the above, the claimants are entitled for the compensation of Rs.2,000/- for the loss of estate. Hence, the total compensation comes to Rs.8,91,000/- to which the claimants are entitled with 9% interest from the date of petition till its realization.

10] During the course of arguments Mr. E. Afonso, the learned counsel for the appellants has referred the evidence of AW-5 Mahadeo Ganig and the estimate of the repairs of the motorcycle to the extent of Rs.97,052/-. However, that part of evidence is without pleading of the claimants regarding damages to the vehicle. Nowhere the claimants have pleaded about the particulars of the damages caused to the motorcycle nor they have specifically claimed. So in absence of the pleading the claim of the claimants for the damages of the vehicle cannot be considered. Hence, points No.1 and 2 are answered

accordingly. Therefore, the following order.

11] Appeal is partly allowed with proportionate costs.

12] The Judgment and award is hereby set aside and modified that the respondents are directed pay an amount of Rs.8,91,000/- jointly and severally to the claimants along with 9% interest from the date of petition till its realization.

13] With this modification appeal stands disposed of.

K. L. WADANE, J.

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