IN THE HIGH COURT OF BOMBAY AT GOA.

FIRST APPEAL NO.2 OF 2012.

1. Smt. Sumitra Dwarkanath Sirsat,
Wife of late Shri Dwarkanath Sirsat,
69 years of age, housewife,

2. Shri Yogesh Dwarkanath Sirsat
Son Of Late Shri. Dwarkanath Sirsat,
Age 41 Years, Business

3. Ms. Anita Dwarkanath Sirsat
Daughter of late Shri. Dwarkanath Sirsat,
Age 31 years, Dentist

4. Ms. Yogeeta Dwarkanath Sirsat
Daughter of late Shri. Dwarkanath Sirsat,
Age 33 Years, employee,
All Indian Nationals and R/o H. No. 43,
Peerachi Kond, Bicholim – Goa. ….. Appellants.

Versus

1. Shri. Shivanand Hanumantappa Bisirotti
Major of age, Galli Bharatnagar III Class,
Belgaum, Taluka-Dharwad, Post-Garag,
District- Dharwad, Karnataka, India.

2. Shri. Mohsin Ahmed Sab
Son of Ahmed Sab Hanchanmani,
Major Of Age, Resident of H. No. 7737/7,
Sector No. 12, Mahantesh Nagar,
Belgaum, India (karnataka)

3. The New India Assurance Company
Limited, Through Manager,
3933/82 Mudalgi Building,
Club Road, Belgaum, India (Karnataka) ….. Respondents.

Mr. D. Gaonkar, Advocate for the appellants.
Mr. E. Afonso, Advocate for the respondent no.3.

Coram:- K. L. WADANE, J.
Reserved on 23rd January, 2015.
Pronounced on:- 30th January, 2015.

JUDGMENT

The present appeal is directed against the judgment and award dated 15th June, 2011 passed by the Presiding Officer, Motor Accident Claims Tribunal, Mapusa, ("Presiding Officer" for short) by which the learned Presiding Officer has partly allowed the petition and granted compensation of Rs.50,000/- (Rupees fifty thousand only) with 8% interest to the claimants.

2. Parties are referred to as per their original status in the claim petition.

3. The claimants have filed the claim petition under Section 166 of the Motor Vehicles Act and it was their case that husband of the claimant no.1 and father of claimants no. 2 to 4 namely Dwarkanth Sirsat was walking on the road on the day of the accident i.e 28.11.2004 and at the relevant time of accident i.e at about 6.10.p.m the offending truck bearing No.KA-22-C-8292 driven by the respondent no.1 came towards

wrong side and gave dash to the husband of the claimant no.1 namely Dwarkanth Sirsat.

4. According to the claimants the accident occurred due to sole negligence of the respondent no.1 and there was no negligence on the part of the deceased. The deceased was walking on the road proceeding from Assonora to Bicholim. In the accident deceased received serious injuries but he was conscious, therefore, initially he was taken to the Primary Health Centre, Bicholim and thereafter, he was shifted to GMC, Bambolim where he was declared dead. According to the claimants, the deceased was 71 years old at the time of accident. He was doing agricultural work, in addition he was doing business of poultry. Therefore, his monthly income was Rs.22,676/- (Rupees twenty two thousand six hundred and seventy six only)

5. The vehicle involved in the accident was driven by the respondent no.1, owned by the respondent no.2 and was insured with the respondent no.3, hence all of them were jointly and severally liable to pay compensation to the claimants. The respondent no.3 filed its written statement at Ex. 12 and it has

denied almost all the contents of the petition for want of information and knowledge. It is specifically admitted by the respondent no. 3 that the vehicle was insured as on the date of the accident, however it has denied the age and income of the deceased. It is further contended that there was no negligence on the part of the respondent no.1, but on the contrary deceased himself was negligent.

6. Respondents no.1 and 2 also filed their Written Statement at Exh. 16 and they have also denied almost all the contents of the petition, Exh.1. Even they have denied involvement of the vehicle in the accident. Alternatively it is contended by them that if at all liability to pay compensation arose, the same shall be saddled against the respondent no. 3, as at the relevant time of the accident respondent no.1 was holding valid driving licence and vehicle was insured with the respondent no.3.

7. In the trial Court on behalf of the claimants in all eight witnesses were examined. Out of which AW1 Yogesh Sirsat (claimant no.2); AW7 Dr. Anita Sirsat (claimant no. 3) have deposed as to the manner in which the accident occurred and the earning of the deceased Dwarkanth Sirsat. Witness

Shambu Kanekar, AW2 is examined to prove the manner in which the accident occurred and AW4 Faruk Agha is examined as panch witness and witness Madan Phatarpekar, AW5 the motor vehicle inspector was examined to prove the accident report form. In addition to the above, the claimants have examined two chartered accountants i.e Mr. Rajendra Bhobe and Dr. Lalitkumar Shah as AW3 and AW8 respectively and Mr. Neenad Deulkar, Investigating officer was examined as AW6 and income tax returns of Smt. Sumitra Sirsat are placed on record at Exh. 58 pertaining to the year 2003-2004 to 2009.

8. Looking to the evidence on record, the learned Presiding Officer has granted compensation to the claimants as referred to above.

9. Looking to the averments in the petition and the written statement, the learned Trial Court has framed issues vide Exh. 19 out of which issue no.1 is relating to the negligence.

10. Looking to the evidence on record and the observation recorded by the learned Presiding Officer it appears that the negligence of the respondent no.1 is proved. The respondent

no.1 has not challenged this finding, therefore, it became final.

11. Now the only question which remains which is required to be determined is whether the amount of compensation determined by the learned Presiding Officer and awarded to the claimants is just and reasonable?

12. The learned Presiding Officer has awarded only compensation of Rs. 50,000/- (Rupees fifty thousand only) which according to me is very meager, therefore, it is liable to be enhanced in view of the observations recently recorded by the Hon'ble Apex Court in the cases of ***Smt. Sarla Verma Vs. Delhi Transport Corporation, 2009(6) SCC 121*** as well as ***Rajesh and others Vs. Rajbir Singh and others, (2013)9 SCC 54.*** It is also admitted position that the deceased was 71 years old at the time of the accident.

13. Looking to the entire evidence on record, the evidence relating to the negligence is not required to be reassessed because it is out of question. The only thing which is to be determined is what was the income of the deceased and whether the learned Presiding Officer has taken into

consideration the guidelines issued by the Hon'ble Apex Court to scrutinize the evidence with regard to the income of the deceased. It is material to note that the claimants have tried to suggest that the annual income of the deceased was taxable and, therefore, they have examined two chartered accountants in addition to the oral evidence of the claimants no. 2 and 3. But it is very material to note that the deceased during the life time has not submitted his income tax returns. The income tax returns submitted after the death of Dwarkanth Sirsat was signed by the claimant no.1. There is absolutely no evidence on record to show that the deceased had submitted his income tax returns. The filing of the returns on behalf of the deceased by the claimants have no relevance to determine the actual income of the deceased.

14. I have gone through the entire oral as well as documentary evidence on record and have also carefully considered the submissions of both the learned Counsel, so also, have gone through the judgment cited by the learned Counsel for the appellants.

15. Perusal of the evidence on record it appears that the

claimants have tried to create some documents to show the earnings of the deceased per annum. However, the evidence adduced by the claimants to that extent is not reliable because the first chartered accountant examined at one place states that income of the deceased was not reduced and another place he states that he filed returns of the deceased. That chartered accountant was recalled for the purpose of explanation and another chartered accountant was examined by the claimants to fill up lacuna left by them in the pleadings and evidence, therefore whatever evidence adduced by the claimants appears to be unreliable. Considering the above situation, I am of the opinion that the evidence adduced on behalf of the claimants regarding income of the deceased is not satisfactory. Hence notional income of the deceased has to be taken into account to determine the compensation on account of his loss of future earnings which is Rs.3000/- per month. The claimants no. 2 to 4 are major sons and daughter, therefore looking to the number of the claimants 1/4th is required to be deducted to self expenses hence loss of dependency comes to Rs.2250/- (Rupees two thousand two hundred fifty only) per month multiplied by 12 months comes to Rs.27000/- (Rupees twenty seven thousand only) per annum. Admittedly deceased was about 71 years old at the time of death, therefore, appropriate multiplier would be 5, hence compensation towards loss of dependency comes to Rs.135,000/- (Rupees one lakhs thirty five thousand only).

16. In view of the observation in the cases reported in ***Sarla Varma***(supra) and ***Rajbir Singh***(supra), claimant no.1 is entitled for compensation of Rs. 1,00,000/-(Rupees one lakh only) towards loss of consortium. All the claimants are entitled for compensation of Rs.25,000/-(Rupees twenty five thousand only) towards funeral expenses and Rs.5000/-(Rupees five thousand only) towards loss of estate, hence claimants are entitled for total compensation of Rs.2,65,000/- together with 9% interest from the date of petition till its realisation.

17. Looking to the quantum of compensation determined by the learned Presiding Officer it appears that it is too meager therefore it is liable to be enhanced. Therefore, award by the learned Presiding Officer needs to be modified as indicated above. Hence, present appeal is partly allowed and judgment and award be modified as indicated above.

18. The claimants are entitled for the compensation of

Rs.2,65,000/- together with interest at the rate of 9% per annum. The amount already paid to the claimants be deducted from the above amount and balance amount be paid to the claimants equally.

K.L. WADANE, J.

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