

IN THE HIGH COURT OF BOMBAY AT GOA

**FIRST APPEAL NO.114 OF 2015
WITH
CROSS OBJECTION NO.3 OF 2016**

IFFCO TOKIO General Insurance
Co. Ltd. & anr.

.... Appellants

V/s

Mr. Kevin Fernandes & Ors.

... Respondents

Shri Narayan Govekar, Advocate for the Appellants.

Shri E. Afonso, Advocate for Respondent Nos.1 to 4.

CORAM : C.V. BHADANG, J.

DATE : 18th NOVEMBER, 2016

ORAL ORDER :

The appeal is taken up for final disposal by consent of parties.

2. I have heard the learned Counsel for the appellants and the learned Counsel for respondent nos.1 to 4.

3. Mrs. Jacinta Fernandes was serving as a Head – Mistress in Our Lady of Grace High School, Mandrem and was drawing a monthly salary of Rs.50,225/-. On 1/07/2015 at about 15.30 hours Mrs. Jacinta Fernandes was proceeding from Pernem to Mapusa on a scooter bearing no.GA-03-Q-4136. When she reached at Marna, she met with an accident with a towing crane bearing no.GA-08-K-1621. The said crane

was being operated by one Mr. Sadiq Shaik (respondent no.1 before the Claims Tribunal). It is claimed that the accident occurred due to the rash and negligent driving of Sadiq Shaik. As a result of the accident Mrs. Jacinta Fernandes suffered injuries to which she succumbed on the spot. It appears that the offence was registered in respect of the said accident with PS Anjuna. Mrs. Jacinta Fernandes was aged 56 years on the date of the accident.

4. Respondent nos.1 to 4 filed Claim Petition No.93/2013 against the appellants herein, before the Motor Accident Claims Tribunal, North Goa at Panaji under Section 166 of the Motor Vehicles Act, 1988 (Act of 1988, for short) claiming compensation of Rs.50.00 lakhs.

5. The petition was contested on behalf of the appellants. At the trial, the respondent no.1 examined himself along with other witnesses which includes Fr. Domingos Pereira, who was in charge Principal of the school. There was no evidence led by the appellants.

6. The Tribunal framed two issues namely, on the aspect of negligence and the quantum of compensation. The Tribunal answered

issue no.1 in the affirmative holding that the accident occurred due to the rash and negligent driving of the crane by the appellant no.2 herein.

7. In so far as the quantum of compensation is concerned, the Tribunal found that the salary of the deceased on the date of the accident was Rs.41,865/- per month and after deduction of tax the net salary was Rs.39,665/- per month. The Tribunal allowed 15% addition/enhancement on account of future prospects increments, in view of the decision of the Hon'ble Supreme Court in the case of ***Santosh Devi V/s. National Insurance Company Ltd. 2012 (6) SCC 421***). The Tribunal applied the multiplier of nine in accordance with the decision in the case of ***Sarla Verma V/s. Delhi Transport Corporation (2009) 6 SCC 121*** and after awarding certain compensation under the general head towards loss of consortium, love and affection and loss of estate, etc. the total compensation awarded is Rs.41,54,263/- along with interest at the rate of 9% per annum. Feeling aggrieved, the appellants have filed this appeal.

8. The respondents have filed cross-objection seeking enhancement of compensation.

9. The learned Counsel for the appellants has raised two contentions. Firstly, it is contended that the Tribunal was in error in applying multiplier of nine. The learned Counsel points out that the age of superannuation of the deceased was 60 years and thus on the date of accident the deceased had four years of service left. It is submitted that in such circumstances, the multiplier cannot exceed four. Secondly, it is contended that the Tribunal could not have considered addition of 15% towards the future increments/prospects which is against the decision of the Hon'ble Supreme Court in the case of ***Sarla Verma*** (supra). Except this, no other contentions are raised.

10. On the contrary, it is submitted by the learned Counsel for respondent nos.1 to 4 that the Tribunal has rightly applied the multiplier of nine considering the fact that the deceased was aged 56 years as on the date of the accident. It is pointed out that the decision in the case of ***Sarla Verma*** (supra) does not make any distinction and the multiplier is not dependent on the period of service left to the credit of the deceased. In so far as the 15% of addition/enhancement granted is concerned, strong reliance is placed on the three Judge Bench decision of the Supreme Court in the case of ***Rajesh V/s. Rajbir Singh & Ors. (2013) 9 SCC 54***. It is submitted that the Hon'ble Supreme Court has allowed

15% addition even in case of persons beyond the age of 50 to 60 years. The learned Counsel further points out that there is evidence on record to show that the salary of the deceased in April, 2017, when the deceased was due for retirement, would have been Rs.73,103/- which is much in excess of the 15% of the addition made.

11. I have carefully considered the rival circumstances and the submissions made. The computation done by the Tribunal while arriving at the quantum of compensation may be reproduced thus:

Salary (Exh.51)	Rs.41,865/-
[Tax deduction]	Rs.2200/-
Total	Rs.39665/-
15% addition/enhancement	Rs.5,949.75
Total	Rs.45,614.75
Deduction of 1/3 rd	
Salary per month including 15%	Rs.45,614.75
1/3 rd deduction Rs.30,409.84	Rs.30,409.84
Rs.30,409.84 X 12 =	Rs.3,64,918.08
Rs.3,64,918.08 X 9 =	Rs.32,84,262.72
Loss of company, love & affection to Claimant no.1 being husband of deceased	Rs.1,00,000/-
Loss of love & affection to claimants no.2,3 & 4 being sons & daughters of deceased Rs.1,00,000/- each	Rs.3,00,000/-
Loss of expectation of deceased life	Rs.1,00,000/-
Loss of estate	Rs.1,00,000/-
Loss of commutation of salary and loss of leave salary	Rs.2,00,000/-

Funeral expenses	Rs.50,000/-
Cot of litigation	Rs.20,000/-
Total	Rs.41,54,262.72
Rounded up at	Rs.41,54,263.00 at the rate of 9% per annum

As noticed earlier, the challenge in the appeal is only on two grounds namely, the multiplier applied and the 15% addition/enhancement considered in so far as the salary is concerned.

12. On behalf of the petitioners strong reliance is placed on the decision of the Hon'ble Supreme Court in para 9 of the judgment in the case of **Sarla Verma** (supra), which reads as under:

“Step 2 (Ascertaining the multiplier)

Having regard to the age of the deceased and period of active career, the appropriate multiplier should be selected. This does not mean ascertaining the number of years he would have lived or worked but for the accident. Having regard to several imponderables in life and economic factors, a table of multipliers with reference to the age has been identified by this Court. The multiplier should be chosen from the said table with reference to the age of the deceased.”

It is submitted that while ascertaining the multiplier, the age of the deceased has to be considered with regard to the period of 'active career'. In other words, the contention is that 'active career', would mean the number of years of service left before retirement or superannuation. In my considered view, the contention cannot be accepted for the reason

that in para 21 of the said judgment the Hon'ble Apex Court has held that the multiplier to be used should be as set out in para 19 of the said judgment. Evidently, the multiplier is not made dependent on the number of years of service left. That apart, even in so far as the observations as aforesaid in the case of ***Sarla Verma*** (supra) are considered, while ascertaining the multiplier the Hon'ble Supreme Court has held that the ascertainment of the multiplier does not mean ascertaining the number of years the deceased would have lived or worked but for the accident. Having regard to several imponderables in life and economic factors, a table of multipliers, with reference to the age has been identified by the Court and the multiplier should be chosen from the said table with reference to the age of the deceased. Thus, in my humble view, the contention that the multiplier of four should have been adopted (because the deceased had four years of service left to her credit at the time of her death) cannot be accepted. It is not in dispute that for the age group of 50 to 60 years in which the deceased fell, the relevant multiplier in column four of the schedule in para 19 of the judgment of ***Sarla Verma*** (supra), is nine. Thus, the contention that the Tribunal has applied wrong multiplier, to my mind, cannot be accepted.

13. This takes me to the 15% addition made. It is true that in

case of **Sarla Verma** (supra), in para 10 of the judgment, the Hon'ble Supreme Court has held that there would be no addition where the age of the deceased is more than 50 years. However, this decision has been considered by the three Judge Bench of the Hon'ble Supreme Court in case of **Rajesh** (supra). In para 9 of the judgment in the case of **Rajesh** (supra) the Hon'ble Apex Court has held that even in respect of the deceased between 50 to 60 years, it would be just and equitable to provide an addition of 15%. That apart, what has been held in the case of **Sarla Verma** (supra) in para 10 is that there shall be no addition where the deceased is more than 50 years of age except in exceptional circumstances. In the present case, I find that there is evidence on record to show that the salary of the deceased would have been Rs.73,173/- in March, 2017 when the deceased was due to be superannuated. In view of this, I do not find that any exception can be taken to the 15% addition as considered by Tribunal. Thus the appeal is without any merit.

14. In so far as the cross-objection is concerned, Shri Afonso, the learned Counsel appearing for the respondent nos.1 to 4/cross-objectors in all fairness does not press the cross-objection.

15. In the result, the appeal as well as the cross-objection is

dismissed. In the circumstances, parties to bear their own costs.

C.V. BHADANG, J.

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