

**IN THE HIGH COURT OF BOMBAY AT GOA**

**FIRST APPEAL NO.40 of 2008**  
**and**  
**CROSS-OBJECTION NO.21 of 2008**

**FIRST APPEAL NO.40 of 2008**

The New India Assurance Co. Ltd.  
Velho Building, 3<sup>rd</sup> Floor,  
Panaji-Goa

.. Appellant

V/s

1. Smt. Nandini Prabhakar Desai  
widow of Prabhakar Vinayak Desai,  
aged 57 years, housewife,  
resident of Flat No.7,  
Lotlikar Building,  
Comba, Margao, Goa.
  2. Shri Prasanna Kumar Prabhakar Desai  
s/o late Prabhakar V. Desai  
aged 32 years,  
resident of Flat No.7,  
Lotlikar Building,  
Comba, Margao, Goa;
  3. Mr. Rajanan Yanan  
major in age, son of Narayan Yanan,  
driver of vehicle No.KL-7-U-6714,  
R/o Yernakulam, Kerala
  4. Mr. K. P. Sadanandan Padamavathy,  
major in age, owner, vehicle No.KL-7-U-6714  
r/o Kunumpurth House, Thuruvoor,  
P.O. Angannely, Angamaly,  
Ernakulam, Kerla.
- .. Respondents

Mr. Emerico Afonso, Advocate for the appellant.

Ms. A. Agni, Senior Advocate with Ms. A. Kamat, Advocate for respondent nos.1 and 2.

**CROSS-OBJECTION NO.21 of 2008**

**in**

**FIRST APPEAL NO.40 of 2008**

1. Smt. Nandini Prabhakar Dessai  
Widow of Prabhakar V. Dessai,  
Aged 57 years, housewife,  
r/o flat No.7, Lotlikar Building,  
Comba, Margao, Goa.
2. Shri Prasanna Kumar Prabhakar Desai  
son of late Prabhakar V. Dessai  
Aged 32 years,  
r/o Flat No.7, Lotlikar Building,  
Comba, Margao, Goa. .. Appellants

Vs.

1. The New India Assurance Co. Ltd.  
Velho Building, 3<sup>rd</sup> Floor,  
Panaji-Goa
2. Mr. Rajanan Yanan  
Major in age, son of Narayan Yanan,  
driver of vehicle No.KL-7-U-6714,  
R/o Ernakulam- Kerala.
3. Mr. K. P. Sadanandan Padamavathy,  
Major in age, owner, vehicle  
No.KL-7-U-6714,  
r/o Thuruvoor, P.O. Angannely,  
Angamaly, Ernakulam-Kerla. .. Respondents

Ms. A. Agni, Senior Advocate with Ms. A. Kamat, Advocate for the

appellant.

Mr. Emerico Afonso, Advocate for respondent no.1.

**CORAM :- C. V. BHADANG, J.**

**Reserved on : 25<sup>th</sup> November, 2016**

**Pronounced on : 4<sup>th</sup> January, 2017**

**JUDGMENT :**

The challenge in this appeal is to the judgment and order dated 06/11/2007, passed by the Motor Accident Claims Tribunal, Margao (Tribunal, for short), in Claims Petition No.39/2000, by which, a compensation of Rs.13,57,000/-, has been granted in favour of respondent nos.1 and 2, under Section 166 of the Motor Vehicles Act, 1988 (the Act, for short) in respect of death of one Prabhakar Desai.

2. At the outset, it is necessary to mention that the challenge is limited to the quantum of the compensation awarded.

3. The brief facts are that now deceased Prabhakar was a Chartered Accountant. He was aged 59 years on the date of the accident. On 12/12/1998, the deceased was proceeding in his Maruti Car, bearing

No.GA-02-A-5638. The accident occurred at about 17.45 hours, when the Truck bearing No.KL-7-U-6714 came from opposite direction and dashed against the Maruti Car, as a result of which, Prabhakar died on the spot. Respondent nos.1 and 2 sought compensation of Rs.40,71,410/- from the appellant and respondent nos.3 and 4, under different heads. The appellant (respondent no.3 before the Tribunal) contested the claim, *inter alia*, on the ground that the compensation claimed was excessive and without any basis.

4. Before the Tribunal, respondent no.1 was examined as AW1 along with Prasanna (AW2), Nagesh Hegade (AW3) being a Chartered Accountant, Manuel De Sa (AW4), Anthony Lucas (AW5) and Dr. E. J. Rodrigues (AW6). There was no evidence led on behalf of the appellant.

5. The Tribunal came to the conclusion that the accident took place on account of the rash and negligent driving of the Truck. The Tribunal assessed the compensation at Rs.13,57,000/-.

6. Feeling aggrieved, the appellant is before this Court, in

which, respondent nos.1 and 2 have filed cross-objections for enhancement.

7. I have heard Shri Afonso, the learned Counsel for the appellant and Smt. Agni, the learned Senior Counsel for respondent nos.1 and 2. There is no appearance on behalf of respondent nos.3 and 4.

8. It is contended on behalf of the appellant that the Tribunal was in error in coming to the conclusion that the monthly income of the deceased was Rs.23,000/- per month. It is submitted that the income of the deceased for the Financial Year (FY) 1996-97 was shown to be Rs.1,14,379/-, while in the next year i.e. FY 1997-98, it is shown as Rs.2,46,668/- and for part of the FY 1998-99 i.e. upto 12/12/1998 (the date of the accident), it is shown as Rs.2,00,375/-. It is contended that the Tax Returns for the year 1997-98 and for part of the Year 1998-99, were filed after the accident and as such, could not have been relied upon. It is submitted that there is sudden spurt shown in the income in the FY 1997-98 and part of the FY 1998-99, which is suspicious and could not have been relied upon. It is submitted that reliance placed by

the Tribunal on the evidence of Nagesh Hegade (AW3) is misplaced. It is submitted that the Tribunal ought to have gone by the income as shown in the FY 1996-97.

9. On the contrary, it is submitted by Smt. Agni, the learned Senior Counsel for respondent nos.1 and 2 that merely because the returns for the FY 1997-98 and 1998-99 (part) have been filed subsequent to the occurrence of the accident, would not be sufficient to discard the same, if the evidence otherwise is found to be acceptable. The learned Senior Counsel points out that under Section 159 of the Income Tax Act, the legal representatives of the assessee are deemed assesseees and are required to file the Income Tax returns and as such, there is nothing unusual, if the Tax Returns are filed subsequent to the death of the assessee. On behalf of respondent nos.1 and 2, reliance is placed on the decision of the Supreme Court in the case of ***Santosh Devi Vs. National Insurance Company Limited and others***; (2012)6 SCC 421 and ***Rajesh and others Vs. Rajbir Singh and others***, in order to submit that even in the case of self-employed persons, addition of 15 % has to be made, where the age of the deceased is between 50 to 60 years, as in the present case. It is submitted that the compensation granted

towards loss of consortium, pain and sufferings and funeral expenses, is inadequate and needs to be enhanced.

10. I have carefully considered the rival circumstances and the submissions made.

11. The Tribunal, on the basis of the evidence of Prasanna (AW2) and Nagesh (AW3), has come to the conclusion that the income of the deceased was Rs.23,000/- per month on the date of the accident. Considering the age of the deceased, the Tribunal has employed the multiplier of 8 in accordance with the decision of the Hon'ble Supreme Court in the case of *Sarla Verma & Ors. vs Delhi Transport Corp. & Anr*; (2009)6 SCC 121. The Tribunal has assessed the compensation after deducting 1/3<sup>rd</sup> towards personal expenses, at Rs.14,72,000/-. In the opinion of the Tribunal, taking into account the uncertainties of life, the compensation was required to be reduced to Rs.13,24,800/-. To this, the Tribunal has added Rs.2,000/- towards funeral expenses, Rs.5,000/- towards compensation for loss of consortium and Rs.25,000/- towards pain and sufferings and had arrived at Rs.13,56,800/-, which is rounded off to Rs.13,57,000/-.

12. It has come on record that the date of birth of the deceased was 11/07/1939. Thus, on the date of the accident, the deceased was aged 59 years and 5 months. In view of the decision in the case of *Sarla Verma* (supra), no exception can be taken to the Tribunal employing 8 as a multiplier. The question is about the monthly income of the deceased. It has come in the evidence of AW2 that the deceased was practising as a Chartered Accountant since the year 1975 and thus, had put in about 23 years of practice at the time of his death. Prasanna (AW2), who happens to be the son of the deceased, was a Chartered Accountancy student at the time of the accident, but by the time he was examined before the Tribunal, he was also a practising Chartered Accountant. AW2 claims that the Tax Returns for the year 1996-97 were filed by the deceased during his life time, while the Tax Returns for the year 1997-98 and for part of the year 1998-99, were filed by him under the guidance of Senior Chartered Accountant Nagesh Hegade (AW3). AW2 claims that the deceased was also having income from shares. Nagesh (AW3) states that the deceased was known to him being from the same fraternity and the deceased was a reputed Chartered Accountant. AW3 states that he had guided Prasanna (AW2) to prepare

the Tax Returns of the deceased and has issued the Income Tax certificate based on the records produced for his verification. The Certificate is at Exh.30.

13. I have gone through the evidence of AW2 and AW3 and the documents produced. The Income Tax Returns for the year 1997-98 and 1998-99 (part) are filed after the date of the accident. It is true that Tax Returns filed prior to the death would have greater probative value. However, that does not mean that Tax Returns, if filed subsequent to the date of the accident and death of a person, have to be necessarily discarded. Section 159 of the Income Tax Act provides that after the death of the assessee, his legal representatives are deemed assesseees and the legal representatives of the assessee are liable for tax liability. Thus, it is not possible to accept that the tax returns filed after the death of the person, in respect of whom, the compensation is claimed, have to be discarded as a rule. However, the Court will have to be cautious and circumspect while placing reliance on the said Returns. If the income disclosed in the returns along with documentary evidence in the form of account books/ receipts is found to be cogent and acceptable, nothing prevents the Tribunal from placing reliance on the same. The question

would depend upon facts and circumstances of each case. In the present case, AW3 has stated that he has issued the Income Tax certificate Exh.30, based on the records produced before him for verification. It has come on record that the deceased had income other than the professional income. However, it is the evidence of AW3 that the income shown in the certificate Exh.30, is the professional income, which is supported by the copies of the Tax Returns produced on record. I have carefully gone through the evidence of AW2 and AW3 and there is nothing on record, which would displace the evidence of these witnesses. Assessment of compensation is hedged with several difficulties. In the exercise of assessment of compensation, a reasonable amount of guess work is necessary, if not inevitable. Considering the overall evidence, I find that the Tribunal was justified in reckoning the income of the deceased at Rs.23,000/- per month, which would translate to Rs.2,76,000/- p.a. It is now well settled that for the purpose of the assessment of compensation, the net income, after the deduction of tax, has to be taken into consideration. A perusal of the impugned judgment shows that this aspect has not been considered by the Tribunal and there is no deduction towards tax. In the absence of clear evidence as to the proportionate tax on the professional income, it would be appropriate to make a deduction

towards tax at the flat rate of 20 %. Thus, if we deduct Rs.55,200/- from Rs.2,76,000/-, the income, after deduction of tax, would come to Rs.2,20,800/-. I am inclined to add 15 % to this, towards future prospects in as much as the deceased was in the age group of 50 to 60 years. Such an addition will have to be made in accordance with the decision of the Supreme Court in the case of **Santosh Devi** (supra). Thus, the total income, after addition of Rs.33,120/-, would be Rs.2,53,920/-. 1/3<sup>rd</sup> out of this i.e. Rs.84,640/- will have to be deducted towards personal and living expenses. Thus, the net income of the deceased would be Rs.1,69,280/-. If we apply multiplier of 8, the compensation would come to Rs.13,54,240/-, which is rounded off to Rs.13,54,000/-. The Tribunal has granted Rs.2,000/- towards funeral expenses and Rs.5,000/- towards loss of consortium, which can be enhanced to Rs.10,000/- on each count. In a claim for compensation in respect of death, no compensation can be awarded towards pain and sufferings. Thus, the compensation of Rs.25,000/- awarded towards pain and sufferings, (which is awarded in the case of personal injury claims,) cannot be sustained. However, I am inclined to grant Rs.10,000/- towards notional compensation for loss of estate. Thus, the total compensation would be Rs.13,84,000/-. Rest of the award, including the

grant of interest, is confirmed.

14. In the result, the compensation is enhanced to Rs.13,84,000/-. Cross-objection to that extent, stands allowed. The appeal, however, is dismissed. In the circumstances, the parties shall bear their own costs. Award be drawn accordingly.

**C. V. BHADANG, J.**

SMA