IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 68 OF 2016

National Insurance Co. Ltd., ... Appellant

Versus

Master Rivaldo Vaz, Rep. by Aunty
Mrs. Bharati P. Kamble & 4 Others, ... Respondents

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Ms. Yadika Mandrekar, Advocate for the Appellant.

Mr. Shailesh Redkar, Advocate for Respondent Nos. 1, 2 and 3.

Ms. Shradha Bhobe, Advocate for Respondent No. 4.

Ms. Rajas Kantak, Advocate for Respondent No. 5.

CORAM:- C.V. BHADANG, J.

DATE:- 9th JUNE, 2017.

ORAL ORDER:

The appellant-Insurance Company is challenging the judgment and award dated 06.02.2016 passed by the Motor Accident Claims Tribunal at Margao (Tribunal, for short) in Claim Petition No. 41/2015. By the impugned judgment, the Tribunal has awarded an amount of Rs.9,35,000/- alongwith interest, as compensation under the Motor Vehicles Act, 1988.

2. The brief facts are that on 06.12.2014, now deceased Santana aged about 56 years, who is the grandmother of

respondent nos. 1 and 2 (original claimants) met with an accident near Arlem junction at about 19:50 hours, involving a bus belonging to the Kadamba Transport Corporation (KTC), bearing registration No. GA-03/X-0258. It is said that in the accident, the bus gave a violent dash to the deceased Santana, who sustained injuries to which she subsequently succumbed. The deceased was a fisherwoman by occupation and was earning Rs.400/- per day.

3. The offending bus was covered by a policy of Insurance issued by the appellant (respondent no.3 before the Tribunal).

4. The claim was opposed by the KTC and the appellant on various grounds.

5. On behalf of the respondent nos. 1 and 2, three witnesses were examined. The appellant examined one Janardhan (RW-1), who is the Driver of the bus.

6. The Tribunal on appreciation of evidence came to the conclusion that the accident occurred due to the rash and negligent driving of the bus. Insofar as the quantum is

concerned, the Tribunal assumed that the daily earning of the deceased was Rs.300/- per day. The Tribunal held that it would be reasonable that the deceased would get such an income for 25 days in a month and thus, reckoned the income at Rs.7,500/- per month. The Tribunal made deduction of 50% towards personal and living expenses and applied multiplier of 18 based on the age of the claimants and arrived at a compensation of Rs.8,10,000/-. The Tribunal awarded Rs.25,000/- towards funeral expenses and Rs.1,00,000/- for pain and suffering, which adds up to Rs.9,35,000/-.

7. The learned Counsel for the appellant states that the Tribunal was in error in reckoning the multiplier of 18 based on the age of the claimants. It is submitted that the Tribunal ought to have reckoned the multiplier of 9 based on the age of the deceased. This is the sole contention raised on behalf of the appellant.

8. The learned Counsel for the respondent nos. 1 and 2, on the contrary, has submitted that the issue whether, multiplier has to be with reference to the age of the deceased or the claimants has been referred to a larger bench, by order dated 28.04.2017 passed in Civil Review Application No. 35/2016 in

First Appeal No. 31/2012. The learned Counsel however, in all fairness submits that respondent nos. 1 and 2 have no objection if, the multiplier of 9 is applied in this case.

9. I have carefully considered the circumstances and the submissions made. The Tribunal in my considered view has rightly come to the conclusion that the monthly income of the deceased could be reckoned as Rs.7,500/-, which translates into an annual income of Rs.90,000/-.

10. The Hon'ble Apex Court in the case of **Smt. Sarla Verma & Others Vs. Delhi Transport Corporation & Another, (2009) 6 SCC 121** has inter alia held that the deduction towards personal and living expenses, when the dependents are less than three (as in the present case), would be $1/3^{rd}$ of the annual income. Thus, considering $1/3^{rd}$ deduction, the net dependency would come to Rs.60,000/-. By consent of parties, multiplier of 9 can be adopted, which would lead to a compensation of Rs.5,40,000/-. An amount of Rs.25,000/- can be awarded towards loss of affection, another Rs.25,000/- towards loss of estate and Rs.25,000/- towards funeral expenses. Thus, the total compensation would be Rs.6,15,000/-. The amount shall carry interest at the rate of 9% per annum from the date of the

petition, till realisation. Consequently, the following order is passed:

O R D E R

(i) The First Appeal is partly allowed.

(ii) The impugned judgment and award is modified.

(iii) The appellant and respondent nos. 4 and 5 shall jointly and severally pay Rs.6,15,000/- to the respondent nos. 1 and 2 alongwith interest at the rate of 9% per annum from the date of the petition, till realisation.

(iv) The compensation shall be apportioned equally between the claimants, which shall be invested in any Nationalised Bank till they attain majority.

(v) This shall be subject to payment of deficit Court fee, if any.

C.V. BHADANG, J.

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