

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 145 OF 2009

1. Mrs. Radhika V.,
aged 21 years,
wife of late V. Sridhar,
Residing at C/o V. Nageshwar Rao,
Buradha, Raghavapuram,
Khammam 507 003,
Andhra Pradesh.
2. Shri K. Vijay Kumar,
S/o K. Rama Rao,
Residing at H.No.3-22,
Konijerla, District Khammam,
Andhra Pradesh.
3. Mrs. Roja K. N. Rao,
age 32 years,
wife of late Kodumuru Nageshwar Rao
r/o Koyachalaka (V),
Khammam (U),
Andhra Pradesh.
4. Mrs. Swarnalatha V.,
age 35 years,
wife of late Volam Nageshwar Rao
C/o Ayappa Enterprises,
Opp. Grain Market,
Kesamudram (Post & Mandal),
Varangal District,
Andhra Pradesh,
5. Mrs. Mukteswari D.,
age 29 years,
wife of late Dupakuntla Janardhna Rao
C/o Shree Vijaylaxmi Enterprises,

Near Old Bus-stand, Sattutalli
(Post & Mandal),
Khammam District,
Andhra Pradesh,

6. Mrs. Shabadu Eswaramma,
age 30 years,
wife of late Shabadu Ashok Reddy
C/o Shabadu Ram Reddy,
Gollapadu (Post),
Khammam (Rural),
Khammam District,
Andhra Pradesh.

7. Mrs. Sindhu D.,
age 30 years,
wife of late Dosapati Anjaneyulu,
C/o D. Rageshwar Reddy,
Thatipudi (Post),
Wyra (Mandal),
Khammam District,
Andhra Pradesh.

8. Smt. Siripuram Swarna,
W/o Siripuram Sudheer,
Resident of H. No.3-195,
Gandhinagar, Sultanabad,
District Karimnagar, 505 185.

9. Komaravelli Ramulu,
F/o Komaravelli Srinivas,
Resident of H.No.3-145,
Main road, Sultanabad,
District Karimnagar – 505 185. Appellants
(Original plaintiffs)

V e r s u s

1. State of Goa,
through its Chief Secretary,
having his office at
Secretariat, Panaji Goa.
 2. Director of Tourism,
Govt. of Goa,
Patto Plaza,
Panaji Goa.
 3. Captain of Ports,
Govt. of Goa,
Captain of Ports Building,
Panaji Goa.
 4. Mr. Anthony Ramos
S/o Sebastian Ramos,
H.No. 156-E/7,
Santawado, Calangute Goa.
 5. Mr. Cosme Corroscó,
s/o Domnic Corroscó,
Santawado, Calangute Goa.
- Respondents
(Original defendants)

Mr. S. N. Joshi and Mr. N. Aguiar, Advocates for the appellants.

Mr. S. Dhargalkar, Addl. Government Advocate for the respondent nos. 1 to 3.

Mr. Y. V. Nadkarni, Advocate for the respondent nos. 4 and 5.

WITH

FIRST APPEAL NO. 149 OF 2009

1. Anthony Ramos,
S/o Sebastian Ramos,
H.No.156 – E/7,
Santawado, Calangute Goa.
2. Cosme Corroscosco,
S/o Domnic Corroscosco,
Santawado, Calangute Goa. Appellants

V e r s u s

1. Mrs. Radhika V.,
aged 21 years,
wife of late V. Shridhar,
Residing at C/o V. Nageshwar Rao,
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Khammam 507 003,
Andhra Pradesh.
2. Shri K. Vijay Kumar,
S/o K. Rama Rao,
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3. Mrs. Roja K. N. Rao,
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Andhra Pradesh.
8. Smt. Siripuram Swarna,
W/o Siripuram Sudheer,
Resident of H.No.3-195,
Gandhinagar, Sultanabad,
District Karimnagar, 505 185.

9. Komaraveli Ramulu,
F/o Komaravelli Srinivas,
Resident of H.No.3-145,
Main road, Sultanabad,
District Karimnagar – 505 185.

10. State of Goa,
Through its Chief Secretary,
having his office at
Secretariat,
Alto Porvorim Goa.

11. Director of Tourism,
Government of Goa,
Patto Plaza,
Panaji Goa.

12. Captain of Ports,
Government of Goa,
Captain of Ports Building,
Panaji Goa.

... Respondents

Mr. Y. V. Nadkarni, Advocate for the appellants.

Mr. S. N. Joshi and Mr. N. Aguiar, Advocates for the respondent nos. 1 to 9.

Ms. Priyanka Kamat, Addl. Government Advocate for the respondent nos. 10 to 12.

Coram:- F. M. REIS, J.

Date:- 10th March, 2017

ORAL JUDGMENT

Heard Mr. S. N. Joshi, learned counsel appearing for the appellants, Mr. Y. V. Nadkarni, learned counsel appearing for the respondent nos. 4 and 5, Mr. S. Dhargalkar, learned Addl. Government Advocate appearing for the respondent nos. 1 to 3 in First Appeal No. 145 of 2009 and Mr. Y. V. Nadkarni, learned counsel appearing for the appellants, Mr. S. N. Joshi, learned counsel appearing for the respondent nos. 1 to 9 and Ms. Priyanka Kamat, learned Addl. Government Advocate appearing for the respondent nos. 10 to 12 in First Appeal No. 149 of 2009.

2. The parties shall be referred to in the manner they so appear in the impugned judgment passed by the learned Trial Judge dated 13.03.2009.

3. The plaintiffs filed a suit for compensation inter alia on the ground that the dealers of M/s. Insecticides Ltd. had come to Goa for a dealership meeting somewhere on 15.04.2003 and when they were at Baga beach, they were contacted by the boat

operators and induced to take a joy ride across the Arabian sea to spot dolphins in a sea. But however, the boat capsized whereby nine occupants died. It is contended that though the authorities were fully aware about the illegal operation of the boats/canoes without any regulations, licencing policy or insurance, such activities flourished which resulted in a tragedy whereupon the legal representatives of the deceased filed a suit inter alia claiming compensation at the rate of Rs.5,00,000/- each from the defendant nos. 4 and 5 who were the boat operators and the remaining defendant nos. 1 to 3 who were the statutory authorities, jointly and severally. The defendant nos. 1 to 3 filed their written statement disputing the claim put forward by the plaintiffs inter alia contending that the said defendants were not responsible to the rashness and negligence on the part of the defendant nos. 4 and 5 in allowing the fishing boat to be used by the tourists for joy ride in the Arabian sea and as such the authorities were not responsible for the subject incident. The defendant nos. 4 and 5 also filed their written statement disputing the claim put forward by the plaintiffs. After the

issues were framed and evidence was recorded, the learned Judge by the impugned judgment and decree dated 13.03.2009 partly decreed the suit against the defendant nos. 4 and 5 directing the said defendants to pay a sum of Rs.1,00,000/- to the legal representatives of each of the victims together with interest accrued thereon at the rate of 10% per annum from 15.04.2003. The suit filed against the defendant nos. 1 to 3 came to be dismissed inter alia on the ground that the said defendants were not responsible for the activities being carried out by the defendants no.4 and 5. Being aggrieved by the said judgment, the plaintiffs filed First Appeal No. 145 of 2009 claiming for enhancement of compensation as well as directing the defendant nos. 1 to 3 to pay the compensation to the plaintiffs. The defendant nos. 4 and 5 also filed First Appeal No.149 of 2009 inter alia disputing the decree passed by the learned Trial Court against the said defendants. By order dated 23.09.2009 both the appeals were directed to be heard together.

4. Mr. S. N. Joshi, learned counsel appearing for the plaintiffs points out that the deceased victims were the dealers of a respectable insecticides establishment situated at Andra Pradesh who had come to Goa for a dealership meeting. It is further pointed out that there were several operators at Baga beach who were hiring their boats for a joy ride to the tourists. It is further pointed out that the said deceased believing the representation of the defendant nos. 4 and 5 ventured to hire a boat for a joy ride to spot dolphins in the Arabian sea. It is further pointed out that on account of rashness and negligence on the part of the operator of the boat, the boat capsized which resulted in the death of nine dealers. The learned counsel further pointed out that the plaintiffs had produced income tax return of some of the deceased dealers which the learned Judge has failed to consider while fixing the compensation at a sum of Rs.1,00,000/- per victim. The learned counsel thereafter has taken me through the impugned judgment passed by the learned Trial Judge to point out that the learned Judge has fixed the amount on surmises and by not examining the relevant material

on record. The learned counsel thereafter has taken me through the findings of the learned Judge exonerating the defendant nos. 1 to 3 from their liability to pay compensation which according to him are on extraneous and untenable ground. The learned counsel further pointed out that the plaintiffs have produced the material on record which included the news paper clippings to show that such illegal activities were being carried out at Baga beach and no action was taken by the authorities to stop such illegal boat driving. The learned counsel further pointed out that as the defendant nos. 1 to 3 have failed in their duties to regulate such activities which were provided to the tourists visiting the said beach, such defendants are liable to pay compensation to the plaintiffs. The learned counsel further pointed out that the plaintiffs had filed a Writ Petition before this Court seeking compensation from the Government which came to be disposed of by reserving a liberty to the plaintiffs to file a Civil Suit considering the disputed question of fact. The learned counsel as such points out that in any event, considering that the tragedy occurred within the State of Goa, the defendant nos. 1 to 3 were

at the most liable to pay some compensation as ex-gratia payment on account of the calamity which occurred within the territory limits of the State of Goa. The learned counsel as such points out that the impugned judgment passed by the learned Judge deserves to be quashed and set aside and the defendant nos. 1 and 3 be directed to pay further compensation to the plaintiffs.

5. On the other hand, Mr. Y. V. Nadkarni, learned counsel appearing for the defendant nos. 4 and 5 has pointed out that on perusal of the pleadings of the plaint, there is no averment therein attributing any illegal operation of the activities which were being carried out by the defendant nos. 4 and 5. The learned counsel further pointed out that the only averment in the plaint which was introduced by the plaintiffs was to the effect that the defendant nos. 4 and 5 were rash and negligent in operating the boat. The learned counsel further submits that the defendant nos. 4 and 5 had taken precaution before venturing into the Arabian sea and according to him on account of reasons

beyond the control of the said defendants, the boat unfortunately capsized. The learned counsel further pointed out that on account of the aforesaid measures taken, no liability can be attributed to the defendant nos. 4 and 5. The learned counsel further pointed out that in any event the compensation has been fixed on the basis that the plaintiffs have failed to produce any material to show the actual income of the deceased victims. The learned counsel further pointed out that the income tax return produced by the plaintiffs were of some of the victims which cannot in any way fix the actual income of all the deceased victims at the relevant time. The learned counsel as such points out that the appeal filed by the plaintiffs be accordingly rejected.

6. The learned Addl. Government Advocate appearing for the defendant nos. 1 to 3 has pointed out that the activities carried out by the defendant nos. 4 and 5 were illegal and without any sanction from the authorities and as such the question of contending that the said defendants have a vicarious liability for rashness and negligence of the defendant nos. 4 and

5 cannot be accepted. The learned counsel further pointed out that the defendant nos. 4 and 5 are responsible for the rashness and negligence in allowing excess number of persons on the boat which resulted in the boat capsizing on the relevant date. The learned counsel further pointed out that only after the incident, the defendant nos. 1 to 3 have stopped such activities on different beaches of the State of Goa. The learned counsel further pointed out that the learned Trial Judge has minutely examined the evidence on record and conclusively found that the defendant nos. 1 to 3 were not responsible for the rashness and negligence of the defendant nos. 4 and 5. The learned counsel as such points out that the appeal be accordingly rejected.

7. I have considered the submissions of the learned counsel and I have also gone through the records. On the basis thereof, the following points for determination arise in the present appeals :

POINTS FOR DETERMINATION

(i) Whether the learned Judge was justified to fix the compensation at the rate of Rs.1,00,000/- per victim payable by the defendant nos. 4 and 5 ?

(ii) Whether the learned Trial Judge was justified to exonerate the defendant nos. 1 to 3 from putting any compensation on account of death of the occupants of the subject boat operator ?

8. On perusal of the judgment passed by the learned Trial Judge, the learned Judge found that the incident occurred on account of rashness and negligence on the part of the defendant nos. 4 and 5. The learned Judge also found that the boat was overcrowded and had exceeded the number of occupants who could occupy such boat. The learned Judge further noted that the boat had capsized on account of rashness and negligence on the part of the defendant nos. 4 and 5. The

learned counsel appearing for the defendant nos. 4 and 5 was unable to point out any infirmity in the findings of the learned Judge while coming to such conclusion. The fact that the boat was overcrowded cannot be disputed based on the material on record. In such circumstances, the findings of the learned Judge that the subject boat had capsized on account of rashness and negligence cannot be faulted.

9. The only aspect as such is to be considered whether a sum of Rs.1,00,000/- per victim fixed by the learned Judge stands justified. On perusal of the judgment passed by the learned Trial Judge, I find that the learned Judge came to the conclusion that there was no cogent material on record to establish the actual income of the deceased victims. Mr. Joshi, learned counsel appearing for the plaintiffs in fact was unable to point out any salary certificate or other material to substantiate the actual salary or wages of the deceased victims. In such circumstances, the amount of compensation fixed by the learned Judge at Rs.1,00,000/- per victim cannot be faulted. As

the plaintiffs have failed to produce any material on record to substantiate such claim, I find that the amount fixed by the learned Judge as against payable by the defendant nos. 4 and 5 on account of rashness and negligence does not call for interference. The learned Judge considering the age of the deceased victims and the nature of the work which the victims were stated to be performing has fixed such compensation at the rate of Rs.1,00,000/- per victim. In the absence of any other material on record, the findings of the learned Judge on this aspect cannot be faulted. The amount so fixed has been directed to be paid along with interest at the rate of 10% per annum. It is also not in dispute that based on the impugned judgment the defendant nos. 4 and 5 had deposited a sum of Rs.14,77,500/- in this Court which is stated to have been invested in the nationalized bank which on rough estimate may work out at a sum of Rs.30 lakhs as of date. In such circumstances, I find that as far as the liability of the defendant nos. 4 and 5 is concerned based on the findings of the learned Judge and the amount of interest accrued thereon as stated herein above, the amount so

fixed appears to be reasonable and there is no case made out for any interference in the amount of compensation payable to the victims by the defendant nos. 4 and 5. The first point for determination is answered accordingly.

10. Taking note of the findings arrived at on this count, Mr. Y. Nadkarni, learned counsel appearing for the defendant nos. 4 and 5 states that he will not press for any relief in the appeal preferred by the said defendants.

11. With regard to the second point for determination though it cannot be disputed that the defendant nos. 4 and 5 are liable to pay compensation on account of rashness and negligence on their part, the authorities cannot shy away from their responsibility to ensure that such activities provided to the tourists who visit to the State of Goa are duly regulated. The State policy clearly imposes an obligation on the State to ensure that the activities which are provided to the public at public beaches are duly regulated. The record clearly reveals that such

activities which are stated to be illegal by the defendant nos. 1 to 3 were in fact going on for at least three to four years prior to the date of the subject incident. The records clearly show that the defendant nos. 1 to 3 did not take any action to regulate such activities or to ensure that the boat operators do not continue with their activities by due process of law. Such inaction on the part of the defendant nos. 1 to 3 would make such defendants otherwise liable to pay compensation considering that the calamity occurred within the State and at the public beach on the relevant date. Such payment can even be paid as an ex-gratia payment on compassionate ground as the death occurred to the tourists on account of failure on the part of the State authorities in regulating such activities. At this stage, Mr. Joshi, learned counsel appearing for the plaintiffs points out that the plaintiffs would make a representation to the defendant no.1 claiming compensation on that count and will not press for any relief to direct the said defendants to pay compensation in the present appeal. In case any such representation is filed, the concerned defendant shall proceed to consider such representation in

accordance with law. The second point for determination is answered accordingly.

12. In view of the above, I pass the following :

ORDER

(i) First Appeal No. 149 of 2009 filed by the defendant nos. 4 and 5 stands dismissed as not pressed for the aforesaid reasons.

(ii) First Appeal No. 145 of 2009 stands disposed of by giving liberty to the plaintiffs to file a representation to the concerned Government authorities to pay additional compensation in accordance in law which the authorities shall examine such representation in the light of the above observations and in accordance with law.

(iii) By consent of the learned counsel appearing for the defendant nos. 4 and 5, the plaintiffs are permitted to withdraw the amount

deposited by the defendant nos. 4 and 5 along with interest accrued thereon subject to satisfying the Registrar (Judicial) of this Court and disburse the amount to the legal representatives of each of the victims jointly at Rs.1,00,000/- per victim along with interest accrued thereon in accordance with law.

(iv) Both the appeals stand disposed of accordingly with no order as to costs.

F. M. REIS, J.

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