

IN THE HIGH COURT OF BOMBAY AT GOA**FIRST APPEAL NO.128 OF 2015**

The New India Assurance Co. Ltd.,
Through its Divisional Manager
Mr. Rafael Lobo
having its office at Velhos Building,
3rd Floor, Rua Conde de Torres,
Panaji, Goa.

.... Appellants

V/s

- 1 Mrs. Mahadevi Parshuram Hosamani,
Widow of Mr. Parshuram Dundappa
Hosamani, aged 42 years, housewife,
Agriculturist, r/o. Labour Colony,
Chinchwada, Ambegal, Pale,
Bicholim-Goa.
- 2 Miss Sheetal Parshuram Hosamani,
d/o. late Parshuram Dundappa
Hosamani, aged 19 years, spinster,
r/o. Labour Colony, Chinchwada,
Ambegal, Pale, Bicholim-Goa.
- 3 Mrs. Pavitra Dhundappa Hosamani
widow of late Mr. Dhundappa
Hosamani, aged 65 years housewife,
r/o. Labour Colony, Chinchwada,
Ambegal, Pale, Bicholim-Goa.
- 4 Mr. Prakash Lotari Yadav,
Son of Mr. Lotari Yadav,
aged 32 years, Driver,
r/o. Tolemata, Pale, Bicholim-Goa.
- 5 M/s. Chowgule & Company Private
Ltd., through its Managing Director,
Chowgule House, Mormugao,
Harbour, Vasco-da-Gama, Goa.
- 6 Mr. Suryakant Narayan Shinde,
son of late Mr. Narayan Shinde,
major, married, labourer,

r/o. Nippani, Grampanchayat
Datthghad, Taluka-Shirol, District
Kolhapur, Karnataka-State.

- 7 Mrs. Vallalya alias Annusuya
Lagmanna Khatedhar alias Ganga P.
Hosamani, wife of Mr. Suryakant
Narayan Shinde, major, housewife,
r/o. Nippani, Grampanchayat
Datthghad, Taluka-Shirol, District
Kolhapur, Karnataka-State.

... Respondents

Shri E. Afonso, Advocate for the Appellant.

Shri Milton Marshel, Advocate for the Respondents.

CORAM : NUTAN D. SARDESSAI, J.

Reserved on : 27th JANUARY, 2017

Pronounced on : 3rd FEBRUARY, 2017

JUDGMENT :

The insurer aggrieved by the award passed by the learned Motor Accident Claims Tribunal, North Goa, Mapusa allowing the petition in favour of the respondents no.1 to 3 and saddling them with the liability to indemnify the registered owner i.e. the respondent no.5 herein have challenged the award in this appeal. The parties would be referred to in their status in the appeal for brevity's sake hereinafter.

2. The respondents no.1 to 3 had maintained the petition for compensation under Section 166 of the Motor Vehicles Act, 1988, ('the Act' for short) claiming the compensation of ₹21,00,000/- (Rupees Twenty One lakhs only) on account of the death of

Parshuram Hosamani in a vehicular accident which took place on 3/04/2009 at the Chowgule Mines, Pale – Bicholim, Goa. It was their case that while Parshuram, since deceased, was standing on the lower level of the road, the truck driven by the original respondent no.1 i.e. the respondent no.4 herein, at a fast speed and in a rash and negligent manner fell on him causing injuries to which he succumbed at the spot itself. The widow and the other dependents of the deceased had accordingly maintained the petition for compensation and had subsequently amended the petition to implead the alleged second wife of the deceased and her subsequent husband as the parties to the petition consequent to an amendment granted by the learned MACT, Mapusa.

3. Shri E. Afonso, learned Advocate for the appellant came to be heard on their behalf who contended that the MACT was in error to compute the compensation in favour of the dependents by taking the salary of the deceased at ₹10,000/- (Rupees Ten Thousand only) per month which was on the higher side. Besides it was his case that the proceedings were filed by one woman claiming to be the widow of the deceased before the Workmen's Compensation Court which was dismissed by the said forum while another proceeding was filed by the widow i.e. the legally wedded wife with others before the MACT and which was allowed in their favour. The

insured i.e. the respondent no.5 had deposited the compensation before the Workmen's Compensation Court and they were entitled to the refund of the money and as the insurer had made the deposit of the awarded sum before the MACT, Mapusa. There was no basis in allowing the compensation as awarded in favour of the respondents no.1 to 3 and therefore the appeal had to be allowed.

4. Shri M. Marshall, learned Advocate for the respondents no.1 to 3 contended that the proceedings were initiated before the Workmen's Compensation Court by the respondent no.6 also claiming to be the widow of the deceased but which was dismissed by the said Court. What survived for consideration was the award passed by the learned MACT in favour of the respondents no.1 to 3 alone and which had to be granted in their favour. It was his contention that there was an arithmetical error in the order passed by the learned MACT inasmuch as the learned Presiding Officer of the MACT had committed an arithmetical error in deducting 1/3rd from the salary of the deceased and therefore necessary correction had to be allowed in the impugned award which was well within the powers of this Court to grant. He placed reliance in **Jitendra Khimshankar Trivedi & Ors. V/s. Kasam Daud Kumbhar & Ors. 2015 (1) T.A.C. 673 (S.C.)**.

5. The learned MACT on a consideration of the evidence brought on record by the original claimants had clearly come to a finding that the original claimants had amply established on the basis of the eye witness account that the deceased was crushed under the wheels of the truck driven by the respondent no.4 herein on the stated date, place and time and which resulted in his death. The learned MACT for that matter had also examined the FIR registered on the basis of the complaint of H.C. Shri Laxman S. Kavlekar apart from the scene of accident panchanama alongwith the sketch read with the memorandum of autopsy and concluded that the death of the deceased was on account of the rash and negligent driving of the tipper truck driven by the respondent no.4 herein. These findings of the learned MACT were not seriously disputed on behalf of the appellants and therefore not warranting any interference in appeal.

6. There was no singular dispute of the fact that the respondent no.5 had disputed the amount before the Workmen's Compensation Court in the proceedings filed by the respondent no.6 claiming to be his widow and entitled to the compensation on his death. It is another matter that she alongwith her husband were joined as the parties to the petition at the instance of the respondents no.1 to 3 and in which the learned MACT had clearly recorded a finding that

the so called widow had neither participated in the proceedings nor proved her claim to be the widow of late Parshuram so as to entitle her to any compensation. Rather, the learned MACT had found favour with the case put forth by the respondents no.1 to 3 and accordingly allowed their petition computing the compensation to which they were entitled and awarded accordingly. Therefore in the fact scenario, and in the absence of any serious objection to the contention of Shri Afonso, learned Advocate for the appellant, the respondent no.5 would be entitled to the refund of the money deposited before the Workmen's Compensation Court.

7. In **Jitendra** (supra) the Hon'ble Apex Court held that even in the absence of the appeal by the claimants, it was appropriate to increase the compensation in the light of the obligation on the part of the Courts/Tribunals to award just and reasonable compensation. In the brief facts, the appellants as the original claimants were secured with the award of the MACT which calculated the loss of dependency and the other damages and awarded the total compensation of ₹2,24,000/- (Rupees Two Lakhs Twenty Four Thousand only) with interest @ 15% per annum. An appeal was preferred by the respondents being aggrieved by the award of the Tribunal before the High Court of Gujarat which partly allowed the appeal and held the appellants-claimants entitled to the

compensation of ₹2,90,000/- (Rupees Two Lakhs Ninety Thousand only) with interest @ 12% per annum after taking the income of the deceased at ₹1350/- (Rupees One Thousand Three hundred Fifty only) per month as against ₹1500/- (Rupees One Thousand Five Hundred only) per month considered by the Tribunal giving rise to the appeal at their instance. They had not filed any appeal in which context the question which arose was whether the income of the deceased could be increased and compensation could be enhanced when the Apex Court held that even though they had not filed any appeal, it was obligatory on the part of the Courts/Tribunal to award just and reasonable compensation and in appropriate cases to increase the compensation after examining the powers of the Court in awarding reasonable compensation as emphasized in **Nagappa V/s. Gurudayal Singh & Ors. (2003) 2 SCC 274, Oriental Insurance Company Ltd. V/s. Mohd. Nasir & Anr. (2009) 6 SCC 280 and Nigamma & Anr. V/s. United India Insurance Company Ltd. (2009) 13 SCC 710.**

8. The case of the respondents no.1 to 3 falls on a still better footing inasmuch as they cannot be prejudiced even though they have not filed an appeal for the simple reason that the learned MACT has committed an error apparent on the face of the records and reflected at paragraph 38 of the judgment under challenge.

The learned MACT considering the age of the deceased had added 30% towards his future earnings and computed the income of the deceased at ₹13,000/- (Rupees Thirteen Thousand only). The learned MACT for that matter had deducted 1/3rd towards his personal living expenses working at ₹4,333/- (Rupees Four Thousand Three Hundred and Thirty Three only) per month and computed the income of the deceased at ₹8,967/- (Rupees Eight Thousand Nine Hundred and Sixty Seven only) per month. However, while computing his annual income, the learned MACT had worked out the annual income at ₹97,844/- (Rupees Ninety Seven Thousand Eight Hundred and Forty Four only) instead of ₹1,07,604/- (Rupees One Lakh Seven Thousand Six Hundred and Four only) which is an error apparent on the face of the record.

9. Thus applying the multiplier of 13 adopted by the learned MACT, the claimants would be entitled to the amount of ₹13,98,852/- (Rupees Thirteen Lakhs Ninety Eight Thousand Eight Hundred and Fifty Two only) as against ₹12,71,972/- (Rupees Twelve Lakhs Seventy One Thousand Nine Hundred and Seventy Two only) computed by the learned MACT towards the loss of dependency and ultimately working out to ₹17,23,852/- (Rupees Seventeen Lakhs Twenty Three Thousand Eight Hundred and Fifty Two only) on adding the amounts awarded on the head of loss of

estate, loss of life and affection, loss of consortium and funeral expenses rounded up to ₹17,24,000 (Rupees Seventeen Lakhs Twenty Four Thousand only). But for these arithmetical corrections in the impugned award, the judgment and award under challenge does not justify any interference in appeal. Therefore i pass the following order:

ORDER

(i) The appeal is dismissed with no order as to costs.

(ii) The respondent no.5 are held entitled to the refund of the amount deposited by them before the Workmen's Compensation Court while the respondents no.1 to 3 who are the original claimants are held entitled to the compensation of ₹17,24,000/- (Rupees Seventeen Lakhs Twenty Four Thousand only) with interest @ 9% from the date of the petition till the final payment and costs and in the proportion awarded by the learned MACT, Mapusa.

10. Shri E. Afonso, learned Advocate for the appellants further submitted that they had deposited the amount awarded in favour of the respondents no.1 to 3 before the MACT, Mapusa and that they would have no objection for the withdrawal of the said amount by the original claimants.

In view of this fair concession by Shri E. Afonso, learned Advocate for the appellants the respondents no.1 to 3 i.e. the original claimants are held entitled to withdraw the amount so deposited and which shall be without prejudice to their right to

claim the additional amount arrived at by this Court on correcting the arithmetical error which had occurred in the impugned judgment and award.

NUTAN D. SARDESSAI, J.

NH