

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 10/2009
WITH
CROSS OBJECTION NO. 5/2014
IN
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The New India Assurance Co. Ltd.,
 Jaganath Bldg., Nr. Flyover Bridge,
 Salcete, Goa.

... Appellant

Versus

1. Mr. Francisco Xavier Fernandes, f/o late Benedito Fernandes, 62 years.
2. Smt. Conceicao Fernandes, wife of Francisco Xavier Fernandes, 54 years.
3. Lucy Fernandes, D/o Francisco Xavier Fernandes, 21 years.
 All R/o H. No. 12, Sorla, Macazana, Salcete-Goa.
4. Mr. Domnic Luis, S/o Octaviano Luis, 25 years, R/o Pandam, Curtorim, Salcete-Goa (Driver).
5. Mr. Shamprasad R. Keny, major of age, R/o Anand Sadan, Dicarpali, Navelim, Salcete-Goa (Driver).
6. Smt. Mecky Fernandes, R/o H. No. 150, Sarzora, C.Band, Salcete-Goa.
 (since deceased) through legal heirs,
 (a) Sebastiao Fernandes, major, residing at H. No. 150, Sarzora, C. Band, Salcete, Goa.
 (b) Ana Maria Fernandes, major, residing at H. No. 150, Sarzora, C. Band, Salcete, Goa.

... Respondents

Shri U.R. Timble with Ms. Yadika Mandrekar, Advocates for the Appellant.

Shri Milton Marshal with Shri Clayton Fonseca, Advocates for the Respondent Nos. 1 to 3.

Shri C.A. Coutinho with Shri Shailesh Redkar, Advocates for the Respondent Nos. 6(a) and 6(b).

CROSS OBJECTION NO. 5/2014
IN
FIRST APPEAL NO. 10/2009

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2. Smt. Conceicao Fernandes, wife of Francisco Xavier Fernandes, aged 54 years.

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All R/o H. No. 12, Sorla, Macazana, Salcete-Goa.

... Cross Objectors

Versus

1. The New India Assurance Co. Ltd., Jaganath Bldg., Nr. Flyover Bridge, Salcete, Goa.

2. Smt. Mecky Fernandes, R/o H. No. 150, Sarzora, C.Band, Salcete-Goa.

(since deceased) through legal heirs,
(a) Sebastiao Fernandes, major, residing at H. No. 150, Sarzora, C. Band, Salcete, Goa.

(b) Ana Maria Fernandes, major, residing at H. No. 150, Sarzora, C. Band, Salcete, Goa.

... Respondents

Shri Milton Marshal with Shri Clayton Fonseca, Advocates for the Cross Objectors.

Shri U.R. Timble with Ms. Yadika Mandrekar, Advocates for the Respondent No. 1.

Shri C.A. Coutinho with Shri Shailesh Redkar, Advocates for the Respondent Nos. 2(a) and 2(b).

CORAM:- C. V. BHADANG, J.

RESERVED ON: 1st NOVEMBER, 2018

PRONOUNCED ON: 19th NOVEMBER, 2018

JUDGMENT:

Benedito Fernandes, a Bosun, working on a foreign ship met with an unfortunate death in a vehicular accident on 22.04.2006 at about 16:20 hours. At the time of the accident, the deceased was proceeding from his residence to Margao astride his motorcycle bearing no. GA-02-H-4069 with his wife Mecky Fernandes as a pillion rider. On reaching at Novabazaar, Macazana, Salcete, the motorcycle was hit by an on coming pickup van bearing no. GA-02/T-5362, which was driven by the respondent no. 4-Mr. Domnic Luis.

2. The respondent nos. 1, 2 and 3 (cross objectors) being respectively the parents and an unmarried sister of the deceased, filed Claim Petition No. 175/2006, before the Motor Accident Claims Tribunal, Margao (Tribunal, for short), under Section 166 of the Motor Vehicles Act, 1988 (Act, for short), seeking a compensation of Rs.25 lakhs in respect of the death of Benedito. Mecky Fernandes, who is the widow of the deceased was not initially made a party to the petition before the Tribunal. She was eventually joined as respondent no. 4 before the Tribunal on 09.04.2007.

3. According to the original claimants, the accident occurred due to rash and negligent driving of Mr. Domnic Luis. It was contended that the deceased was working as a Bosun on a foreign ship and was earning Rs.80,000/- per month. The deceased was 33 years, on the date of the accident, his date of birth being 30.09.1971.

4. The petition was not contested by the respondent nos. 4 and 5 (original respondent nos. 1 and 2, before the Tribunal). The appellant, which was the sole contesting respondent, resisted the petition on various grounds. It was contended that Mr. Domnic Luis, the Driver of the pickup van was not responsible for the accident and the accident occurred solely due to the rash and negligent driving of the deceased himself. It was contended that Domnic Luis was not holding a valid and effective licence on the date of the accident, which is in breach of the conditions of the insurance policy. The claim as to the quantum of compensation was also disputed.

5. The Tribunal framed as many as six issues.

6. On behalf of the claimants, Francisco Fernandes examined himself as AW-1 alongwith Mecky Fernandes (AW-2),

the widow of the deceased, Mr. Concesao Gonsalves (AW-3), a spot pancha and Head Constable Mr. Kamlakar Kotarkar (AW-4), who had registered the FIR and had drawn the spot panchanama.

7. There was no evidence led on behalf of the appellant.

8. The Tribunal came to the conclusion that the accident occurred solely due to the rash and negligent driving of Mr. Domnic Luis and the deceased had no role in the occurrence of the accident. The Tribunal answered issue nos. 1 and 2 in the affirmative and issue no. 4 in the negative. Insofar as issue nos. 3 and 5 are concerned, the Tribunal found that the claimants have not examined any witness to prove the Wage Account Slip (Exhibit X2 colly) and although, there was evidence to show that the deceased was working on Board a foreign ship, there was no acceptable evidence to show that he was earning Rs.80,000/- per month. The Tribunal reckoned the monthly income of the deceased at Rs.20,000/- per month and deducted 1/3rd towards personal and living expenses of the deceased. The Tribunal applied the multiplier of 5, depending upon the age of the respondent no. 1 (claimant no. 1) and arrived at a compensation of Rs.8 lakhs. The Tribunal granted

an amount of Rs.2,000/- towards funeral expenses, Rs.2,500/- towards loss of estate and Rs.5,000/- to the widow of the deceased towards loss of consortium alongwith Rs.1 lakh towards pain and suffering. Thus, the Tribunal has awarded a total sum of Rs.9,09,500/- alongwith interest at the rate of 9% per annum from the date of petition, till realisation, including the compensation under Section 140 of the Act. The Tribunal apportioned the compensation by granting 60% of the compensation to the widow, while 40% of the compensation being granted together to the respondent nos. 1, 2 and 3.

9. Feeling aggrieved by the same, the appellant has filed this appeal, in which, the respondent nos. 1, 2 and 3 have raised a cross objection for enhancement of the compensation. It may be mentioned that subsequent to the passing of the impugned award, the respondent no. 6 i.e. the widow of the deceased has expired not on account of the injuries sustained in the accident.

10. The respondent nos. 6(a) and 6(b) are the parents of Mecky Fernandes i.e. the parents-in-law of the deceased Benedito, who have been brought on record.

11. The cross objectors filed Miscellaneous Civil Application No. 46/2016 for enhancement of the claim to Rs.50 lakhs, which amendment has been allowed on 17.10.2018. The cross objectors have filed yet another application being Miscellaneous Civil Application No. 384/2018, under Order XLI, Rule 27 of CPC, for production of as many as 27 documents including the "Seaman's Employment Agreement". According to the cross objectors, they could not trace the documents, which are now sought to be produced and on 25.01.2018, while they were searching the birth and marriage certificate of the deceased, they came across these documents, which according to them have a bearing on the quantum of compensation to be granted.

12. The appellant has filed a reply and has opposed the application. It is contended that the applicants have not shown any plausible explanation for not producing the documents earlier. It is also contended that the documents cannot be directly admitted in evidence. It is contended that the documents are "manipulated and created documents" and the genuineness and veracity of the documents is disputed. The said application is heard alongwith the appeal on merits.

13. I have heard Shri Timble, the learned Counsel for the appellant, Shri Marshal, the learned Counsel for the respondent nos. 1 to 3 and Shri Coutinho, the learned Counsel for the respondent nos. 6(a) and 6(b). Perused record.

14. It is submitted by Shri Timble, the learned Counsel for the appellant that the negligence of the Driver of the pickup van is not established in this case and as such, the very basis of grant of compensation does not exist. It is submitted that Mr. Domnic Luis was not holding a valid and effective licence and there is a clear case of breach of policy conditions made out. Insofar as quantum is concerned, the learned Counsel submitted that there is no acceptable evidence that the deceased was working as a 'Bosun', on a foreign ship or was earning Rs.80,000/- per month. It is submitted that the additional documents sought to be produced, cannot be allowed to be taken on record and in any case, in the absence of proof, no reliance can be placed on the documents to establish income of the deceased. It is submitted that the income as reckoned by the Tribunal at Rs.20,000/- is also on a higher side. The learned Counsel however did not dispute that in accordance with the Constitution Bench judgment of the Supreme Court in the case of **National Insurance Company Limited Vs. Pranay Sethi**

& Others, AIR 2017 SC 5157, the multiplier has to be reckoned in relation to the age of the deceased.

15. Shri Marshal, the learned Counsel for the respondent nos. 1 to 3 submitted that the original claimants being the parents and an unmarried sister of the deceased, would only be entitled to the compensation, in view of the fact that the widow of the deceased has expired. It is submitted that the parents-in-law of the deceased Benedito, would neither be the legal representatives nor the dependents of the deceased, so as to be entitled to any part of the compensation. The learned Counsel has submitted that there is enough evidence to show that the deceased was working on a foreign ship and was earning Rs.80,000/- per month. The learned Counsel submitted that the additional documents sought to be produced would show that the deceased was being paid in Euros and U.S. Dollars (USD) and the equivalent conversion in Rupees would exceed much more than Rs.80,000/- per month. It is submitted that the Tribunal was also in error in reckoning the multiplier of 5 i.e. in relation to the age of the respondent no. 1 (claimant no. 1).

Reliance is placed on the decision of the Supreme Court in the case of **Pranay Sethi** (supra), in order to submit that the multiplier would be in relation to the age of the

deceased, who was 33 years on the date of the accident. It is submitted that the compensation granted under the head of loss of estate, loss of consortium and funeral expenses is also on a lower side and is not in accordance with the decision of the Supreme Court in the case of **Pranay Sethi** (supra).

16. On behalf of the respondent nos. 1 to 3, reliance is placed on the decision of the Supreme Court in the case of (i) *Smt. Manjuri Bera Vs. Oriental Insurance Company Ltd. & Another*, (2007) 10 SCC 643, (ii) *Mrs. Hafizun Begum Vs. Md. Ikram Heque & Others*, AIR 2007 SC 2680, (iii) *Jiju Kuruvila & Others Vs. Kunjujamma Mohan & Others*, (2013) 9 SCC 166; (iv) *D.M. Oriental Insurance Co. Ltd. Vs. Swapna Nayak & Others*, (2017) 3 SCC 598 and (v) *State of Himachal Pradesh & Others Vs. Naval Kumar alias Rohit Kumar*, (2017) 3 SCC 115.

Reliance is placed on the decision of this Court in the case of (i) *Maimuna Begum & Others Vs. Taju & Others*, 1988 ACJ 417, (ii) *Abdul Rahman & Others Vs. Dayaram & Others*, 1989 ACJ 806, (iii) *Smt. Dumaina Fernandes & Another Vs. Razik B. Pereira & Others*, 2012 SCJ 349 and (iv) *Smt. Milagrina Araujo & Others Vs. Mr. Mahesh S. Kambli* (First Appeal No. 41/2010 decided on 31.07.2015).

Reliance is also placed on the decision of the Madras High Court in the case of (i) *New India Assurance Co. Ltd. Vs. P. Arunachalam & Others*, 2017 (3) T.A.C. 300 (Mad.) and (ii) *G. Deivasigamani & Others Vs. Metropolitan Transport Corporation Limited*, 2008 1 MLJ 1107 and on the decision of the Kerala High Court in the case of *Clara Vs. Yasoda*, 2009 (2) T.A.C. 618 (Ker.).

17. Shri Coutinho, the learned Counsel for the respondent nos. 6(a) and 6(b) has submitted that the Tribunal having granted 60% of the compensation to the respondent no. 6 (since deceased), the same would form part of the estate of the respondent no. 6. It is submitted that the respondent nos. 6(a) and 6(b) being her parents, would be entitled to that part of the compensation. The learned Counsel in all fairness submitted that this is not on the ground of the respondent nos. 6(a) and 6(b) being either legal representatives or being the dependents of the deceased Bedito. The contention is that once the amount having been granted to now deceased Mecky Fernandes, by the award, her subsequent death would entitle the respondent nos. 6(a) and 6(b) to inherit that amount. Reliance in this regard is placed on the decision of the Supreme Court in the case of **Melepurath Sankunni Ezhuthassan Vs.**

Thekittil Geopalankutty Nair, 1986 (1) SCC 118 and the decision of the Karnataka High Court in the case of **Hussain (since deceased) Vs. Imtiyankhan & Another, 2017 4 KCCR 2968.**

18. I have carefully considered the circumstances and the submissions made.

19. The following points arise for my determination in this appeal:

(i) Whether, the accident occurred solely due to the rash and negligent driving of the respondent no. 4, Domnic Luis ?

OR

(ii) Whether, the accident occurred due to the rash and negligent driving of Benedito Fernandes ?

(iii) Whether, the appellant proves that there is breach of the policy condition, on the ground that Domnic Luis was not holding a valid and effective licence on the date of the accident ?

(iv) What is the just compensation to be awarded in this case ?

(v) Whether, the respondent nos. 6(a) and 6(b) are entitled to a part of the compensation on account of death of Smt. Mecky Fernandes ?

(vi) What Order ?

20. Point Nos. (i) and (ii):

Smt. Mecky Fernandes (AW-2), who is the widow of Benedito Fernandes was a pillion rider alongwith the deceased at the time of the accident. As such, she is an eye witness to the accident. She was fortunate enough to survive the accident as she was flung aside, while her husband suffered severe injuries to the head, chest and limbs in the accident.

21. Mecky Fernandes has stated that while she alongwith her husband was proceeding to Margao on their motorcycle, the original respondent no. 1 Domnic Luis drove the pick up van in a fast speed and came on the wrong side and dashed against the motorcycle. In the accident, the deceased succumbed injuries to the head and the right leg, while AW-2 was flung by the side of the road and she also sustained injuries. Nothing significant has come in the cross examination of AW-2, except a suggestion that the pick up van was not driven in the rash and negligent manner, which was refuted. The driver of the pick up is not examined, who would have been the best witness to depose the manner in which, the accident occurred. AW-4, Head Constable Kottarkar had registered the offence and had visited the spot and had drawn the spot panchanama alongwith a sketch, which is also referred to by

Conceinsao Gonsalves (AW-3), the spot panch. The sketch (Exhibit X colly) specifically shows that the pick up van had come to the wrong side and had given a dash to the motorcycle, which is apparent from the spot of impact shown on the sketch. The motorcycle was found lying on the extreme edge of the kaccha road. It is well settled that the standard of proof in a dispute of the present nature is not as high as is required in a criminal case. In a claims petition, negligence can be established on preponderance of probabilities. Considering the overall evidence, there is no manner of doubt that the accident occurred due to rash and negligent driving of Domnic Luis, the driver of the pick up van. Point no. (i) is accordingly answered in the affirmative and point no. (ii) in the negative.

22. Point No. (iii):

The burden to prove that there was breach of the policy conditions on the ground that Domnic Luis was not holding a valid and effective licence on the date of the accident was on the appellant, which has not been discharged. As noticed earlier, the appellant has not led evidence to show that the driver of the pick up van was not holding a valid and effective driving licence on the date of the accident. The record would disclose that this issue was perhaps not seriously pressed

before the Tribunal and there is also no issue framed on this aspect. Be that as it may, in the absence of any evidence on behalf of the appellant, it is not possible to accept that the Domnic Luis was not holding a valid and effective licence. Consequently, the issue is answered in the negative.

23. Point No. (iv):

This takes me to the issue of quantum. Francisco Fernandes (AW-1) has stated that his son was a seaman by profession and was earning Rs.80,000/- per month and was 33 years of age at the time of the accident. He produced the Passport of the deceased alongwith C.D.C. cum Seafarers Identity Document as also the Wage Account Slip. He claimed that the deceased was working on board vessel overseas named "D.G." on a contract basis and was paid depending on the trips. He claimed that the deceased had made atleast six voyages prior to his death. The C.D.C. cum Seafarers Identity Document is produced at Exhibit 33 (colly) containing the details of the voyage undertaken by the deceased alongwith the visa entries made on the passport. Thus, the Tribunal, in my considered view, is justified in holding that there is enough evidence to show that the deceased was working on a foreign ship on contract basis depending upon the trips/voyage made. The

copy of the passport shows the date of birth of the deceased as 30.09.1971 and thus, the deceased was 33 years of age on the date of the accident. The material question is about the income/salary earned by the deceased. Although, Francisco Fernandes (AW-1) has produced a Wage Account Slip (X-2), no witness was examined to prove the same. Now, at the stage of appeal, there are as many as 22 documents, which are sought to be produced under Order XLI, Rule 27 of CPC, which includes the Seaman's Employment Agreement dated 28.06.2004, which is executed between Atlanitica Navigation Limited Valletta (owner of M.V. Sealink, Malta Flag) and the deceased Benedito Fernandes and the duration of the contract is shown to be 8 to 12 months at the owner's option. The monthly wage including Sunday allowance is shown as 1250 U.S. Dollars (USD) per month all inclusive. The agreement is signed by one of the crew member and for DeeJay Marine Enterprises by the authorised agent or master. The contract stipulates that after eight months, the owner/master will undertake the seaman's repatriation. The contract was extendable at the option of the master.

24. Apart from the Seaman's Employment Agreement, there are several wage account slips sought to be produced on

record. The said documents even if, allowed to be produced and proved on record, do not clearly indicate the salary or the wage structure of the deceased and more so in rupee terms. Further Mecky Fernandes (AW-2) admitted that the deceased was working on the ship only for three to five months. Although, she claimed that for the remainder part of the year he was working on land at home, there is no evidence of any such employment or the earnings therefrom. It can thus be seen that the employment of the deceased on board ship was a contract employment, where the payment was based on trips and that was not a perennial employment.

25. It was also indicated to the learned Counsel for the appellants that in the event, the production of the documents is allowed, the matter will have to be either remanded or the issue as to quantum will have to be sent to the Tribunal for decision, in as much as the documents cannot be relied, unless the appellant is given an opportunity to question the same, resulting into further delay in disposal of the claim, which arises out of an accident of the year 2006. It also transpired during the course of the arguments at bar that the witnesses to prove the documents (even assuming that strict rules of Evidence Act are not applicable to the claims petition), would

be difficult to find and to secure their presence. Faced with this, the learned Counsel for the appellants, on instructions, has not pressed the application for production of additional evidence. It is submitted that however, this Court may make appropriate additions towards future prospects and apply multiplier in accordance with the decision of the Supreme Court in the case of **Pranay Sethi** (supra).

26. I have carefully considered the submissions made. Looking to the fact that the deceased was working as Bosun on board a foreign ship and was being paid in US Dollars/Euros, and even after discounting the fact that the said employment was contractual in nature and was not available round the year, I find that the monthly income of the deceased can be taken at Rs.20,000/- as reckoned by the Tribunal. Thus, the annual income would be Rs.2,40,000/-. The income for the purposes of the calculation of the compensation is the net income after deduction of tax. It would be reasonable to assume tax at 20%. Thus, after deduction of Rs.48,000/- (20% of Rs.2,40,000/-), the net income would be Rs.1,92,000/-. As per the decision in the case of **Pranay Sethi** (supra), an addition of 40% can be made towards future prospects. Thus, the income would be Rs.1,92,000+Rs.76,800/- ie. Rs.2,68,800/-. As there were three

dependents on the deceased, deduction towards personal and living expenses would be one third i.e. Rs.89,600/-. The net income for computing loss of dependency would be Rs.2,68,800-Rs.89,600=Rs.1,79,200/-. The appropriate multiplier depending on the age of the deceased would be 16. Thus, the compensation towards loss of dependency would be Rs.1,79,200x16 =Rs.28,67,200/-. Rs.15,000/- could be granted towards loss of estate and funeral expenses. Thus, the total compensation is Rs.28,82,200/-. This being a first appeal, subsequent developments which have a bearing on the grant of compensation and its entitlement have to be noticed. In the present case, the widow of the deceased died during the pendency of the appeal and thus, I am not inclined to grant any compensation under the head of loss of consortium. The point is answered accordingly.

27. Point No. (v):

This is the most vexed issue, which falls for determination in this appeal. It is not disputed on behalf of the respondent nos. 6(a) and 6(b) that they are neither the legal representatives nor the dependents of Benedito Fernandes, who died in the accident "of the nature specified in sub-section (1) of Section 165 of the Act". The claim is essentially based on the

ground that the Tribunal having passed the award, granting compensation to the widow of the deceased, who is the daughter of the respondent nos. 6(a) and 6(b), the compensation forms her estate, to which these respondents are entitled to succeed. In other words, the claim is not based on any loss of dependency, but, is based on a claim of inheritance. Shri Coutinho the learned Counsel for the respondent nos. 6(a) and 6(b) even submitted that this Court can, in given case tinker with the apportionment of compensation and it could be apportioned 50% to the share of the widow and 50% to the parents of the deceased. On the contrary, it is contended on behalf of the cross objectors that the widow having died during the pendency of the appeal and the respondent nos. 6(a) and 6(b) not being the legal representatives or dependents of Benedito are not entitled to any compensation.

28. The Claims Tribunal is constituted under Section 165 of the Act for the purpose of adjudicating upon claims for compensation in respect of accidents involving death or bodily injury to persons, arising out of the use of motor vehicles or damages to any property of a third party so arising or both. The explanation annexed to Section 165 of the Act would make it clear that such a claim includes a claim under Section 140 of

the Act and Section 163A of the Act. Such a claim can be filed under Section 166 of the Act where death has resulted, (as in the present case) by the legal representatives of the deceased. The Tribunal in such case is required to determine the amount of compensation which appears to it to be just and specifying the person or persons to whom such compensation is payable. The Act is a piece of beneficial legislation in order to grant just compensation to the persons injured or to the legal representatives of the deceased in the accident. It is now well settled that such compensation should be a reasonable and just compensation as far as possible to restore the person injured or the legal representatives to a position prior to the accident, economically. The compensation should neither be meager nor a windfall. No party can claim to be enriched on account of the hapless event. Although, Section 166 of the Act speaks of the legal representatives, the relevant factor for determination and distribution of the compensation is dependency. This is because loss of dependency is a major head of compensation under which the compensation is determined and granted under the Act. It is necessary to note that the Tribunal is a creature and the creation of the Act having limited jurisdiction as conferred to determine the amount of compensation and the person or persons to whom the same is payable. As a Court exercising

appellate powers over the award of the Tribunal under Section 173 of the Act, this Court is entitled and is bound to take the note of subsequent developments which has a bearing on the question of determination and distribution of compensation.

29. In the present case, the claim petition was originally filed by the parents and an unmarried sister of the deceased. The widow came to be subsequently arrayed as a respondent no. 4 before the Tribunal. The sister has since been married, while the widow died after the award was passed by the Tribunal, granting compensation, 60% of which was made payable to the widow. The question is whether, the respondent nos. 6(a) and 6(b) can claim and could be granted a part of the compensation or a lessor share, which was payable to the widow of the deceased. In my considered view, the answer has to be in the negative. As noticed earlier, the Tribunal is having limited jurisdiction circumscribed by the provisions of the Act and is clothed with the jurisdiction to determine and distribute compensation amongst the legal representatives of the deceased in case of a fatal accident. The Tribunal unlike a civil Court has no plenary jurisdiction. That apart, the whole exercise of determination and distribution of just compensation is to put the legal representatives, who are dependents to a

position as nearly as possible prior to the accident. Thus, the aspect of dependency cannot be overlooked while deciding the person or persons to whom the compensation is payable. The reliance placed on behalf of the respondent nos. 6(a) and 6(b) on various decisions to my mind is misplaced.

30. The case of **Melepurath Ezhuthassan** (supra) arose out of a civil suit seeking compensation for defamation. The question was whether, the action would abate on the death of the plaintiff. The Supreme Court taking note of Section 306 of the Indian Succession Act found that the said Section speaks of an action and not of an appeal. It was held that conjoint reading of Section 306 of the Succession Act and Order I, Rule 10 of CPC would show that the cause of action for defamation does not survive the death of the appellant. It was held that the position would be entirely different where the suit is already decreed, where the cause of action would merge with the decree. In such a case, if the original plaintiff dies during the pendency of an appeal by the defendant, the legal representatives can defend the appeal as there is question of benefit or detriment to the estate involved. In my considered view, the case cannot come to the aid of the respondent nos. 6(a) and 6(b) for the reason that it arose out of a civil suit

before a Court of plenary jurisdiction, unlike in the present case and secondly, the appeal was defended by the legal representatives of the plaintiff. In the present case, these respondents are not even the legal representatives of the deceased, who died in the accident. Thirdly, the question of dependency has to have some bearing in a dispute of the present nature and admittedly, these respondents are not the dependents of Benedito, who died in the accident.

31. The Supreme Court in the case of **Mrs. Hafizun Begum** (supra) has held that the liability in terms of Section 140 of the Act (no fault liability) does not cease because of absence of dependency. In that case, the matter was remanded as the High Court had not dealt with the said aspect. Thus, even in a case where the claimants were legal representatives of the deceased, who died in the accident, who were not dependents, were held entitled to compensation, which could not be less than what is payable under Section 140 of the Act. It is not necessary to multiply authorities on the point. However, in the case of **G. Deivasigamani** (supra), the Madras High Court (R. Banumathi J. as her ladyship then was) placing reliance on the decision in the case of **Mrs. Hafizun Begum** (supra) has held that the claimants, who were not dependents

of the deceased, were only held entitled to compensation under no fault liability. At the cost of repetition, it is necessary to note that these respondents are not even the legal representatives of the deceased in the accident, much less the dependents.

32. In the case of **Gujarat State Road Transport Corporation, Ahmedabad Vs. Ramanbhai Prabhatbhai & Another, AIR 1987 SC 1690**, it was *inter alia* held that the brother of the deceased can maintain a claim “if he is a legal representative of the deceased”. In para 11 of the judgment, the Supreme Court has held that every legal representative, who suffers on account of death of a person due to a motor vehicle accident should have a remedy for realisation of compensation.

33. In the case of **Skoda Afonso Vs. Motor Accidents Claims Tribunal & Others, 1999 (3) Mh.L.J. 285**, before a Division Bench of this Court, the original claimant Dr. Skoda Afonso had filed a claim, seeking compensation on account of injuries suffered by him in a vehicular accident. The claimant Dr. Afonso died during the pendency of the claim petition on account of the injuries suffered in the accident. It can thus clearly be seen that the case squarely turned on its own facts.

If the death is attributable to the injuries sustained in the accident, the legal representative would obviously be entitled to maintain an action for compensation. The Division Bench in para 6 of the judgment has *inter alia* held that the position would be different in cases where death of claimant during pendency of claim petition is not on account of injuries suffered in the accident. In such cases, the cause of action would survive for the legal representatives, only insofar as loss to estate is concerned. The Division Bench in the case of **Skoda Afonso** (supra) has relied upon the Division Bench judgment of this Court in the case of **Maimuna Begum** (supra). Even in that case, the original claimant had filed a petition, seeking compensation in respect of injuries sustained in the accident. The petition was dismissed and the original claimant had filed an appeal, during the pendency of which, he died. One of the questions which fell for determination was whether, the right to sue the owner survives to the legal heirs, which was answered in the affirmative. It can thus be seen that even in that case, the persons who were substituted to prosecute the appeal, were the legal representatives of the original claimant, who suffered injuries in the accident and had subsequently died.

34. In the case of **Smt. Manjuri Bera** (supra), it was held that a married daughter of the deceased, though not dependent on deceased, was entitled to compensation, she being a legal representative. In the present case, the respondent nos. 6(a) and 6(b) are neither legal representatives nor dependents of the deceased Benedito Fernandes. Similar is the case of **Hussain (since deceased)** (supra) before the Karnataka High Court.

35. A brief reference can be made to the judgments relied upon on behalf of the respondent nos. 1, 2 and 3 at this stage. In the case of **Abdul Rahman** (supra), a Division Bench of this Court held that the Court cannot be guided by the personal law, while deciding upon the apportionment of the compensation and the compensation was paid taking into consideration the dependency of the claimants.

36. In the result, I have no hesitation in holding that the respondent nos. 1, 2 and 3, respondent nos. 1 and 2 being the parents of the deceased, would be entitled to the major part of compensation. The respondent no. 3, who is then unmarried was also a dependent on the deceased. She has subsequently been married. She is held entitled to a compensation of

Rs.2,00,000/-. The respondent nos. 6(a) and 6(b) neither being the legal representatives nor the dependents of the deceased Benedito Fernandes, are held not entitled to any part of the compensation. The point is answered accordingly and the following order is passed:

ORDER

- (i) The Appeal is hereby dismissed.
- (ii) Cross Objection No. 5/2014 is partly allowed.
- (iii) The impugned award passed by the Tribunal is modified.
- (iv) The appellant (New India Insurance Company Limited), respondent no. 4 (Mr. Domnic Luis, Driver) and respondent no. 5 (Mr. Shamprasad Keny, owner) are held jointly and severally liable to pay a compensation of Rs.28,82,200/- to the respondent nos. 1, 2 and 3 alongwith interest at the rate of 7% per annum from the date of the petition, till realisation.
- (v) This will be inclusive of the compensation under Section 140 of the Act.
- (vi) Out of the said amount, Rs.2,00,000/- alongwith proportionate interest shall be paid to the respondent no. 3 (cross objector no. 3). The remaining amount alongwith proportionate interest shall be paid to the respondent nos. 1 and 2 (cross objector nos. 1 and 2).
- (vii) In the circumstances, the parties to bear their own costs.
- (viii) Award be drawn accordingly.

C. V. BHADANG, J.