

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 111 OF 2012

1. Mr. Augusto Rogerio Leronardo Cabral,
aged 62 years,
 2. Mrs. Rita Maria Roquita Gonsalves
(since deceased)
through Lrs.:
 - i) Mr. Isidore Sebastian Cabral, aged 39 years,
married,
 - ii) Mrs. Semona Emily de Souza, aged 33 years,
married,
 - iii) Mr. Dwayne Roger Cabral,
aged 24 years, bachelor,
all resident of P. O. NIO House No.532,
Dona Paula, Tiswadi, Goa 403001.
- ... Appellants.

(Amendment carried out as per order dated 28/3.2018)
in STA 4207/2017)

V e r s u s

1. Mr. Shashank Anil Agarwal,
major, r/o House No. 512,
Bela Vista Colony,
Dona Paula, Panaji,
Goa (Driver)
 2. Himgiri Castings Pvt. Ltd.,
Flat No.251,
Kundaim Industrial Estate,
Kundaim, Goa (Owner)
 3. Oriental Insurance Co. Ltd.,
Goveia Chambers,
3rd floor, Panaji-Goa.
- Respondents

Shri R. G. Ramani, Advocate for the Appellants.

Shri E. Afonso, Advocate for the Respondent no. 3.

CORAM: C. V. BHADANG, J.

DATE: 22nd October, 2018.

JUDGMENT:

The appellants are the original claimants before the Motors Accident Claims Tribunal at Panaji (Tribunal, for short).

2. Jacinto, the son of the appellants, aged 23 years met with an unfortunate death in a vehicular accident on 2/8/2008, when he was riding his scooter bearing registration no.GDD-4336. The deceased was hit by a Maruti Swift car bearing registration no.GA-05-B-5871 coming from the opposite direction. The first respondent is the driver of the said Maruti car and the second respondent is its owner. The third respondent had covered the risk out of the use of the said car under a policy of insurance which was valid on the date of the accident.

2. According to the appellants the deceased was serving as a Manager at a Mobile Service Shop at Caranzalem and was earning Rs.9500/- per month as income. The deceased was unmarried. The Tribunal framed as many as

eight issues. The Tribunal on appreciation of the evidence came to the conclusion that the accident occurred due to the rash and negligent driving of the first respondent, as a result of which the respondents were held jointly and severally liable to pay compensation to the appellants. The present appeal involves only the issue of quantum of compensation and thus it is not necessary to dwell on any other issues.

3. The Tribunal after noticing that the employer of the deceased was not examined has refused to place reliance on the income certificate produced by the appellants. The Tribunal reckoned the monthly income of the deceased at Rs.3000/- per month and made deduction of 50% towards personal and living expenses, in accordance with the decision of the Supreme Court in the case of **Sarla Verma (Smt) and others Vs. Delhi Transport Corporation and another (2009) 6 SCC 121**. The Tribunal has applied a multiplier of 5 depending upon the age of the claimants. The Tribunal awarded Rs.2500/- towards loss of estate and Rs.2000/- as funeral expenses. Significantly the Tribunal also granted Rs.25000/- toward pain and suffering, which was obviously not competent having regard to the fact this was a death case. This aspect is not disputed by the learned counsel for the respondent.

4. The Tribunal vide judgment and award dated 8/5/2012 arrived at a

sum of Rs.1,19,500/- as the compensation to which the appellants are entitled to, along with interest at the rate of 9% p.m. from the date of the petition till realization. This was inclusive of the compensation under section 140 of the Motor Vehicles Act 1988 (Act, for short). Feeling aggrieved by the inadequate compensation granted, the appellants have filed this appeal.

5. I have heard Shri Ramani, the learned counsel for the appellants and Shri Afonso, the learned counsel appearing for the respondent no.3. None appears for the respondent nos. 1 and 2. Perused record.

6. On behalf of the appellants reliance is placed on the Constitution Bench decision of the Supreme Court in the case of **National Insurance Company Ltd. Vs. Pranay Sethi and others (2017) 16 SCC 680**. It is submitted that in terms of the law as laid down by the Hon'ble Supreme Court, the Tribunal is required to make an addition of 40% towards future prospects and the multiplier has to be reckoned in relation to the age of the deceased and not claimants. It is submitted that the compensation granted under the head loss of estate and funeral expenses is also on the lower side than what is reckoned by the Hon'ble Supreme Court in the case of **Pranay Sethi (supra)**.

7. Shri Afosno, the learned counsel for the respondent no.3 in all fairness does not dispute that in terms of the decision of the Supreme Court in the case **Pranay Sethi** the multiplier has to be in relation to the age of the deceased and not the parents/claimants. He, however, submits that the monthly income taken by the Tribunal is reasonable and proper.

8. I have considered the circumstances and the submissions made. Under the provisions of the Act, the Tribunal is required to determine just compensation payable to the claimants and strict rules of procedure are not applicable before the Tribunal. In my considered view the tribunal was not justified in reckoning the monthly income of the deceased at Rs.3000/- p.m. which I find to be quite on the lower side. A certain amount of reasonable guesswork, is necessary, if not inevitable while determining just compensation. The deceased was a young commerce graduate and was said to be serving in a mobile service center. In my considered view the monthly income of the deceased can be safely reckoned at Rs.7000/- p.m. After addition of 40% towards future prospects, the monthly income for the purpose of computation of the compensation would be Rs.9800/- p.m. Looking to the fact that the deceased was a bachelor, 50% of this will have to be deducted, towards personal and living expenses of the deceased. Thus the net income for the purpose of computation of the compensation would be

Rs.4900/- p.m. i.e Rs.58,800/- p.a. The Hon'ble Supreme Court in no uncertain terms has held in the case of **Pranny Sethi (supra)** that in a case of the present nature it is the multiplier in relation to the age of the deceased, which has to be the basis for applying the proper multiplier. For the purpose of determining the multiplier the Tribunal is required to follow the decision of the Supreme Court in the case of **Sarala Verma (supra)**. Looking to the fact that the deceased was aged 23 years on the date of of the accident, the appropriate multiplier would be 18. The compensation thus would be $\text{Rs.}58,800 \times 18 = \text{Rs.}10,58,400/-$. An amount of Rs.15,000/- each will have to be granted under the head of loss of estate and funeral expenses. Thus the total compensation payable would be Rs.10,88,400/- which would be inclusive of the compensation under section 140 of the Act. It is now well settled that, in an appropriate case, the tribunal can grant compensation in excess of what is claimed, provided it is just compensation.

9. This takes me to the question of grant of interest. The Tribunal has allowed interest at the rate of 9% p.a. Normally, this Court would be slow in interfering with the rate of interest, granted by the Tribunal. However, in the present case, I find that at the time when the Tribunal delivered the impugned award, the legal position as prevailing was that there could be no addition on the ground of future prospects in the case of a self employed person and the

question whether the multiplier has to be reckoned in relation to the age of the deceased or the claimants was also fluid. The legal position has now been settled by the Constitution Bench of the Supreme Court on 31/10/2017. The accident is of the year 2008 and as noticed earlier, the Tribunal decided the petition for compensation on the basis of the legal position as prevailing then. The appeal also was pending from the year 2012. Considering the peculiar circumstances of this case, I do not find it appropriate to burden the respondents with interest at the rate of 9% p.a. I find that it would be appropriate to reduce the rate of interest to 7% p.a.

10. Shri Ramani, the learned counsel for the appellants submits that since after filing of this appeal, the appellant no.2 (the mother of the deceased) has expired. He, therefore, submits that the entire amount be directed to be paid to the appellant no.1/father and the legal representatives of the appellant no.2, i.e. the appellant no.2 (i) to (iii) have no objection for the same. In the result the following order is passed:

ORDER:

- (i) The appeal is allowed.
- (ii) The respondents shall jointly and severally pay Rs.10,88,400/- to the appellant no.1 along with interest at the rate of 7% p.a. from the date of the petition, till realization, which would be inclusive of the compensation under

section 140 of the M.V. Act.

(iii) In the circumstances there shall be no order as to costs.

(iv) Award be drawn accordingly.

C. V. BHADANG, J.

ap/-