

IN THE HIGH COURT OF BOMBAY AT GOA
CIVIL APPLICATION (REVIEW) NO. 35 OF 2016
IN
FIRST APPEAL NO. 31 OF 2012

Perfeta alias Perpetua			
Camelo Marques & Anr.	...		Applicants
Versus			
Mr. Dilip Galande & 2 Others	...		Respondents

Shri Emerico Afonso, Advocate for the Applicants.

Shri Clayton Fonseca, Advocate for the Respondent No. 3.

CORAM : C.V. BHADANG, J.

Reserved on : 16th JULY 2018

Pronounced on : 23rd JULY 2018

ORDER:

This is an application, seeking review of judgment of this Court (K.L. Wadane, J.) dated 09.06.2015, in First Appeal No. 31/2012.

2. The applicants are the original claimants/parents of the deceased Raymond Marques, who met with an unfortunate death, at the age of 20 years, in a vehicular accident. According to the applicants, Raymond was an accomplished sportsman/footballer and had earned several State awards. He represented Goa State in National and International tournaments. He was a regular football player with Sporting Clube De Goa and was earning Rs.18,000/- per month. He had

also participated in International football game at Portugal and had a bright future as a sportsman.

3. The applicants made a claim of compensation of Rs.25 lakhs, before the Motor Accident Claims Tribunal at Panaji (Tribunal, for short) in Claim Petition No. 109/2007, against the respondents.

4. The Tribunal by a judgment and award dated 10.02.2011, granted compensation of Rs.6,28,500/- along with interest at the rate of 9% per annum, from the date of the application till realisation. The Tribunal reckoned the monthly income of deceased at Rs.8,000/- per month and applied the multiplier of 18. The Tribunal deducted 50% of the amount towards personal and living expenses and granted Rs.2,000/- towards funeral expenses and Rs.2,500/- towards loss of estate. Feeling aggrieved by the inadequate compensation granted, the applicants challenged the same in First Appeal No. 31/2012, before this Court.

5. This Court partly allowed the appeal and enhanced the compensation to Rs.8,91,000/-, maintaining the rate of interest, as granted by the Tribunal. This Court found that the

calculation made by the Tribunal was incorrect. Thus, on facts, this Court did not interfere with the finding of the Tribunal, reckoning the monthly income of the deceased at Rs.8,000/- per month and also maintaining the multiplier of 18.

6. The applicants have filed the present application, for review, based on the decision of the Supreme Court in the case of **Rajesh and Others Vs. Rajbir Singh and Others, (2013) 9 SCC 54**. It is contended that there has to be 40% addition to the income of the deceased, towards future prospects, as held by the Supreme Court in the case of **Rajesh** (supra), which has not been done by this Court. Secondly, it is contended that the finding of this Court that the annual income of the deceased was Rs.8,000/-, is also incorrect and lastly, it is contended that this Court ought to have granted compensation of Rs.1 lakh towards damage to the motorcycle of the deceased, which was completely destroyed in the accident. These are the three grounds, on which, review is sought.

7. I have heard Shri Afonso, the learned Counsel for the applicants. Respondent Nos. 1 and 2 have chosen not to appear, though served. Shri Fonseca, the learned Counsel for the respondent no. 3 stated that he has no instructions,

although, formally, no discharge is sought till today. The record further discloses that even in the first appeal, there was no appearance on behalf of any of the respondents, at the hearing of the appeal.

8. It is submitted by Shri Afonso, the learned Counsel for the applicants that there is a salary certificate (Exhibit-45) produced, by the applicants, before the Tribunal, which was duly proved by AW-3, Victor Fernandes, who is the Vice President of the Sporting Clube De Goa. It is submitted that the several certificates, which were produced on record (at pages 65 to 101 of the compilation in the first appeal), which were collectively exhibited as Exhibit-41, would show that the deceased was an all rounder and a promising sportsman. It is thus submitted that this Court ought to have reckoned the monthly income of the deceased at Rs.18,000/- per month. Secondly, it is contended that although, this Court had noticed the decision of the Supreme Court in the case of **Rajesh** (supra), this Court failed to make addition of 40% to the income of the deceased, towards future prospects. It is submitted that strict rules of pleadings, do not apply to a claims petition, under Section 166 of the Motor Vehicles Act, 1988 (MV Act, for short) and the claim towards repair to the motorcycle to the extent of

Rs.97,052/-, could not have been disallowed, for want of pleadings. Except this, there are no other contentions raised.

9. I have carefully considered the circumstances and the submissions made. Before proceeding to consider the submissions made on behalf of the applicants, it would be necessary to note that the Tribunal, as well as this Court had reckoned the multiplier of 18, as per the decision of the Supreme Court in the case of **Smt. Sarla Verma & Others Vs. Delhi Transport Corporation & Another, (2009) 6 SCC 121**, based on the age of the deceased and not the claimants. The learned Counsel for the applicants has not disputed the choice of the multiplier.

10. In the present application, this Court (M.S. Sonak, J.), by an order dated 28.04.2017, had referred the matter to the Division Bench, in view of the conflicting decisions on the point as to whether, the multiplier has to be in relation to the age of the deceased or the parents/claimants, where the deceased died as a bachelor. The matter was accordingly placed before the Division Bench. The Division Bench of this Court placing reliance on the decision of the Supreme Court in the case of **National Insurance Co. Ltd. Vs. Pranay Sethi &**

Others, (2017) 16 SCC 680, has held that the issue referred to the Division Bench already stands answered by the Supreme Court, where the Supreme Court has held that even in cases where the deceased is a bachelor, the age of the deceased shall be taken for applying the appropriate multiplier. Subsequent to the reference being answered, the application is placed before this Court. At the cost of repetition, it may be mentioned that the Tribunal as well as this Court, while deciding the application has maintained the multiplier of 18, which is in accordance with the age of the deceased. Thus, the question of multiplier does not fall for determination in this case.

11. Insofar as the monthly income of the deceased is concerned, this Court in para 8 of the judgment under review has observed that there was no appointment letter issued to the deceased, which has been admitted by AW-3 and although, there was a contract between the Sporting Clube de Goa and the deceased, the same was not produced on record. This Court found that thus, the best available evidence was not produced. AW-2 had not brought the original record, relating to the pay and perks of the deceased and in that view of the matter, had refused to rely on the salary certificate. It can thus clearly be seen that after considering the evidence on record,

this Court has come to the conclusion that the income of the deceased has to be reckoned as Rs.8,000/- per month. There is absolutely no error apparent on the face of record, insofar as the said finding is concerned. In a review application, this Court cannot reconsider the matter afresh. The finding insofar as the monthly income of the deceased is concerned, does not call for interference in this application.

12. Coming to the claim, insofar as repairs to the motorcycle, is concerned, here again, this Court rejected the contention raised, in para 10 of the judgment under review. This Court has found that the evidence of AW-5, Mahadeo Ganig, about the estimate of repairs of the motorcycle, are neither supported by pleadings, regarding damage to the motorcycle, nor any such damages are specifically claimed in the petition. Shri Afonso, the learned Counsel for the applicants has pointed out the sketch enclosed to the spot panchanama, as well as para 23 of the claim petition, in order to submit that the sketch would show that the motorcycle was torn into pieces and there is claim made in para 23 of the petition that the motorcycle was crushed and scattered into pieces. A bare perusal of para 22 of the petition would show that various heads, under which, the compensation of Rs.25

lakhs is claimed, are not set out in the petition. Undoubtedly, it is the duty of the Tribunal to determine just compensation, payable under Section 166 of the MV Act and strict rules of pleadings may not be applicable to a claim petition, however, that does not obviate the need for the claimants to assist the Tribunal in arriving at just compensation.

13. This Court has found that there were no specific pleadings, as to the amount claimed, in respect of damage to the motorcycle. That apart, the evidence of AW-5 shows that the vehicle was a Hero Honda Karizma motorcycle of 2006 make. There is nothing on record to show the price, at which, the motorcycle was purchased, so that appropriate depreciation can be applied. The evidence of AW-5 shows that the applicants have only obtained the estimate and had not, thereafter, followed up for repairs of the motorcycle. For these reasons, I am not inclined to accept the claim based on the cost of repairs of the motorcycle. The correctness or otherwise of the reasoning in the judgment under review cannot normally be gone into, in a application for review.

14. This takes me to the contention about addition of 40% income, towards the loss of future prospects. In the case

of **Rajesh** (supra), the Supreme Court has held that there has to be addition to the income towards future prospects, even in respect of self employed persons or persons with fixed income. The actual addition depends upon the age of the deceased. In the present case, the deceased was 21 years of age and according to the applicants, the monthly income is required to be enhanced by 40%.

15. It is true that this Court has noticed the judgment in the case of **Rajesh** (supra), but while arriving at computation has not made addition to the income towards future prospects.

16. Shri Afonso, the learned Counsel for the applicants has relied upon the decision of this Court in the case of **Kritik Kishore Naik & Another Vs. Buddesa Bandagisa Mulla & Others**, in Civil Review Application No. 3/2016 in First Appeal No. 79/2013, decided on 28.04.2016, wherein under similar facts and circumstances, this Court had allowed the review application by making appropriate addition to the income towards future prospects, in accordance with the judgment of the Supreme Court in the case of **Rajesh** (supra). In the result, the review application has to be partly allowed by adding 40% to the income of the deceased towards future prospects.

17. Insofar as general/notional damages under the head of loss of estate and funeral expenses, are concerned, the same have to be granted at the rate of Rs.15,000/- each, as held in the case of **Rajesh** (supra). This Court has granted Rs.25,000/- towards funeral expenses and Rs.2,000/- towards the loss of estate. It would appear that the total compensation to be granted under the two heads is Rs.30,000/-. I, thus, propose to grant a total compensation of Rs.30,000/- towards the two heads of general compensation.

18. The total compensation would be as under:

1. Income per month	:	Rs.	8,000/-
2. Add 40% income towards future prospects	:	Rs.	3,200/-
Total Income per month	:	Rs.	11,200/-
3. Annual Income (Rs.11,200 x 12 months)	:	Rs.	1,34,400/-
4. Deduct 50% towards living and personal expenses	:	Rs.	67,200/-
5. Net income to be taken for computing loss of dependency	:	Rs.	67,200/-
6. Compensation towards loss of dependency (Rs.67,200 x 18)	:	Rs.	12,09,600/-
7. Towards Funeral Expenses and Loss of Estate	:	Rs.	30,000/-
TOTAL			: Rs. 12,39,600/-

19. In the result, the following order is passed:

ORDER

- (a) The review application is partly allowed.
- (b) The applicants shall be entitled to compensation of Rs.12,39,600/-, jointly and severally against the respondents.
- (c) The amount shall carry interest at the rate of 9% per annum, from the date of the petition till realisation.
- (d) In the circumstances, there shall be no order as to costs.

C.V. BHADANG, J.

EV