

**IN THE HIGH COURT OF BOMBAY AT GOA****FIRST APPEAL NO. 272 OF 2008**

1. Mrs. Shweta D. Hirve, wife of late Dharmendra Hirve, major of age, housewife, resident of "Gurukrupa", Dattawadi, Mapusa-Goa.

2. Master Mithilesh D. Hirve, son of late Dharmendra Hirve,

3. Master Yeshodhan D. Hirve, son of late Dharmendra Hirve,

Both minors, represented by the Appellant No. 1, being their natural guardian.

.... Appellants

Versus

1. U.P. State Roadways Transport Corporation, having its Head Office at Tehari Kothi, in front of Gautam Buddha Park, Lucknow, U.P.

2. Shri Deen Dayal, major of age, driver, residing at Khudipur, Thana, Puparpur, Zilla, Sultanpur, U.P. } Deleted in terms of order dated 14.10.2015

.... Respondents

Shri Ryan Menezes, Advocate for the Appellants.

Shri Arun De Sa, Advocate for the Respondent No. 1.

**CORAM:- C. V. BHADANG, J.**

**DATE:- 8<sup>th</sup> MARCH 2018**

**ORAL JUDGMENT:**

This appeal is for enhancement of the compensation granted by the Motor Accident Claims Tribunal at Panaji (Tribunal, for short).

2. The brief facts necessary for the disposal of the Appeal may be stated thus:

That now deceased Dharmendra Hirve was a professional Tabla player and was working with a music group of Mr. Remo Fernandes.

On 18.09.2000 around 7:20 p.m., Dharmendra along with four other band members were proceeding from Kanpur to Lucknow, after a musical concert at I.I.T., Kanpur in a Tata Sumo, bearing registration No. UP-78-S-7983. The vehicle met with an accident with a bus bearing registration No. UP-42/B-8246, belonging to the U.P. State Roadways Transport Corporation, near Basiratganj, within the jurisdiction of Ajgain P.S., Unnao, Uttar Pradesh, resulting into the death of Dharmendra. The appellants who are respectively the widow and children of Dharmendra filed a petition for compensation under Section 166 of the Motor Vehicles Act, 1988 (Act, for short), before the Tribunal, claiming a compensation of Rs.22 lakhs.

The deceased at the relevant time was aged 35 years and was earning Rs.15,000/- per month. It was contended that due to the untimely death of Dharmendra, the appellants have lost their support. It was contended that the accident occurred due to

the rash and negligent driving of the respondent no. 2, who was driving the bus belonging to the U.P. State Roadways Transport Corporation.

3. The learned Tribunal found that the accident was caused solely due to the rash and negligent driving of the bus. Insofar as the quantum of the compensation is concerned, the appellants had produced Form No. 16A, issued by Remo Fernandes for the years 1998-1999, 1999-2000 and 2000-2001 at Exhibit-24. The learned Tribunal refused to rely on the said documents on the ground that Remo Fernandes was not examined and the Income Tax Returns were not produced.

The learned Tribunal reckoned the average annual income of the deceased at Rs.60,000/-. After deducting 1/3<sup>rd</sup> towards personal and living expenses and after applying the multiplier of 16, arrived at a compensation of Rs.6,40,000/-. The Tribunal awarded Rs.2,500/- towards funeral expenses and Rs.5,000/- towards loss of estate and Rs.5,000/- to the appellant no. 1 towards loss of consortium. The learned Tribunal thus, granted compensation of Rs.6,52,500/- along with interest at the rate of 9% per annum on a sum of Rs.2,03,377/- (excluding the

future loss of dependency) from the date of filing of the petition till realisation. Feeling aggrieved by the inadequate compensation granted, the appellants are before this Court.

4. I have heard Shri Menezes, the learned Counsel for the appellants and Shri De Sa, the learned Counsel for the respondent no. 1. I have gone through the record.

5. It is submitted by Shri Menezes, the learned Counsel for the appellants that the Tribunal was in error in refusing to place reliance on Form No. 16A. It is submitted that strict rules of evidence, do not apply to the Tribunal and the Tribunal, ought to have reckoned the monthly income at least at Rs.13,000/- per month.

On behalf of the petitioner, reliance is placed on the decision of the Supreme Court, in the case of **National Insurance Company Limited Vs. Pranay Sethi and Others, AIR 2017 SC 5157**, in order to submit that the compensation under the head of loss of consortium, funeral expenses is also inadequate.

6. Shri De Sa, the learned Counsel for the respondent no. 1 has supported the impugned judgment on the aspect of quantum. It is submitted that the Tribunal has rightly refused to rely on Form No. 16A (Exhibit-24), in the absence of Mr. Remo Fernandes being examined. It is submitted that the appellants have also not produced the Income Tax Returns, which would have consistently shown the income of the deceased and the annual income reckoned by the Tribunal, is just and proper.

7. I have considered the circumstances and the submissions made. At the outset, it may be mentioned that the First Appeal No. 101/2010, filed by the respondent no. 1-Corporation, challenging the aspect of negligence, has already been dismissed. Thus, the limited question is about the quantum of compensation, to which the appellants can be held entitled. It is now well settled that under Section 166 of the Act, the Tribunal is required to arrive at a just compensation and the compensation so determined, should neither be meager nor should be exorbitant. The question as to what is just compensation depends upon facts and circumstances of each case.

8. In the present case, it is not in dispute that the date of birth of Dharmendra was 22.12.1964 and the deceased was 35 years old at the time of the accident. The question is about the annual income of the deceased. The appellant had produced Form No. 16A for two complete years i.e. 1998-1999 and 1999-2000 and part of the year 2000-2001 (Exhibit-24). For the year 1998-1999, the annual income is shown to be Rs.1,16,260, while for the year 1999-2000, it is shown to be Rs.2,11,303/- and for six months period for 2000-2001, it is shown to be Rs.50,872/-. The question is whether, implicit reliance can be placed on the documents at Exhibit-24.

9. In this regard, it would be significant to note that strict rules of the Evidence Act, do not apply to the proceedings under Section 166 of the Act. The Tribunal can act on the basis of evidence and material, which can be found to be acceptable. It may not be out of place to mention that the Forms 16A are issued prior to the death of Dharmendra and thus, would have greater probative value. It is true that Remo Fernandes has not been examined nor the Income Tax Returns have been produced. However, in my considered view, the Tribunal can look into the

documents at Exhibit-24 to have an idea about the nature of the income earned by the deceased. Insofar as the six months period for 2000-2001 is concerned, it was submitted by Shri Menezes that such concerts normally take place during the later part of the calendar year and therefore, the income may be on the lower side. In any event, looking to the nature of the work of the deceased, an uniform payment or income cannot be expected, as the income is bound to fluctuate. The Court can also take note of the fact that the field in which Dharmendra was working is a highly competitive field, where constantly there are new entrants. It is evident that a certain amount of guess work and approximation is necessary, if not inevitable, in the matter of determining the compensation. Considering the income as depicted in Form No. 16A for three years, I find that the monthly income of the deceased can be safely reckoned at Rs.9,000/-.

10. The annual income would work out to Rs.1,08,000/-. Looking to the fact that there were three dependents, the deduction towards personal and living expenses would be  $\frac{1}{3}^{\text{rd}}$  of Rs.1,08,000/- i.e. Rs.36,000/-. Thus, the net dependency would be  $\text{Rs.1,08,000} - \text{Rs.36,000} = \text{Rs.72,000/-}$  per annum. Looking to the

age of the deceased, the appropriate multiplier would be 16, in view of the decision of the Supreme Court in the case of **Smt. Sarla Verma & Others Vs. Delhi Transport Corporation & Another, (2009) 6 SCC 121**. Thus, the compensation towards loss of dependency would be  $\text{Rs.}72,000 \times 16 = \text{Rs.}11,52,000/-$ .

The Hon'ble Supreme Court in a recent decision in the case of **Pranay Sethi** (supra) has standardized the measure of general damages towards loss of consortium, loss of estate and funeral expenses. The Hon'ble Supreme Court has held that compensation of Rs.15,000/- can be allowed towards loss of estate, Rs.40,000/- towards loss of consortium and Rs.15,000/- towards funeral expenses. Thus, a total amount of Rs.70,000/- can be granted towards compensation under the head of loss of consortium, towards loss of estate and funeral expenses. Thus, the total amount of compensation would work out to  $\text{Rs.}11,52,000 + \text{Rs.}70,000 = \text{Rs.}12,22,000/-$ .

The Tribunal has restricted the future interest only on the part of the compensation, excluding the future loss of dependency. I do not find that any reason to restrict the interest only on the part of compensation, excluding towards loss of future dependency.

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

**ORDER**

- (a) The Appeal is partly allowed.
- (b) The impugned judgment and award, passed by the Tribunal is hereby modified.
- (c) The respondent shall be entitled to compensation of Rs.12,22,000/- along with interest at the rate of 9% per annum from the date of the petition till realisation. This shall be inclusive of the compensation under Section 140 of the Act.
- (d) In the circumstances, there shall be no order as to costs.
- (e) Award be drawn accordingly.

**C. V. BHADANG, J.**

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